

FOR
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LAW REFORM COMMISSION

OF

PAPUA NEW GUINEA

A FOURTH REVIEW
MOTOR VEHICLES (THIRD PARTY INSURANCE)
(BASIC PROTECTION COMPENSATION) ACT
(REVISED LAWS OF PAPUA NEW GUINEA CHAPTER NO.296)

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MOTOR VEHICLES (THIRD PARTY INSURANCE)
(BASIC PROTECTION COMPENSATION) ACT

1. INTRODUCTION

This further review of the Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act (hereinafter called the Act) is conducted as part of the Commission's Reference on Compensation. The purpose of the Act is to provide for "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, without regard to any concept of negligence."

The three prior publications on this topic are:

Occasional Paper No.2: February 1977

Review of period 26 September 1974 - 21 August 1976

Working Paper No.8: March 1978

Review of period 22 August 1976 - 31 October 1977

Occasional Paper No.14: February 1981

Review of three periods, 1 November 1977 - 31 October 1980

This fourth review is of two periods, 1 November 1980 - 31 October 1982, and includes the previously published figures for the purposes of comparison. Its purpose is again to consider the operation and administration of the Act and to suggest ways in which it could be improved.

In addition, this paper repeats the conclusion, drawn in the third review, that the government should take firm action in the field of accident prevention. Road traffic accidents have been estimated to cost a country 1% of its gross domestic product: in the case of Papua New Guinea this would represent a loss to the nation of K15 million a year. There should thus be a very strong financial incentive to government to promote road safety measures.

2. ADMINISTRATION OF THE ACT

When a person is killed in a motor vehicle accident, his dependent wife or children, the head of his immediate customary kinship group, a member of the Police Force or the Minister for Finance may apply to an assessment officer (a District Court magistrate or a coroner¹) for an inquiry to be conducted into the cause of death. An assessment officer may also conduct an inquiry of his own accord.²

The inquiry should be conducted within two weeks of an application by an entitled person³ and once the assessment officer is satisfied that the death is "directly or indirectly attributable to the use of a motor vehicle", he must award Basic Protection Compensation: K2000 maximum where the deceased left dependent wife or child, K1500 maximum in any other case.⁴

The award must then be sent to Port Moresby - either to the Motor Vehicles Insurance (PNG) Trust (hereinafter called the Trust) or, if a Government vehicle caused the death, to the Department of Finance - for payment⁵. The compensation must then be paid within seven days of receipt of the award⁶ - in practice by means of a cheque sent to the District Court issuing the award. The assessment officer ascertains, as far as possible that the compensation is disbursed in accordance with the terms of the award but is not statutorily required to do so.

3. STATISTICS

The seven periods referred to in paragraphs 3.2 and 3.3 are:

First	26-9-74	to	21- 8-76
Second	22-8-76	to	31-10-77
Third	1-11-77	to	31-10-78
Fourth	1-11-78	to	31-10-79
Fifth	1-11-79	to	31-10-80
Sixth	1-11-80	to	31-10-81
Seventh	1-11-81	to	31-10-82

3.1. Total number of road traffic accidents

These figures were obtained from the Royal Papua New Guinea Constabulary whose Road Traffic Accident Analysis is now computerised.

	<u>1980</u>	<u>1981</u>	<u>1982</u>
Total accidents	5901	6829	6011
Fatal accidents	224	252	207
Persons killed	269	291	227
Alcohol affected*	657	927	958

*those drivers involved in accidents who are suspected by the Police of having been drinking, although not necessarily charged with driving under the influence of intoxicating liquor.

It can be seen that the 1981 figures in each category show increases over the 1980 figures - the most marked being a 41% increase in the number of "alcohol affected" accidents. The 1982 figures indicate a slight improvement (although the "alcohol affected" accidents again increased - by 3%). The "suspected" involvement of alcohol is a matter for concern since it has climbed from 11% to 16% in two years.

3.2. Total number of awards paid within the periods

These figures and those at 3.3, 3.4, 3.5 and 3.6 below were obtained from the Trust and from the Department of Finance.

	<u>First Period</u>	<u>Second Period</u>	<u>Third Period</u>	<u>Fourth Period</u>	<u>Fifth Period</u>	<u>Sixth Period</u>	<u>Seventh Period</u>
Motor Vehicles Insurance (PNG) Trust	57	89	107	123	163	195	161
PNG Government	9	11	11	9	8	27	12
Private Insurers	17	1	0	0	0	0	0
TOTAL	83	101	118	132	171	222	173

It can be seen that in the sixth period (Nov 1980 - Oct 1981) there was a 30% increase in the total number of awards paid, over the fifth period. In the seventh period (Nov 1981 - Oct 1982), however, there was a 22% decrease in the total number of awards paid, on the sixth period.

