

(2) The *Campbell Town Water Act 1908*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall be deemed to have commenced on the first day of January 1947.

2 Notwithstanding anything in the Principal Act, the Warden, Councillors and Electors of the municipality of Campbell Town may borrow, in accordance with the provisions of the *Local Bodies Loans Act 1881*, such sums of money, not exceeding in the whole the sum of thirty thousand pounds, in addition to the sum or sums authorized by the Principal Act to be borrowed, as may from time to time be necessary for giving effect to the objects authorized by that Act. Borrowing powers.

3 Section thirteen of the Principal Act is repealed and the following section is substituted therefor:—

“13—(1) The Council may make and levy water rates upon the annual value of all properties within the water district as shown by the assessment roll in force for the time being. Water rates.

(2) Subject to subsection (3), such rates shall not exceed, in respect of any one year, the sum of three shillings in the pound upon the annual value of such properties.

(3) The rate, or the aggregate of the rates, as the case may be, shall, on and after the first day of July 1958, in no case be less than—

- (a) five pounds per annum for every house, building, or premises supplied with water; or
- (b) one pound ten shillings per annum for every vacant allotment of land supplied with water.”

TRAFFIC (No. 2)

No. 75 of 1957.

AN ACT to amend the *Traffic Act 1925*.

[6 December 1957.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Traffic Act (No. 2) 1957*. Short title, citation, and commencement.

(2) The *Traffic Act 1925*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) Sections six, seven, eight, nine, ten, eleven, twelve, and thirteen of this Act shall commence on the first day of February 1958.

Regulations.

2 Section ten of the Principal Act is amended—

- (a) by omitting from paragraph 1 of subsection (1) the words “those labels:” and substituting therefor the words “registration labels and of labels issued in lieu of registration labels that are lost or destroyed:”; and
- (b) by adding at the end of that subsection the following paragraph:—

“: and

“XIX Prescribing the fees to be paid in respect of information supplied by the Commissioner or an officer of the Commissioner with respect to any registration, licence, number plate, or identification mark, or the existence or contents of a certificate of insurance under Part VII.”.

Unauthorized use of motor vehicle.

3 Section thirty-seven of the Principal Act is amended—

- (a) by omitting from subsection (1) thereof the words “Penalty: Not less than fourteen days’ imprisonment.”; and
- (b) by adding at the end thereof the following subsections:—

“(3) Notwithstanding any other law to the contrary, all proceedings in respect of offences against this section shall be heard and determined by a police magistrate sitting alone.

“(4) Subject to subsection (5) of this section, a person who is convicted of an offence under subsection (1) of this section is liable to a penalty—

- I For a first offence, of not less than twenty-five pounds or more than fifty pounds: or
- II For a second or subsequent offence, of not less than six months’ imprisonment or more than two years’ imprisonment.

“(5) Notwithstanding the provisions of subsection (4) of this section, where a person is convicted of an offence under subsection (1) of this section, having previously been convicted of an offence thereunder, the police magistrate before whom he is convicted, if he thinks it reasonable so to do, having regard to all or any of the following matters, namely:—

- I The time that has elapsed since the commission of the previous offence:

II The character, antecedents, age, health, or mental condition of that person: and

III Any other special circumstances,

may impose on that person such penalty (being less than the penalty prescribed by paragraph II of subsection (4) of this section) as the police magistrate may consider just and reasonable in all the circumstances of the case, but the police magistrate shall not, in any such case, impose a penalty of lesser severity than the penalty prescribed in respect of a first offence against subsection (1) of this section.

“(6) Subject to subsection (7) of this section, where a person is convicted of an offence under subsection (1) of this section, the police magistrate before whom he is convicted may, on the application of the complainant, assess the amount of the damage caused to the motor vehicle by reason of the commission of the offence and may order that, in addition to any fine or term of imprisonment to which the offender is liable by reason of the offence, the offender shall pay to the owner of the motor vehicle the amount so assessed.

“(7) An amount ordered to be paid pursuant to subsection (6) of this section shall not, in any case, exceed two hundred and fifty pounds.

“(8) An order under subsection (6) of this section—

I May direct that the amount thereby ordered to be paid shall be paid either in a lump sum or by which instalments as may be specified in the order: and

II May contain such incidental and supplementary provisions as the police magistrate may think proper.

