

# AUSTRALIAN CAPITAL TERRITORY.

No. 6 of 1947.

## AN ORDINANCE

### To amend the Motor Traffic Ordinance 1936-1945.

**B**E it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909-1938* and the *Seat of Government (Administration) Act 1910-1940*, as follows:—

1.—(1.) This Ordinance may be cited as the *Motor Traffic Ordinance 1947*.\* Short title and citation.

(2.) The *Motor Traffic Ordinance 1936-1945* is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Motor Traffic Ordinance 1936-1947*.

2. This Ordinance shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*. Commencement.

3. Section three of the Principal Ordinance is amended by inserting, after the words “Part IV.—Traders’ Plates”, the words “Part IVA.—Insurance”.

4. Section twenty-four of the Principal Ordinance is amended by omitting sub-section (2.). Licences of public motor vehicles.

5. Section twenty-five A of the Principal Ordinance is amended by omitting sub-section (2.). Licences for the carriage of tourists.

6. Section twenty-seven of the Principal Ordinance is amended by omitting sub-section (3.). Licence to conduct motor omnibus service.

7. After Part IV. of the Principal Ordinance the following Part is inserted:—

#### “PART IVA.—INSURANCE.

“41A. In this Part, unless the contrary intention appears— Definitions.

‘authorized insurer’ means a person carrying on the business of insurance who is or has been approved by the Minister as an authorized insurer under this Part;

‘hospital treatment’ means treatment at any hospital, and includes the maintenance of the injured person as a patient at the hospital, and the provision or supply by

\* Notified in the *Commonwealth Gazette* on 29th July, 1947.

the hospital of nursing attendance, medicine, medical or surgical supplies or other curative apparatus, and any other ancillary service;

‘insured motor vehicle’ means a motor vehicle (including a trailer) in relation to which there is in force at all material times a third-party policy;

‘medical and surgical treatment’ includes—

- (a) treatment by a legally qualified medical practitioner, a registered dentist or a masseur;
- (b) the provision of skiagrams, crutches, artificial members, and artificial replacements; and
- (c) any nursing attendance, medicines, medical or surgical supplies or curative apparatus supplied or provided for the injured person otherwise than as a patient at the hospital;

‘nominal defendant’ means the person who is the nominal defendant for the purposes of this Part;

‘third-party policy’ means a policy of insurance which complies with the requirements of this Part;

‘trailer’ means any vehicle without motive power capable of being drawn by a motor vehicle while attached to it; and

‘uninsured motor vehicle’ means a motor vehicle (including a trailer) not being a motor vehicle—

- (a) the property of the Commonwealth or of any authority under the Commonwealth; or
- (b) in respect of which persons are exempted by or under this Ordinance from the provisions of sub-section (1.) of section forty-one c of this Ordinance,

which is not an insured motor vehicle.

Application  
of Part to  
Commonwealth  
motor vehicles.

“41B. Nothing in this Part shall render it obligatory for a third-party policy or for a policy referred to in section forty-one AM of this Ordinance to be taken out in relation to the use of any motor vehicle the property of the Commonwealth or any authority under the Commonwealth but the Commonwealth or any such authority shall, in relation to the use of any such vehicle in respect of which any such policy is not in force, be under the same liabilities and have the same rights as an authorized insurer would be under or have if he had issued to the Commonwealth or that authority, as the case may be, a third-party policy or a policy referred to in that section in relation to the use of that vehicle.

“41C.—(1.) Subject to sections forty-one D and forty-one E of this Ordinance, a person shall not use, or cause, suffer or permit any other person to use, a motor vehicle on a public street unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a third-party policy.

Motor vehicle not to be used on a public street unless insured against third-party risk.

Penalty: In the case of a first offence, One hundred pounds and, in the case of any subsequent offence, Two hundred pounds.

(2.) In addition to any penalty imposed under the last preceding sub-section, the Court may order, on the conviction of any person of an offence against that sub-section, that—

- (a) that person shall cease to be licensed or to be deemed to be licensed to drive a motor vehicle, and his licence to drive a motor vehicle shall be cancelled as on and from the date of the conviction, and he shall not be entitled to obtain any licence to drive a motor vehicle;
- (b) the registration of the motor vehicle in respect of which the offence was committed shall be cancelled and that person shall not be entitled to have the vehicle re-registered,

in either case, for a period of twelve months from the date of the conviction.

(3.) It shall be a sufficient defence in any proceedings for a contravention of sub-section (1.) of this section if the defendant proves to the satisfaction of the Court that at the time the vehicle was used upon the public street he had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

“41D. Where, at the date of the commencement of this section, a motor vehicle is registered, the provisions of sub-section (1.) of the last preceding section shall not apply to and in respect of the use of that motor vehicle until the expiration of a period of its registration or until the expiration of a period of thirty days after that date of commencement, whichever is the earlier.

Exemption in respect of certain registered motor vehicles.

“41E.—(1.) Where, at the date of commencement of this section, there is in force in relation to the use of a motor vehicle or of a motor vehicle to which a trader's plate is affixed a third-party policy (in this section referred to as the ‘existing policy’) which insures, with an authorized insurer, the owner of the motor vehicle or the trader against some or all of the liabilities against which he is required to insure under this Part, the following provisions shall apply:—

Existing policies valid until renewal of registration.

- (a) The existing policy shall, as regards all liability against which the owner or trader is required to insure under this Part, be deemed for all purposes of this Part to be a third-party policy, and the existing policy shall

be deemed to have been varied, modified or amended in such manner and to such extent as may be necessary to give effect to this sub-section; and

- (b) The provisions of this Part shall apply in all respects as if the motor vehicle were an insured motor vehicle and the insurer were an authorized insurer.

(2.) Nothing in the last preceding sub-section shall affect the operation of the existing policy insofar as the existing policy insures the owner or the trader or any other person against any liability other than the liability against which he is required to insure under this Part.

Motor vehicle  
not to be  
registered, &c.,  
without  
evidence of  
insurance.

“41F.—(1.) The Registrar shall not grant or renew the registration of a motor vehicle unless and until there is lodged with him a certificate in accordance with the prescribed form issued by an authorized insurer that a third-party policy expressed to commence either upon the date of issue of the certificate or upon a date not later than the date of commencement of the registration or renewal of registration and to terminate upon the date of expiration of such registration or renewal will be issued by that authorized insurer in relation to the use of the motor vehicle.

(2.) The Registrar shall not issue a trader's plate (except as provided in sub-section (3.) of this section) unless there is lodged with him a certificate in accordance with the prescribed form issued by an authorized insurer that a third-party policy expressed to commence not later than the date of commencement of the period for which the trader's plate is issued and to terminate upon the date of expiration of that period will be issued by that authorized insurer in relation to the use of any motor vehicle to which the trader's plate is affixed.

(3.) Where a third-party policy in relation to the use of a motor vehicle to which a trader's plate is affixed is expressed to terminate upon a specified date and before that date the Registrar issues, in lieu of the trader's plate and for a period expiring upon that date, another trader's plate, the third-party policy shall enure in relation to the use of any motor vehicle to which the other trader's plate is affixed.

(4.) Any reference in this Part to the issue of a third-party policy shall extend to and include the issue of a renewal of the third-party policy.

(5.) Any person who in or with respect to any proposal for a third-party policy knowingly makes any false statement or misrepresentation with regard to any material fact or thing, or fails to disclose any material fact or thing of which he has knowledge, shall be guilty of an offence.

