

TRANSPORT AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends Part VI of the Transport Act 1962 (relating to third-party risks insurance), and is intended to give effect to the recommendations in the Report of the Committee on Absolute Liability that—

- (a) Third-party risks insurance be extended to cover claims by passengers (not being passengers for hire) in the insured vehicles. Passengers for hire are already covered.
- (b) The existing limit of £75,000 in respect of all claims by passengers in any vehicle plying for hire be removed.
- (c) The substance of the existing agreement between the Crown and insurers relating to claims in respect of unidentified vehicles and uninsured owners be incorporated in legislation.

Clause 1 relates to the Short Title and commencement. *Clause 3* is to come into force on 1 July 1964, *clauses 4 and 5* are to come into force on 1 July 1965, which is the date of commencement of a licensing period, and the other provisions of the Bill are to come into force on the date of its passing.

Clause 2 extends the third-party risks insurance provisions to indemnify any passenger who is lawfully in an insured motor vehicle to the same extent as the driver. It was recently decided in the United Kingdom (*Brown v. Roberts and Another*, [1963] 2 All E.R. 263) that a passenger is not covered by third-party risks insurance against his liability for injuries caused to a pedestrian through the negligent opening of the door of a motor vehicle by the passenger. By this amendment, a passenger lawfully in an insured motor vehicle will be covered in such a case. This amendment does not arise out of the report of the Committee.

Clause 3 removes as from 1 July 1964 the existing limit of £75,000 in respect of all passengers in any vehicle plying for hire. Although this amendment is expressed to expire on 1 July 1965, its effect will continue after that date under *clause 4*, which from that date will replace the existing provisions relating to claims by passengers.

Clause 4: The effect of this clause will be—

- (a) In the case of a motor vehicle plying for hire or carrying passengers for hire, the liability of the insurance company is limited, as at present, to £7,500 in respect of a claim by or in respect of any one passenger carried for hire, but the existing limit of £75,000 in respect of all claims by or in respect of such passengers is removed:

(b) The third-party risks insurance is extended to cover claims by passengers (not being passengers for hire) carried in the insured vehicle, subject to a limit of £5,000 for any one such passenger.

Clause 5 prohibits any gratuitous passenger from contracting out of the benefits conferred on him by section 82 of the principal Act (as amended by *clause 4* of this Bill). Any agreement excluding or modifying the liability of the owner or of any other person will be valid in relation to any liability in excess of the limit of £5,000 provided in the amended section 82.

Clause 6 inserts new *sections 90A to 90I* in Part VI of the principal Act, in order to provide third-party risks insurance in respect of persons who suffer death or bodily injury as the result of an accident caused by an unidentified motor vehicle or by an uninsured motor vehicle.

Section 90A defines the term "uninsured motor vehicle" for the purposes of these provisions.

Section 90B provides that the State Insurance General Manager is to be the nominal defendant for the purposes of these provisions.

Section 90C constitutes the Nominal Defendant's Advisory Committee, whose functions it will be to advise the nominal defendant, who must act on their advice. The Committee is to comprise the State Insurance General Manager and two representatives of insurance companies that undertake third-party risks insurance under Part VI of the principal Act.

Section 90D provides that the nominal defendant is not to be liable, either personally or in his capacity as a corporation sole, to pay any amount payable in satisfaction of any claim or judgment against him, but every such claim or judgment is to be met out of money provided by insurance companies under this section. Insurance companies undertaking third-party risks insurance are required to contribute towards the amount necessary to satisfy any claim or judgment in proportion to the amounts received by them as premiums under section 88 (2) of the principal Act.

Section 90E provides that where the death of or bodily injury to any person is caused by or through or in connection with the use of an unidentified motor vehicle or of an uninsured motor vehicle the owner or driver of which cannot be identified, any person who could have obtained a judgment against the owner or driver may obtain against the nominal defendant the judgment which in the circumstances he could have obtained against the owner or driver of the motor vehicle.