“(9) A person who wilfully or negligently makes default in payment of an amount ordered to be paid pursuant to subsection (6) of this section in accordance with the terms of the order is guilty of an offence.

Penalty: Six months' imprisonment.

“(10) The imposition of a penalty under subsection (9) of this section does not relieve the offender from payment of the amount ordered to be paid by him pursuant to subsection (6) of this section, or of any unpaid instalment thereof.

“(11) An order under subsection (6) of this section is not a bar to any civil proceedings by the owner of the motor vehicle against the offender in respect of any loss or damage sus-

tained by the owner by reason of, or arising out of, the commission of the offence in respect of which the order is made, but, in any such proceedings, the court shall reduce the damages that, but for this subsection, it might have awarded by an amount equal to the amount ordered to be paid by the offender pursuant to subsection (6) of this section.

“(12) Section one hundred and twenty-nine of the *Justices Procedure Act 1919* does not apply to or in relation to an amount ordered to be paid pursuant to subsection (6) of this section.”.

Operating
vehicle while
intoxicated.

4 Section forty-one of the Principal Act is amended by inserting after subsection (1) thereof the following subsection:—

“(1A) A person shall not be convicted of an offence under paragraph III of subsection (1) of this section unless the court before which he is charged is satisfied that, at the time at which the offence is alleged to have been committed, that person exhibited a manifest intention or disposition to operate or drive the vehicle in relation to which the offence is alleged to have been committed.”.

5 After section forty-one of the Principal Act the following section is inserted:—

Power of
police officer
to forbid
incapable
person to
drive, &c.
Cf. 1949,
No. 7
(N.Z.),
s. 44A.

“41A—(1) Where a police officer is of the opinion that a person who is for the time being in charge of a motor vehicle is, by reason of his physical or mental condition, however arising, incapable of having proper control of the motor vehicle, the police officer may—

- I Forbid that person to drive the motor vehicle:
- II Direct that person to deliver up to the police officer forthwith all ignition keys and other keys of the motor vehicle that are in that person's possession: and
- III Take such steps as may be necessary to render the motor vehicle immobile or to remove it to a place of safety.

“(2) A person who fails to comply with a direction given to him under subsection (1) of this section or does an act that is for the time being forbidden under that subsection is guilty of an offence against this Act, but no person shall be convicted of an offence under this subsection unless the court before which he is charged is satisfied that the police officer had reasonable grounds for believing that, in all the circumstances of the case, the direction or prohibition was necessary in the interests of the defendant, or of any other person, or of the public.

“(3) Subject to subsection (4) of this section, where a police officer exercises the powers conferred by subsection (1) of this section, he shall retain the ignition keys and other keys of the motor vehicle and cause the motor vehicle to be kept immobile or in a place of safety until such time as, in his opinion, the person referred to in the last-mentioned subsection is capable of having proper control of the motor vehicle.

“(4) Notwithstanding anything in subsection (3) of this section, a person who is directed or forbidden to do anything, pursuant to subsection (1) of this section, may, at the time when the direction or prohibition is given or imposed or at any time thereafter, request that—

I His capacity to have proper control of the motor vehicle be determined by a police officer (in this subsection referred to as ‘the senior police officer’) of a higher rank than the police officer who gave the direction or imposed the prohibition, if the last-mentioned police officer is of a rank lower than inspector: or

II He be permitted to submit himself for examination by a legally qualified medical practitioner,

and if it is reasonably practicable that the request be granted the police officer who gave the direction or imposed the prohibition shall make the necessary arrangements accordingly, and if the senior police officer or the medical practitioner, as the case may be, certifies that he is of the opinion that that person is capable of having proper control of the motor vehicle, the police officer who has possession of the ignition keys and other keys of the motor vehicle shall forthwith return them to that person and, if the motor vehicle has been rendered immobile, shall also without further delay cause it to be again returned to running order.”.

6 Section sixty-two of the Principal Act is amended— Interpretation.

(a) by inserting after the definition of “Board” the following definitions:—

“‘Insured’ means a person who is the holder of a policy of insurance issued under this Part:

“‘Insured motor vehicle’ means a motor vehicle in relation to which a policy of insurance that complies with the requirements of this Part is in force at all material times:”;

(b) by inserting after the definition of “Motor vehicle” the following definition:—

“ ‘Nominal defendant’ means the person who is appointed by the Attorney-General as the nominal defendant pursuant to the provisions of this Part.”;

- (c) by inserting after the definition of “Policy of insurance” the following definition:—

“ ‘Uninsured motor vehicle’ means a motor vehicle in relation to which no policy of insurance that complies with the requirements of this Part is in force at any material time.”; and

- (d) by omitting the definition of “The insured”.