Penalty: Twenty pounds.

“41G.—(1.) Where an authorized insurer accepts the appropriate amount of insurance premium in respect of the insurance of a motor vehicle, he shall forthwith issue to the owner of the motor vehicle a certificate of the nature referred to in sub-section (1.) of section forty-one F of this Ordinance in relation to the motor vehicle.

Issue of  
Certificate and  
Third-party  
Policy.

(2.) Where an authorized insurer accepts the appropriate amount of insurance premium in respect of the insurance of any motor vehicle to which a trader's plate is affixed, he shall forthwith issue to the trader a certificate of the nature referred to in sub-section (2.) of section forty-one F of this Ordinance in relation to the motor vehicle.

(3.) An authorized insurer who issues any such certificate—

- (a) shall, for all purposes of this Ordinance relating to the liability of authorized insurers, be deemed to have issued a third-party policy in conformity with the certificate; and
- (b) shall, at the time of the issue of the certificate or as soon as practicable thereafter, issue a third-party policy in conformity with the certificate.

“41H.—(1.) In order to comply with the requirements of this Part, a third-party policy—

Policy of  
Insurance.

- (a) shall be issued by an authorized insurer;
- (b) shall, where the policy is issued in relation to the use of a particular motor vehicle, insure the owner of the motor vehicle mentioned in the policy and any other person who at any time drives the motor vehicle, whether with or without the authority of the owner, jointly and each of them severally, against all liability incurred by that owner and that person jointly, or by either of them severally, in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the motor vehicle in any part of the Commonwealth;
- (c) shall, where the policy is issued in relation to the use of motor vehicles to which a trader's plate is affixed, insure the trader to whom the trader's plate mentioned in the policy is in issue and any other person who at any time drives a motor vehicle to which that trader's plate is affixed (whether the vehicle is so driven or the trader's plate is so affixed with or without the authority of the trader) jointly, and each of them severally, against all liability incurred by that trader and that person jointly, or by either of them severally, in respect of the death of, or bodily injury

to, any person caused by or arising out of the use of the motor vehicle to which the trader's plate is so affixed, in any part of the Commonwealth; and

(d) shall be in accordance with the prescribed form.

(2.) A third-party policy shall not extend to insure the owner or driver of the motor vehicle against—

(a) any liability to pay compensation under the *Workmen's Compensation Ordinance 1946* to a worker employed by him; or

(b) any liability which may be incurred by him under an agreement unless the liability is one which would have arisen in the absence of that agreement.

(3.) A third-party policy which complies with the requirements of paragraphs (a) and (b) or (c) of sub-section (1.) of this section shall not be invalidated by reason of the fact that it contains any term, condition or warranty not contained in the prescribed form, but any such term, condition or warranty shall be void and of no effect.

(4.) Any authorized insurer who, upon any proposal for a third-party policy, issues a policy of insurance which is not a third-party policy or which contains any term, condition or warranty rendered void by the operation of sub-section (3.) of this section shall be guilty of an offence.

**Penalty:** One hundred pounds.

(5.) A third-party policy issued by an authorized insurer in relation to the use of a motor vehicle or in relation to the use of any motor vehicle to which a trader's plate is affixed shall commence on the date on which it is expressed to commence, and, unless it is sooner cancelled pursuant to this Ordinance, shall continue in force—

(a) in any case where the authorized insurer notifies the Registrar, at least thirty days before the date on which the policy is expressed to terminate, that he will not renew the policy—until that date;

(b) in any case not provided for in paragraph (a) of this sub-section, and where another third-party policy issued by the same or another authorized insurer in relation to the use of that motor vehicle or in relation to the use of any motor vehicle to which that trader's plate is affixed commences during the period of fifteen days next following the date on which the first-mentioned policy is expressed to terminate—until that commencement; and

(c) in any other case—until fifteen days after the date on which it is expressed to terminate.

(6.) Where an authorized insurer issues a renewal of a third-party policy in relation to the use of a motor vehicle for a period expressed to terminate upon the date of expiration of a renewal of the registration of the motor vehicle—

- (a) the insurance premium shall be payable as if the renewal of the policy were expressed to commence from the date of commencement of the renewal of registration, whether or not the renewal of the policy is so expressed; and
- (b) the authorized insurer shall not be liable under the renewal of the policy in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the motor vehicle during the period (if any) between the date from which the renewal of the policy is expressed to commence and the date of payment of the amount of insurance premium in respect of the renewal of the policy.

(7.) Whilst any authorized insurer is exempted under paragraph (b) of sub-section (6.) of this section from liability in respect of the death of, or bodily injury to, any person caused by or arising out of the use of a motor vehicle, and no third-party policy is in force in relation to the motor vehicle whether by reason of the operation of that sub-section or otherwise, the motor vehicle shall, for the purposes of this Ordinance, be deemed to be an uninsured motor vehicle.

(8.) Notwithstanding anything in any enactment other than this Ordinance or any rule of law, an authorized insurer issuing a third-party policy shall, in respect of any liability in respect of the death of, or bodily injury to, any person which the third-party policy purports to cover in the case of the owner of the insured motor vehicle or any other person, be liable to indemnify that owner or person.

“41J.—(1.) A person who commences an action against the owner or driver of an insured motor vehicle for the recovery of damages in respect of the death of, or bodily injury to, any person caused by, or arising out of the use of, that motor vehicle shall serve upon the authorized insurer of the motor vehicle a copy of the writ of summons in that action, and shall, before taking any further proceedings in the action, file in the appropriate court an affidavit of service of the writ.

Actions for damages in case of death or bodily injury.

(2.) Where an action for damages is commenced in respect of bodily injury to any person caused by, or arising out of the use of, an insured motor vehicle, and there has been a refusal or neglect, without reasonable cause, to allow a legally qualified medical practitioner, nominated by the owner, driver or authorized insurer of the motor vehicle, to examine the injured person for the

purpose of ascertaining the nature and extent of the bodily injury, the court may make an order, on such terms as it thinks proper, that all further proceedings in the action be stayed and those proceedings shall be stayed accordingly.

**Trader's policy to apply.**

“41K. Where the death of, or bodily injury to, any person is caused by or arises out of the use of an insured motor vehicle whilst a trader's plate is affixed to that motor vehicle, the third-party policy in relation to motor vehicles to which that trader's plate is affixed shall (to the exclusion of the third-party policy in relation to the particular motor vehicle) be the policy under which, in respect of that death or bodily injury, any person whom the policy purports to insure is insured.

**Cancellation of third-party policy.**

“41L.—(1.) A third-party policy may be cancelled by the authorized insurer if another third-party policy is in force in relation to the same motor vehicle or in relation to motor vehicles to which the same trader's plate is affixed, and the other policy is expressed to terminate not earlier than the date upon which the first-mentioned policy was expressed to terminate.

(2.) Where the registration of an insured motor vehicle is cancelled by the Registrar, or a trader's plate is delivered to the Registrar before the date on which the third-party policy in relation to the use of that insured motor vehicle, or the use of any motor vehicle to which that trader's plate is attached, is expressed to terminate, the authorized insurer who issued the policy shall, upon application by the owner of the motor vehicle or the trader, as the case may be, but subject to such conditions (if any) as are prescribed, cancel the policy.