No action may be brought against the nominal defendant under this section, unless, within 42 days after the accident or, if he is unable to do so within that time by reason of injuries sustained in the accident, as soon as practicable after he has recovered sufficiently, the claimant has given notice in writing of his claim to the nominal defendant or to the manager of any branch of the State Insurance Office and a statement of the grounds of the claim and other particulars specified in the section.

The Court is to have a discretion to grant leave to bring an action under this section where the claimant has failed to give the required notice, if it is satisfied that the failure was caused by mistake or other reasonable cause or that the nominal defendant has not been prejudiced in his defence or otherwise by the failure to give the notice.

The liability of the nominal defendant in a claim under this section is limited to £7,500 in respect of any one claim.

Section 90F provides that where the death of or bodily injury to any person is caused by or through or in connection with the use of an uninsured motor vehicle, and the owner or driver of the motor vehicle would have been indemnified against that liability if the vehicle had been insured, the amount of any judgment obtained against the owner or driver is to be paid by the nominal defendant, provided the claimant, forthwith after he became aware that the vehicle was not insured, gave to the nominal defendant or to the manager of any branch of the State Insurance Office notice in writing of his intention to claim and a statement of the grounds thereof, and the nominal defendant had a reasonable opportunity of settling the claim and conducting and defending the proceedings before the judgment was entered.

Where the notice is not given or the nominal defendant had no reasonable opportunity of settling the claim and conducting and defending the proceedings, the claimant may recover from the nominal defendant such amount (if any) as the Court, having regard to all the circumstances of the case, thinks just, not exceeding the amount of the judgment obtained by the claimant against the owner or driver.

The liability of the nominal defendant in a claim under this section is limited to £7,500 in respect of any one claim.

Section 90G provides that where an uninsured motor vehicle is involved in an accident that results in the death of or bodily injury to any person, the owner must forthwith after the accident or, if he was not in charge of the motor vehicle at the time of the accident, forthwith after he first becomes aware of the accident, give notice in writing to the nominal defendant or to the manager of any branch of the State Insurance Office of the fact of the accident, with particulars of the date, nature, and circumstances thereof, and must thereafter give all such other information and take all such steps as the nominal defendant or the manager of any branch of that Office may reasonably require in relation thereto.

The owner must also give to that Office notice of any claim brought against him, or to the knowledge of the owner brought against any other person.

Section 90H provides that in the case of a claim arising out of the use of an uninsured motor vehicle the nominal defendant is to have all the powers conferred by section 86 of the principal Act on the insurer as if he were the insurer of the motor vehicle concerned. That section authorises the insurer to settle the claim, to take over the conduct and control of any proceedings arising out of the claim, and to defend any such proceedings.

Section 90I provides that any amount properly paid by the nominal defendant in satisfaction of any claim or judgment and any costs incurred by him in any case where the motor vehicle concerned was uninsured may be recovered by him from the owner of the motor vehicle or, where at the time of the accident some other person was driving the motor vehicle, from the owner and the driver jointly or from either of them severally.

It will be a good defence in proceedings against the owner under this section if he proves that at the time of the accident some other person was driving the motor vehicle without the owner's authority.

It will be a good defence in proceedings against the driver of a motor vehicle if he proves that he was driving the vehicle with the authority of the owner, or believed on reasonable grounds that he had that authority, and that he believed on reasonable grounds that the vehicle was insured.

Any money recovered by the nominal defendant under this section is to be paid to the insurance companies in the proportions in which they contributed to the amount paid in satisfaction of the claim or judgment.

Clause 7 provides that nothing in the existing agreement made between the Crown and the insurance companies carrying on third-party risks insurance and providing for payment of claims where unidentified or uninsured motor vehicles are involved shall apply with respect to any claim where the cause of action arose after the passing of the Act.

Hon. Mr McAlpine

TRANSPORT AMENDMENT

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A BILL INTITULED

An Act to amend the Transport Act 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Transport Amendment Act 1963, and shall be read together with and deemed part of the Transport Act 1962* (hereinafter referred to as the principal Act).

*1962, No. 135

(2) Section 3 of this Act shall come into force on the first day of July, nineteen hundred and sixty-four.