Motor
vehicles to
be insured.

7 Section sixty-three of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting therefor the following subsection:—

“(1) No person shall use, or cause, permit, or suffer any other person to use, a motor vehicle unless there is in force in relation to that motor vehicle a policy of insurance that complies with the requirements of this Part.

Penalty: Fifty pounds or three months’ imprisonment.”;

- (b) by omitting from subsection (2) the word “with” and substituting therefor the words “whether with or without”; and

- (c) by inserting after subsection (2) the following subsection:—

“(2A) Nothing in subsection (2) of this section shall be construed as implying any ratification by the owner of a motor vehicle of the acts of any person who at any time drives the motor vehicle without the authority or acquiescence of the owner.”.

Policies of
insurance.

8 Section sixty-four of the Principal Act is amended—

- (a) by inserting the word “and” after paragraph I of subsection (1);

- (b) by omitting paragraph II of that subsection and substituting therefor the following paragraph:—

“II Insures the owner for the time being of the motor vehicle to which it relates and any other person who at any time during the currency of the policy uses that motor vehicle, whether with or without the authority or acquiescence of the owner thereof, jointly and each of them severally against any liability (including liability for costs) that may be incurred by that owner or other person jointly or either of them sever-

ally in respect of the death of, or bodily injury to, any person caused by or arising out of the use of that motor vehicle in this State.”;

- (c) by inserting the word “or” after sub-paragraph (a) of paragraph I of subsection (2); and
- (d) by omitting subsection (3) and substituting therefor the following subsection:—

“(3) Notwithstanding any other law or rule of law to the contrary—

I An insurer who issues a policy of insurance under or for the purposes of this Part is liable to indemnify the owner for the time being of the motor vehicle to which the policy relates and any other person who at any time during the currency of the policy, and whether with or without the authority or acquiescence of the owner, uses that motor vehicle in this State in respect of the liability that the policy purports to cover: and

II Where a cause of action in respect of such a liability survives against the estate of the owner for the time being of that motor vehicle or any such person as is mentioned in paragraph I of this subsection, that indemnity extends to the personal representatives of that owner or person.”.

9 Section sixty-five of the Principal Act is amended by omitting from paragraph I of subsection (2) the word “seven” and substituting therefor the word “twenty-one”.

Conditions
against
liability
void.

10 After section sixty-five of the Principal Act the following sections are inserted:—

“65A—(1) Subject to this section, where the death of, or bodily injury to, a person is caused by or arises out of the use of a motor vehicle but the identity of the motor vehicle cannot be established, any person who could have obtained a judgment against the driver of the motor vehicle in respect of that death or bodily injury may obtain against the nominal defendant the judgment that, in the circumstances, he could have obtained against the driver of the motor vehicle, but the amount for which judgment may be entered against the nominal defendant pursuant to this subsection shall not, in any case, exceed the amount to which the liability of an insurer might be limited by the terms of a policy of insurance that complies with the requirements of this Part.

Provision for
case where
identity of
motor vehicle
cannot be
established.
Cf. No. 5616,
(Vict.),
s. 47,
No. 15, 1942
(N.S.W.),
s. 30 (2).

“(2) A person is not entitled to obtain a judgment under this section unless—

- I Within one month after the occurrence of the accident he gives to the Attorney-General notice of intention to make a claim under this section, together with a short statement of the grounds thereof: and
- II He institutes proceedings against the nominal defendant within six months after the occurrence of the accident.

“(3) Notwithstanding anything in subsection (2) of this section, the court, upon application being made in that behalf, may, after hearing such of the persons affected or likely to be affected by the application as it thinks fit, extend the time limited by that subsection for giving notice of intention to make a claim or for instituting proceedings, or both, for such further period as the court thinks fit.

“(4) The powers conferred on a court by subsection (3) of this section may be exercised notwithstanding that the times limited by subsection (2) of this section have, or either of those times has, expired.

