

South Australia

Compulsory Third Party Insurance Regulation Act 2016

An Act to establish the CTP Regulator; to define its functions in relation to the compulsory third party insurance scheme for motor vehicles in the State; to make related amendments to the *Motor Accident Commission Act 1992* and the *Motor Vehicles Act 1959*; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—CTP Regulator

Division 1—Establishment, functions and powers

- 4 Establishment
- 5 Functions
- 6 Powers
- 7 Independence

Division 2—Constitution of CTP Regulator

- 8 Constitution of CTP Regulator
- 9 Acting CEO

Division 3—CEO

- 10 Conditions of appointment
- 11 Functions of CEO
- 12 Saving provision
- 13 Delegation
- 14 Conflict of interest

Division 4—Staff and resources

- 15 Staff and resources

Part 3—Collection and use of information

- 16 Regulator's power to require information
- 17 Obligation to preserve confidentiality
- 18 Statutory declarations

Part 4—Miscellaneous

- 19 Annual report
- 20 False or misleading information
- 21 Service
- 22 Regulations

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

- 1 Interpretation

Part 2—Amendment of *Motor Accident Commission Act 1992*

- 2 Amendment of section 3—Interpretation
- 3 Amendment of section 13A—Sufficient level of solvency
- 4 Amendment of section 14—Functions and objectives of Commission
- 5 Amendment of section 18—Commission's charter
- 6 Amendment of section 25—MAC Fund
- 7 Amendment of section 26—Requirement by Treasurer for payment from surplus
- 8 Amendment of section 29—Annual report
- 9 Amendment of section 29B—Prosecution of offences under Part 4 of *Motor Vehicles Act 1959*

Part 3—Amendment of *Motor Vehicles Act 1959*

- 10 Amendment of section 5—Interpretation
- 11 Amendment of section 99—Interpretation
- 12 Amendment of section 99A—Insurance premium to be paid on applications for registration
- 13 Amendment of section 101—Approved insurers
- 14 Substitution of section 104
 - 104 Requirements if policy is to comply with this Part
- 15 Amendment of section 116—Claim against nominal defendant where vehicle uninsured
- 16 Amendment of section 124AA—Limitation of liability in respect of foreign awards
- 17 Repeal of section 129
- 18 Repeal of section 134A
- 19 Repeal of Schedule 4
- 20 Transitional provision—Saving of existing policies of insurance under Part 4

Part 4—Transitional provisions

- 21 Interpretation
- 22 Ministerial control
- 23 Transfer of CTP insurance policies

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Compulsory Third Party Insurance Regulation Act 2016*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

approved insurer means a person or body of persons approved as an insurer under Part 4 of the Motor Vehicles Act;

CEO means the Chief Executive Officer appointed to the CTP Regulator under Part 2 Division 2, and includes an Acting Chief Executive Officer appointed under that Part;

CTP insurance means compulsory third party insurance required under Part 4 of the Motor Vehicles Act;

CTP insurance business means business relating to compulsory third party insurance required under Part 4 of the Motor Vehicles Act;

CTP insurance policy means a policy of insurance that complies with Part 4 of the Motor Vehicles Act;

CTP Regulator or **Regulator** means the CTP Regulator established under Part 2 Division 1;

designated Act means—

- (a) the *Motor Accident Commission Act 1992*; or
- (b) the Motor Vehicles Act; or
- (c) any other Act prescribed by the regulations for the purposes of this definition;

exercise, for a function, includes perform;

insurance business includes—

- (a) assurance, additional insurance, coinsurance, or reinsurance; and
- (b) the granting, issuing or entering into of guarantees, sureties or contracts of indemnity; and
- (c) any other activity or transaction—
 - (i) of a kind generally regarded by the insurance industry as constituting or forming part of insurance or insurance business; or
 - (ii) of a kind prescribed by regulation;

Motor Vehicles Act means the *Motor Vehicles Act 1959*.

- (2) Other words and expressions used in this Act have the meaning assigned to them in section 5, or Part 4, of the Motor Vehicles Act, unless the context otherwise requires.