(3) Sections 4 and 5 of this Act shall come into force on the first day of July, nineteen hundred and sixty-five.

(4) Except as provided in subsections (2) and (3) of this section, this Act shall come into force on the date of its passing.

(5) Every provision of this Act shall apply only with respect to claims where the cause of action arose after the commencement of that provision. Where the cause of action arose before the commencement of any such provision, the provisions of the principal Act shall apply as if this Act had not been passed.

2. Passengers indemnified by third-party risks insurance—

(1) Section 79 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) For the purposes of this Part of this Act and of every contract of insurance thereunder, every person who at the time of any accident affecting a motor vehicle is lawfully in the motor vehicle shall be deemed to be the authorised agent of the owner of the motor vehicle acting within the scope of his authority in relation to the vehicle, and shall be indemnified to the same extent as if he were the owner in respect of his liability (if any) to pay damages on account of the accident.”

(2) Section 82 of the principal Act is hereby amended by inserting in subsection (1), after the words “subsection (3)”, the words “or subsection (3A)”.

3. Limit of liability for claims by passengers for hire—

(1) Section 82 of the principal Act is hereby amended—

(a) By omitting from subsection (2) the words “and to seventy-five thousand pounds for all claims made by or in respect of such passengers”:

(b) By omitting from subsection (2) the words “The amounts”, and substituting the words “The amount”:

(c) By omitting from subsection (2) the words “or claims”.

(2) This section shall expire on the first day of July, nineteen hundred and sixty-five.

4. Liability under contract of third-party risks insurance—

(1) Section 82 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsections:

“(2) The liability of an insurance company under any contract of insurance as aforesaid shall be limited to seven thousand five hundred pounds for any claim (inclusive of all costs incidental to any such claim) made by or in respect of any
5 passenger in the motor vehicle to which the contract of insurance relates where the vehicle is plying for hire or used in the course of the business of carrying passengers for hire and the claim is made in respect of the death of or bodily injury suffered by a person who (being a passenger for hire) was at
10 the time of the accident in respect of which the claim has arisen being conveyed in the motor vehicle, or was entering or alighting from, or about to enter or alight from, the motor vehicle.

“(2A) The liability of an insurance company under any
15 contract of insurance as aforesaid shall be limited to five thousand pounds for any claim (inclusive of all costs incidental to any such claim) made by or in respect of any passenger in the motor vehicle to which the contract of insurance relates where the claim is made in respect of the
20 death of or bodily injury suffered by a person who (not being a passenger for hire) was at the time of the accident in respect of which the claim has arisen being conveyed in the motor vehicle, or was entering or alighting from, or about to enter or alight from, the motor vehicle.”

25 (2) Section 82 of the principal Act is hereby further amended—

(a) By inserting in subsection (3), after the words “subsection (2)”, the words “or subsection (2A)”:

30 (b) By inserting in subsection (5), after the words “subsection (2)”, the words “and subsection (2A)”.

(3) Section 82 of the principal Act is hereby further amended by repealing paragraphs (b) and (c) of subsection (4), and substituting the following paragraph:

35 “(b) Any claim against the owner of a motor vehicle made in respect of the death of or bodily injury suffered by any person who was at the time of the accident in respect of which the claim has arisen driving the motor vehicle.”

**5. Limitation on contracting out of benefits by gratuitous
40 passengers—**The principal Act is hereby further amended by inserting, after section 87, the following section:

“87A. In any action brought against the owner or person in charge of a motor vehicle, or against an insurance company under or for the purposes of this Part of this Act, in respect
45 of an accident causing the death of or bodily injury to any person who (not being a passenger for hire) at the time of

the accident in respect of which the claim has arisen was a passenger in the vehicle, any agreement or stipulation which excludes or modifies the liability of the owner or of any other person to pay damages in respect of accidents due to the negligence or wilful default of the owner, his servants, or agents or other person in charge of the vehicle shall be void, except to the extent that it excludes or modifies the liability of the owner or other person to pay damages in excess of the amount in respect of which he is entitled to be indemnified under section 82 of this Act.”