“65B—(1) Where—

- I Judgment is obtained against the owner or driver of an uninsured motor vehicle in respect of the death of, or bodily injury to, any person caused by or arising out of the use of that motor vehicle:
- II That death or bodily injury is one against liability in respect of which the judgment debtor would have been insured if the motor vehicle were an insured motor vehicle: and
- III The judgment debtor does not satisfy the judgment in full within the period of one month after it is obtained,

the court in which the judgment is obtained may, on the application of the judgment creditor, direct that judgment be entered against the nominal defendant for a sum equivalent to the amount (including costs) unpaid in respect of the first-mentioned judgment, or the amount to which the liability of an insurer might have been limited had the motor vehicle been an insured motor vehicle, whichever is the lesser amount.

“(2) For the purposes of subsection (1) of this section, where execution of the judgment obtained against the owner or driver of the motor vehicle is stayed pending appeal, the time during which it is so stayed shall be excluded in calculating the period referred to in paragraph III of that subsection.

“(3) Where proceedings are taken against the owner or driver of an uninsured motor vehicle for damages in respect of the death of, or bodily injury to, any person arising out of the use of that motor vehicle, the defendant or his solicitor shall—

- I In the case of proceedings in the Supreme Court, within forty-eight hours after entering an appearance to the writ of summons serve on the nominal defendant a copy of the notice of appearance: or

II In the case of proceedings in a court under the *Local Courts Act 1896*, within forty-eight hours after filing a defence to the summons serve on the nominal defendant a copy of the notice of defence, and thereupon the nominal defendant may apply to the court to be made a party to the proceedings and to take over the conduct of the defence.

“(4) An application under subsection (3) of this section shall be made on summons—

I In the case of proceedings in the Supreme Court, to a judge: or

II In the case of proceedings in a court under the *Local Courts Act 1896*, to the commissioner of the court (in the case of a court of requests) or to the chairman of the court (in the case of a court of general sessions).

“(5) On an application under subsection (3) of this section, the court may order that the nominal defendant be made a party to the proceedings and that, to such extent and upon and subject to such conditions as the court may determine, the conduct of the defence be taken over by the nominal defendant.

“(6) In any proceedings to which this section relates, no judgment by default shall be entered for the plaintiff unless, within the time prescribed by the rules of court or rules of practice, a copy of the writ of summons or of the summons to appear to the plaintiff, as the case may be, has been served, by or on behalf of the plaintiff, on the nominal defendant.

“(7) If the defendant in any proceedings to which this section relates has not entered an appearance to the writ of summons or, as the case may be, has not filed a defence to the summons, the nominal defendant may, on receiving a copy of the writ of summons or summons, as the case may be, apply to the court to be made a party to the proceedings and to take over the conduct of the defence, and the provisions of subsections (4) and (5) of this section apply to and in relation to an application under this subsection as if it were an application under subsection (3) of this section.

“(8) The right conferred on a judgment creditor by subsection (1) of this section to have judgment entered against the nominal defendant is not affected or prejudiced by any non-compliance by the judgment creditor or judgment debtor, or by the judgment creditor's or judgment debtor's solicitor, with any of the provisions of subsections (3) to (6) of this section.

“(9) For the purpose of giving effect to the provisions of subsections (3) to (7) of this section—

I Rules of court may be made in accordance with the provisions of the *Supreme Court Civil Procedure Act 1932*, in relation to proceedings in the Supreme Court: and

II The judges may, in accordance with section one hundred and thirty-eight of the *Local Courts Act 1896*, alter the rules of practice set forth in the fifth

schedule to that Act or make additional rules of practice, in relation to proceedings in a court under that Act.

Special provisions where owner or driver of uninsured motor vehicle cannot be found.
Vict., s. 49.

“ 65C—(1) Where—

I Liability has been incurred by the owner or driver of an uninsured motor vehicle in respect of the death of, or bodily injury to, a person caused by, or arising out of, the use of that motor vehicle: and

II That liability is one against which the owner or driver would have been indemnified if that motor vehicle were an insured motor vehicle,

but the owner or driver cannot, after strict inquiry and search, be found, a person who could have obtained judgment against the owner or driver if he could be found may obtain judgment against the nominal defendant for a sum equivalent to the amount for which he could have obtained judgment against the owner or driver, or the amount to which the liability of an insurer might have been limited if the motor vehicle had been an insured motor vehicle, whichever is the lesser amount.

