



ANNO TRICESIMO SECUNDO

**ELIZABETHAE II REGINAE**

**A.D. 1983**

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**No. 119 of 1983**

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

*[Assented to 22 December 1983]*

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. (1) This Act may be cited as the "Motor Vehicles Act Amendment Act (No. 4), 1983".

(2) The Motor Vehicles Act, 1959, is in this Act referred to as "the principal Act".

Insertion of new s. 125a.

2. The following section is inserted after section 125 of the principal Act:

Joinder of insurer as defendant to an action.

125a. (1) Where an action for damages or other compensation has been commenced in a court against an insured person in respect of death or bodily injury resulting from the use of a motor vehicle, the court may, on the application of the insurer, join it as a defendant to the action.

(2) The court shall not join an insurer as a defendant to an action under subsection (1) unless the court is of the opinion that—

(a) there is an actual or potential conflict of interest between the insurer and the insured in relation to the presentation of the defence;

and

(b) the defence proposed by the insurer in relation to which the actual or potential conflict of interest arises is, in the circumstances of the case, not merely speculative.

(3) Where, in pursuance of this section, an insurer has been joined as a defendant to an action—

(a) the insurer shall be taken to have directly assumed the liability (if any) of the insured person upon the claim in respect of death or bodily injury and, where such a liability is found to exist, judgment upon that claim

shall be given not against the insured person but against the insurer;

(b) the insured person shall remain a party to the action only for the purposes of—

(i) defending a claim that is not a claim in respect of death or bodily injury;

or

(ii) proceeding upon a counter-claim,

and where there is no such claim or counter-claim, he shall cease to be a party to the action;

(c) the insured person shall not be joined as a third party to the action;

(d) the insured person is, notwithstanding paragraphs (b) and (c), entitled to be heard in the proceedings upon any question related to the claim in respect of death or bodily injury;

(e) for the purpose referred to in paragraph (d), the insured person is entitled to be represented by counsel of his own choice, and his costs shall be paid by the insurer unless, in the opinion of the court, there are special reasons for ordering otherwise;

and

(f) the insurer may apply to call the insured person to give evidence and, in that event, he shall be called, or summoned to appear, as a witness and be liable to cross-examination by the insurer.

(4) No judgment or finding of a court in proceedings in which an insurer has been joined as a defendant under this section is binding in subsequent proceedings against the insured person under section 124a.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor