

2007

**The Legislative Assembly for
Australian Capital Territory**

**Road Transport (Third Party Insurance) Bill
2007**

Explanatory Statement

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Road Transport (Third Party Insurance) Bill 2007

Overview

The Road Transport (Third Party Insurance) Bill 2007 amends the *Road Transport (General) Act 1999*, effectively removing the provisions of Part 10 of the Act relating to compulsory third party insurance (CTP) into a separate Bill.

The current CTP scheme in place in the ACT has not changed significantly since 1948. The new legislation is expected to bring about cost savings flowing through to CTP premiums, without diminishing the compensation available for negligently injured persons. The legislation will also remove barriers to competition and give insurance companies clear guidelines for providing CTP insurance in the ACT, which should now give consumers a choice of provider.

Detail

Chapter 1 – Preliminary

Part 1.1 – Introduction

Clauses 1 to 5 set out the name of the Act, commencement date, and refer to the dictionary, notes and offences against the Act.

Part 1.2 – Important concepts

Clauses 6 to 8 define **personal injury**, **motor accident**, **injured person** and the **use** of a motor vehicle. The aim of these definitions is to link more closely to the principle that compensation under this statutory scheme should only arise if the personal injury derives directly from an accident that reflects the insured risk.

Clause 9 defines **the insurance industry deed** and Clause 10 sets out the provisions that may be included in the deed, including disclosure requirements and the apportionment of liability. Clause 11 defines **CTP insurance business** as any business associated with CTP policies.

Clauses 12 and 13 define the **owner** of a registered and unregistered motor vehicle. Clause 14 provides that possession of a motor vehicle is not affected by hiring or passing the vehicle to a bailee.

Chapter 2 – Compulsory third party insurance (CTP insurance)

Part 2.1 – CTP insurance – requirement

Clauses 15 and 16 define an **insured motor vehicle** and a **CTP insured person** as a vehicle/person insured under a CTP policy.

Clause 17 contains the main offence provision, making it an offence to use an uninsured vehicle on a road, with a maximum penalty of 50 penalty units.

Part 2.2 – CTP policies

Clause 18 defines a **CTP policy**, which insures a person who uses a registered vehicle, trailer, and anything else prescribed by regulation (Clauses 19-20).

A CTP policy insures against the risk of personal injury caused by a motor accident (Clause 21), but does not insure against workers compensation claims, an act of terrorism or various other risks (Clause 22). This represents a necessary realignment of the CTP scheme to address insurance risks pertaining to motor accidents and to provide greater certainty for insurers and the Courts as to the boundaries of the scheme.

The remainder of Part 2.2 (Clauses 23 to 27) defines a **CTP insurer** and sets out the conditions of insurance: an insurer cannot decline a policy, the insurer must indemnify insured people and a policy is not affected by a change in vehicle ownership or an error. In light of the Government's desire for competition, these provisions prevent insurers from segmenting the market.

Part 2.3 – Selecting a CTP insurer

Clause 30 defines a **registered motor vehicle**, with Clauses 28 and 29 setting up the procedures for selecting an insurer at first registration and at renewal. These are new provisions that have become necessary in view of potential competition in the ACT.

Part 2.4 – Length of CTP policy

A CTP policy comes into force when the registration or renewal takes effect, and the insurer remains on risk (is liable for any claims) until midnight of the day the registration is renewed, or until the policy is cancelled (Clauses 31 to 34).

Part 2.5 – Cancellation of CTP policies

Clause 35 provides that a CTP insurer cannot cancel a CTP policy. This ensures the insurer is on risk for the whole registration period. Clause 36 indicates that a CTP policy is cancelled if the vehicle registration is cancelled.

Part 2.6 – CTP premiums

Division 2.6.1 – Approval of CTP premiums

Insurers and the Australian Prudential Regulatory Authority (APRA) have expressed concern that the existing premium regulation provisions are not conducive to competition and do not reflect how modern insurance markets work. Part 2.6 introduces a wholly new premium regulation mechanism that all insurers currently offering CTP insurance in Australia, understand.

