2008

The Legislative Assembly for

Australian Capital Territory

Road Transport (Third Party Insurance) Regulation 2008

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Explanatory Statement

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Treasurer
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Road Transport (Third Party Insurance) Regulation 2008 (Regulation)

Overview

The Road Transport (Third Party Insurance) Regulation 2008 provides the necessary delegated legislative support to the *Road Transport (Third Party Insurance) Act 2008* (the Principal Act). Necessarily, the Regulation contains both substantive and transitional provisions.

The substantive provisions address essential elements of insurer regulation and licensing, premium setting, nominal defendant, early medical treatment for injured motor accident victims and claims procedures, including controls on legal costs.

The Principal Act contains many references to regulation making power. In fact, there are approximately 80 individual areas within which regulations could be promulgated. Extensive regulation making power is a feature of modern complulsory third party insurance (CTP) legislation. There is a need for flexibility in administering or regulating CTP schemes, particularly in view of the rapid shifts in the market that occurred around the time of the 2001-02 insurance crisis, and, of course the many mergers, takeovers, restructures and consolidations that have occurred among banks, insurers and financial services organisations since then.

In addition, it is necessary to be able to react quickly to shifts in liability and cost patterns, driver behaviour, accident prevention, vehicle and road safety as the need arises. On the other hand, the Government has taken a structured approach to making regulations under the Principal Act, limiting them to 35 provisions (other than transitional) limited to the areas addressed above and explained in detail, below.

The Regulation amplifies the Government's objectives of securing choice of CTP insurers for ACT citizens, better health outcomes for injured motor accident victims and necessary controls on the cost of pursuing small claims that are better resolved utilising modern injury management modalities, as opposed to the costly and lengthy adversarial process that was the hallmark of a CTP scheme in place in the ACT that had not changed significantly since 1948.

Detail

Part 1 – Preliminary

Sections 1 through 5 set out the name of the Regulation, commencement date, and refer to the dictionary, notes and offences under the Regulation, including notes that provide cross references to the Criminal Code.

Part 2 – Industry Deed

Chapter 1 of the Principal Act introduced a new regulatory concept into the ACT, that of the Industry Deed. The Deed and subsidiary documents such as a "sharing agreement" regulate the relationship between competing insurers as regulated entities in

terms of the scheme as a whole. For example, the Deed sets out the division of responsibility between insurers in cases where multiple vehicle accidents occur involving different CTP insurers. The Deed provides an agreed mechanism for division of responsibility that does not require insurers to sue one another to determine their respective levels of responsibility in a motor accident. It also provides for the transfer of necessary information between insurers and indeed the regulator in certain circumstances.

Section 6 contains the necessary approval trigger that permits the regulator to determine and approve the contents of the Industry Deed. Necessarily, the Deed is a Disallowable Instrument. It is expected that the Industry Deed will be presented to the Assembly towards the end of 2008 in advance of the commencement of competition.

Part 3 – CTP premiums

There are 52 different classes and sub-classes of vehicle in the ACT and each class requires the individual assessment of a CTP premium. This Part of the Regulation sets out the practical mechanism by which this essential regulatory function is to be carried out.

Section 7 defines what a CTP premium is, namely a premium covering a 12 month period.

Section 8 enables the premium to be levied per class of vehicle, by providing a definition of vehicle class. It is intended that vehicle classes will be consolidated and standardised, over time to bring them more closely into line with comparable vehicle classes in NSW. This will reduce costs for new CTP insurers

Section 9 requires insurers to seek approval for the imposition of annual CTP premiums, per class of vehicle. The Principal Act requires that this take place at least once per year. The premium classes are set out in Part 1.2 of Schedule 1.

Section 10 clarifies section 9 by specifying that where a vehicle might fit into one or more classes, the premium shall be determined by reference to the higher premium class. This section ensures that the premium paid reflects the correct risk for the vehicle.

Section 11 provides a detailed formula for calculating premiums for periods of less than one year in a format that insurers readily comprehend.

Section 12 provides the necessary means of reassessing a CTP premium if the nature of a vehicle's use changes. For example, a class 1 vehicle, normally a family car may at some point be used as a chauffeur driven vehicle. Premiums need to reflect the additional risk that obtains to such use. The section also deals with changes to a vehicle's construction.

Section 13 contains the main offence provision for this Part, making it an offence to fail to pay any additional premium due under section 12.

Part 4 – Compulsory third party insurance

Section 14 defines the circumstances within which a vehicle can be said to have a sufficient connection with the ACT to require the payment of a CTP premium. Given the proximity of the ACT to NSW, this section has particular importance in terms of the administration of the CTP scheme.