(3.) Where the Registrar refuses the renewal of, or cancels the registration of, an insured motor vehicle on the ground that the vehicle or its parts or equipment is not in a thoroughly serviceable condition or does not comply with requirements prescribed by or under this Ordinance, the Registrar shall forthwith give to the authorized insurer who issued the third-party policy in relation to the use of that motor vehicle a notice in writing of the cancellation or refusal.

(4.) In any case not provided for in sub-sections (1.) or (2.) of this section, a third-party policy may be cancelled by the authorized insurer after a notice specifying a date, not being a date earlier than thirty days after service of the notice, upon which the authorized insurer proposes to cancel the policy has been served on the Registrar and (except where the owner of the motor vehicle or the trader has applied to the authorized insurer for cancellation of the policy) on the owner of the motor vehicle or the trader, as the case may be.

(5.) Where an appeal to the Minister under section forty-one m of this Ordinance is lodged on or before the date specified in the notice, the third-party policy shall not be cancelled unless and until

the proposed cancellation is confirmed by order made by the Minister or the appellant fails to comply with any direction by him to be performed in the order made by the Minister.

(6.) Where an authorized insurer cancels a third-party policy under this section, he shall forthwith notify the Registrar of the fact.

(7.) Whilst the registration of a motor vehicle is current or a trader's plate is in issue, the authorized insurer shall not (whether upon application by the owner of the motor vehicle or the trader, or otherwise) cancel the third-party policy except—

(a) under the circumstances and subject to the conditions prescribed by or under this section or section forty-one AT of this Ordinance; or

(b) under such other circumstances and subject to such conditions as are prescribed.

(8.) The cancellation of any third-party policy shall not exempt the authorized insurer from any liability, whether under the policy or under this Ordinance, accrued or incurred before the cancellation of the policy.

“41M.—(1.) Where an authorized insurer refuses to issue or to renew a third-party policy to any person or gives notice of intention to cancel a third-party policy issued to any person, there shall be a right of appeal to the Minister. Appeal against refusal to issue or against cancellation of policy.

(2.) On any such appeal the Minister may make such order as he thinks fit, having regard to the merits of the case and the public welfare.

(3.) Without prejudice to the generality of the foregoing power, the Minister may direct that the third-party policy be issued upon payment of a premium at the amount specified in the order or that the notice of intended cancellation of a policy be withdrawn upon payment of such additional amount as is specified in the order by way of premium.

“41N.—(1.) Any person or association, registered for the purpose of carrying on the business of accident insurance under the law for the time being in force in the Territory relating to the registration of companies, who or which is willing to undertake insurance business in terms of this Ordinance may lodge with the Registrar an application containing such information as the Registrar requires for approval by the Minister as an authorized insurer. Authorized insurers.

(2.) The Minister may refuse to grant the application or may grant the application subject to such conditions (if any) as are prescribed.

(3.) The Minister shall cause notice of approval of any person as an authorized insurer to be published in the *Gazette* and the approval shall take effect on a date specified for the purpose by the Minister in the notice.

(4.) Any approval of a person as an authorized insurer may be cancelled by the Minister after a notice specifying the grounds upon which the action is taken and the date (not being a date earlier than fourteen days after the giving of the notice) upon which he proposes to cancel the approval has been served on the authorized insurer.

(5.) Where, pursuant to sub-section (11.) of this section, an appeal is lodged on or before the date specified in the notice, the approval of a person as an authorized insurer shall not be cancelled unless and until the proposed cancellation is confirmed by the court or the appeal is dismissed.

(6.) The Minister may cancel an approval granted under this section to any person if that person has, in his capacity as authorized insurer, been convicted of an offence against this Ordinance.

(7.) Any authorized insurer may, by notice in writing to the Minister, withdraw from insurance business in terms of this Ordinance:

Provided that the notice of withdrawal shall not take effect until a date (not being more than three months after the date when the notice of withdrawal is given) specified by the Minister by notice published in the *Gazette*.

(8.) As from the date specified in the notice in the *Gazette* the person giving the notice of withdrawal shall cease to be an authorized insurer.

(9.) A cancellation of approval of a person as an insurer or a notice of withdrawal from insurance business made or given under this section shall not affect—

(a) any third-party policy in force at the date upon which the cancellation or notice of withdrawal takes effect;  
or

(b) any liability as an authorized insurer, whether under a third-party policy or under this Ordinance accrued or incurred before the date upon which the cancellation took effect or incurred under any third-party policy referred to in paragraph (a) of this sub-section.

(10.) For the purposes of any policy referred to in paragraph (a) of the last preceding sub-section and for all purposes relating to the liability referred to in paragraph (b) of the last preceding sub-section, this Ordinance shall extend to and in respect of the person referred to in the notification of cancellation or, as the case may be, the person who gave the notice of withdrawal in all respects as if he were an authorized insurer.

(11.) Where an application for approval as an authorized insurer has been refused or where the Minister gives notice of intention to cancel the approval of any person as an authorized insurer, the applicant may appeal to the Supreme Court of the Territory against the refusal or proposed cancellation.

(12.) The decision of the Supreme Court on any such appeal shall be final.

“41o. Any person who, not being an authorized insurer, advertises himself or holds himself out to be an authorized insurer or undertakes or offers to undertake insurance business in terms of this Ordinance shall be guilty of an offence. Holding out as an authorized insurer.

Penalty: Five hundred pounds.

“41p.—(1.) Where judgment has been obtained in any court in respect of the death of, or bodily injury to, any person caused by or arising out of the use of an insured motor vehicle, and the third-party policy insures the judgment debtor against liability in respect of that death or bodily injury and the judgment is not satisfied in full within a period of thirty days after judgment has been entered, the court shall, upon the application of the judgment creditor, direct that the judgment be entered against the authorized insurer: Recovery of money from insurers.

Provided that, where execution on the judgment is stayed pending appeal, the time during which execution is so stayed shall be excluded in calculating the period of thirty days:

Provided further that notice of intention to make the application shall be served on the authorized insurer at least seven days before the hearing of the application.

(2.) Where the court gives a direction to enter judgment, the judgment shall be entered and may thereupon be enforced as a judgment against the authorized insurer:

Provided that any judgment so entered may be enforced against the authorized insurer only to the extent to which it had not already been satisfied at the time it was so entered.

(3.) Where, in respect of the death of, or bodily injury to, any other person caused by or arising out of the use of a motor vehicle, liability has been incurred by any person (in this sub-section referred to as the ‘insured person’) who is insured against such liability under—

(a) a third-party policy; or

(b) a policy of insurance complying with the provisions of any statute which is in force in any prescribed part of the Commonwealth other than the Territory and which requires the owner or driver of a motor vehicle to be insured against liability in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the motor vehicle,

and where the insured person is dead or cannot be served with process, any person who could have obtained judgment in respect of such death or bodily injury against the insured person if he were living or if he could have been served with process, as the case may be, may recover, in any case where the insurance is under a third-party policy, by action against the authorized insurer who issued the third-party policy and, in any case where the insurance is under a policy of the nature referred to in paragraph (b) of this sub-section, by action against the nominal defendant, an amount equivalent to the sum for which he could have obtained a judgment against the insured person.

(4.) An action under the last preceding sub-section shall not lie against the authorized insurer or the nominal defendant unless notice of intention to make a claim is given to the authorized insurer or the nominal defendant, as the case may be—

- (a) in the case of an action for the recovery of any amount referred to in paragraph (b) of sub-section (1.) of section forty-one AE of this Ordinance—within the time prescribed by paragraph (c) of that sub-section; and
- (b) in any other case—within a period of three months after the occurrence which resulted in such death or bodily injury, or within such further period as the court, upon sufficient cause being shown, allows.