“(2) No action lies under this section against the nominal defendant unless notice of intention to make a claim, together with a short statement of the grounds thereof, is given to the nominal defendant within the period of six months after the occurrence of the accident, or within such further time as the court may, on application made either before or after the expiration of that period, allow.

“(3) In an action under this section, the inquiry and search for the owner or driver may be proved orally or by the affidavit of the person who made the inquiry and search.

“ 65D—(1) The Attorney-General may, by notice in the *Gazette*, appoint a person who resides in this State to be the nominal defendant for the purposes of this Part, and may, in like manner, revoke any such appointment.

“(2) An appointment under this section shall be made on the nomination of the insurers or a majority of them, but if the insurers fail, within one month after being requested by the Attorney-General so to do, to nominate a person for appointment as the nominal defendant the Attorney-General may appoint such person as he thinks fit to be the nominal defendant for the purposes of this Part.

“(3) Any proceedings by or against the nominal defendant may be taken in the name of ‘The Nominal Defendant’.

“(4) The death or resignation of a person holding office as the nominal defendant, or the revocation of such a person’s appointment, does not abate any proceedings commenced by or against him before the date of the death or resignation or the revocation of his appointment, and the proceedings may be continued and concluded by the person appointed in his place as if the death, resignation, or revocation had not occurred.

The nominal defendant.
N.S.W.,
s. 30.

“65E—(1) The nominal defendant is not personally liable to pay any amount that is payable pursuant to this Part in satisfaction of any claim made, or judgment obtained, against the nominal defendant, or the amount of any costs incurred by him in relation to any claim made, or the proceedings in which any judgment is obtained, against him pursuant to this Part, but any such amount shall be paid by the nominal defendant out of moneys provided by the insurers in accordance with this section.

Payment by
nominal
defendant.
N.S.W.
s. 31.

“(2) Any moneys that are required by this section to be provided by the insurers shall be provided by the insurers in such proportions as the Attorney-General may determine, having regard, so far as is practicable, to the premium income in respect of policies of insurance under this Part received by each insurer during the preceding financial year.

“(3) Any amounts (not being amounts to which subsection (1) of this section applies) required from time to time to meet any costs and expenses incurred by the nominal defendant in or in connection with the exercise and discharge of the powers, functions, and duties conferred and imposed on him by or under this Part shall be paid by the insurers in such proportions as the Attorney-General may determine, having regard, so far as is practicable, to the premium income in respect of policies of insurance under this Part received by each insurer during the preceding financial year.

“(4) When the Attorney-General makes a determination under subsection (2) or subsection (3) of this section he shall give notice to each insurer of the sum he has determined as being payable by that insurer and shall, in that notice, require the insurer to pay that sum to the nominal defendant within such time as is specified in that behalf in the notice.

“(5) If an insurer fails to pay to the nominal defendant the sum specified in a notice given to the insurer pursuant to subsection (4) of this section within the time specified in that behalf in the notice the insurer is guilty of an offence against this section.

Penalty: One hundred pounds.

“(6) Where an insurer is convicted of an offence against this section the justices by whom he is convicted may, in addition to imposing a penalty for the offence, order the insurer to pay to the nominal defendant the sum in respect of the non-payment of which the offence was committed, or such portion of that sum as may remain unpaid at the date of the conviction.

“(7) An order under subsection (6) of this section for the payment of a sum to the nominal defendant may be enforced in the same manner as a summary conviction or order under the *Justices Procedure Act 1919* for the payment of a sum of money, and the provisions of that Act apply thereto accordingly.

Recovery by
nominal
defendant
from owner
or driver.
N.S.W.,
s. 32.

“65F—(1) Any amount paid by the nominal defendant in satisfaction of a claim made, or judgment obtained, against him pursuant to this Part, together with his costs of and incidental to the claim or the proceedings in which the judgment was obtained, may be recovered by the nominal defendant as a debt due to the nominal defendant by action in a court of competent jurisdiction against—

I The person who, at the time of the accident out of which the claim arose or in respect of which the judgment was obtained, was the owner of the motor vehicle concerned: or

II The owner and driver jointly, or either of them severally, where, at that time, any other person was driving the motor vehicle.