Sections 15 through 18 deals with payments of various types to the nominal defendant. Previously, the ACT nominal defendant was a named individual, but the "real" administration of the nominal defendant's affairs was performed by NRMA. In 2005, the whole claims function was transferred to NRMA and claims against the nominal defendant were treated by NRMA as simply part of its overall claims portfolio, at least in terms of claims administration, litigation and settlement. The prospect of competition means that the nominal defendant claims can not be administered by NRMA because it would mean that NRMA would potentially have access to its competitors' claims procedures and internal business affairs.

Consequently, part 2.7 of the Principal Act provides that the ACT nominal defendant will be the ACT Insurance Authority (ACTIA). ACTIA is already the default insurer under the workers compensation scheme, which means that its claims staff already deal with accident claims arising out of uninsured circumstances. The addition of the nominal defendant role is regarded as an essential, cost effective and transparent way of providing a 'clean break" for incoming CTP competitors in the ACT market for CTP.

Section 15 sets out the bodies that are responsible for funding the nominal defendant.

Section 16 sets out the arrangements by which the nominal defendant can secure its funding and the formula for determining the respective share to be paid by each responsible body.

Section 17 provides the practical mechanism by which the nominal defendant may seek its funding, through the provision of collection notices.

Section 18 makes it an offence not to pay the nominal defendant if a section 17 notice has been provided to one of the licensed insurers, but no payment is forthcoming.

Part 5 – early payment for treatment of motor accident injuries

This part provides the mechanism for persons injured as a result of a motor accident, in accordance with Chapter 3 of the Principal Act.

Section 19 outlines the necessary level of accounting detail that enables claimants to secure the early payment for medical expenses. It also ensures that licensed insurers can make the payment in the knowledge that the invoice is valid and their GST compliance requirements are properly addressed.

Part 6 – Motor accident claims

This Part provides the detailed regulatory structure behind Chapter 4 of the Principal Act which deals with claims and claims procedures following a motor accident.

Section 20 addresses a problem that existed under the "old" CTP law wherein there was confusion around whether particular communications from lawyers or potential claimants under the Civil Law (Wrongs) Act 2002 were actually notified claims. Compulsory, statutory compensation schemes require certainty in terms of procedure, disclosure and intent, otherwise unnecessary legal and investigation costs can emerge. Chapter 4 of the Principal Act invokes a full array of procedural mechanisms that deal with problems such as this, and section 20 offers a clear determination of legislative intent in relation to claims notification. The regulator will provide an appropriate claim notification form under the Principal Act (concomitant with its commencement) that will constitute sufficient notice of intent to claim.

Section 21 provides the necessary rigour around the addition of a later respondent to a claim, with respect to the circumstances contained in section 91 (2) (a) of the Principal Act.

Section 22 requires claimants exercising their rights under section 21 to notify other respondents.

Section 23 is the corollary provision to section 21, and imposes the same obligation upon a respondent with respect to those entities or persons the respondent alleges are contributors.

Section 24 is likewise, a corollary provision to section 22, in this regard. It is to be noted that the respondent's duty extends to notifying all parties.

Section 25 amplifies the provisions in Part 4.5 of the Principal Act. This section requires the regulator to consult with a wide array of relevant bodies prior to and in connection with any decision the regulator makes under section 117 (1) of the Principal Act, that is to say, if the regulator decides to establish a panel of recognised experts with respect for reporting on the medical condition of claimants and their prospects of rehabilitation.

Section 26 outlines the necessary level of accounting detail that enables claimants to secure payment for medical expenses under Part 4.6 of the Principal Act. It also ensures that licensed insurers can make the payment in the knowledge that the invoice is valid and their GST compliance requirements are properly addressed.

Sections 27 though 30 deal with a particular issue, addressed in Part 4.8 of the Principal Act. Part 4.8 of the Principal Act contains detailed provisions that address the problem that emerged from the "old" CTP scheme over the years, but which accelerated in intensity and cost pressure from 2004.

All recent, relevant, recognised research points to the fact that people who suffer minor injury in motor accidents are far better off being properly treated promptly and made well.

In this regard, insurers in Queensland and NSW offer effective early intervention, treatment, and rehabilitation and occupational therapy modalities. Between 30 and 45% of motor accident victims in NSW and Queensland have their claims and treatment dealt with direct with a licensed CTP insurer. In Queensland (Chapter 4 of the principal Act is based on its Queensland equivalent), lawyers representing injured claimants generally trust insurers to provide such facilities to their clients. The capacity for this now to occur in the ACT is contained in legislative provisions, now reflected in Chapters 3 and 4 of the Principal Act.

Small claims represent an important first cost pressure benchmark the Government has seen fit to address in relation to Chapters 3 and 4 of the principal Act.

Therefore, section 27 offers lawyers the opportunity to earn up to $5,000 in costs if their clients accept mandatory final offers in cases involving damages, other than general damages, between $30,000 and $50,000.

If their clients choose to litigate small claims under $30,000, section 28 provides that no costs shall be awarded. If their clients choose to litigate claims between $30,000 and $50,000, costs amounting to $2,500 may be awarded (for instance, section 155 (3) (b) (i) of the Principal Act refers).

Section 28 provides that in a small claim up to $30,000 (exclusive of general damages) as previously outlined, that the plaintiff wins, an award reflecting a disparity of 15% or more in the mandatory final offers in favour of the plaintiff will result in uplift costs amounting to $10,000.

Likewise, if the same situation occurs in relation to claims between $30,000 and $50,000 (exclusive of general damages) section 30 provides for uplift costs to $15,000.

Section 29 provides that in a case involving a claim between $30,000 and $50,000 (exclusive of general damages), an award reflecting a disparity of 15% or more in the mandatory final offers in favour of the respondent will result in a costs award of $2,500 to the respondent.

Part 7 – Licensing of insurers

Section 31 offers new entrants the opportunity to seek licenses in the ACT by proffering current or most recent federal and State regulatory reports, in support of their applications.

Part 8 – Information collection and secrecy

Part 8 replicates, almost exactly the equivalent Queensland regulations that detail the level and extent of reporting required under their scheme. Given that the ACT claims structure (Chapter 4 of the Principal Act) is likewise based on its Queensland equivalent, the solution represents the lowest barrier to entry option available.

Sections 32 through 35 provide this necessary reporting link.

Section 32 addresses monthly reports.

Section 33 deals with reports that are normally provided quarterly.

Section 34 deals with the position, such as previously outlined in relation to the Industry Deed, under which a claims manager appointed by multiple respondents is able to provide necessary reports, to avoid duplication.

Section 35 deals with the essential link between an insurer's federal responsibilities under the *Insurance Act 1973*, the *Corporations Act 2001* and the necessity to report on significant issues affecting its structure, financial status or the management of its insurance business.

Part 20 – Transitional

Section 100 defines terms for this part.

Section 101 is a transitional provision continuing the former provisions in relation to trader's plates.

Section 102 is a transitional provision continuing the former provisions in relation to unregistered vehicle permits.

Section 103 is a transitional provision that has the effect of modifying the Road Transport (Public Passenger Services) Act 2001 by inserting new Part 8A, which is set out in Schedule 20 of the Regulation.

The purpose of this section is to include in the Road Transport (Public Passenger Services) Act 2001 provisions to require the accredited operator of a public passenger vehicle to maintain an insurance policy, known as a public passenger vehicle policy.

These provisions were formerly contained in Division 10.12 of the *Road Transport (General) Act 1999*, and were omitted when Part 10 of that Act was repealed by the principal Act.

Section 104 provides for this part to expire one year after the commencement of the Act.

Schedule 1 CTP premium classes

Schedule 1, Part 1.1 defines terms in relation to CTP premium classes.

Schedule 1, Part 1.2 sets out the CTP premium classes for the purposes of section 9. These are divided into 20 kinds of vehicle, with further sub-classification into 52 sub-classes according to whether the vehicle is used for business or private purposes and, where applicable, according to the seating capacity, unladen weight or engine capacity of the vehicle.

Schedule 20 Modification – Road Transport (Public Passenger Services) Act 2001

Item 20.1 New part 8A

New Part 8A deals with the requirements for accredited operators of public passenger vehicles to hold a public passenger vehicle policy.

New section 110 is based on former sections 261A and 218 of the Road Transport (General) Act 1999 and defines the terms "accredited operator" and "public passenger vehicle policy."

New section 111 requires an accredited operator of a public passenger vehicle to hold an insurance policy for property damage (known as a "public passenger vehicle policy") for at least $5 million. A failure to comply with this requirement is an offence. This provision is based on former section 117 of the Road Transport (General) Act 1999.

New section 112 requires accredited operators to provide evidence of the public passenger vehicle policy when required by a police officer or authorised person to do so. A failure to comply with this requirement is an offence. This provision is based on former section 224 of the Road Transport (General) Act 1999.

New section 113 is a consequential amendment that makes it clear that the Road Transport (Offences) Regulation 2005 applies in relation to offences under new Part 8A as though schedule 1, part 1.10 of that Regulation included references to the offences contained in new sections 111 and 112. The purpose of this amendment is to ensure that the provisions in the road transport legislation for dealing with offences, including provisions relating to infringement notices, will apply to the new offences.

Dictionary

The Dictionary contains definitions of terms relevant to the Regulation.