(5.) The fact that the insured person cannot be served with process may be proved orally or by the affidavit of the person who endeavoured to effect service.

(6.) It shall not be a defence by an authorized insurer to an application to enter judgment against him pursuant to sub-section (1.) of this section or to an action against him under sub-section (3.) of this section that he is not liable under the third-party policy by reason of any act committed or omission made by the owner or driver of the insured motor vehicle.

(7.) In particular and without prejudice to the generality of the provisions of sub-section (6.) of this section, it shall not be a defence by an authorized insurer to any such application or action that he is not liable under the third-party policy by reason of the fact that—

- (a) the third-party policy was obtained by any false statement or misrepresentation or non-disclosure, whether fraudulent, material or otherwise;
- (b) the owner of the insured motor vehicle has committed a breach of, or has failed to comply with, any term, condition or warranty of the third-party policy; or
- (c) the owner or driver of the insured motor vehicle has committed a breach of, or has failed to comply with, any provision of this Ordinance.

(8.) It shall not be a defence by the nominal defendant to an action against him under sub-section (3.) of this section that the owner or driver of the motor vehicle has committed any breach of or has failed to comply with any provision of this Ordinance.

“41q. The authorized insurer may, in addition to any other right or remedy he may have, recover from the owner of the insured motor vehicle (and, where two or more persons are the owners, from those persons jointly and severally) so much of— Recovery by insurer from owner.

- (a) any judgment entered or obtained against the authorized insurer; or
- (b) any sums which the authorized insurer has paid in payment, settlement or compromise of the claim or of the judgment against the owner and the driver jointly or either of them severally or of the judgment entered or obtained against the authorized insurer; and
- (c) the costs of and expenses reasonably incurred by the authorized insurer,

as the authorized insurer has paid under or in consequence of any third-party policy where there has been—

- (i) a false statement or misrepresentation or non-disclosure in obtaining the third-party policy; or
- (ii) a breach by the owner of any term, condition or warranty of the third-party policy or any provision of this Ordinance or a failure by the owner to comply with any such term, condition, warranty or provision:

Provided that the authorized insurer shall not be entitled to recover any moneys under this sub-section unless the court in which the proceedings for the recovery of such moneys are taken is satisfied—

- (a) where there has been a false statement or misrepresentation or non-disclosure in obtaining the third-party policy—that the false statement, misrepresentation or non-disclosure, whether fraudulent or otherwise, was in relation to some fact or thing of such a nature as to influence a prudent insurer in determining whether or not to accept a proposal for insurance; or
- (b) where there has been a breach of or failure to comply with any term, condition, warranty or provision referred to in sub-paragraph (ii) of paragraph (c) of this section—that the breach or failure was such that it contributed in a material degree to the circumstances in which the authorized insurer agreed to pay or otherwise became liable to pay the moneys sought to be recovered.

Recovery by  
insurer from  
driver.

“41R. The authorized insurer may, in addition to any other right or remedy he may have, recover from the driver so much of—

- (a) any judgment entered or obtained against the authorized insurer; or
- (b) any sums which the authorized insurer has paid in payment, settlement or compromise of the claim or of the judgment against the owner and the driver jointly or either of them severally or of the judgment entered or obtained against the authorized insurer; and.
- (c) the costs of and expenses reasonably incurred by the authorized insurer,

as the authorized insurer has paid under or in consequence of any third-party policy where the driver has committed a breach of, or has failed to comply with, any provision of this Ordinance:

Provided that the authorized insurer shall not be entitled to recover any moneys under this section unless the court in which the proceedings for the recovery of the moneys are taken is satisfied that the breach or failure was such that it contributed in a material degree to the circumstances in which the authorized insurer agreed to pay or otherwise became liable to pay the moneys sought to be recovered.

Limitation  
of amount  
recoverable.

“41S. An authorized insurer shall not be entitled to recover, under the provisions of sections forty-one q and forty-one r of this Ordinance from the driver, as well as from the owner, in respect of the same act or omission or in respect of the same breach of or failure to comply with any provision of this Ordinance.

Effect of  
payment by  
authorized  
insurer.

“41T.—(1.) Any payment by an authorized insurer, made in pursuance of a judgment entered in pursuance of section forty-one p of this Ordinance shall, to the extent of such payment, be a discharge of—

- (a) the liability of the judgment debtor to the judgment creditor or, as the case may be, of the insured person entitled to the right of action referred to in sub-section (2.) of this section; and
- (b) the liability (if any) of the authorized insurer to the judgment debtor or, as the case may be, to the insured person.

(2.) Any payment by the nominal defendant, made in pursuance of a judgment entered in pursuance of section forty-one p of this Ordinance shall, to the extent of that payment, be a discharge of the liability of the insured person to the person entitled to the right of action referred to in sub-section (3.) of section forty-one p of this Ordinance.

Presumption  
of agency.

“41U. For the purposes of any proceedings against the owner of a motor vehicle, whether severally or jointly with the driver of the motor vehicle, for the recovery of damages in respect of the

death of, or bodily injury to, any person caused by or arising out of the use of the motor vehicle, and, where the motor vehicle is an insured motor vehicle, for the purposes of the third-party policy, any person (other than the owner) who was, at the time of the occurrence out of which the proceedings arose, the driver of the motor vehicle (whether with or without the authority of the owner) shall be deemed to be the agent of the owner acting within the scope of his authority in relation to the motor vehicle:

Provided that nothing in this section shall be construed as implying any ratification by the owner of the motor vehicle of the acts of the person driving the motor vehicle:

Provided further that, in the case of a motor vehicle which is registered at the date of commencement of this section, the provisions of this section shall not apply to and in respect of that motor vehicle until the expiration of that registration or until the expiration of a period of thirty days after that date, whichever first happens.

"41v. Where the death of, or bodily injury to, any person is caused by or arises out of the use of an insured motor vehicle and that motor vehicle was at the time of the occurrence out of which the death or injury arose driven by a person without the authority of the owner or without reasonable grounds for believing that he had the authority of the owner—

Right of authorized insurers against unauthorized drivers.

- (a) the driver of the motor vehicle shall not be entitled to recover from the authorized insurer any sum on account of any moneys (including costs) paid or payable by the driver in respect of his liability in respect of the death or bodily injury, but any amount necessary to satisfy that liability shall be paid by the authorized insurer to the person to whom the liability was incurred; and
- (b) any sum paid by the authorized insurer in or towards the discharge of the liability of any person in respect of the death or bodily injury shall be recoverable by the authorized insurer from the driver.

"41w.—(1.) The authorized insurer who issued any third-party policy—

Authorized insurer may take over proceedings, &c.

- (a) may undertake the settlement of any claim against any person in respect of a liability against which he is insured under the third-party policy;
- (b) may take over during such period as he thinks proper the conduct on behalf of that person of any proceedings taken or had to enforce the claim or for the settlement of any question arising with reference to the claim;

- (c) may defend or conduct those proceedings in the name and on behalf of that person; and
- (d) shall indemnify that person against all costs and expenses of or incidental to any of those proceedings while the authorized insurer retains the defence or conduct of the proceedings.