6. New sections (as to unidentified or uninsured motor vehicles) inserted—The principal Act is hereby further amended by inserting in Part VI, after section 90, the following heading and sections:

“Accidents Caused by Unidentified Motor Vehicles or Uninsured Motor Vehicles

“90A. **‘Uninsured motor vehicle’ defined**—For the purposes of this Part of this Act, the term ‘uninsured motor vehicle’ means a motor vehicle in respect of which a contract of insurance under this Part of this Act is not in force and which at the time of the accident in respect of which a claim is made under section 90E or section 90F of this Act is used in circumstances under which the owner of the vehicle is required to insure under this Part of this Act against his liability to pay damages on account of the death of or bodily injury to any person in the event of the death or bodily injury being caused by or through or in connection with the use of that motor vehicle.

“90B. **Nominal defendant**—(1) The State Insurance General Manager shall be the nominal defendant for the purposes of this Part of this Act (in this Part of the Act referred to as the nominal defendant), and shall be so described in any action brought against him under section 90E or section 90F of this Act.

“(2) The nominal defendant shall be deemed to be a tortfeasor for the purposes of section 17 of the Law Reform Act 1936.

“90c. **Nominal Defendant’s Advisory Committee**—(1) There is hereby constituted for the purposes of this Part of this Act a committee to be known as the Nominal Defendant’s Advisory Committee. The Committee shall consist of—

“(a) The State Insurance General Manager, who shall be the Chairman of the Committee:

“(b) Two other members, to be appointed as representatives of insurance companies (other than the State Insurance Office) for the time being undertaking insurance business in terms of this Part of this Act.

“(2) The appointed members of the Committee shall be appointed by the Minister, by notice in the *Gazette*, and their appointment shall be made upon the nomination of the insurance companies (other than the State Insurance Office) undertaking insurance business in terms of this Part of this Act or a majority of such companies. If no such nomination is made within a time specified by the Minister by notice in writing to those companies, the Minister may appoint such persons as he thinks fit to be members of the Committee.

“(3) For the purposes of subsection (2) of this section, a nomination of any person for appointment as a member of the Committee made by any organisation of insurance companies shall be deemed to be a nomination by all the insurance companies that are members of the organisation.

“(4) The appointed members of the Committee shall hold office during the pleasure of the Minister.

“(5) Any vacancy in the office of an appointed member of the Committee shall be filled in the manner in which the vacating member was appointed.

“(6) The function of the Committee shall be to advise the nominal defendant in respect of claims against the nominal defendant, and the nominal defendant shall act upon the advice of the Committee.

“(7) The Committee shall determine its own procedure.

“90D. **Payment by nominal defendant**—(1) The nominal defendant shall not be liable, either personally or in his capacity as a corporation sole, to pay any amount payable in satisfaction of any claim made against and admitted by him or any judgment obtained against him or the amount of any costs and expenses incurred by him in relation to any such claim or to the proceedings in which the judgment was obtained, but every such amount shall be paid by the nominal defendant out of money provided by insurance companies pursuant to subsection (2) of this section.

“(2) Each of the insurance companies undertaking insurance business in terms of this Part of this Act at the date of the accident out of which the claim arose shall pay to the nominal defendant such proportion of the total amount payable in satisfaction of any such claim or judgment (including costs

and expenses as aforesaid) as the amount payable to it under subsection (2) of section 88 of this Act for the months of July, August, and September of the year in which the accident giving rise to the claim or judgment occurred bears to the total amount payable to all those insurance companies under that subsection during the said three months. For the purposes of this subsection, the term 'year' means a period of twelve months commencing on the first day of July. 5

“(3) Any amounts (not being amounts to which subsection (1) of this section applies) from time to time necessary to meet any costs and expenses incurred or payable by the nominal defendant in or in connection with the exercise of his duties, powers, functions, and authorities shall be paid to him in like manner to the amounts payable to him under subsection (2) of this section. 10 15