3.3. Distribution of awards among the regions

	First Period	Second Period	Third Period	Fourth Period	Fifth Period	Sixth Period	Seventh Period
Papua	8	25	24	30	30	38	41
Highlands	7	57	50	63	88	126	88
New Guinea Coastal	1	7	6	22	30	42	29
New Guinea Islands	12	12	38	17	23	16	15
TOTAL	83	101	118	132	171	222	173

3.4. Total cost of awards paid in Sixth and Seventh Peri

Motor Vehicles Insurance (PNG) Trust	K617,250
PNG Government	K 57,100
TOTAL	K674,350

3.5. Delay between accident and payment of award

In both the sixth and seventh periods, in 63% of claims, there were delays of more than ten weeks between the accident and payment of the award, but these delays were usually because claims were made late, rather than because of a delay either in the assessment or payment of the award.

3.6. Delay between assessment of award and payment

Sixth period: 26% of claims were paid within seven days of the award being made, 32% within two weeks and a further 22% within three weeks.

Seventh period: 27% of claims were paid within seven days of the award being made, 24% within two weeks and a further 17% within three weeks.

The administration of the Act is in this respect reasonably satisfactory: once a claim has been assessed there is usually little delay in payment being made - although in both periods only a quarter of claims were paid within the statutorily required period.

4. PROPOSED AMENDMENTS TO THE ACT AND SUGGESTIONS FOR ITS IMPROVED OPERATION AND ADMINISTRATION

4.1. Section 1 - Interpretation

It is proposed that the definition of "dependent child" be amended, by the deletion of the words "(including an ex-nuptial child)" to read as follows:

"1. - Interpretation

"dependent child", in relation to a deceased person means -

- (a) a child of the deceased person; and
- (b) a person to whom the deceased person stood *in loco parentis*;"

This proposal reflects the Commission's view that the distinction in law between nuptial and ex-nuptial children should be abolished.⁷

4.2. Section 17 - Entitlement to compensation

The Insurance Commissioner proposed in 1978 that section 17 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."

This proposal had the support of experienced field staff in the (then) Department of Decentralisation, and it was envisaged that apportionment would take place only where it was required by custom. However, despite the fact that this proposal has not been enacted, assessment officers have in practice been apportioning payments between several recipients and recording the apportionment in their awards.

The proposed amendments raise the issue of the relationship between insurance and customary compensation in Papua New Guinea. For example, a wife may not customarily be entitled to compensation for the death of her husband, and compensation awarded and paid to her under the Act may be "claimed" by her dead husband's kinship group.

The Law Reform Commission's view is that the interests of a dependent wife and child are paramount and that section 17 should be further amended to specify a minimum amount to be apportioned to them (regardless of customary requirements.) Customary claims for compensation should continue to be dealt with by customary means.

4.3. Section 18 - Maximum amount of compensation payable

The Commission proposes that the maximum amounts of compensation payable be increased.

Taking account of inflation alone since 1974, the maximum amounts of K2000 and K1500 should be increased to K3500 and K2625 respectively - although it has been suggested to us that more important to recipients than the amount of the payment, is the speed with which the payment is made.

Also in support of the proposal for increases is the suggestion that if higher amounts of Basic Protection Compensation were paid, fewer further claims would be made for damages^B since in many cases those claims would be worth no more than the amounts already paid. The National Court would thus be relieved of some of its work-load.

The Trust, however, has indicated to the Commission that it does not consider increases to be warranted.

4.4. Section 25 - Saving of other rights of action

The Commission proposes again that section 25(1) be amended by the addition of the words "or compensation" after the word "damages" in paragraphs (a) and (b) to read as follows:

"25. - Saving of other rights of action

(1) An award of compensation made in favour of any person under this Act does not affect the right of that person -

(a) to commence proceedings under any other law for the recovery of damages or compensation for the death of the person in respect of whom the award was made; and

- (b) any damages or compensation awarded to a person as a result of those proceedings shall be reduced by the amount of compensation awarded to the person under this Act."

Since workers "compensation" is not strictly "damages" this proposal was made in 1978 by the then Secretary for Justice so that payment of workers compensation upon death might be reduced by the amount of any compensation paid under this Act.

4.5. Some claims for compensation are made and paid as much as several years after the accident, despite the Act's preamble which provides for "speedy payment of a limited amount of compensation."

Assessment officers often seem unaware of their ability to conduct an inquiry under the Act "of their own motion". Those assessment officers who are magistrates might make awards under the Act in conjunction with committal hearings, and coroners, as assessment officers, might make awards in conjunction with coronial inquiries - which should be conducted "without delay into the manner and cause of death of a person who was killed."⁹

4.6. The Commission previously proposed¹⁰ that section 21 of the Act be amended so as to add the Public Solicitor to the list of people to whom the assessment officer shall send a copy of the award. This proposal was so that the Public Solicitor could, if he considered it warranted, make a claim on behalf of the deceased's dependants, for damages under the (then) Law Reform (Miscellaneous Provisions) Act 1962.