(2.) The person referred to in sub-section (1.) of this section shall sign all such warrants and authorities as the authorized insurer requires for the purpose of enabling the authorized insurer to have the defence or conduct of any proceedings referred to in that sub-section and, in default of his so doing, the court in which the proceedings are pending may order that the warrants and authorities be signed by the authorized insurer on behalf of that person.

(3.) Nothing said or done by or on behalf of the authorized insurer in connexion with the settlement of any such claim or the defence or conduct of any such proceedings shall be regarded as an admission of liability in respect of, or shall in any way prejudice, any other claim, action or proceeding arising out of the same occurrence.

No contracting  
out of  
Ordinance.

“41x.—(1.) Any provision, stipulation, covenant or condition in any agreement (whether made before or after the commencement of this section) which negatives, limits or modifies or purports to negative, limit or modify the operation of the provisions of this Part shall be void and of no effect.

(2.) Any contract whereby the liability of the owner of a public motor vehicle used for the conveyance of passengers in respect of the death of, or bodily injury to, any passenger thereon is negated, limited or modified shall be void.

(3.) For the purposes of the last preceding sub-section, ‘passenger’ includes any person (other than the driver) who is in or upon, entering or getting on to or alighting from the motor vehicle.

Notice of  
accidents.

“41y.—(1.) Where the death of, or bodily injury to, any person is caused by or arises out of the use of a motor vehicle (not being a motor vehicle in respect of which persons are exempted by or under this Part from the provisions of sub-section (1.) of section forty-one c of this Ordinance) the driver or the person in charge of the motor vehicle shall forthwith give written notification as soon as practicable after the occurrence which resulted in that death or bodily injury, or, if he was not then driving the motor vehicle, as soon as practicable after he became aware of the occurrence, to the authorized insurer (where the motor vehicle is an insured motor vehicle) or to the nominal defendant (where the motor vehicle is an uninsured motor-vehicle).

(2.) If at the time of the occurrence referred to in the last preceding sub-section the person driving the motor vehicle (in this sub-section referred to as 'the driver') was not the owner of the motor vehicle, the driver shall as soon as practicable give a notification in writing—

- (a) to the owner of the motor vehicle; or
- (b) to the authorized insurer (where the motor vehicle is an insured motor vehicle) or the nominal defendant (where the motor vehicle is an uninsured motor vehicle).

(3.) The notification shall set forth as fully as possible the following information:—

- (a) The fact of the accident;
- (b) The time, date and place at which the accident occurred;
- (c) The circumstances of the accident;
- (d) The name and address of any person killed or injured in the accident; and
- (e) The names of any witnesses of the accident.

(4.) The owner and the driver of the motor vehicle, or either of them, shall give such information, in addition to the information referred to in sub-sections (1.) and (2.) of this section, and shall take such steps, as the authorized insurer or the nominal defendant may reasonably require, whether or not any claim has been made in respect of the death or bodily injury.

(5.) Where the owner or the driver of the motor vehicle, without the consent in writing of the authorized insurer or the nominal defendant, makes any offer, promise, payment or settlement or any admission of liability in respect of the death or bodily injury, the fact that offer, promise, payment, settlement or admission has been made shall not be admissible in evidence in any proceedings against the authorized insurer or the nominal defendant.

(6.) Where the motor vehicle is an insured motor vehicle—

- (a) the owner or the driver, as the case may be, shall forthwith give to the authorized insurer a notification in writing of every notice of intention to make a claim given to, and of every claim made or action brought against, him in respect of that death or bodily injury;
- (b) the owner shall, where he becomes aware that notice of intention to make a claim has been given to, or a claim has been made or an action brought against, the driver in respect of that death or bodily injury, forthwith give to the authorized insurer a notification in writing thereof;
- (c) the owner or the driver shall not, without the consent in writing of the authorized insurer, enter upon or incur the expense of any litigation in respect of

any liability against which he is insured under the third-party policy relating to the use of the motor vehicle.

(7.) It shall be a sufficient compliance with any requirement of the last preceding sub-section as to the giving of a notification by the owner or the driver if the notification is given by some person on his behalf.

(8.) A notification given under this section shall not be subject to discovery and shall not be admissible in evidence in any proceedings (whether or not for an offence against this or any other Ordinance) except proceedings for failure to comply with or observe the requirements of this section.

(9.) This section shall not apply in any case where—

- (a) the person suffering the death or bodily injury was the owner of the motor vehicle; and
- (b) the motor vehicle was at the time of the occurrence being driven by the owner.

Change of  
ownership of  
motor vehicle.

“41z.—(1.) Every third-party policy in relation to a motor vehicle shall enure in favour of the owner for the time being and the driver, notwithstanding any change in the ownership of the motor vehicle, but shall cease to have effect when another third-party policy in relation to that motor vehicle comes into force except in relation to any liability, whether under the policy or under this Ordinance, accrued or incurred before that other third-party policy came into force.

(2.) As soon as practicable after the owner of an insured motor vehicle sells or ceases to have possession of the motor vehicle—

- (a) he shall give notice of that fact to the authorized insurer who issued the third-party policy; and
- (b) the person who has purchased or acquired possession of the insured motor vehicle shall give notice of that fact to the authorized insurer.

(3.) For the purposes of this section a person shall be deemed not to have ceased to have possession or, as the case may be, not to have acquired possession of an insured motor vehicle where a change of possession occurs by way of—

- (a) any hiring (not being a hiring under a hire-purchase agreement) or lending of a motor vehicle for a period not exceeding three months; or
- (b) the passing of the possession of a motor 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.

Change of  
ownership  
of trader's  
business.

“41AA.—(1.) Every third-party policy in relation to motor vehicles to which a trader's plate issued in respect of any business is affixed shall enure in favour of the person who for the time being is carrying on that business and the driver of any such motor

vehicle, notwithstanding any change in the ownership of the business, but shall cease to have effect when another third-party policy in relation to motor vehicles to which that trader's plate is affixed comes into force, except in relation to any liability, whether under the policy or under this Ordinance, accrued or incurred before that other third-party policy came into force.

(2.) As soon as practicable after the sale or other disposal of any business in respect of which a trader's plate is in issue—

- (a) the former owner of the business shall give notice of the sale or disposal to the authorized insurer who issued the third-party policy;
- (b) the new owner of the business shall give notice of the acquisition by him of the business to that authorized insurer.

“41AB.—(1.) Every authorized insurer shall submit to the Registrar such returns as are prescribed and shall, whenever so required by the Minister, furnish such information as the Minister reasonably requires relating to—

Information  
to be supplied  
by insurers.

- (a) premiums received for insurance under this Part;
- (b) claims paid under this Part;
- (c) the persons insured under this Part; and
- (d) any other matters relevant to this Part.

(2.) Any authorized insurer who, without lawful excuse, fails to furnish any information to the Minister within two months after receipt of a written notice requiring that information to be furnished shall be guilty of an offence.

“41AC.—(1.) Where any legally qualified medical practitioner or registered nurse renders emergency treatment in respect of bodily injury (including fatal injury) to any person caused by or arising out of the use of a motor vehicle, or the person so injured is immediately after the injury conveyed in any vehicle, and any payment is made (whether or not with an admission of liability) by an authorized insurer under or in consequence of a third-party policy, in respect of the death or of bodily injury to that person, and notice in writing of a claim under this section is given by the medical practitioner, nurse or person who conveyed the injured person to the authorized insurer within one month after the occurrence out of which the death or bodily injury arose, the authorized insurer shall make such of the following payments as are applicable to the case:—

Emergency  
treatment.

