MOTOR ACCIDENT INSURANCE AMENDMENT BILL 1999

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Bill

The objectives of the Bill are to:

- enable CTP policies of insurance to be effected on a six-monthly basis aligning to the Government's initiative for optional six-monthly registration.
- provide the mechanism for the review of CTP premium rates at times other than 1 July, should the scheme experience necessitate such action.
- enhance the independence and credibility of the premium setting process.
- provide a form of insurance on a vehicle being driven to a safe place following the issuing of an offence notice to the driver of an unregistered/uninsured motor vehicle.
- make a technical amendment to include in the Commission's functions the appointment of referees to resolve disputes between insurers.

Reasons for the Bill

Six-monthly registration/insurance option

The Department of Transport will be introducing six-monthly registration from early April 1999. The Bill amends the legislation to provide for CTP insurance to be issued for a corresponding period and to provide for different administration fees depending on the period of insurance.

Premium setting process

Under current arrangements premiums are reviewed annually but there is a risk that if the scheme experience deteriorates, premiums could be inadequate. The amendment will provide greater flexibility in management of the scheme and it can be achieved without diluting the rigorous assessment processes required before a premium increase is recommended.

Gratuitous insurance

Currently, a vehicle stopped by enforcement officers and found to be unregistered/uninsured cannot be moved until the matters of registration and insurance are addressed, or if moved is done without insurance against the driver's legal liability for personal injury. The situation is potentially dangerous as it may leave the offending driver and his/her passengers stranded, or if the vehicle is moved, the driver exposed to the cost of personal injury claims arising from an accident. In conjunction with the Motor Accident Insurance Commission, the Department of Transport has developed a permit system to allow the vehicle to be driven to a designated place of safety. The amendment provides gratuitous CTP insurance by the Nominal Defendant.

Appointment of referees

The current legislation provides mechanisms for the resolution of disputes between insurers. The amendment is technical in nature, specifically identifying appointment of referees as a Commission function.

Achievement of Objectives

The objectives of the Bill are achieved by:

- extending the CTP scheme to enable CTP policies of insurance to be effected on a six-monthly basis.
- providing a mechanism for the review of CTP premium at times other than 1 July and by putting in place timeframes for the Government's response to premium recommendations.
- ensuring the driver of a detected uninsured vehicle has appropriate CTP insurance cover through the Nominal Defendant to move the vehicle.
- facilitating the resolution of disputes between insurers by specifically conferring on the Commission the power to appoint

referees to resolve disputes between insurers.

Alternative Ways of Achieving the Policy Objectives

Six-monthly registration

With registration provided by the Department of Transport there is no feasible alternative in respect of CTP insurance.

Premium setting process

An alternative is to maintain the current system which could leave an insurer writing business in an obvious loss situation and leading to solvency problems. A further alternative is to deregulate the scheme leaving market forces to dictate premium levels. Such a system will be fully considered in the scheduled National Competition Policy review of the scheme.

Gratuitous insurance

The only alternative is to leave the driver to organise insurance with one of the licensed insurers but it would not alleviate the problems which would arise out of hours.

Appointment of referees

This is merely a technical amendment. The concept operates within the parameters of the Industry Deed forming part of the Regulation.

Estimated Cost for Government Implementation

The CTP scheme is funded by way of premiums paid by motor vehicle owners and this Bill will not result in any implementation costs to Government. The insured motor vehicle owner who elects to pay registration/insurance six-monthly will be subject to a surcharge both in respect of registration and CTP insurance to cover the loss of investment income and added administration costs.

Any claims costs incurred by the provision of gratuitous insurance will be funded from the current Nominal Defendant levy.

Consistency with Fundamental Legislative Principles

The Bill does not breach fundamental legislative principles however, it is arguable that the new transitional section 107 overrides provisions of the legislation stipulating procedural steps associated with stakeholder consultation. Section 12 of the *Motor Accident Insurance Act 1994* requires the Commission to invite written submissions before recommending changes to levies, the administration fee and premiums. Although consultation has taken place with the underwriting insurers and organisations representing motorists, the formal procedure of inviting written submissions specifically dealing with the changes necessary for the implementation of six-monthly registration/insurance, has not been undertaken.

