

LAW REFORM COMMISSION

OF

PAPUA NEW GUINEA

**A THIRD REVIEW OF THE MOTOR VEHICLES
(THIRD PARTY INSURANCE) (BASIC PROTECTION
COMPENSATION) ACT 1974**

OCCASIONAL PAPER NO. 14

FEBRUARY 1981

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The Law Reform Commission of Papua New Guinea was established by the LAW REFORM COMMISSION ACT 1975 and began functioning in May 1975.

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A THIRD REVIEW OF THE MOTOR VEHICLES

(THIRD PARTY INSURANCE) (BASIC PROTECTION COMPENSATION) ACT 1974

INTRODUCTION.

The purpose of this further review of the Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act 1974 (also called the Act and the Basic Protection Compensation Act) is to consider the operation of the Act and ways in which it could be improved. The Act is important because it has become the main method by which financial assistance in the form of lump sum payments reach the dependants and relatives of citizens killed in motor vehicle accidents.

In February 1977 the Commission published Occasional Paper No.2 on this subject in which developments from 26th September 1974, when the Act came into force, to 21st August 1976 were noted. A second review was published in March 1978 as Working Paper No.8 which documented the operation of the Act from 22nd August 1976 to 31st October 1977.

This paper documents the further annual periods from 1st November 1977 to 31st October 1980. The figures from the earlier papers are repeated in this paper for the purposes of comparison.

It should be noted that the five different periods of time detailed in the following tables are as follows:

First Period:	26 SEPT 74 - 21 AUG 76	(24 months)
Second Period:	22 AUG 76 - 31 OCT 77	(14 months)
Third Period:	1 NOV 77 - 31 OCT 78	(12 months)
Fourth Period:	1 NOV 78 - 31 OCT 79	(12 months)
Fifth Period:	1 NOV 79 - 31 OCT 80	(12 months)

REVIEW OF THE ACT.

The history of the development of the Act is given in the Law Reform Commission Occasional Paper No.2 of February 1977. The following tables give details of the number of assessment awards made in each period and their disposition amongst the regions. There are comments on the amounts awarded and on the delays encountered in attempting to achieve "the speedy payment of a limited amount of compensation to the dependants of persons whose deaths are directly or indirectly attributable to the use of motor vehicles"¹

THE DISPOSITION OF AWARDS AMONGST THE REGIONS

	FIRST PERIOD	SECOND PERIOD	THIRD PERIOD	FOURTH PERIOD	FIFTH PERIOD
	26.9.74 - 21.8.76	22.8.76 - 31.10.77	1.11.77 - 31.10.78	1.11.78 - 31.10.79	1.11.79 - 31.10.80
<u>PAPUAN COASTAL</u>	8	25	24	30	30
Central	7	25	23	30	30
Northern	1		1		
Milne Bay					
Gulf					
<u>HIGHLANDS REGION</u>	62	57	50	63	88
Eastern	7	6	2	11	13
Western	36	26	13	28	57
Southern	3	5	5	1	3
Chimbu	16	12	24	21	15
Enga		8	6		
<u>NEW GUINEA ISLAND</u>	12	12	38	17	23
East N. Britain	4	6	23	10	9
West N. Britain	1	1	6	5	3
New Ireland	3	5	2		1
North Solomons	4		6	2	10
Lorengau			1		
<u>NEW GUINEA COASTAL</u>	1	7	6	22	30
Madang	1	1		5	6
Morobe		3	3	12	15
East Sepik		3	3	5	8
<u>TOTALS</u>	<u>83</u>	<u>101</u>	<u>118</u>	<u>132</u>	<u>171</u>

Total Number of Assessment Awards²

	1st Period	2nd Period	3rd Period	4th Period	5th Period
MVI (PNG) Trust	57	89	107	123	163
PNG Government	9	11	11	9	8
Private Insured	<u>17</u>	<u>1</u>	<u> </u>	<u> </u>	<u> </u>
	83	101	118	132	171

Assessment officers found that the Act could also be used to settle comparative small claims arising out of deaths attributable to the use of motor vehicles, even though the deaths occurred some years before the claim was lodged. Since the third period almost a fifth of the claims lodged appear to be such "old" claims.