Part 2—CTP Regulator

Division 1—Establishment, functions and powers

4—Establishment

- (1) The CTP Regulator is established.
- (2) The Regulator—
 - (a) is a body corporate with perpetual succession; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name.
- (3) The Regulator is an instrumentality of the Crown and holds its property on behalf of the Crown.
- (4) If a document appears to bear the common seal of the Regulator, it will be presumed, in the absence of proof to the contrary, that the common seal of the Regulator was duly affixed to the document.

5—Functions

- (1) The CTP Regulator has the following functions:
 - (a) to regulate approved insurers and perform any other function relating to approved insurers conferred on the Regulator under the Motor Vehicles Act;
 - (b) to determine premium amounts payable in respect of CTP insurance policies;
 - (c) to determine the minimum terms and conditions of CTP insurance policies;
 - (d) to monitor, audit and review the operation and efficiency of the CTP insurance business;
 - (e) to provide, or facilitate the provision of, information to consumers about the CTP insurance business and approved insurers;
 - (f) to make, monitor the operation of, and review, from time to time, rules with which approved insurers must comply, and guidelines for approved insurers, relating to—
 - (i) the determination of premiums; and
 - (ii) the management of claims; and
 - (iii) dispute resolution; and
 - (iv) the provision of information to consumers; and
 - (v) any other relevant matter;
 - (g) to make recommendations to the Minister in relation to—
 - (i) eligibility criteria for insurers seeking approval under Part 4 of the Motor Vehicles Act; and

- (ii) the terms and conditions of any undertaking, agreement or contract entered into between the Minister and an approved insurer relating to the provision of CTP insurance; and
 - (iii) the assessment of an application from an insurer for approval or withdrawal of approval under Part 4 of the Motor Vehicles Act;
 - (h) to approve the novation of CTP insurance policies between approved insurers;
 - (i) to regulate such other insurance business as may be prescribed by the regulations;
 - (j) to administer this Act;
 - (k) to exercise any other function conferred on the Regulator by or under this or any other Act.
- (2) The Regulator must publish on its website the rules and guidelines as made by the Regulator from time to time.
- (3) In determining premium amounts, the Regulator—
- (a) may not fix differential premiums except on the basis of 1 or more of the following:
 - (i) vehicle type;
 - (ii) vehicle use;
 - (iii) garaging location;
 - (iv) entitlement under the GST law to an input tax credit in respect of compulsory third party insurance premiums; and
 - (b) must be satisfied that the premiums are fair and reasonable to the registered owners of the motor vehicles.
- (4) The administrative costs and expenses reasonably incurred by the Regulator in carrying out its functions are recoverable in fair proportions from all approved insurers, subject to and in accordance with the directions of the Minister and the Treasurer.
- (5) In this section—
- Minister* means the Minister with responsibility for approving insurers under Part 4 of the Motor Vehicles Act.

6—Powers

The CTP Regulator has all the powers of a natural person and, in particular, may—

- (a) enter into any form of contract or arrangement; and
- (b) engage experts and consultants; and
- (c) acquire, hold, deal with or dispose of real or personal property; and
- (d) establish and operate ADI accounts and invest money; and
- (e) do anything necessary or convenient to be done in the exercise of its functions.

7—Independence

Except as provided under this or any other Act, the CTP Regulator is not subject to Ministerial direction in the exercise of its functions or powers.

Division 2—Constitution of CTP Regulator

8—Constitution of CTP Regulator

- (1) The CTP Regulator will be constituted of the Chief Executive Officer (*CEO*) of the Regulator.
- (2) The CEO will be appointed by the Governor, on the recommendation of the Minister, on terms and conditions determined by the Governor.
- (3) The CEO is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

9—Acting CEO

- (1) If the CEO is temporarily absent or unable to perform official functions, the Minister may appoint an Acting Chief Executive Officer (*Acting CEO*) to act in the office of the CEO and a person so appointed has, while so acting, all the functions and powers of the CEO.
- (2) The terms and conditions of appointment of an Acting CEO will be as determined by the Minister.
- (3) The Acting CEO is a senior official for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

Division 3—CEO

10—Conditions of appointment

- (1) The CEO will be appointed for a term, not exceeding 5 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.
- (2) The Governor may remove the CEO from office—
 - (a) for misconduct; or
 - (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
 - (c) if serious irregularities have occurred in the conduct of the Regulator's affairs.
- (3) The office of the CEO becomes vacant if the CEO—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is convicted of an indictable offence; or
 - (e) is removed from office under subsection (2).

