

MOTOR VEHICLE (THIRD PARTY INSURANCE) AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

The objective of this Bill is to:

- a) Enable the Minister for Government Enterprises to vary the Scales of Premiums for compulsory third party (CTP) insurance on more than one occasion in any financial year, should it be deemed necessary.
- b) To remove a means by which an Incorporated Insurance Office, as defined under the *Workers' Compensation and Injury Management Act 1981*, can transfer risk intended to be insured under a workers' compensation/employers' indemnity policy, to the compulsory Third Party Insurance Fund (TPIF).
- c) To introduce a cap on all economic loss for all motor vehicle personal injury claims, consistent with the outcome of the *Civil Liability Act 2002*.

PREMIUM VARIATION

The current wording of Section 3T of the Act limits the Minister to approving any variation to the Scales of Premiums for CTP insurance to one occasion in any financial year. As a consequence, the Insurance Commission incurred a revenue reduction of approximately \$11 million as a result of the introduction of the GST in the 2000/2001 financial year, which succeeded the April 2000 setting of the Scales of Premiums for 2000/2001.

Realistic possibilities of future instances where there may be a need for more than one variation to the Scales of Premiums within any financial year are:

- Changes in the GST rate (either an increase or decrease).
- A need to create a new vehicle classification or, amended description within an existing class of vehicle, and
- Significant variation between the TPIF actual experience and the projected forecast, which impacts on past premium setting assumptions.

SINGLE VEHICLE ACCIDENTS – EMPLOYEE DRIVER CLAIMS

When *The Motor Vehicle (Third Party Insurance) Act 1943* was first passed by Parliament it provided for innocent third parties and their dependants being able to recover hospital or medical expenses and damages for injuries caused by the negligent driving of Western Australian registered motor vehicles.

The liability of the sole CTP insurer (now the Insurance Commission of Western Australia) was then cast in terms by the draftsman to ensure that injured third parties received just awards in all conceivable circumstances.

Over the past few years incidents where employees were driving the employer's vehicle in the course of their employment and no other vehicle was involved, have resulted in the Insurance Commission being found liable to indemnify the employer through the TPIF. This is occurring even though there is in fact no third party injured and the negligence giving rise to the injury strictly relates to negligence in the workplace and not negligence in the driving of a motor vehicle.

CAPPING ECONOMIC LOSS

Such limits already apply in other Australian jurisdictions, (eg. South Australia and New South Wales) but at present there are no limits to economic loss benefits claimable in Western Australia under the Act. This amendment ensures that assessments of economic loss in actions resulting from motor vehicle crashes are consistent with the *Civil Liability Act 2002* and protects the TPIF's solvency from a few injuries/deaths to extremely high-income earners.

SUMMARY OF CHANGES TO THE MOTOR VEHICLE (THIRD PARTY INSURANCE) ACT 1943 (THE ACT)

Clause 1: Short Title

This clause provides that the Act may be cited as *The Motor Vehicle (Third Party Insurance) Amendment Act 2005*

Clause 2: Commencement

Subclause (1) provides that the Act is to come into operation on the day it is proclaimed.

Subclause (2) allows for different dates to be set for certain provisions to commence.

Clause 3: The Act amended

Clause 3 identifies the Act which is being amended by this Bill.

Clause 4: Section 3F Inserted

Provides for the addition of Section 3F to the Act. This new section applies restrictions on damages payable for loss of earning capacity.

Subclause (1) provides for this section to apply to the awarding of damages in actions for personal injuries which are directly caused by, or by the driving of, a motor vehicle.

Subclause (2) provides for Section 3F to take effect only in relation to incidents after the date of proclamation. The Bill is not to have retrospective operation.

Subclause (3) provides that a Court is not to award damages contrary to the provisions of Subsection (4).

Subclause (4) provides that the assessment of damages for loss of earning capacity, be limited so as not to accrue at a rate exceeding three times average weekly earnings.

Subclause (5) defines average weekly earnings as the average weekly total earnings of full time adult employees in Western Australia, as published by the Australian Bureau of Statistics. (Average weekly total earnings of full time adult employees in Western Australia as published by the Australian Bureau of Statistics on 24 February 2005 were \$1,147.20; consequently under the provisions of this section, the current maximum amount that can be claimed for loss of earnings is \$3,441.60 per week)

Clause 5 **Section 3G Inserted**

Provides for the addition of Section 3G in the Act. This section aims at removing a means by which a workers' compensation insurer can transfer risk, intended to be insured under a workers' compensation/employers' indemnity policy, to the compulsory TPIF.

Subclause (1) provides for the application of section 3G in instances where the death of or bodily injury to a person, caused through the driving of a motor vehicle, occurs 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*.

Subclause (2) provides that if Subclause (1) applies, then no liability arises under *The Motor Vehicle (Third Party Insurance) Act 1943*.

Subclause (3) defines a vehicle owner to include any person for whose negligence the owner is legally liable.

Clause 6 **Section 3T Amended**

This section repeals section 3T(1) of the Act which restricts the Minister to approving amendments to the Scales of Premiums for insurance to one occasion in any financial year.

Subclause (1) replaces the repealed section 3T(1) and sets the minimum requirement that the Insurance Commission must make an assessment of premium requirements at least once in each financial year, but does not limit the number of times this can be done in any given financial year.

Subclause (2) is a minor amendment to section 3T(3) of the Act. It substitutes the word "*scales of*" for the word "scales".

Clause 7 This amendment makes the wording used in Section 12(6) of the Act consistent with the wording used in other sections of the Act, following amendments introduced in 1987.