“90E. **Liability where motor vehicle unidentified, or uninsured and owner or driver unidentified**—(1) Where the death of or bodily injury to any person is caused by or through or in connection with the use of a motor vehicle, and—

“(a) The identity of the motor vehicle cannot be established after reasonable inquiries have been made; or 20

“(b) The vehicle is an uninsured motor vehicle and the identity of the owner or driver cannot be established after reasonable inquiries have been made,—

any person who could have obtained a judgment against the owner or driver of the motor vehicle in respect of that death or bodily injury may obtain against the nominal defendant the judgment which in the circumstances he could have obtained against the owner or driver of the motor vehicle. 25

“(2) No action may be brought against the nominal defendant under this section, unless, within forty-two days after the accident or, if he was unable to do so within that time by reason of injuries sustained in the accident, as soon as it was reasonably practicable for him to do so, the person seeking to obtain judgment has given to the nominal defendant or to the manager of any branch of the State Insurance Office notice in writing of his intention to make the claim accompanied by a statutory declaration setting forth— 30 35

“(a) The grounds of the proposed claim; and

“(b) The nature of inquiries made to ascertain the identity of the motor vehicle and, in the case of an uninsured motor vehicle, the identity of the owner or driver; and 40

“(c) Full particulars of the circumstances upon which the proposed claim will be based; and

“(d) All other information in the possession of the claimant in relation to the proposed claim.

5 “(3) Notwithstanding that notice has not been given to the nominal defendant in accordance with subsection (2) of this section, application may be made to the Court, after notice to the nominal defendant, for leave to bring an action against the nominal defendant under this section; and the Court may,
10 if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks fit to impose, where it considers that the failure to give the notice was occasioned by mistake of fact or mistake of any matter of law other than the provisions of subsection (2) of this section, or by any
15 other reasonable cause, or that the nominal defendant was not materially prejudiced in his defence or otherwise by the failure to give the notice.

“(4) Where after the commencement of proceedings against the nominal defendant under this section the identity of the
20 motor vehicle or, as the case may be, of the owner or driver of the motor vehicle is ascertained, the proceedings against the nominal defendant shall abate.

“(5) Subject to the provisions of section 82 of this Act, the liability of the nominal defendant under any such
25 judgment shall be limited to seven thousand five hundred pounds, inclusive of all costs incidental to the judgment.

“90F. **Liability where motor vehicle uninsured—**

(1) Where—

30 “(a) Liability has been incurred by the owner or driver of an uninsured motor vehicle, or by any other person lawfully in an uninsured motor vehicle, in respect of the death of or bodily injury to any person caused by or through or in connection with the use of that motor vehicle; and

35 “(b) The death or bodily injury is one against liability for which the owner or driver or other person would have been indemnified if there had been in force in respect of that motor vehicle a contract of insurance under this Part of this Act,—

40 then, subject to the provisions of this section, the amount of any judgment obtained by any person against the owner or driver or other person in respect of the death or bodily injury shall be paid to that person by the nominal defendant.

“(2) Subject to the provisions of subsection (3) of this section, no such payment shall be made by the nominal defendant, unless—

“(a) The person making the claim, forthwith after he first became aware that a contract of insurance under this Part of this Act was not in force in respect of the motor vehicle, gave to the nominal defendant or to the manager of any branch of the State Insurance Office notice in writing of his intention to make the claim and a statement in writing of the grounds thereof; and 5

“(b) The nominal defendant had a reasonable opportunity of exercising his powers in relation to the claim under section 86 of this Act before judgment was entered in the proceedings. 10

“(3) If notice has not been given to the nominal defendant in accordance with subsection (2) of this section, or if the nominal defendant did not have a reasonable opportunity of exercising his powers in relation to the claim as aforesaid, then, subject to the provisions of subsection (4) of this section, the person making the claim shall be entitled to recover from the nominal defendant such amount (if any) as the Court, having regard to all the circumstances of the case, thinks just, not exceeding an amount equal to the amount (including costs) for which judgment was obtained by the claimant against the owner or driver of the motor vehicle or other person lawfully in the motor vehicle. 15 20 25