- (a) To the medical practitioner—the sum of twelve shillings and sixpence for each person to whom emergency treatment is rendered together with any travelling expenses reasonably and necessarily incurred in respect of the emergency treatment so rendered;

(b) To the nurse—the sum of ten shillings and sixpence for all emergency treatment rendered by her to the person or persons injured in the accident together with any travelling expenses reasonably and necessarily incurred in respect of the emergency treatment so rendered which sum shall, if emergency treatment is rendered to two or more persons, be deemed to have been paid on behalf of all those persons in equal shares;

(c) To any person who conveyed the injured person as mentioned in this sub-section—an amount to be ascertained in accordance with the regulations.

(2.) In this section, 'emergency treatment' means such medical or surgical treatment or examination by a legally qualified medical practitioner or a registered nurse as is immediately required as the result of any such injury as is mentioned in the last preceding sub-section.

Hospital  
treatment.

“41AD. Where—

- (a) any payment is made (whether or not with an admission of liability) by an authorized insurer, under or in consequence of a third-party policy, in respect of the death of, or bodily injury to, any person caused by or arising out of the use of a motor vehicle; and
- (b) the person who dies or is injured received treatment at a hospital, whether as an in-patient or as an out-patient in respect of the bodily injury (whether fatal or not) so caused or arising; and
- (c) within one month after admission to a hospital for treatment as a result of the occurrence out of which the death or bodily injury arose, notice in writing of a claim under this section is given by that hospital to the authorized insurer,

the authorized insurer shall pay to the hospital the amount owing to the hospital in respect of treatment afforded to the person who has so died or been injured, such amount to be calculated at the rates fixed by the by-laws, made in pursuance of the *Canberra Community Hospital Ordinance 1938-1945*, with ward accommodation at the public ward rates, or the rates prescribed under the compulsory third-party insurance Act in the State in which the treatment is given:

Provided that the amount payable by the authorized insurer to the hospital in respect of any such bodily injury (whether fatal or not) shall not exceed Fifty pounds for each person so treated as an in-patient or Five pounds for each person so treated as an out-patient or, in either case, one-fifth of the total amount (exclusive of costs) paid by the authorized insurer in respect of the injury, whichever is the lesser:

Provided also that, where the person who dies or is bodily injured receives treatment at more than one hospital and the total amount owing to those hospitals in respect of such treatment exceeds the maximum sum payable under this section, that sum shall be divisible between the hospitals in proportion to their respective claims.

“41AE.—(1.) Where—

Surgical and  
medical  
treatment.

- (a) any payment is made (whether or not with an admission of liability) by an insurer, under or in consequence of a third-party policy, in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle;
- (b) the person who died or was injured received medical, dental or surgical treatment by a legally qualified medical practitioner, registered dentist, nurse or masseur in respect of the bodily injury (whether fatal or not) so caused or arising; and
- (c) within one month after the occurrence out of which the death of, or bodily injury to, the person arose, notice in writing of a claim under this section is made to the authorized insurer by the medical practitioner, dentist, nurse or masseur from whom that person received medical, dental or surgical treatment,

the authorized insurer shall pay to that medical practitioner, dentist, nurse or masseur the amount owing for the treatment afforded to the person who has so died or been injured, having regard to the reasonable necessity therefor, at the customary charge made in the community for treatment of the nature afforded:

Provided that the amount payable by the authorized insurer to the medical practitioner, dentist, nurse or masseur in respect of the bodily injury (whether fatal or not) shall not exceed Fifty pounds for each person so treated.

(2.) If the total amount owing to any medical practitioner, dentist, nurse or masseur in respect of the treatment of a person who dies or is bodily injured exceeds Fifty pounds, the sum of Fifty pounds payable by the authorized insurer shall be divisible between the claimants in proportion to their respective claims.

“41AF. Where two or more authorized insurers make payments under or in consequence of a third-party policy, in respect of the death of, or bodily injury to, a person caused by or arising out of the use of two or more motor vehicles, each such authorized insurer shall pay an equal share of any payments required to be made under sections forty-one AC, forty-one AD and forty-one AE of this Ordinance.

Apportionment  
of cost of  
medical and  
surgical  
treatment.

**Reduction of liability.**

“41AG. The liability (if any) of—

- (a) the owner or driver of a motor vehicle in respect of the death of or bodily injury to any person or persons caused by or arising out of the use of the motor vehicle; and
- (b) the authorized insurer to the owner or driver under the policy of insurance,

shall be reduced by the amount paid by the authorized insurer under sections forty-one AC, forty-one AD and forty-one AE of this Ordinance.

**Nominal defendant standing for authorized insurer.**

“41AH. For the purposes of this Part, where death or bodily injury to any person is caused by an uninsured or unidentified motor vehicle, any reference to an authorized insurer shall be read as a reference to the nominal defendant.

**Payment by authorized insurer.**

“41AJ. Any payment by an authorized insurer or the nominal defendant under and in accordance with sections forty-one AC, forty-one AD or forty-one AE of this Ordinance in respect of the treatment or conveyance of a person who dies or suffers bodily injury shall, to the extent of such payment, but subject to section forty-one AQ of this Ordinance, be a discharge of the liability of any person in respect of that treatment or conveyance.

**Actions for damage to be tried without a jury.**

“41AK. Every action brought against the owner or driver of a motor vehicle or against the nominal defendant, in respect of the death of, or bodily injury to, any person caused by or arising out of the use of a motor vehicle shall be tried without a jury.

**Disqualification of person holding driving licence.**

“41AL. An authorized insurer may apply to a court of summary jurisdiction for an order disqualifying any person for such period as the court thinks fit from holding and obtaining a licence to drive a motor vehicle under this Ordinance.

**Insurance of public motor vehicles against damage to property.**

“41AM.—(1.) The owner of a motor omnibus, public hire car or private hire car shall insure himself and keep himself insured to the extent of at least One thousand pounds under a policy of insurance issued by an authorized insurer against liability to any damages in respect of damage to property caused by or arising out of the use of the motor omnibus, public hire car or private hire car and every such policy shall be in the prescribed form.

(2.) The insurance required by the last preceding sub-section shall be additional to the insurance required under this Part in respect of the death of, or bodily injury to, any person caused by or arising out of the use of a motor vehicle.

(3.) Registration or renewal of registration of a motor omnibus, public hire car or private hire car shall not be granted unless and until there is lodged with the Registrar a certificate in or to the effect of the prescribed form issued by an authorized insurer that a policy of the nature specified in sub-section (1.) of this section expressed to commence upon the date of issue of the certificate or

upon a date not later than the date of commencement of the registration or renewal of registration and to terminate upon the date of expiration of the registration or renewal will be issued by that authorized insurer in relation to the motor omnibus, public hire car or private hire car.

(4.) Where an authorized insurer accepts the appropriate amount of insurance premium in respect of the insurance under this section of a motor omnibus, public hire car or private hire car, he shall forthwith issue to the owner a certificate of the nature referred to in sub-section (3.) of this section in relation to the motor omnibus, public hire car or private hire car.

(5.) An authorized insurer who issues any such certificate—

- (a) shall, for the purposes of this section relating to the liability of authorized insurers, be deemed to have issued a policy in conformity with the certificate; and
- (b) shall, at the time of the issue of the certificate, or as soon as practicable thereafter, issue a policy in conformity with the certificate.

