

Western Australia

**Motor Vehicle (Third Party Insurance)
Amendment Bill 2005**

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Western Australia

LEGISLATIVE ASSEMBLY

**Motor Vehicle (Third Party Insurance)
Amendment Bill 2005**

A Bill for

An Act to amend the *Motor Vehicle (Third Party Insurance) Act 1943*.

The Parliament of Western Australia enacts as follows:

1. Short title

This is the *Motor Vehicle (Third Party Insurance) Amendment Act 2005*.

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2. Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Section 5 comes into operation on a day fixed by proclamation.

5 **3. The Act amended**

The amendments in this Act are to the *Motor Vehicle (Third Party Insurance) Act 1943**.

[* Reprinted as at 20 November 1998.

10 *For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 299 .]*

4. Section 3F inserted

After section 3E the following section is inserted —

“

15 **3F. Restriction on damages for loss relating to earning capacity**

- (1) Subsection (4) applies to the awarding of damages in respect of bodily injury to a person directly caused by, or by the driving of, a motor vehicle.
- 20 (2) Subsection (4) does not apply to causes of action arising before the commencement of section 4 of the *Motor Vehicle (Third Party Insurance) Amendment Act 2005*.
- (3) If subsection (4) applies a court is not to award damages to a person contrary to that subsection.
- 25 (4) In assessing the amount of —
 - (a) past economic loss due to the deprivation or impairment of earning capacity; or

- (b) future economic loss due to the deprivation or impairment of prospective earning capacity,
for the purpose of the awarding of damages, earning capacity is to be disregarded to the extent that it would have exceeded a capacity to earn 3 times the average weekly earnings at the date of the award.
- (5) For the purpose of subsection (4), the average weekly earnings at the date of the award is —
- (a) the amount estimated by the Australian Statistician as the average weekly total earnings of full-time adult employees in Western Australia for the quarter ending most recently before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award; or
- (b) if the Australian Statistician fails or ceases to make the estimate referred to in paragraph (a), the amount fixed by, or determined in accordance with, the regulations.
- ”.

5. Section 3G inserted

Before section 3Q the following section is inserted —

“

3G. Liability of employers

- (1) This section has effect if the death of or bodily injury to a person is directly caused by, or by the driving of, a motor vehicle in circumstances giving rise to the owner of the motor vehicle being liable to pay compensation under the *Workers' Compensation and Injury Management Act 1981* in respect of that death or bodily

s. 6

injury or which would have given rise to liability of that kind but for section 22 of that Act.

5 (2) If this section has effect, neither this Act nor a contract of insurance under this Act apply in respect of liability for negligence which may be incurred by the owner in respect of the death or bodily injury other than liability for the negligent driving of the motor vehicle.

(3) In subsection (2) —
10 “owner” includes any person for whose negligence the owner is legally responsible.

”.

6. Section 3T amended

(1) Section 3T(1) is repealed and the following subsection is inserted instead —

15 “
(1) At least once in each financial year, the Commission is to make an assessment of the extent to which the premium income of the Commission as estimated on the basis of existing scales of premiums, together with
20 other income expected to be received under and for the purposes of this Act by the Commission, will be sufficient to meet claims, costs and other expenses anticipated to arise or be incurred under this Act.

”.

25 (2) Section 3T(3) is amended by deleting “scales or” and inserting instead —

“ scales of ”.

7. Section 12 amended

Section 12(6) is amended by deleting “out of the use of which the death or bodily injury arose” and inserting instead —

“

5

which, or the driving of which, directly caused the death or bodily injury

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