“(4) Subject to the provisions of section 82 of this Act, the liability of a nominal defendant as aforesaid in respect of any such judgment shall be limited to seven thousand five hundred pounds, inclusive of all costs incidental to the judgment. 30

“90g. Notice of accident where uninsured motor vehicle involved—(1) On the happening of any accident affecting an uninsured motor vehicle and resulting in the death of or bodily injury to any person, it shall be the duty of the owner forthwith after the accident, or if the owner was not in charge of the motor vehicle at the time of the accident, forthwith after he first becomes aware of the accident, to give notice in writing to the nominal defendant or to the manager of any branch of the State Insurance Office of the fact of the accident, with particulars in writing as to the date, nature, and circumstances thereof, and thereafter to give all such other information and take all such steps as the nominal defendant or the manager of any branch of that Office may reasonably 35 40 45

require in relation thereto, whether or not any claims have actually been made against the owner or any other person on account of the accident.

5 “(2) Notice in writing of every claim made or action brought against the owner, or to the knowledge of the owner made or brought against any other person, on account of any accident as aforesaid shall forthwith thereafter be given by the owner to the nominal defendant or to the manager of any
10 branch of the State Insurance Office, with such particulars in writing as the nominal defendant or the manager of any branch of that Office may require.

“ (3) Every person who without reasonable excuse fails to comply with the provisions of this section commits an offence, and is liable to a fine not exceeding one hundred pounds.

15 “90H. **Nominal defendant may settle claims**—(1) Where—

“ (a) A claim is made against the owner or driver of an uninsured motor vehicle, or against any other person lawfully in an uninsured motor vehicle, in respect
20 of the death of or bodily injury to any person caused by or through or in connection with the use of that motor vehicle; and

“ (b) The death or bodily injury is one against liability for which the owner or driver or other person would have been indemnified if there had been in force
25 in respect of that motor vehicle a contract of insurance under this Part of this Act,—

the provisions of section 86 of this Act (except paragraph (d) of subsection (1)) shall apply as if the nominal defendant were the insurer under a contract of insurance under this Part
30 of this Act indemnifying the owner of the motor vehicle against the claim.

“90I. **Recovery from owner or driver**—(1) Any amount properly paid by the nominal defendant in satisfaction of a
35 claim made or judgment obtained against him and the amount of any costs and expenses properly incurred by him in relation to any such claim or to the proceedings in which the judgment was obtained (being a claim made or judgment obtained in respect of an accident affecting an uninsured motor
40 vehicle) may be recovered by the nominal defendant as a debt from 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, or, where at the time of the accident some other person was driving the vehicle, from the owner and the driver jointly or from
45 either of them severally:

“Provided that—

“(a) It shall be a sufficient defence in any proceedings under this subsection against the owner (whether severally or jointly with the driver) if he establishes to the satisfaction of the Court that, at the time of the accident, some other person was driving the motor vehicle without the express or implied authority of the owner: 5

“(b) It shall be a sufficient defence in any proceedings under this subsection against the driver of a motor vehicle (whether severally or jointly with the owner) if he establishes to the satisfaction of the Court that, at the time of the accident, he was driving the vehicle with the express or implied authority of the owner or had reasonable grounds for believing and did in fact believe he had such authority, and that he had reasonable grounds for believing, and did in fact believe, that there was a contract of insurance in force under this Part of this Act in respect of the motor vehicle. 10 15 20

“(2) Any amount recovered by the nominal defendant under this section shall be paid by him to the insurance companies undertaking insurance business in terms of this Part of this Act in the same proportion as those companies contributed to the amount paid in satisfaction of the claim made or judgment obtained against him.” 25

7. Agreement between Crown and insurance companies—

Nothing in the agreement dated the thirtieth day of October, nineteen hundred and sixty-one, made between Her Majesty the Queen and the several companies undertaking insurance business in terms of Part V of the Transport Act 1949 (the text of which is published in the *Gazette* of the ninth day of November, nineteen hundred and sixty-one, at page 1747) shall apply with respect to any claim where the cause of action arose after the passing of this Act. 30 35