The Administration of the Act.

After a motor accident in which a person loses his or her life the police are informed. The police then investigate the accident and collect statements from witnesses and others such as doctors who attended the victims and mechanics who inspected the vehicle or vehicles involved. A Police Accident Report is completed and this report and the written statements form the basis of any subsequent legal action, either criminal or civil.

The Basic Protection Compensation Act empowers assessment officers, who are usually magistrates, to investigate the death and award compensation of up to K2000 to surviving dependants or K1500 to relatives were there are no dependants. The assessment officer conducts an administrative inquiry rather than a legal proceeding to determine entitlement. The proceedings are not to find out whose "fault" it was that the accident occurred but to establish if the accident was attributable to the use of a motor vehicle and to award and apportion compensation.

Once an assessment officer signs and seals an award it is posted to either the Motor Vehicles Insurance (PNG) Trust or to the Finance Department, both of which are located in Port Moresby. The Trust now has branch offices in Lae and Mount Hagen but assessment awards are paid from Port Moresby. On occasion there appears to have been serious delays in the forwarding of mail from outstations, but in the ordinary course of events the assessment orders reach the two offices in two or three days. If the assessment order appears valid "on its face", (for example it is not for an obviously excessive amount and does not obviously award compensation to the wrong person) the Trust draws and posts by registered mail a cheque to the District Court from which the order issued within 24 hours.

An acquittance form for the assessment officer's signature is enclosed to ensure as far as is humanly possible that the money is disbursed in accordance with the order.

Similarly Finance Department instructs the Bureau of Management Services (BMS) to draw a cheque for the assessed amount and on occasion instructs a provincial BMS office by telephone to draw a cheque in favour of a claimant in order that the claim be settled quickly. The Trust is reluctant to authorise payments by telephone or telegraphic transfer because of the auditing and other problems that can arise.

Delays between the Issue of the Assessment Order and Final Payment.

Regulation 28 of 1974 made under the Act requires that payments under the Act be deposited with the originating District Court within seven days after the date of service of the order. Most cheques are drawn within two weeks of the date of issue of the assessment order and most of the beneficiaries have received their money within three weeks. Delays are encountered in BMS cheque processing, postal services, the contacting of relatives, administrative mishandling and so on, but generally the administration of the Act appears to be satisfactory.

PROPOSED ALTERATIONS TO THE ACT.

Proposed Alterations to Section 17.

In 1978 the Insurance Commissioner proposed that Section 17 should be amended to read as follows:

"17. • ENTITLEMENT TO COMPENSATION

Compensation awarded under Section 19 is payable •

- (a) in the case where the deceased dies leaving a dependent spouse or dependent child, to that spouse or child • or apportioned to spouse and children and the head of the immediate customary kinship group where custom so requires; and
- (b) in any other case to the head of the deceased person's immediate customary kinship group as agent for all members of that group or apportioned to the deceased person's immediate customary kinship group or parent, brother, sister, or dependent relative where custom so requires."

The Insurance Commissioner noted that such apportionment would only take place where it was required by custom. The amendment had the support of experienced field staff in the Department of Decentralization. In practice assessment officers have been regularly apportioning payments between as many as ten recipients and recording the apportionment in their assessment orders.

The proposed amendment raises the issue of the relationship between insurance and customary compensation in Papua New Guinea. In many cases under customary law a dependent wife and child would not be entitled to compensation. In such cases when compensation is paid quickly to the dependent wife and child it may have the effect of increasing tensions rather than reducing them and thereby increasing the likelihood of a payback killing.

The Inclusion of "Spouses".

If references to "husband" and "wife" in the Act are changed to "spouse" a husband whose wife was killed in a motor vehicle accident would clearly be entitled to compensation and a minor ambiguity would thereby be removed from the Act.

Proposed Alterations to Section 18.