Clause 37 defines a **CTP premium** as a premium approved for the CTP policy. Licensed insurers can only charge approved premiums (Clause 38). Clause 39 allows the CTP regulator to make CTP premium guidelines, stating how premiums are to be calculated, requiring the provision of additional information, and other matters.

A licensed insurer must apply to the CTP regulator for the approval of each premium after 1 year unless the CTP regulator allows longer or issues an **approval notice** requiring the insurer to seek approval sooner (Clause 40). The CTP regulator then has six weeks to approve or reject the premium and inform the insurer (Clause 41).

Clause 42 provides the criteria for this assessment, including whether the premium will cover all liabilities, or if the premium is excessive. Further criteria to decide if the premium will fund liabilities are in Clause 43. This is a new clause which supports the operation of Clause 42.

Clause 44 allows the CTP regulator to reconsider rejected premiums if requested, with Clause 45 providing for the matter to go to arbitration if the premium is rejected a second time.

Clause 46 requires the CTP regulator to assess each insurer's profit margin and provide a report to the Assembly.

Division 2.6.2 – CTP premium board

This is a new Division which establishes the CTP premium board (Clause 47). The Government considers that the makeup of CTP premiums is little understood. These provisions give the opportunity for the broader community perspective to be canvassed in case of premium disputes. Clause 48 outlines the functions of the board as arbitrating insurance premium disagreements and other functions as set out in the regulations.

The seven member board includes government, motorist and insurer representatives (Clause 49), with Clause 50 covering appointment of the chair and other board members and Clause 51 appointment of the deputy chair. Clause 52 lists the incidents which may end a member's appointment.

Clauses 53 to 57 set out the principles of honesty, care and diligence of board members, and procedures for dealing with a conflict of interest. Clause 58 protects directors from liability for acts done honestly and without recklessness.

Part 2.7 – Nominal defendant liable for uninsured or unidentified motor vehicles

Clauses 59 and 60 define the **nominal defendant** and an **uninsured motor vehicle**. Clause 61 states that the nominal defendant is liable for a personal injury caused by an uninsured motor vehicle, except if the person was trespassing, the vehicle is owned by the Commonwealth or the Territory, among other exclusions.

Clause 62 defines an **unidentified motor vehicle**, and Clause 63 makes the nominal defendant liable for an accident causing personal injury involving an unidentified vehicle, except if the person was trespassing.

Clause 64 allows the nominal defendant to deal with the claim as it sees fit, and Clause 65 enables claims to be paid from the nominal defendant's fund. The CTP regulator establishes the fund, with payments into the fund from penalties, interest and other amounts collected or recovered by the nominal defendant (Clauses 66 and 67).

Chapter 3 – Motor accident claims

Part 3.1 – Preliminary – Chapter 3

Clauses 68 to 73 define a number of key terms relating to the motor accident claims process and the Act in general, including **medical treatment, motor accident claim, claimant, respondent, insured person** and **insurer**.

Clause 74 restricts the insured person from acting on behalf of their insurer and admitting liability or offering to settle or make a payment. Accordingly, Clause 75 gives power to the insurer to act on behalf of the insured person.

Part 3.2 – Motor accident claims procedures

The first step in a claims procedure is for the claimant to give the respondent a written **notice of claim** (Clause 76). The notice includes all information required by regulation relating to the accident, includes relevant documents and authorises access to information.

This notice must be provided no later than nine months after the accident, or one month after seeking legal advice or identifying the respondent (Clause 77). For claims against the nominal defendant, the time limit is three months from the day of the motor accident (Clause 78). Clause 79 requires the respondent to identify and notify other relevant persons.

Clause 80 then gives the respondent one month to respond to the notice of claim, but the legislation specifically states that acknowledgement that he or she is the proper respondent is not an admission of liability (Clause 81).

Clause 82 sets out the required contents of the response to the notice of claim, including whether the notice is a complying notice of claim and whether the insurer will meet rehabilitation costs.

Clauses 83 and 84 deal with multiple respondents, allowing the claimant to add later respondents and appointing one respondent as the claim manager.