“(2) For the purposes of this section—

I It is a sufficient defence to an action by the nominal defendant against the owner of a motor vehicle (whether severally or jointly with the driver thereof) if the owner establishes to the satisfaction of the court that, at the time of the accident, some other person was driving the motor vehicle without his authority or acquiescence: and

II It is a sufficient defence to an action by the nominal defendant against the driver of a motor vehicle (whether severally or jointly with the owner thereof) if the driver establishes to the satisfaction of the court that, at the time of the accident, he was driving the motor vehicle with the authority or acquiescence of the owner or had reasonable ground for believing, and did in fact believe, that he had that authority or acquiescence and that he had reasonable ground for believing, and did in fact believe, that the motor vehicle was an insured motor vehicle.

“(3) Notwithstanding anything in the foregoing provisions of this section, the defence mentioned in paragraph II of subsection (2) of this section is not available to the driver of a motor vehicle if the court in which proceedings are taken by the nominal defendant against the driver is satisfied that, at the time of the accident, the driver was under the influence of intoxicating liquor while driving the motor vehicle and that the fact that the driver was under the influence of intoxicating liquor contributed to the occurrence of the accident.

“65G—(1) Where—

I Judgment has been obtained in any proceedings brought in respect of the death of, or bodily injury to, a person caused by, or arising out of, the use of a motor vehicle:

II The policy of insurance under this Part in relation to that motor vehicle insures the judgment debtor against liability in respect of that death or bodily injury: and

III The judgment is not satisfied in full within the period of one month after it is entered,

Entry of
judgment
against
insurer in
certain
events.

N.S.W., s. 15
(1), (2),
(3).

the court in which those proceedings were taken may, on the application of the judgment creditor, direct that the judgment be entered against the insurer by whom the policy was issued for a sum equivalent to the amount (including costs) unpaid in respect of the first-mentioned judgment, or the amount (if any) to which the liability of the insurer is limited by the terms of the policy of insurance, whichever is the lesser amount.

“(2) For the purposes of subsection (1) of this section—

- I Notice of intention to make an application under that subsection shall be served, by or on behalf of the judgment creditor, on the insurer at least seven days before the hearing of the application:
- II Where execution on the judgment obtained against the judgment debtor is stayed pending appeal, the time during which it is so stayed shall be excluded in calculating the period referred to in that subsection: and
- III Where a direction is given under that subsection, the judgment shall be entered against, and may be enforced as a judgment obtained against, the insurer, but only to the extent to which it is not already satisfied at the date on which it is entered against the insurer.

“(3) Where—

- I In respect of the death of, or bodily injury to, a person caused by, or arising out of, the use of a motor vehicle, liability has been incurred by the owner or driver of a motor vehicle, and the owner or driver is indemnified against such a liability by a policy of insurance under this Part: and
- II The owner or driver cannot, after strict inquiry and search, be found,

any person who could have obtained judgment in respect of that death or bodily injury against the owner or driver if he could have been found may, by action in a court of competent jurisdiction against the insurer, recover an amount equivalent to the sum for which he could have obtained judgment against the owner or driver or the amount (if any) to which the liability of the insurer is limited by the terms of the policy of insurance, whichever is the lesser amount.

“(4) No action lies under subsection (3) of this section against an insurer unless notice of intention to make a claim is given to the insurer within the period of six months after the occurrence of the accident, or within such further time as the court may, on application made either before or after the expiration of that period, allow.

“(5) In an action under subsection (3) of this section, the inquiry and search made for the owner or driver may be proved orally or by the affidavit of the person who made the inquiry and search.

“(6) It is no defence by an insurer to an application under subsection (1) of this section to enter judgment against him or to an action against him under subsection (3) of this section that he is not liable under the policy of insurance by reason of any act or omission made by the owner or driver of the motor vehicle, and, in particular and without prejudice to the foregoing provisions of this subsection, it is no defence by an insurer to such an application or action that he is not liable under the policy of insurance by reason that—

- I The policy of insurance was obtained by a false statement, by misrepresentation, or by a non-disclosure, whether fraudulent, material, or otherwise:
- II The owner of the motor vehicle has committed a breach of, or has failed to comply with, a term, condition, or warranty of the policy of insurance: or
- III The owner or driver of the motor vehicle has committed a breach of, or has failed to comply with, any provision of this Act or of the regulations.

Recovery by insurer from owner.