11—Functions of CEO

- (1) The functions of the CEO include—
 - (a) being the chief executive officer of the CTP Regulator; and
 - (b) exercising the functions of the Regulator conferred on the Regulator or the CEO under this or any other Act; and
 - (c) otherwise acting on behalf of the Regulator in appropriate cases.
- (2) An act of the CEO will be taken to be an act of the Regulator.
- (3) Except as provided under this or any other Act, the CEO is not subject to direction in the exercise of his or her functions or powers.

12—Saving provision

An act of the CTP Regulator is not invalid by reason only of a defect in the appointment of the CEO (or Acting CEO).

13—Delegation

- (1) The CEO may, by instrument in writing, delegate any of the CTP Regulator's or CEO's functions or powers under this or any other Act.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
 - (a) may be made subject to conditions and limitations specified in the instrument of delegation; and
 - (b) is revocable at will and does not derogate from the power of the delegator to act in any matter.

14—Conflict of interest

- (1) The CEO, an Acting CEO or a delegate must inform the Minister in writing of—
 - (a) any direct or indirect interest that the person has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or
 - (b) any other direct or indirect interest that the person has or acquires that conflicts or may conflict with the person's functions.
- (2) The CEO, Acting CEO or delegate must take steps to resolve a conflict or possible conflict between a direct or indirect interest and the person's functions in relation to a particular matter, and, unless the conflict is resolved to the Minister's satisfaction, the person is disqualified from acting in relation to the matter.
- (3) A failure to comply with this section does not affect the validity of an act or decision of the CEO, Acting CEO or delegate.
- (4) Section 8 of the *Public Sector (Honesty and Accountability) Act 1995* does not apply to the CEO or an Acting CEO.

Division 4—Staff and resources

15—Staff and resources

- (1) The CTP Regulator may engage persons to be members of its staff on terms and conditions determined by the Regulator.
- (2) The Regulator may—
 - (a) by arrangement with the appropriate authority, make use of the services, facilities or staff of a government department, agency or instrumentality; or
 - (b) with the approval of the Minister, make use of the services, facilities or staff of any other entity.
- (3) The CEO is responsible for managing the staff and resources of the Regulator.

Part 3—Collection and use of information

16—Regulator's power to require information

- (1) The CTP Regulator may, by written notice, require a person to give to the Regulator, within a time and in a manner stated in the notice (which must be reasonable), information in the person's possession that the Regulator reasonably requires for the performance of the Regulator's functions, including (for example) such evidence of the person's financial position and capacity to meet existing and future liabilities under CTP insurance policies as may be required in the notice.
- (2) A person must comply with a requirement under this section.
Maximum penalty: \$20 000 or imprisonment for 2 years.
- (3) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence.

17—Obligation to preserve confidentiality

- (1) Information gained under this Part that—
 - (a) could affect the competitive position of an insurer or other person; or
 - (b) is commercially sensitive for some other reason,is, for the purposes of this Act, confidential information and a person performing a function under this Act or a designated Act is guilty of an offence if the person discloses such information otherwise than as authorised under this section.
Maximum penalty: \$20 000 or imprisonment for 2 years.
- (2) Confidential information may be disclosed if—
 - (a) the disclosure is made to another who is also performing a function under this Act or a designated Act; or
 - (b) the disclosure is made with the consent of the person who gave the information or to whom the information relates; or
 - (c) the disclosure is authorised or required under any other Act or law; or

- (d) the disclosure is authorised or required by a court or tribunal constituted by law; or
 - (e) the disclosure is authorised by regulation.
- (3) The CTP Regulator may disclose confidential information if the Regulator is of the opinion that the public benefit in making the disclosure outweighs any detriment that might be suffered by a person in consequence of the disclosure.
- (4) If a person, when giving information to the Regulator in response to a requirement of the Regulator under this Part, claims that the information is confidential information, the Regulator must, before disclosing the information otherwise than as referred to in subsection (2), give the person written notice of the proposed disclosure and the reasons for the disclosure.
- (5) A person performing a function under this Act or a designated Act must not use confidential information for the purpose of securing a private benefit for himself or herself or for some other person.
- Maximum penalty: \$20 000 or imprisonment for 2 years.
- (6) Information classified by the Regulator as being confidential under subsection (1) is not liable to disclosure under the *Freedom of Information Act 1991*.