Clauses 85 and 86 cover contributors, allowing the respondent to add another party to the claim and giving the contributor one month to respond to the notice.

Clause 87 sets out circumstances in which a claimant's non-complying notice of claim will be treated as a complying notice, including if the respondent waives non-compliance. This clause is important as Clause 88 bars the claimant from proceeding if the notice of claim does not comply.

Clause 89 imposes a duty on the respondent to try to resolve the claim, giving six months to take any necessary action.

The claimant is excluded from any time limits in this chapter if they are under a **legal disability** (Clause 90). This includes the person being under 18 years of age or suffering an intellectual or mental disorder.

Clauses 91 and 92 allow costs to be awarded to a party if the opposing party does not comply with this Part.

Part 3.3 – Obligations to give documents and information

Clause 93 provides the purpose of this Part, to give the parties enough information relating to the claim. The following clauses (Clauses 94 and 95) define a **required document** and **relevant claim information**.

Clauses 96 and 97 compel the exchange of required documents between the claimant and respondent. Both parties will have equal access to each other's documents. Clauses 98 and 99 require the respondent and any contributors to exchange documents.

Exceptions to this exchange are outlined in Clauses 100 to 103 and include client legal privilege and suspected fraud. Failure to provide documentation is an offence (Clause 104), and the document in question cannot be used by the party in later proceedings (Clause 105). Clause 106 gives a general legal privilege for documents and information under this Part.

Part 3.4 – Enforcement of Part 3.2 and Part 3.3

Clause 107 gives the Court power to make orders for a party to comply with the preceding two Parts. Clause 108 makes it an offence to make a false or misleading statement under Part 3.2 or 3.3, with a maximum penalty of 100 penalty units, one year imprisonment or both.

Part 3.5 – Expert reports

Clause 109 allows the CTP regulator to set up a panel of medical experts for reporting on a claimant's condition. In forming the panel the regulator must consult with the prescribed regulatory bodies.

Parties to a claim can jointly arrange for a report from the panel about the cause of the accident or injury (Clause 110), with the respondent reimbursing the claimant for costs of obtaining the report (Clause 111).

Clause 112 outlines procedures for a medical examination of the claimant if the claimant does not agree to a report under Clause 110(1).

Part 3.6 – Respondent to pay for medical expenses and rehabilitation services

Division 3.6.1 – Claimant to give documents

Clause 113 entitles the claimant to payment of medical and rehabilitation expenses under Part 3.6 only if they give a motor accident notification form and a motor accident medical report to the respondent within 28 days of the accident.

Division 3.6.2 – Medical expenses

The respondent must pay for the claimant's **medical expenses** (defined in Clause 114) under Clause 116 if the respondent admits liability for the claim and the accident was reported to the police under Clause 115.

Division 3.6.3 – Rehabilitation services

Clauses 117 to 119 define **rehabilitation, rehabilitation services** and **provided rehabilitation services**. Under Clause 120 the respondent may make rehabilitation services available to the claimant on their own initiative, but this does not admit liability. Clause 121 requires the respondent to make rehabilitation available if they admit liability or agree to pay for these services without admitting liability.

Before Clauses 120 or 121 are followed, Clause 123 compels the respondent to provide an estimated cost of rehabilitation services to the claimant, and how this will affect the provision of any damages. The cost of rehabilitation can only be taken into account if notice is provided under Clause 122.

If the claimant is not satisfied that the proposed rehabilitation services are appropriate, the matter can be referred to mediation (Clause 124) or a court proceeding (Clause 125). If the respondent considers the cost of rehabilitation to be unreasonable, the CTP regulator can appoint a mediator (Clause 127) or the respondent can apply to the Court (Clause 128).

Clause 126 states that the respondent must pay for rehabilitation services unless liability is reduced by agreement or by a Clause 128 court order.

Division 3.6.4 – Medical and rehabilitation guidelines

Clause 129 allows the CTP regulator to make medical and rehabilitation guidelines about appropriate treatment of injuries, provision of rehabilitation and assessment of impairment.

Part 3.7 – Compulsory conferences before court proceedings

Clause 130 specifies that the parties to a motor accident claim must have a compulsory conference before any court proceeding. This requirement can be dispensed with under Clause 131.

An independent mediator can be utilised at the conference if all parties agree to this and to the allocation of costs (Clause 132).

Before the conference parties must exchange a copy of relevant documents, details of legal representation and a certificate of readiness (if represented) - Clause 133.

Clause 134 requires attendance and participation from both parties to the conference.

Part 3.8 – Mandatory final offers

Clause 135 requests the exchange of final written offers between the parties, if the compulsory conference has been dispensed with or the claim is not settled at the conference. The court may dispense with this requirement (Clause 136).

Offers are to be exchanged at the end of the conference or 14 days after it is dispensed with, and remain open for 14 days (Clause 137). Court proceedings cannot commence while the offer is open (Clause 139).

Clause 138 provides the scale of costs relating to final offers.

Part 3.9 – Court proceedings

Clauses 140 to 143 set out the time limits relating to commencing court proceedings. Timeframes have been shortened from the previous legislation in an effort to reduce the time to resolution of claims. However the court may grant leave from these time limits if the proceeding is urgent (Clause 144).

Clauses 145 and 146 specify court procedures if the insurer is a joint defendant, sole defendant or the respondent. Clause 147 excludes summary judgment if the defendant admits liability, but the court can give a judgment by consent.

Clause 148 permits the insurer to call the insured person as a witness and cross-examine them. Clause 149 sets out the principles for awarding costs for damages less than \$50,000. Exceptions to this are listed in Clause 150.

Part 3.10 – Judgment for noncompliance with time limits

Part 3.10 is a new Part, providing a trigger for the court to provide judgment and order costs against a party who has not complied with a time limit in the Act. This is to stop either side from unduly delaying proceedings.

Clause 151 sets out the definitions for this Part, including **compliance notice**, **enforcing party** and **late party**.

Clause 152 provides that the enforcing party may give the late party a compliance notice to provide information or otherwise comply with the Act, within 7 days. If this timeframe is not met, the court may make orders against the non-complying party (Clauses 153 to 155). Clauses 156 and 157 set out damages and costs payable on these orders.

Part 3.11 – CTP insurer and nominal defendant may recover costs incurred

Division 3.11.1 – Preliminary

Clause 158 defines **costs**, Clause 159 limits insurers to recovering costs once only and Clause 160 allows proceedings under this part to be brought separately or as a third party.

Division 3.11.2 – CTP insurers

Clauses 161 to 165 outline circumstances in which the CTP insurer can recover costs; such as premium fraud, the insured has no authority to use the vehicle, or the driver used alcohol or drugs prior to the accident.

Division 3.11.3 – CTP insurer and nominal defendant

Clauses 166 and 167 permit the insurer to recover costs from the action if the vehicle involved was defective or if there is fraud involved.

Division 3.11.4 – Nominal defendant

Clause 168 states that the nominal defendant may recover costs from the owner or driver of the vehicle, and sets out various exceptions to this rule. Clause 169 gives the nominal defendant access to Territory information to determine the owner or driver of the vehicle.

This information can only be sought where the nominal defendant is the subject of the motor accident claim, the information is held by an agency and is relevant to the claim, and would be otherwise discoverable. The nominal defendant is the subject of a claim only in specific circumstances, hence it is not expected that Clause 169 would be used often.

Part 3.12 – Other matters

Clause 170 puts a duty on the insurer to deter fraudulent claims.

Chapter 4 – Licensing of insurers

Part 4.1 – Important concepts

Clauses 171 and 172 define a **CTP insurer licence, former licensed insurer and licensed insurer**. Clause 173 creates an offence to issue a third party policy without a licence, but if a licence is not issued the insurer is still liable (Clause 174).

Part 4.2 – Application for CTP insurer licence

Insurers must apply to the CTP regulator for a licence (Clause 175). Clause 176 outlines eligibility for a licence.

Clause 177 specifies the criteria for the CTP regulator to decide to issue a licence, with licence conditions listed in Clauses 178 and 179. Clause 180 then lists conditions that the licensee must not be subject to.

Clauses 181 and 183 set up offences of contravening a licence condition and an unlicensed insurer contravening a condition. These offences do not affect CTP policies issued in contravention of the licence (Clause 182).

A licence remains in force until it is cancelled (Clause 184), and can be transferred to another insurer with approval of the CTP regulator (Clause 185).

Part 4.3 – Suspension of CTP insurer licence

Clause 186 permits the CTP regulator to suspend a CTP insurer licence by issuing the licensed insurer a suspension notice. Clauses 187 and 188 set out grounds for suspension, including breach of the Act, licence or industry deed.

The regulator can end the suspension if it believes the insurer can now comply with the licence conditions (Clause 189).

Clause 190 contains the offence of issuing a CTP policy while suspended, with a maximum penalty of 100 penalty units.

Alternatively, the CTP regulator may impose a civil penalty of less than \$50,000 or issue a letter of censure, after referring the matter to the civil penalty and censure committee (Clauses 191 to 193).

Part 4.4 – Cancellation of CTP insurer licences

Clause 194 enables the CTP regulator to issue a licence cancellation notice to an insurer, for grounds stated under Clause 195. The licence can also be cancelled after it is surrendered to the regulator (Clause 196).

This power allows the CTP regulator to quickly react to changes in the insurance market, advice from APRA and developments in insurance policy.

All liabilities must be met by the insurer before their licence is cancelled (Clause 197).

Part 4.5 – Transfer of CTP policies to other insurers

Clause 198 enables the CTP regulator to issue a licence transfer notice to an insurer, effecting the transfer of policies to another insurer, for the grounds stated in Clause 199. Clause 200 deems that replacement policies are issued by the new insurer and requires a payment from the old insurer to the new insurer of a portion of the premium paid as well as investment income.

Clause 201 specifies that the CTP regulator must keep a register of all CTP insurance licences issued and refused.

Part 4.6 – Supervision of licensed insurers

Clause 203 requires all licensed insurers to have a **business plan**, as defined in Clause 202. Clause 204 mandates compliance with the plan, and the plan must be revised at least once a year (Clause 205).

The CTP regulator may make guidelines about business plans and the issue of CTP policies (Clause 206). The regulator must calculate each insurer's market share (Clauses 207 and 208) and report this back to all insurers.

Clause 209 ensures the CTP regulator receives information on each licensed insurer's reinsurance arrangements, as well as company investment details (Clause 211) including **third party funds** (Clause 210).

It is an offence if the licensed insurer fails to keep adequate accounting records (Clause 212) or provide returns to the regulator (Clause 213). Clause 214 allows the regulator to publish these returns.

The CTP regulator can appoint an auditor to inspect the insurer's books and it is an offence if the insurer does not co-operate (Clauses 215 and 216). The regulator can audit the profitability of any insurer and must then report confidentially to APRA, and can ask for any business or finance document to assist with this (Clauses 217 and 218). Clause 219 contains the format of how the regulator must request this information. Clause 220 is the offence provision for failing to provide information or documents.

Clause 221 provides for the CTP regulator to give reports to the Minister about specified matters and permits the Minister to make a report public.

The regulator may apply for a court order to protect the interests of policy holders (Clause 222), and the Supreme Court can grant such orders under Clause 223.

Further offences are provided in Clauses 224 to 227, relating to contravening a court order and keeping the CTP regulator informed of certain company matters. Only the CTP regulator can take an insurer to court for a breach of licence agreement (Clause 228).

Part 4.7 – Insolvent insurers

Clauses 229 and 230 define such terms as **insolvent insurer** and **liquidator**, with this Part applying to a liquidator appointed and/or operating both inside and outside the ACT.

The Minister may declare an insurer insolvent under Clause 231, and then the nominal defendant becomes the insurer (Clause 232) and may recover costs from the insolvent insurer (Clause 233).

Clauses 234 to 236 contain the offences of the insolvent insurer failing to give claims and information to the nominal defendant, or obstructing the inspection of documents. The nominal defendant can borrow amounts for the nominal defendant fund to satisfy claims against an insolvent insurer (Clause 237).