In 1977 experienced officers of the Department of Decentralization based in the Highlands provinces suggested that assessment officer be empowered to award full third party compensation as opposed to the limited payments of up to K2000 and K1500 authorized under the Basic Protection Compensation Act. It was hoped that this would reduce the likelihood of clansmen from the deceased person's line claiming a second and customary payment. As the size of any award under the ordinary third party legislation is likely to be smaller than the payments recently made under custom it is respectfully suggested that the claim for a customary payment would be maintained, particularly if the clans are already involved in trading and ceremonial relationships. Such a dramatic change in the jurisdiction of assessment officers may well create more problems than it would solve. The Trust considered that the financial jurisdiction of the assessment officers should not be increased beyond the present limits of K2000 and K1500. The Trust also believed that increasing the size of the maximum payments under the Act would eventually result in the new maximum payments becoming the normal payments as happened with the old limits.

In Rokan Bayava v. Minisaug Wankiar and Lufa Local Government Council³

Mr. Justice Wilson decided that the conventional sum of K800 damages for loss of expectation of life should be increased to K1500 on the basis that the fall in the value of money from 1970 to 1978 should be taken into account. The effect of this judgement is to make all claims for death worth at least K1,500 according to the normal principles used for the calculation of negligence claims. When the value of the estate claim, conventionally fixed at K600, is considered it seems that the only function of the assessment officer is now to award the maximum amounts of K1500 and K2000 in all cases where a death is attributed to the use of a motor vehicle.

Proposed Alterations to Section 25.

The Secretary for Justice has pointed out that because the word "damages" was used in Section 25 it has been generally agreed that workers compensation payments made on death cannot be reduced by the amount of the award under this Act because "compensation" is not "damage".

Accordingly the Commission proposes that section 25(1) be amended to read as follows:

"25. AWARD UNDER THIS ACT DOES NOT EFFECT RIGHT OF ACTION OF ENTITLED PERSON

- (1) An award of compensation made in favour of any person under this Act does not affect the right of that person to commence proceedings under any other law in force in Papua New Guinea for the recovery of damages or compensation for the death of the person in respect of whom the award was made, but any damages or compensation awarded to a person a result of those proceedings shall be reduced by the amount of compensation awarded to the person under this Act".

RELATED MATTERS

The Assessment Officers.

In November 1977 the Law Reform Commission approached senior magistrates throughout the country for their views as to how the delays encountered in the administration of the Act could be reduced. The replies received showed that magistrates acting in their role of assessment officer would prefer claims under the Act to be commenced as a matter of routine soon after the accident or at least no later than other legal proceedings associated with the accident. This is the time when witnesses and accident reports are readily available.

The inquiry by the assessment officer is an administrative procedure and there is no reason to wait for judicial proceedings or police prosecution other than the convenience of having all reports and witnesses together in the one place at the same time.

It is suggested that both police prosecutors and field staff be trained to present claims for compensation under the Act as soon as possible after the accident or at least no later than other proceedings such as inquests and prosecutions for dangerous driving causing death. The government has accepted that such training is a government responsibility.

Additionally it has been pointed out that District Officers are also assessment officers by virtue of their appointment as coroners. In many areas they are logically the appropriate officials to deal with claims under that Act because they are on the spot and have detailed knowledge of the people and their customs.

Finally, assessment officers have encountered delays and difficulties in obtaining police accident reports. It was suggested that an obligation be imposed on the police to supply a report within a specified period or risk a fine, but such a procedure would not be an effective deterrent and the problem is really a matter for internal police administration.

The Circumstances of the Claims

In reading the files associated with the claims the following points were noted:

- (a) alcohol is involved in many cases
- (b) the victims appear to come from all ages of the population but passengers and pedestrians are killed more frequently than drivers.
- (c) a substantial minority of the driver do not own the vehicles they are driving
- (d) "utilities" or "pick-ups" are frequently involved and the passengers sitting in the tray are particularly vulnerable.
- (e) unroadworthy vehicles are frequently involved.

The above notes are inevitably selective and may be misleading if considered in isolation, but in the absence of other data they may help to give some idea of the problems of road safety peculiar to Papua New Guinea.