(6.) A policy issued by an authorized insurer in relation to a motor omnibus, public hire car or private hire car shall commence on the date on which it is expressed to commence and shall continue in force—

- (a) in any case where the authorized insurer notifies the Registrar, at least thirty days before the date on which the policy is expressed to terminate, that he will not renew the policy—until that date;
- (b) in any case not provided for in paragraph (a) of this sub-section, and where another policy issued by the same or another authorized insurer in relation to that motor omnibus, public hire car or private hire car commences during the period of fifteen days next following the date on which the first-mentioned policy is expressed to terminate—until that commencement; and
- (c) in any other case—until fifteen days after the date on which it is expressed to terminate.

(7.) Where an authorized insurer issues a renewal of a policy in relation to a motor omnibus, public hire car or private hire car for a period expressed to terminate on the date of expiration of a renewal of the registration of the motor omnibus, public hire car or private hire car—

- (a) the insurance premium shall be payable as if the renewal of the policy were expressed to commence from the date of commencement of the renewal of registration, whether or not the renewal of the policy is so expressed; and

(b) the authorized insurer shall not be liable under the renewal of the policy in respect of any damage to property caused by or arising out of the use of the motor omnibus, public hire car or private hire car during the period (if any) between the date from which the renewal of the policy is expressed to commence and the date of payment of the amount of insurance premium in respect of the renewal of the policy.

(8.) Nothing in sub-section (7.) of this section shall affect the operation of sub-section (6.) of this section, or exempt any authorized insurer from liability under any policy continued in force by that sub-section.

(9.) Where, upon the date of commencement of this section, a motor omnibus, public hire car or private hire car is registered and there is in force a policy of insurance in respect of that omnibus or car, which to any extent insures the owner of the omnibus or car against liability to pay compensation in respect of damage to property caused by or arising out of the use of the omnibus or car, the policy shall, until the expiration of the registration of the omnibus or car or until the expiration of thirty days after the commencement of this section, whichever period is the lesser, have effect as follows:—

(a) The policy shall, as regards any such liability, be deemed, for all purposes of the Ordinance to be a policy as prescribed in the preceding provisions of this section, and the policy shall be deemed to have been varied, modified or amended in such manner and to such extent as may be necessary to give effect to this sub-section;

(b) The insurer who issued the policy shall, for the purposes only of that policy and of this sub-section, be deemed to be an authorized insurer whether or not he has been approved as such,

but nothing in the foregoing provisions of this sub-section shall affect the operation of the existing policy in so far as the existing policy insures the owner of the omnibus or car against any liability other than the liability to which those provisions relate.

Nominal  
defendant.

“41AN.—(1.) The Minister may from time to time, by notification in the *Gazette*, appoint any person resident in the Territory to be the nominal defendant for the purposes of this Ordinance and may, from time to time, in like manner, revoke any such appointment.

(2.) Any such appointment shall be made on the nomination of the authorized insurers or a majority of them or, in default of nomination, directly by the Minister.

(3.) Any action or proceeding by or against the nominal defendant may be taken in the name of 'The Nominal Defendant' and the death or resignation of or the revocation of the appointment of the person holding office as nominal defendant at the time any action or proceeding was commenced and the appointment of another person in his place shall not abate the action or proceeding but the action or proceeding may be continued and concluded as if there had been no such death, resignation, revocation or appointment.

"41AO.—(1.) Every claim for damages in respect of the death of, or bodily injury to, any person caused by or arising out of the use of an uninsured motor vehicle shall be made to the nominal defendant and not to the owner or driver of the uninsured motor vehicle and any proceedings to enforce any such claim for damages shall be taken against the nominal defendant and not against the owner or driver of the uninsured motor vehicle.

Claims in respect of uninsured and unidentified motor vehicles.

(2.) A claim may be so made and proceedings may be so taken notwithstanding that the owner or driver of the uninsured motor vehicle is dead or cannot be found.

(3.) Where the death of or bodily injury to any person is caused by or arises out of the use of a motor vehicle but the identity of the motor vehicle cannot after due inquiry and search be established, any person who could have enforced a claim for damages against the owner or driver of the motor vehicle in respect of the death or bodily injury may enforce against the nominal defendant the claim which he could have enforced against the owner or driver of the motor vehicle.

(4.) The inquiry and search for the purpose of establishing the identity of the motor vehicle may be proved orally or by affidavit of the person who made the inquiry and search.

(5.) An action to enforce any such claim shall not lie against the nominal defendant unless notice of intention to make a claim is given by the claimant to the nominal defendant—

- (a) in the case of an action for the recovery of any amount referred to in sub-section (1.) of section forty-one AE of this Ordinance—within the time prescribed by paragraph (c) of that sub-section;
- (b) in any other case—within a period of three months after the occurrence out of which the claim arose, or within such further period as the court, upon sufficient cause being shown, allows.

"41AP.—(1.) The nominal defendant shall not be personally liable to pay any amount payable in satisfaction of any claim made or judgment recovered against him or the amount of any costs or expenses incurred by him in relation to any such claim or to the proceedings in which the judgment was obtained, but every such

Payment by nominal defendant.

amount shall be paid by the nominal defendant out of moneys provided by the Commonwealth and the authorized insurers in accordance with this Ordinance.

(2.) Any amount which is required by this sub-section to be provided by the Commonwealth and the authorized insurers shall be apportioned by the Registrar, in proportions determined by him, amongst the Commonwealth and those who were authorized insurers at the time of the occurrence out of which the claim arose.

(3.) Any amounts (not being amounts to which sub-section (1.) of this section applies) from time to time necessary to meet any costs and expenses incurred by the nominal defendant in or in connexion with the exercise and discharge of the powers, authorities, duties and functions conferred and imposed upon him by or under this Ordinance shall be apportioned by the Registrar, in proportions determined by him, amongst the Commonwealth and the authorized insurers.

(4.) In making any determination under this section, the Registrar shall have regard so far as practicable to the premium incomes in respect of third-party policies received by each authorized insurer during a period adopted by the Registrar for the purpose and, in the case of the Commonwealth, the premiums which would have been payable in respect of motor vehicles (other than motor omnibuses) the property of the Commonwealth and ordinarily used in the Territory during that period if those vehicles had been insured under this Part.

(5.) When the Registrar makes any apportionment under this section he shall give notice to the Commonwealth and to each authorized insurer concerned of the sum which the Registrar has determined as being payable by the Commonwealth or by that authorized insurer and shall in the notice require the Commonwealth or the authorized insurer, as the case may be, to pay that sum to the nominal defendant within a time to be specified in the notice.

(6.) The Registrar may revoke, alter or vary any such notice from time to time as occasion requires.

(7.) Where an authorized insurer neglects or fails to pay to the nominal defendant the sum specified in any notice given to him under this section within the time specified in the notice he shall be guilty of an offence against this Ordinance and shall be liable to a penalty not exceeding One hundred pounds, and the court, in addition to imposing a penalty, may order that authorized insurer to pay to the nominal defendant such amount or such portion of it as remains unpaid.

(8.) Any such order shall operate as an order for the payment of money under the *Court of Petty Sessions Ordinance 1930-1940*, and be enforceable under the provisions of that Ordinance.

(9.) For the purpose of enforcing payment of any order, the order may be entered in the records of the Court of Petty Sessions in such manner as is prescribed by rules made under that Ordinance.