Clauses 238 and 239 allow the nominal defendant to intervene in or commence legal proceedings relating to an insolvent insurer.

Chapter 5 – Enforcement

Part 5.1 – Enforcement - General

Clause 240 defines an **authorised person**, things **connected** with an offence, an **occupier** of premises and an **offence**.

Part 5.2 – Powers of authorised people

Clause 241 gives power to an authorised person to enter premises for the purpose of enforcement. The person must show an identity card (Clause 242).

Clause 243 outlines the procedure for gaining consent to entry, and Clause 244 provides the general power after entry is gained. Clause 245 allows the authorised person to seize things connected with an offence.

Part 5.3 – Search warrants

Clause 246 states the general rules about applying for a search warrant, with Clause 247 permitting an application other than in person if it is urgent.

Clause 248 compels the authorised person to announce their entry to premises, then to give details of the warrant to the occupier (Clause 249). The occupier may be present during the search (Clause 250).

Part 5.4 – Return and forfeiture of things seized

Clause 251 requires an authorised person to give the occupier of searched premises a receipt for items seized. Items may be moved to another place for examination, following procedures in Clause 252.

Clause 253 permits access to seized things by a person who would be otherwise entitled, and Clause 254 specifies processes for returning seized items. Items may be forfeited if not returned or destroyed (Clause 255).

The occupier may apply for an order to disallow the seizure or for the return of seized things (Clauses 256 and 257).

Part 5.5 – Enforcement - Miscellaneous

Clause 258 requires the authorised person to minimise damage to premises and items within. A person may claim compensation under Clause 259 for any loss or damage suffered.

Chapter 6 – Information collection and secrecy

Clause 260 lists the information to be provided to the CTP regulator by a licensed insurer, including periodic returns and claims information. Clause 261 sets out rules for the CTP regulator keeping a claims register.

Clause 262 makes it an offence to divulge protected information or being reckless in this regard.

Chapter 7 - Miscellaneous

Clause 263 excludes the Territory and Commonwealth and territory or commonwealth authorities from the requirement to have a CTP policy for owned motor vehicles.

Clause 264 established the CTP regulator as the Chief Executive of ACT Treasury. Clause 265 allows the CTP regulator to delegate functions to a public employee.

Clause 266 states that the chief executive may approve forms for the Act.

Clause 267 contains the regulation making power of the Executive.

Clause 268 refers to the amended legislation in Schedule 1 to the Act.

Clause 269 notes that the *Road Transport (Third-Party Insurance) Regulation 2000* is repealed.

Chapter 8 – Transitional

Clause 270 contains the definitions for this Chapter, including **commencement day** and **former CTP provisions**.

Clause 271 provides that CTP policies in force before the commencement of the Act continue in force until a new policy is taken up or 15 days after the end of the vehicle registration period, whichever is earlier.

The nominal defendant under the Act succeeds the former nominal defendant for claims before the commencement day (Clause 272).

The old provisions relating to the maximum premium chargeable will apply if there is no CTP premium set on the commencement day (Clause 273). The previous authorised insurer (Insurance Australia Limited, trading as NRMA Insurance) is taken to be a licensed insurer for the Act (Clause 274).

Clause 275 allows claims provisions to expire three years after the commencement day, to allow old claims processes to run their course. All other transitional provisions expire one year after commencement (Clause 277). Clause 276 states that the regulations can prescribe additional transitional matters.

Schedule 1

Schedule 1 contains the consequential amendments for the Bill, updating references to the new Act in other pieces of legislation and omitting Part 10 of the *Road Transport (General) Act 1999*. The Road Transport (General) Regulation 2000 and the Road Transport (Offences) Regulation 2005 are also amended.

The *Road Transport (Public Passenger Services) Act 2001* is amended so that a regulation under that Act may make provision for insurance against liability for damage to property caused by or arising from the use of a public passenger vehicle. Division 10.12 of the *Road Transport (General) Act 1999* has hitherto covered these matters.