Consultation

In formulating the proposed Bill consultation was undertaken with the following:

- Insurance Council of Australia
- Licensed insurers
- Motor Trades Association of Queensland (MTAQ)
- Royal Automobile Club of Queensland (RACQ)
- Queensland Law Society
- Australian Plaintiff Lawyers Association
- Department of Transport

Notes on Provisions

Clause 1—Short title

This is a formal provision that states that the Act will be referred to as the *Motor Accident Insurance Amendment Act 1999*.

Clause 2—Act amended

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

Clause 3—Amendment of s 4 (Definitions)

The clause introduces new definitions in respect of “assessment period” and “re-assessed period”.

Clause 4—Amendment of s 10 (Commission’s functions)

This clause provides for a technical amendment specifically empowering the Commission to appoint a referee to arbitrate disputes between insurers over claims management and/or the basis upon which claims costs are to be shared.

Clause 5—Replacement of pt 2, div 3 hdg

The clause alters the title of the Part to better reflect the arrangement of the provisions within the Part.

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

The heading of the section is renamed to reflect the order of the following provisions.

The current legislation, by its construction, limits premium reviews to once in a financial year. The clause provides the mechanism for review at times other than 1 July. The flexibility will ensure the ongoing viability of the scheme.

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

The existing legislation allows for the setting of levies for the financial year. This clause alters the term “financial year” to “assessment period”, aligning the provision to the amendments to section 12 of the Act.

Clause 8—Insertion of new s 13A

This clause adds a new section 13A which specifies that the administration fee is to be fixed according to the policy term. This will provide a mechanism for a regulation to have a higher fee applicable to policies of insurance of six-months or less. The proposed fee will take account of the added costs of the Department of Transport in effecting business associated with shorter term insurance.

Clause 9—Amendment of s 14 (Principles governing insurance premiums)

The existing legislation allows for the setting of premiums for the financial year. This clause alters the term “a financial year” to “an assessment period”, aligning the provision to the amendments to section 12 of the Act.

Clause 10—Amendment of s 15 (Fixing of premiums, levies and administration fee)

This clause changes the section heading to reflect the order of the section provisions and also amends the term “financial year” to “assessment period” aligning the change to the amendments introduced to section 12 of the Act.

Clause 11—Insertion of new s 15A

The clause introduces a new step for the Minister to take in the premium review process should a regulation not be made 2 months before the commencement of a period of review. In the event of such occurrence the Minister is required to publish the Commission’s recommendation in the gazette. The purpose is to ensure openness in the premium review process and as such the ongoing viability of the scheme.

Clause 12—Amendment of s 20 (Offence of driving uninsured vehicle, etc.)

The clause is a complementary amendment to the new section 20A. In effect it removes as an offence, the driving of an uninsured vehicle authorised under section 44A of the *Transport Infrastructure (Roads) Regulation, 1991.*

Clause 13—Insertion of new s 20A

This clause provides for temporary gratuitous insurance by the Nominal Defendant for the owner and driver of a vehicle that has been granted a permit in terms of section 44A of the *Transport Infrastructure (Roads) Regulation 1991*. Such a permit may be issued to the driver of a vehicle intercepted in an unregistered/uninsured vehicle.

The insurance provided by this section is only in respect of authorised travel for a maximum period of cover of 24 hours. However, if for whatever reason it is later established that a CTP policy of insurance was actually in force at the time, the insurance cover provided by the Nominal Defendant would not apply.

Clause 14—Amendment of s 65 (Industry deed)

For completeness, this clause introduces a technical amendment to Section 65 which outlines the matters covered by the Industry Deed. The amendment will provide for the appointment of a referee to arbitrate disputes between two or more insurers about a motor vehicle claim.

Clause 15—Insertion of new pt 7, div 1 hdg

This change will assist the reader of the Act in segregating the transitional provisions.

Clause 16—Insertion of new pt 7, div 2

This clause introduces a division heading and includes a transitional clause that enables the fixing of the levies, administration fee and insurance premiums without the normal two-month delay in commencement and without having undertaken the procedural steps under section 12 of the Act. This action is to facilitate the planned introduction of the six-monthly registration/insurance option in April 1999.

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