N.S.W.,
s. 15, (4),
(5), (6).

“65H—(1) Subject to this section, in addition to any other right or remedy he may have, an insurer may, by action in a court of competent jurisdiction, recover from the owner of a motor vehicle, or, where two or more persons are the owners thereof, from those owners jointly and severally, so much of—

- I Any judgment obtained or entered against the insurer under this Part:
- II Any sums that the insurer has paid in payment, settlement, or compromise of a claim under this Part, or of a judgment under this Part, against the owner and driver of a motor vehicle jointly, or either of them severally, or of a judgment entered against the insurer pursuant to section sixty-five G: and
- III The costs and expenses reasonably incurred by the insurer in connection with such a claim or the proceedings in which such a judgment was obtained or entered,

as the insurer has paid under or in consequence of a policy of insurance under this Part, where there has been a false statement or misrepresentation, or a non-disclosure, in obtaining the issue of the policy, or a breach by the owner of, or a failure by the owner to comply with, any term, condition, or warranty of the policy.

“(2) Notwithstanding the provisions of subsection (1) of this section an insurer is not entitled to recover moneys from the owner of a motor vehicle pursuant to that subsection unless the court in which the action for the recovery thereof is brought is satisfied—

- I Where there has been a false statement, misrepresentation, or non-disclosure, in obtaining the issue of a policy, that the statement, misrepresentation, or non-disclosure (whether fraudulent, material, or otherwise) was in relation to some fact or thing of such a nature as to influence a prudent insurer in determining whether or not to accept a proposal for insurance: or
- II Where there has been a breach of, or failure to comply with, a term, condition, or warranty of a policy, that the breach or failure was such that it contributed in a material degree to the circumstances in which the insurer agreed to pay, or otherwise became liable to pay, the moneys sought to be recovered.

“65J—(1) Notwithstanding any other provisions of this Part—

Rights of insurer against unauthorized or intoxicated driver.
Vict., s. 56.

- I Where the death of, or bodily injury to, a person is caused by, or arises out of, the use of a motor vehicle: and
- II At the time of the occurrence of the accident that caused or gave rise to that death or bodily injury, the motor vehicle was being driven by a person (in this subsection referred to as ‘the driver’) without the authority or acquiescence of the owner of the motor vehicle or without reasonable grounds for believing that he had that authority or acquiescence,

the driver is not entitled to recover from the insurer any sum on account of any moneys (including costs) paid or payable by the driver in respect of that death or bodily injury, and any sum paid by the insurer in discharge of the liability of the driver for or on account of that death or bodily injury is recoverable by the insurer from the driver by action in a court of competent jurisdiction.

“(2) Where—

- I The death of, or bodily injury to, a person is caused by, or arises out of, the use of an insured motor vehicle: and
- II The driver of that motor vehicle (not being the owner thereof) is convicted of having, at the time of the occurrence of the accident out of which the death or bodily injury arose, been under the influence of intoxicating liquor while driving that motor vehicle,

any sum (including costs) paid by the insurer in discharge of the liability of the owner or driver of the motor vehicle in respect of that death or bodily injury is recoverable by the insurer from the driver by action in a court of competent jurisdiction.

Change of ownership of motor vehicle.
 Vict., s. 41 (10).
 N.S.W., s. 21.

“65K—(1) By virtue only of the operation of this section, every policy of insurance under this Part insures in favour of the owner for the time being of the motor vehicle to which it relates, notwithstanding any change in the ownership of that vehicle, but ceases to have effect when another policy of insurance under this Act comes into force in relation to that motor vehicle, except in relation to any liability, whether under the policy or arising by virtue of the operation of this Part, accrued or incurred before that other policy came into force.

“(2) This section has effect, notwithstanding any other law or rule of law to the contrary, as if the provisions of this section were an express term or condition of every policy of insurance under this Part and were set forth therein as a term or condition thereof.”

No registration without insurance.

11 Section sixty-six of the Principal Act is amended by omitting subsection (3) thereof.

12 After section sixty-nine of the Principal Act the following section is inserted:—

Notice of certain accidents involving uninsured motor vehicles.
 Vict., s. 50.

