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FOURTH REPORT

of the

LAW REFORM COMMITTEE
of
SOUTH AUSTRALIA

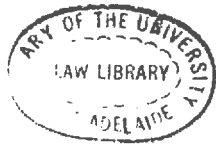
to

THE ATTORNEY-GENERAL

—

**SECTION 118 of the MOTOR VEHICLES ACT,
1959-1968**

1969



The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19th September, 1968. The Members are:

THE HONOURABLE MR. JUSTICE ZELLING, C.B.E., *Chairman*.
W. A. N. WELLS, Q.C., Solicitor-General.
S. J. JACOBS, Q.C.
K. P. LYNCH.
D. ST.L. KELLY.

The Secretary of the Committee is Mr. H. G. Edwards, c/o Adelaide Magistrates' Court Department, Adelaide, South Australia.

FOURTH REPORT OF THE LAW REFORM COMMITTEE OF SOUTH AUSTRALIA

To:

The Honourable R. R. Millhouse, M.P.,
Attorney-General for South Australia.

Sir,

We have the honour to report at your request upon section 118 of the Motor Vehicles Act, 1959-1968.

As the section stands at present, it provides for actions to be brought by a spouse who suffers bodily injury caused wholly or partly by the negligence of the other spouse, which negligence arises out of the use of a motor vehicle, against the authorized insurer of that spouse, in the cases mentioned in the section and after giving the notice required by subsection (5) of the section.

The fact that proceedings are taken against the insurer and not against the husband has caused difficulties of the type dealt with in *Passmore v. Nott and General Insurance Company Limited* 1966 S.A.S.R. 138 and there are also other difficulties of a type akin to those raised in *Plozza and Plozza v. South Australian Insurance Company Limited* 1963 S.A.S.R. 122 (a decision on section 113), which have not yet been resolved by decisions of the Court and which are well known to those who practise in this field.

We therefore recommend that the right to sue the approved insurer given under the present section 118 should be repealed and that in its place there should be given a right to sue the other spouse direct notwithstanding the unity of spouses during marriage.

The result of this would be as follows:—

- (1) Subsection (1) of the present section would be repealed and a new subsection be substituted to cover the matters in the preceding paragraph.
- (2) The present subsections (2) and (3) would remain as they are.
- (3) Subsection (4) would be repealed and a new subsection (4) inserted. The new subsection (4) would provide that the right of action given by this section would be available in the following cases—
 - (a) where the accident happened in South Australia;
 - (b) where the accident happened outside South Australia but within the Commonwealth of Australia if either—
 - (i) the spouses were domiciled or ordinarily resident in South Australia; or
 - (ii) the defendant spouse was insured under a policy issued pursuant to Part IV of the Act.
- (4) The present subsection (5) should be repealed. Insured persons must give notice under section 124 and this should be a sufficient notice in this case as in all other cases by way of protection to the insurance company.

- (5) A new subsection (5) should be enacted to provide that the insurers of all motor vehicles driven within this State shall be liable to grant indemnity against claims under this section in relation to accidents occurring within this State notwithstanding anything in their policy of insurance or that the insurer is the Crown or an instrumentality of the Crown in right of any other State. All States and Territories have an equivalent section to our section 104 so that the new subsection (5) merely ensures that a particular defence which would otherwise take the case out of the negligence cover which they are compelled to give throughout Australia is no longer open to the insurer in question.
- (6) Subsection (6) and (7) should be repealed and a new subsection (6) enacted to provide that this section applies where the parties were not married at the time when the cause of action accrued but subsequently intermarried.

We desire to add for your information that the Committee is currently considering the matter of actions in tort between husbands and wives in general. There are certain well known difficulties in this field relating to actions of ejection, defamation and assault and your Committee will present a later report dealing generally with this field of the law.

We have the honour to be

HOWARD ZELLING.
W. A. N. WELLS.
S. J. JACOBS.
K. P. LYNCH.
D. ST.L. KELLY.

Law Reform Committee of South Australia.