18—Statutory declarations

The CTP Regulator may require a person who is required by or under this Act to give information to the Regulator to verify the information to be given by statutory declaration and, in that event, the person will not be taken to have given the information as required unless it has been verified in accordance with the requirements of the Regulator.

Part 4—Miscellaneous

19—Annual report

- (1) The CTP Regulator must, on or before 30 September in each year, deliver to the Minister a report on the operations of the Regulator during the preceding financial year.
- (2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

20—False or misleading information

A person must not—

- (a) provide to the CTP Regulator or any other person who is performing or exercising a function or power under this Act information that the person knows is false or misleading in a material particular; or
- (b) refuse or fail to include in information provided to a person who is performing or exercising a function or power under this Act other information without which the information provided is, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty: \$20 000 or imprisonment for 2 years.

21—Service

- (1) A notice or other document required or authorised to be given to or served on a person under this Act may be given or served—
 - (a) by delivering it personally to the person or an agent of the person; or
 - (b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
 - (c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business.
- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given to or served on a person may be given to or served on the person in accordance with the *Corporations Act 2001* of the Commonwealth (if applicable to the person).

22—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) require the keeping of records, statistics or other information; and
 - (b) require the provision of reports, statements, documents or other forms of information to the CTP Regulator; and
 - (c) require the giving of notice to the Regulator at specified intervals, or on the occurrence of any specified event; and
 - (d) specify any procedure associated with any process under this Act or the *Motor Vehicles Act*; and
 - (e) impose penalties, not exceeding \$10 000, for a contravention of, or failure to comply with, a regulation; and
 - (f) prescribe saving or transitional provisions in connection with the enactment or operation of this Act.
- (3) A regulation may—
 - (a) refer to or incorporate, wholly or partially and with or without modification, a document prepared or published by a specified body, either as in force at the time the regulation is made or as in force from time to time; and
 - (b) be of general or limited application; and
 - (c) make different provision according to the persons or circumstances to which it is expressed to apply; and
 - (d) provide that a matter is to be determined according to the discretion of the Minister or the Regulator.
- (4) A provision of a regulation made under subsection (2)(f) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

- (5) To the extent to which a provision takes effect under subsection (4) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Interpretation

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

Part 2—Amendment of *Motor Accident Commission Act 1992*

2—Amendment of section 3—Interpretation

- (1) Section 3, definition of *Compulsory Third Party Fund*—delete the definition
- (2) Section 3—after the definition of *insurance business* insert:

MAC Fund means the Fund continued in existence under Part 4.

3—Amendment of section 13A—Sufficient level of solvency

Section 13A—delete "Compulsory Third Party Fund" and substitute:

MAC Fund

4—Amendment of section 14—Functions and objectives of Commission

- (1) Section 14(1)(a)—delete paragraph (a) and substitute:
 - (a) to carry on any residual insurance business arising from its operations as the sole approved insurer under Part 4 of the *Motor Vehicles Act 1959* (but only until it divests itself of that business or winds up that business, whichever occurs earlier);
- (2) Section 14(1)(b)—delete "Compulsory Third Party Fund" and substitute:

MAC Fund
- (3) Section 14(3)—delete subsection (3)

5—Amendment of section 18—Commission's charter

Section 18(2)(a)(i)—delete "Compulsory Third Party Fund" and substitute:

MAC Fund

6—Amendment of section 25—MAC Fund

- (1) Section 25(1), (3) and (3a)—delete subsections (1), (3) and (3a) and substitute:
 - (1) The special fund for compulsory third party insurance formerly established by the Commission continues in existence as the MAC Fund.

- (2) The Commission must seek to achieve and maintain a sufficient level of solvency in the Fund at all times while the Commission is carrying on any residual compulsory third party insurance business arising from its operations as the sole approved insurer under Part 4 of the *Motor Vehicles Act 1959*.
- (2) Section 25(4)(a)—delete paragraph (a) and substitute:
- (a) the income derived by the Commission during the period the Commission was the sole approved insurer for compulsory third party insurance business; and
- (3) Section 25(5)(c)—after "its" insert:
- residual
- (4) Section 25(5)(e)—delete paragraph (e)
- (5) Section 25—after subsection (8) insert:
- (9) For the avoidance of doubt, after the commencement of this subsection, a reference in an Act, instrument, contract, agreement or other document to the Compulsory Third Party Fund will (where the context so admits) have effect as if it were a reference to the MAC Fund.