“41AQ.—(1.) Any amount paid by the nominal defendant in satisfaction of a claim made or judgment recovered against him in relation to any such claim or to the proceedings in which the judgment was obtained may be recovered by the nominal defendant as a debt from the person who, at the time of the occurrence out of which such claim arose or in respect of which such judgment was obtained, was the owner of the motor vehicle or, where at the time of that occurrence some other person was driving the vehicle, from the owner and the driver jointly or from either of them severally: Recovery from owner or driver.

Provided that—

- (a) it shall be a sufficient defence in any proceedings under this section against the owner (whether severally or jointly with the driver) if he establishes to the satisfaction of the court that, at the time of the occurrence, some other person was driving the motor vehicle without his authority;
- (b) it shall be a sufficient defence in any proceedings under this section against the driver of an uninsured motor vehicle (whether severally or jointly with the owner) if he establishes to the satisfaction of the court that, at the time of the occurrence, he was driving the motor vehicle with the authority of the owner or had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

(2.) Any amount recovered by the nominal defendant under this section shall be paid by the nominal defendant, in proportions determined by the Registrar, to the Commonwealth and the authorized insurers who provided the amount paid by the nominal defendant.

(3.) In making a determination under the last preceding subsection, the Registrar shall have regard so far as practicable to the proportion of the amount provided by the Commonwealth and each such authorized insurer.

“41AR.—(1.) The maximum rates of premiums which may be charged by an authorized insurer in respect of third party policies shall be such rates as are prescribed. Maximum rates of premiums may be prescribed.

(2.) Different maximum rates may be prescribed in respect of third-party policies in relation to different classes of motor vehicles having regard to the purposes for which those motor vehicles are used or the areas in which those motor vehicles are mainly used or are usually garaged or the periods for which the third-party policies are expressed to be effective, or otherwise.

(3.) If an authorized insurer demands, charges or accepts in respect of any third-party policy any premium or sum of money greater than the appropriate maximum rate of premium prescribed or, where an order has been made pursuant to section forty-one M of this Ordinance, greater than the amount of premium, or, as the case may be, the amount of premium and the additional amount specified in the order, he shall be guilty of an offence.

Use of motor vehicle where appropriate amount of insurance premium not paid.

“41AS.—(1.) Any person who uses or causes, permits or suffers any other person to use upon a public street any insured motor vehicle shall, if the appropriate amount of insurance premium payable in relation thereto has not been paid, be guilty of an offence and shall be liable to a penalty not exceeding Ten pounds for every day on which the motor vehicle is so used.

(2.) The authorized insurer may recover as a debt from any such person, the difference between the amount of premium (if any) actually paid in relation to the motor vehicle so used and the appropriate amount of premium.

(3.) Notwithstanding any other provision of this Ordinance, failure by any person to lodge or pay in full the appropriate amount of insurance premium in respect of the insurance of a motor vehicle (whether his failure is due to error or omission, or to any change of circumstances or other matter affecting the amount payable as the appropriate amount of insurance premium) shall not affect the validity of any third-party policy issued or deemed to have been issued, or any registration of the motor vehicle.

Rebate of premiums.

“41AT. Where on the day upon which a third-party policy issued in relation to a motor vehicle or in relation to motor vehicles to which a trader's plate is affixed commences, there is in force in relation thereto a policy of insurance (in this sub-section referred to as the 'existing policy') which by reason of the operation of section forty-one D of this Ordinance is, to the extent referred to in that section, deemed to be a third-party policy, the owner of the motor vehicle, or the trader may, by notice in writing given to the insurer, cancel the existing policy so far as it relates to liability covered by the third-party policy, and the insurer shall pay or allow to the owner or trader a reasonable amount by way of rebate of portion of the premium paid in respect of the existing policy.

Production of evidence of insurance policy.

“41AU. Any owner of a motor vehicle who, on being required by any inspector or any officer in the execution of his duty or by any member of the Police Force, to produce evidence that there is in force in respect of every motor vehicle owned by him a policy of insurance complying with this Ordinance, fails to do so, shall be guilty of an offence unless—

(a) he has a reasonable excuse; or

- (b) he produces the evidence so required at the Motor Vehicle Registry, Department of the Interior, Canberra, or a Police Station (to be nominated by him to any inspector, officer or member of the Police Force at the time when the requirement is made) within three days of the time when its production was so required.

Penalty: Fifty pounds.

"41AV. Where a judgment is obtained for payment of damages in respect of the death of, or bodily injury to, any person caused by or arising out of the use of an insured motor vehicle as well as for damages in respect of any other matter, the court shall as part of its judgment declare what portion of the sum awarded by such judgment is in respect of the death or bodily injury and shall apportion any costs awarded.

Court to apportion damages.

"41AW. No proceeding or conviction for any act or omission by this Ordinance declared to be an offence shall affect any remedy which any person aggrieved or injured by the act or omission may be entitled to at law or in equity against the person who committed the act or who was responsible for the omission.

Conviction not to affect civil remedy.

"41AX. The provisions of sub-section (1) of section forty-one c and sub-section (1) of section forty-one f of this Ordinance shall not apply in respect of any visiting motor vehicle in relation to which there is in force a contract of insurance complying with any of the following enactments:—

Exemption of visiting motor vehicles.

- (a) Part II. of the 'Motor Vehicles (Third Party Insurance) Act, 1942' of the State of New South Wales;
- (b) Part I. of the 'Motor Car (Third Party Insurance) Act 1939' of the State of Victoria;
- (c) Part IIA. of the 'Road Traffic Act, 1934-1946', of the State of South Australia;
- (d) The provisions of the 'Motor Vehicle (Third Party Insurance) Act, 1943-1945', of the State of Western Australia; or
- (e) The provisions of 'The Motor Vehicles Insurance Acts, of 1936-1944, of the State of Queensland'.

8. Section one hundred of the Principal Ordinance is amended by omitting sub-section (3.).

Special licences for the carriage of workmen.

9. Section one hundred and three of the Principal Ordinance is amended by adding at the end thereof the following paragraphs:—

Regulations.

"(ag) the exemption, subject to such conditions (if any) as are specified, from the operation of all or any of the provisions of this Ordinance of—

- (i) motor vehicles or specified classes of motor vehicles which are owned by persons ordinarily resident outside the Territory and which are temporarily in the Territory;
  - (ii) motor vehicles of any other specified class;
  - (iii) persons in respect of a specified class or specified classes of motor vehicles (including motor vehicles or specified classes of motor vehicles which are owned by persons ordinarily resident outside the Territory and which are temporarily in the Territory);
- “(ah) the granting of refunds, subject to such conditions as are prescribed, of portion of premiums in cases where third-party policies are cancelled;
- “(aj) the circumstances under which and the conditions (which may include the payment of a prescribed fee) subject to which the records kept and documents filed in the Motor Registry for the purposes of this Ordinance may be inspected or the information contained in such records or documents may be made available, or certificates of the Registrar or a prescribed officer may be given;
- “(ak) the furnishing to a prescribed person by any authorized insurer of prescribed particulars, verified as prescribed, which may be necessary or convenient to be ascertained from time to time for the purpose of enabling the Minister to decide what maximum amounts of premiums should be prescribed, or for the purpose of enabling the Registrar to make any determination under section forty-one AP of this Ordinance.”.

Dated this twenty-third day of July, 1947.

W. J. McKELL

Governor-General.

By His Excellency's Command,

VICTOR JOHNSON

Minister of State for the Interior.

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By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.