Such an amendment may however, no longer be necessary since the Public Solicitor does not have the staff or resources to handle civil accident cases and it is private lawyers who increasingly do so.

5. PROPOSALS FOR IMPROVING ROAD SAFETY

Many road casualties need never occur. If those due to carelessness, incompetence, driver impairment from alcohol, and faulty vehicles could be eliminated, many lives would be saved, crippling injuries prevented and health resources put to other important, if less dramatic, uses.

Statistics from other countries show that definite improvements result from active measures such as seatbelts for those inside vehicles, breathalyser tests, strict driving tests and codes and competent vehicle checks.

Breathalyser tests are however unlikely to be introduced in Papua New Guinea in the foreseeable future and self-discipline at the individual level is unlikely to be the answer to the problem of alcohol consumption and driving. Firm action by the police and courts, to enforce the existing legislation, is what is needed. The Royal Papua New Guinea Constabulary says that the effects of alcohol have been implicated in at least 16% of serious road accidents in 1982 and it is suggested elsewhere¹² that in recent years the figure may be as high as 75%.

The immediate introduction of legislation requiring the compulsory fitting of seat-belts in new cars sold in Papua New Guinea, followed by the introduction of legislation requiring the compulsory wearing of seat-belts in cars and light commercial vehicles must be a priority for the Government. In addition an education programme should be conducted on the use of seat-belts for drivers and passengers.

Seat-belts would not of course, prevent the large numbers of deaths and injuries which occur when passengers travelling in the backs of utilities are thrown, or fall, or jump, out. If the existing provisions of the Motor Traffic Regulation concerning, for example, the number of passengers travelling in a motor vehicle and passengers on trays of vehicles¹³, were enforced by police and courts, this situation might be improved.

6. CONCLUSION

In so far as money can help the dependants and relatives of those killed in road accidents, it is available via the operation of the Act - once an inquiry by an assessment officer is conducted. While it would seem a relatively simple matter to ensure that more inquiries under the Act are conducted and thus more deaths compensated, might it not be desirable to employ scarce resources in trying to prevent accidents rather than to alleviate their effects?

The question, initially posed in the first review of the Act, and subsequently repeated, whether a no-fault scheme for compensating all motor accident injuries and deaths should be introduced in Papua New Guinea, remains unanswered.¹⁴

The trend in other countries is towards the concept of liability without fault, whether comprehensive no-fault schemes such as that adopted in New Zealand in 1974, or limited no-fault schemes for motor accident victims such as have been introduced in various Australian jurisdictions. Victoria, Tasmania and the Northern Territory have established such schemes and a similar approach is being considered in the Australian Capital Territory.

In the course of its Inquiry into Accident Compensation, the New South Wales Law Reform Commission has recently published a Working Paper on a Transport Accidents Scheme for that State.¹⁵

The Working Paper puts forward a proposal for a no-fault scheme providing compensation for death or personal injury arising out of motor vehicle and other transport accidents and replacing the common law negligence action.

This Commission does not suggest that what is appropriate in New South Wales or anywhere else is necessary appropriate in Papua New Guinea, although clearly the traditional view in Papua New Guinea about compensation, either for injury or death, is that of absolute liability rather than of liability based on fault.

Ten years ago the following statement was made:¹⁶

"I have not abandoned hope that an adequate "no fault" system can be designed for Papua New Guinea, but the problems involved extend far beyond insurance. It is my personal belief that progress in this direction can only be made by a Government appointed Committee with ability to assess all the financial, social, medical and administrative problems involved."

The Commission again proposes that consideration be given to introducing in this country a liability without fault scheme to provide complete compensation in respect of death or injury arising out of motor vehicle accidents.

FOOTNOTES

1. Section 6
2. Section 8(1)
3. Section 8(2)
4. Section 18
5. Section 21
6. Section 7 Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Regulation. Revised Laws of Papua New Guinea (Chapter No.296).
7. See also Law Reform Commission Working Paper No.9 March 1978. Family Law.
8. Section 25 Wrongs (Miscellaneous Provisions) Act. Revised Laws of Papua New Guinea (Chapter No.297).
9. Section 7 Coroners Act. Revised Laws of Papua New Guinea (Chapter No.32).
10. Law Reform Commission Occasional Paper No.2 February 1974. A Review of the Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act 1974.
11. Now the Wrongs (Miscellaneous Provisions) Act.
12. Lourie, J.A. Letter to Law Reform Commission 25 January 1983.
13. Sections 145-149 Motor Traffic Regulation. Revised Laws of Papua New Guinea (Chapter No.243).
14. For a discussion, see O'Neill, N.K.F., Liability without fault in Papua New Guinea. In Lo Bilong Ol Manmeri, 1975. (Zorn and Bayne, eds.).
15. New South Wales Law Reform Commission. Accident Compensation Working Paper 1 May 1983.
16. Rutherford, Report on Non-Life Insurance in Papua New Guinea, 1973.