7—Amendment of section 26—Requirement by Treasurer for payment from surplus

Section 26—delete "Compulsory Third Party Fund" and substitute:
MAC Fund

8—Amendment of section 29—Annual report

Section 29(2)(f)—delete "Compulsory Third Party Fund" and substitute:
MAC Fund

9—Amendment of section 29B—Prosecution of offences under Part 4 of *Motor Vehicles Act 1959*

Section 29B(1)—delete subsection (1) and substitute:

- (1) The Commission may, with the approval of the Minister responsible for the administration of Part 4 of the *Motor Vehicles Act 1959*, commence proceedings for an offence against Part 4 of that Act.

Part 3—Amendment of *Motor Vehicles Act 1959*

10—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *CPI* insert:

CTP Regulator or *Regulator* means the CTP Regulator established under the *Compulsory Third Party Insurance Regulation Act 2016*;

- (2) Section 5(1)—after the definition of *high powered vehicle* insert:

insurance premium or *premium*, in relation to a motor vehicle, means the premium appropriate to the motor vehicle for a policy of insurance under Part 4, as determined by the CTP Regulator from time to time, and includes any money that the Registrar is required to retain under section 99A(14);

- (3) Section 5(1), definition of *premium*—delete the definition

11—Amendment of section 99—Interpretation

- (1) Section 99(1)—delete "and in Schedule 4"

- (2) Section 99(1), definition of *the insurance premium committee*—delete the definition

- (3) Section 99(1)—after the definition of *terrorist act* insert:

transitional period has the same meaning as in Schedule 1 Part 4 of the *Compulsory Third Party Insurance Regulation Act 2016*.

- (4) Section 99(3), (3a) and (4)—delete "and Schedule 4" wherever occurring

12—Amendment of section 99A—Insurance premium to be paid on applications for registration

- (1) Section 99A(1)—delete "of Schedule 4" and substitute:

determined by the CTP Regulator

- (2) Section 99A(2)—delete subsection (2) and substitute:

- (2) The approved insurer for a motor vehicle in respect of which an application for registration is made will be—

- (a) in the case of an application made during the transitional period—the approved insurer selected by the CTP Regulator in accordance with a scheme determined by the Minister; or
- (b) in any other case—the approved insurer selected by the applicant for registration.

- (3) Section 99A(2a)(b)—delete paragraph (b) and substitute:

- (b) without limiting subsection (3), the approved insurer for the motor vehicle will be taken to be—

- (i) in the case of an application for registration made during the transitional period—the approved insurer selected by the CTP Regulator in accordance with a scheme determined by the Minister; or
- (ii) in any other case—the approved insurer selected by the person to be the insurer in his or her most recent application for registration of the vehicle.

- (4) Section 99A(3)—delete "Registrar" and substitute:

CTP Regulator

- (5) Section 99A(4)—delete "Registrar" first occurring and substitute:

CTP Regulator

- (6) Section 99A(4)—delete "Registrar" second occurring and substitute:
Regulator
- (7) Section 99A(8)—delete "of Schedule 4" and substitute:
determined by the CTP Regulator
- (8) Section 99A(9)—delete subsection (9) and substitute:
- (9) Subject to subsection (9a), the insurer under the policy of insurance relating to a motor vehicle is—
 - (a) the approved insurer selected under the provisions of this section in respect of that motor vehicle; or
 - (b) if the insurer referred to in paragraph (a), with the approval of the CTP Regulator and the consent of the registered owner of the motor vehicle, novates or assigns the policy of insurance to another approved insurer—that other approved insurer.
 - (9a) If, during the transitional period, a policy of insurance relating to a motor vehicle is transferred from 1 approved insurer to another approved insurer by the CTP Regulator in accordance with a scheme determined by the Minister, the approved insurer to whom the policy of insurance is transferred becomes the insurer under the policy of insurance relating to that motor vehicle.
- (9) Section 99A(14)—delete subsection (14) and substitute:
- (14) The Registrar must retain out of the amounts collected by the Registrar under this section a sum of money determined by the CTP Regulator as costs associated with compulsory third party insurance.
 - (15) The costs determined by the CTP Regulator under subsection (14) must include an amount to cover the costs reasonably incurred by the Registrar in connection with the administration of the compulsory third party insurance scheme.