From 1st November 1980, the day following the last day covered by this paper, all motor vehicle accident reports are to be entered into a computer file by the police in Port Moresby. It is hoped that accurate and detailed accident statistics will soon be available for the first time in Papua New Guinea.⁴

Accident Rates and Claim Rates

The following table gives the motor vehicle death, reported accident and injury rates for Papua New Guinea from the Annual Reports of the Royal Papua New Guinea Constabulary:

<u>Year</u>	<u>Deaths</u>	<u>Reported Accidents</u>	<u>Injuries</u>
1966 - 67	46	1681	530
1967 - 68	72	2578	800
1968 - 69	96	2915	1280
1969 - 70	115	3037	1097
1970 - 71	103	3725	998
1971 - 72			
1972 - 73			
1973 - 74			
1974 - 75			
1975 - 76	207	4803	1068
1976 - 77	224	6220	1757
1977 - 78	222	5055	1736

The above figures are alarming and give some idea of the scale of a grave social problem. In the five years from 1971 to 1976 the annual death rate due to motor vehicle accidents doubled from 103 to 207 deaths per annum.

Statistics concerning motor vehicle insurance claims for death have improved because only two offices, those of the Trust and the Finance Department, are now handling the claims. A comparison between the above figures and those contained in this paper suggests that approximately 50% of possible claims are now commenced.

In so far as money can help the plight of the dependants it should be readily available via the operation of the Act. However the realization that monetary compensation is available to the dependants and relatives of the deceased varies widely from place to place. Many people take the view that the loss of a life cannot be compensated for by mere money. By contrast others believe that the loss of a member of the family can only be revenged in blood, or at least by the rapid payment of substantial sums in compensation. In the great majority of cases the

compensation awarded under the Act is the only compensation that will be paid to the dependants and relatives of the victims.

It would be simple to compensate an increasing proportion of these deaths. Even though the numbers of deaths on the roads continue to increase it should nevertheless be possible to pay out proportionately more compensation each year by the diversion of more and more administrative time and effort to the assessment and payment of claims. However, by taking a broader view it would seem to be obvious that scarce administrative resources would be better employed in trying to prevent accidents rather than in attempting to alleviate their effects. Thus the administrative effort involved in ensuring that illegal PMVs are kept off the roads is a better use of resources than using the same effort in attempting to compensate some proportion of those killed in accidents with the same PMVs. The first approach would also ease the pressure on the medical and police services.

Briefly, the prevention of accidents is preferable to the payment of compensation. But the subject of accident prevention remains virtually unexplored in Papua New Guinea. Apart from roadworthiness checks in the major centres and occasional police "blitzes" very little has been achieved. Seatbelts are not compulsory and breathalysers have not yet been introduced. The Police Department, which is responsible for the Motor Traffic Act and Regulations, hopes to undertake a thorough review of this rather dated legislation during 1981. The police expect that enforcement of the law will then become simpler and more effective.

CONCLUSION

The operation of the Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act 1974 has shown that compensation for motor vehicle deaths can be awarded rapidly by the use of comparatively simple administrative and financial procedures. It could perhaps become a model for a broader system of compensation encompassing both death and injury, but this larger question remains unexplored. However taking a broader view, the problem of compensation for motor vehicle deaths will not be solved by finding more efficient ways to pay out larger sums of money. Firm action to reduce the road toll appears to be necessary.

FOOTNOTES

1. Preamble to the Act.

2. "When the Act first came into force, claims under it were handled by the Motor Vehicles Insurance Trust, the private insurers and the Government. On 3rd March 1975, the Trust began to take over all third party insurance in Papua New Guinea and since 3rd March 1976, it has handled third party insurance on all motor vehicles except those owned by the Government. The Government acts as its own insurer."

Page 4, Law Reform Commission's
Occasional Paper No.2, February 1977.

3. Unreported Judgement No.161 of 11th October 1978, Wilson J.

4. The accident statistics are not reliable. One reason for this was pointed out in the Police Annual Report 1977, 1978 at page 8:

"Yet, a good 20 percent or so more accidents were never heard of because police do not patrol in all areas of the country."