

House of Assembly—No 124

As laid on the table and read a first time, 26 May 2016

South Australia

**Motor Vehicles (Nominal Defendant) Amendment
Bill 2016**

A BILL FOR

An Act to amend the *Motor Vehicles Act 1959*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Motor Vehicles (Nominal Defendant) Amendment Act 2016*.

2—Commencement

This Act will come into operation 6 months after the day on which it is assented to by the Governor.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Motor Vehicles Act 1959*

4—Insertion of section 115A

After section 115 insert:

15 **115A—Claim against nominal defendant where vehicle involved is a bicycle and rider is not insured**

(1) In this section—

bicycle has the same meaning as in the *Australian Road Rules*.

(2) If—

20 (a) death, or bodily injury, has been caused by, or has arisen out of the use of, a vehicle that is a bicycle; and

(b) the identity of the rider of the bicycle has not after due inquiry and search been ascertained,

a person who could have obtained a judgment in respect of that death or bodily injury against a person (had the person been insured under a policy of insurance and the vehicle been an insured motor vehicle instead of a bicycle, at the relevant time) may recover by action against the nominal defendant the amount of the judgment that could have been so recovered.

(3) The nominal defendant is not liable to satisfy a judgment obtained against the nominal defendant, but the judgment and the nominal defendant's costs must be paid—

(a) out of money contributed by approved insurers pursuant to a scheme under section 119; or

(b) if no such scheme is in operation, by the Minister and approved insurers in accordance with section 120.

(4) A person who proposes to proceed against the nominal defendant under this section must, as soon as reasonably practicable after it becomes apparent that the identity of the rider of the bicycle is not readily ascertainable, give to the nominal defendant notice in writing of the claim and a short statement of the grounds on which it is made.

(5) If a claimant fails to give notice of a claim in accordance with the requirements of subsection (4) and the court before which the action is brought is satisfied on the balance of probabilities that the defendant has been prejudiced in the conduct of his or her defence by that failure, it may, if the justice of the case so requires, dismiss the action.