13—Amendment of section 101—Approved insurers

- (1) Section 101(1), (1a), (1b) and (2)—delete subsections (1) to (2) inclusive and substitute:
- (1) Subject to this section, any person or body (whether incorporated or unincorporated) that carries on, or intends to carry on, the business of insurance in this State, may apply to the Minister for approval as an insurer under this Part.
 - (2) During the transitional period, an application for approval as an insurer under this Part may only be made on an invitation by the Minister.
 - (2a) The Minister may, during the transitional period, invite interested persons and bodies to apply for approval in accordance with subsection (2b).

- (2b) An application for approval as an insurer under this Part must—
- (a) be made in a manner and form approved by the CTP Regulator; and
 - (b) be lodged with the Regulator; and
 - (c) be referred by the Regulator to the Minister, together with any recommendations of the Regulator to the Minister in relation to the application.
- (2c) The Minister may, after considering any recommendations made by the CTP Regulator in relation to an application for approval, grant or refuse the application.
- (2) Section 101(3)(b)—delete "1 July 1998 or" and "(whichever is the later)"
- (3) Section 101(5)—delete subsection (5) and substitute:
- (5) An approved insurer may, on or before 1 April in any year, apply to the Minister for the withdrawal of approval under this Part.
- (5a) An application for the withdrawal of approval under this Part must—
- (a) be made in a manner and form approved by the CTP Regulator; and
 - (b) be lodged with the Regulator; and
 - (c) be referred by the Regulator to the Minister, together with any recommendations of the Regulator to the Minister in relation to the application.
- (5b) The Minister may, after considering any recommendations made by the CTP Regulator in relation to an application for the withdrawal of approval under this Part, grant the application with effect from 1 July following the making of the application.
- (4) Section 101(6)—delete subsection (6) and substitute:
- (6) If—
- (a) an application for approval or withdrawal of approval under this Part is made other than in conformity with the limitations of time stipulated in this section; and
 - (b) the Minister, after considering any recommendations made by the CTP Regulator in relation to the application, is satisfied that there are special circumstances justified in doing so,
- the Minister may grant the application with effect as from a date determined by the Minister.
- (5) Section 101(8)(c)—delete paragraph (c) and substitute:
- (c) the Minister, after considering—
 - (i) evidence furnished by an approved insurer in compliance with a requirement under subsection (7); and

- (ii) any recommendations made by the CTP Regulator in relation to the matter,

is not satisfied that the approved insurer has sufficient financial resources to continue properly to carry on business as an approved insurer,

14—Substitution of section 104

Section 104—delete the section and substitute:

104—Requirements if policy is to comply with this Part

- (1) In order to comply with this Part, a policy of insurance must—
 - (a) insure the owner of the motor vehicle to which the policy relates, and any other person who at any time drives or is a passenger in or on the vehicle, whether with or without the consent of the owner, in respect of all liability that may be incurred by the owner or other person in respect of the death of, or bodily injury to, any person caused by, or arising out of the use of, the vehicle in any part of the Commonwealth; and
 - (b) be in the terms, and contain the conditions and warranties, determined by the CTP Regulator from time to time.
- (2) However, a policy of insurance complies with this Part even though it does not extend to liability arising from the death of, or bodily injury to, a participant in a road race caused by the act or omission of another participant in the road race.

15—Amendment of section 116—Claim against nominal defendant where vehicle uninsured

Section 116(1), definition of *uninsured motor vehicle*—delete the definition and substitute:

uninsured motor vehicle means a motor vehicle in relation to which no policy of insurance as required by this Part is in force, but does not include—

- (a) a prescribed agricultural machine (within the meaning of section 12) in relation to which there is in force a policy of public liability insurance referred to in section 12(2b); or
- (b) a motor vehicle in relation to which there is in force a policy of public liability insurance referred to in section 12B(2); or
- (c) a motor vehicle of a kind exempted by the regulations from insurance under this Part in relation to which there is in force a policy of insurance as required by the regulations; or
- (d) a motor vehicle in relation to which there is in force a policy of insurance—
 - (i) that complies with the law of some other State or Territory of the Commonwealth; and

- (ii) under which the owner and driver of the motor vehicle are insured against liability that might be incurred by either or both of them 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 this State.