“69A—(1) On the occurrence of an accident in which an uninsured motor vehicle is involved—

- I The driver of that vehicle shall, as soon as practicable after the accident: or
- II If a person other than the owner of the motor vehicle was the driver thereof at the time of the accident, the owner shall, as soon as practicable after he first becomes aware of the accident,

notify the nominal defendant or the Attorney-General, in writing, of the fact of the accident, and shall give to the nominal defendant or to the Attorney-General, as the case may be, particulars as to the date, nature, and circumstances of the accident.

“(2) If the owner or driver of a motor vehicle to which subsection (1) of this section relates fails to give notice as provided in that subsection, he is guilty of an offence against this Act.

Penalty: Ten pounds.

“(3) Where the driver of a motor vehicle is charged with an offence under this section, it is a good defence if he establishes to the satisfaction of the court before which he is charged that he did not know that the motor vehicle was an uninsured motor vehicle.”

Making and settlement of claims.

13 Section seventy of the Principal Act is amended—

- (a) by omitting from subsection (1) the word “All” and substituting therefor the words “Except as otherwise expressly provided in this Part, all”;

- (b) by omitting from subsection (2) the words "such claim" and substituting therefor the words "claim made against the owner of a motor vehicle under this Part"; and
- (c) by omitting subsection (5).

14—(1) The Principal Act is amended by omitting the second schedule thereto and substituting therefor the following schedule:— The second schedule.

"THE SECOND SCHEDULE.

"(Section 10.)

"FEES IN RESPECT OF MOTOR VEHICLES AND DRIVERS THEREOF.

	£	s.	d.
<i>Motor vehicle (other than a motor cycle)—</i>			
Registration or renewal of registration	1	10	0
Transfer of registration	0	10	0
<i>Motor cycle—</i>			
Registration or renewal of registration	1	0	0
Transfer of registration	0	10	0
<i>Trailer attached to a motor vehicle (other than a motor cycle)—</i>			
Registration or renewal of registration	1	0	0
Transfer of registration	0	5	0
<i>Driver of motor vehicle—</i>			
Licence	1	0	0
Renewal of licence	1	0	0
Temporary licence not exceeding three months for visiting motorist from beyond the State	0	2	6
<i>Dealers' special number plates—</i>			
Annual fee (in respect of each set of number plates issued and retained)	5	0	0
<i>General—</i>			
Certificate, duplicate, other document issued in lieu of or in respect of any certificate of registration, registration label, or licence that has been lost or destroyed	0	2	6."

(2) The fee payable in respect of the issue or renewal of a driver's licence by virtue of the second schedule to the Principal Act (as inserted therein by subsection (1) of this section) is payable in respect of every licence (whenever issued or renewed) that, by virtue of that Act and the regulations, will expire on the first day of January 1959 or any later day.

(3) Except as provided in subsection (2) of this section, this section shall commence on the first day of January 1958.

15—(1) The third schedule to the Principal Act is amended— The third schedule.

- (a) by omitting the item "Driver of any licensed motor vehicle..... Ten shillings" and substituting therefor the following item:—

- “ Driver of any licensed motor vehicle.....
One pound ”; and
- (b) by omitting the item “ Certificate or other document issued in lieu or in respect of any certificate of registration or licence which has been lost or destroyed.....One shilling ” and substituting therefor the following item:—
- “ Certificate or other document issued in lieu or in respect of any certificate of registration or licence which has been lost or destroyed.....
Two shillings and sixpence.”.

(2) This section shall commence on the first day of January 1958.

FORTH RIVER DEFENCES.

No. 76 of 1957.

AN ACT to amend the *Forth River Defences Act* 1956. [6 December 1957.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title
and citation.

1—(1) This Act may be cited as the *Forth River Defences Act* 1957.

(2) The *Forth River Defences Act* 1956 is in this Act referred to as the Principal Act.

Forth
Defended
District.

2 Section two of the Principal Act is amended by omitting the words “ third, and fourth ” and substituting therefor the words “ and third ”.

Construction
of works.

3 Section three of the Principal Act is amended by omitting the words “ the amount mentioned in section four ” and substituting therefor the words “ five thousand five hundred pounds ”.

4 After section four of the Principal Act the following section is inserted:—

Appropriation
and
application
of £2,250.

“ 4A The Treasurer may issue out of the Consolidated Revenue (which, to the necessary extent, is appropriated accordingly) a sum not exceeding £2,250 and apply that sum for the purpose mentioned in section four.”.