16—Amendment of section 124AA—Limitation of liability in respect of foreign awards

Section 124AA(2)—delete "under Schedule 4" and substitute:

under this Part

17—Repeal of section 129

Section 129—delete the section

18—Repeal of section 134A

Section 134A—delete the section

19—Repeal of Schedule 4

Schedule 4—delete the Schedule

20—Transitional provision—Saving of existing policies of insurance under Part 4

A policy of insurance under Part 4 in force immediately before the commencement of this section will, after that commencement, continue in force, until its expiry or cancellation, as a policy under that Part subject to the terms, conditions, warranties and exclusions set out in the table below.

- 1 The insurer insures the owner of the motor vehicle and any other person who at any time drives or is a passenger in or on the vehicle, whether with or without the consent of the owner, in respect of all liability that may be incurred by the owner or other person in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle in any part of the Commonwealth.
- 2 A person so insured warrants that he or she will not—
 - (a) drive the vehicle, or do or omit to do anything in relation to the vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property or with reckless indifference as to whether such death, bodily injury or damage results; or
 - (b) drive the vehicle while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle; or
 - (c) drive the vehicle while there is present in his or her blood a concentration of .1 grams or more of alcohol in 100 millilitres of blood; or
 - (d) drive the vehicle while not duly licensed or otherwise permitted by law to drive the motor vehicle; or
 - (e) drive the vehicle while the vehicle is overloaded, or in an unsafe, unroadworthy or damaged condition; or
 - (f) use the vehicle otherwise than—
 - (i) for purposes stated in the application for registration, renewal of registration, exemption from registration or a permit, in respect of the

- vehicle; or
- (ii) if trade plates are affixed to the vehicle—for purposes stated in the application for the issuing of those plates; or
 - (iii) for purposes agreed on between the insurer and the registered owner of the vehicle; or
- (g) if the person is the driver of the vehicle when it is involved in an accident in which a person is killed or injured—commit an offence against section 43 of the *Road Traffic Act 1961*.
- 3 The owner of the vehicle warrants that no other person will, with his or her knowledge or consent (which will be presumed in any proceedings in the absence of proof to the contrary), drive or use the vehicle, or do or omit to do anything in relation to the vehicle, contrary to any of the paragraphs of clause 2.
- 4 This policy of insurance does not extend to liability arising from death of, or bodily injury to, a participant in a road race caused by the act or omission of another participant in the road race.

Part 4—Transitional provisions

21—Interpretation

In this Part—

commencement day means the day on which this Part comes into operation;

declared day means the day declared by proclamation to be the day on which the transitional period ends;

Minister means the Minister with responsibility for approving insurers under Part 4 of the Motor Vehicles Act;

transitional period means the period commencing on the commencement day and ending on the declared day.

22—Ministerial control

During the transitional period, the CTP Regulator is subject to the directions of the Minister as to the exercise of the following of the Regulator's functions:

- (a) determining premium amounts payable in respect of CTP insurance policies;
- (b) determining the minimum terms and conditions of CTP insurance policies;
- (c) making, monitoring the operation of, and reviewing from time to time, rules with which approved insurers must comply, and guidelines for approved insurers, in relation to—
 - (i) the determination of premiums; and
 - (ii) the management of claims; and
 - (iii) dispute resolution; and
 - (iv) the provision of information to consumers; and
 - (v) any other relevant matter.

23—Transfer of CTP insurance policies

- (1) On the commencement day, a CTP insurance policy in existence under Part 4 of the Motor Vehicles Act will, by force of this subclause, be transferred from the Motor Accident Commission to an approved insurer in accordance with a scheme determined by the Minister.
- (2) During the transitional period, the CTP Regulator may transfer a CTP insurance policy relating to a motor vehicle from 1 approved insurer to another approved insurer in accordance with a scheme determined by the Minister (in which case, the approved insurer to whom the policy of insurance is transferred becomes the insurer under the policy of insurance relating to that motor vehicle).

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act

Year	No	Title	Assent	Commencement
2016	16	<i>Compulsory Third Party Insurance Regulation Act 2016</i>	21.4.2016	uncommenced