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LAW REFORM COMMISSION

OF

PAPUA NEW GUINEA

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

WORKING PAPER NO. 8

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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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Comments, suggestions and criticisms of the proposals contained in the Joint Working Paper are invited and should be directed to the following address before 31st May, 1978.

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

SUMMARY.

This working paper contains the Law Reform Commission's tentative proposals regarding the *Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act 1974*. These proposals are summarized as follows:

1. The police and field staff should be given training in the operation of the Act so that more claims may be commenced promptly and unnecessary hardship thereby avoided.
2. Consideration should be given to the amendment of Section 17 "Entitlement to Compensation", but that the interests of the surviving spouse and of any children should remain paramount.
3. A simple method of establishing trust funds for the surviving spouse and children should be provided in the Act.
4. Assessment officers should be kept informed of comparable assessment orders so that excessive payments under the authority of the Act may be avoided.
5. In appropriate cases assessment officers should be empowered to order compensation payments of up to K4000 where the deceased leaves a dependant spouse or child and K3000 where there is no surviving spouse or child.

NAMBA TU LUKLUK CEN LONG MOTOR VEHICLE (THIRD PARTY
INSURANCE) (BASIC PROTECTION COMPENSATION) LO 1974

OL BIGPELA HAF BILONG DISPELA TINGTING

Dispela pepa em i toktok long ol tingting bilong Lo Rifom Komisin long Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Lo 1974. Dispela ol tingting em mipela i sotim olsem:

1. Ol Polis na ol wokman i save wokim dispela kain wok imas kisim skul long wok bilong dispela lo olsem bai moa kieimas i ken kamap hariap na bai ol sampela liklik hat wok yumi ken abrusim.
2. Tingting long senisim sekman / "Entitlement to Compensation" tasol aidaun bilong man or meri na ol pikinini bilong man i dai em i nambawan samting.
3. Wanpela isi wei bilong kirapim trust fan bilong ol dispela man or meri or pikinini stop yet imas stop insait long dispela lo.
4. Ol wokman bilong lukluk na sekim long haumas moni bilong peim imas save olgeta taim long ol muk moni em ol i save peim long narapela hap olsem bai planti moni tumas ino ken go aut winim orda insait long dispela lo.
5. Long ol sampela kain wari, ol wokman bilong lukluk na sekim imas igat pawa long adaim kompensasin igo antap inap long K4,000 taim huait idai larim meri or man bilong em o wanpela pikinini bilong em em yet i save lukautim, na K3,000 taim em i nogot meri or pikinini.

Laloa Iharyana Motuka edia Third Party Insurance bona Basic Protection Compensation taravatuna lagani 1974 ai Idia karala gauna dekenal.

Inal pepa be gavamani ena kaha ta ladana Law Reform Commission ena lalohadal gini gunadia motuka edia Third Party bona Basic Protection Compensation taravatuna latanal ia hereva laia.

1. Police bona outstation ai Idia gaukara taunimanima be namo sikuli namona Idia abia Inal taravatu adena bamuna gaukanaia dalona dekenal badina Idia ese kota do Idia durua ena gaukara karala haraga totona.
2. Inal taravatu ena kaha 17 ladana "Entitlement to Compensation" haidaua laloa danu karala to lalohadal badana be vabu mai ena natuna latadlai ia mia.
3. Inal taravatu lalonai danu vabu bona natudia edia Trust Fund dalana karala be namo Idia hedinarala taravatu lalonai.
4. Dava henla gaukara Idia karala taunimanima be namo diba maorona Idia abia bora moni momo dadu do Idia henla kava lasi.
5. Bema namo nega halda dava henla gaukara Idia karala taunimanima be Inal taravatu ese maoro ia henidia Inal moni hegeregere K4,000 vabu mai ena natuna Ida Idia henla to bema mase tauna advana lasi bona natuna lasi be namo K3,000 Idia henla.

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.

In February, 1977 the Commission published Occasional Paper No. 2 on this subject in which developments from 25th September, 1974 up to 31st August 1976 were noted. The present paper documents the operation of the Act from 1st September 1976 up to 31st October, 1977. The tables in this paper repeat the figures from Occasional Paper No. 2 for the purposes of comparison.

REVIEW OF THE ACT

The following table gives the numbers of assessment orders made in the two years from 26th September, 1974 to 21st August 1978 (First Period) and in the fourteen months from 1st September 1976 to 31st October 1977 (Second Period).

	<u>First Period</u>	<u>Second Period</u>
Motor Vehicles Insurance (PNG)		
Trust	57	89
Papua New Guinea Government	9	11
Private Insurers	17	1
	<hr/>	<hr/>
T o t a l	83	101

The table shows that the Act is becoming better known and more frequently used and that old claims against the Private Insurers have virtually ceased.

The Disposition of Awards, amongst the Regions.

	First Period	Second Period
<u>Papuan Coastal Region</u>	8	25
Central Province (7)		(25)
Northern Province (1)		
<u>Highlands Region</u>	62	57
Western Highlands Province (7)		(6)
Western Highlands Province (36)		(26)
Southern Highlands Province (3)		(5)
Chimbu Province (3)		(12)
Chimbu Province (16)		
Enga Province (1)		(8)
<u>New Guinea Islands</u>	12	12
East New Britain Province (1)		(6)
West New Britain Province (1)		(1)
New Ireland Province (3)		(5)
North Solomons Province (4)		-
<u>New Guinea Coastal Region</u>	1	7
Madang Province (1)		(1)
Morobe Province		(3)
East Sepik		(3)
T O T A L	83	101

The disposition of awards amongst the four regions shows a large increase in the number of awards in the Central Province and an apparent decrease in the number from the Highlands Region because of the different lengths of time in each period. In fact awards in the Highlands continue to increase.

Awards Made in Respect of Persons With Dependants (Maximum K2000)

	First Period	Second Period
K 900		1
1000		1
1500	8	10
1600		2
1650		1
1750		1
1800	1	4
1900	1	1
2000	<u>35</u>	<u>31</u>
	45	52

Awards Made in Respect of Persons Without Dependants (Maximum K1500)

K 500	1	4
600		1
800	1	
900		1
1000	9	8
1200		6
1300	2	3
1400		4
1500	<u>24</u>	<u>22</u>
	37	49

The size of the awards show that assessment officers are now less inclined to award the maximum amounts than they were in the first period under review.

Bringing both categories together the result is that in 53% of cases the maximum payment was made, compared to 71% of cases in the previous survey. K145,800 was paid out in the fourteen months under review, compared to K124,600 in the twenty-three months up 21st August 1976.

Thus 83 claims totalled K124,600 in nearly two years to 31st August 1976 and 101 claims totalled K145,800 in fourteen months to 31st October 1977. Clearly, the Act is becoming more frequently used and the average amount awarded has decreased slightly.

Delays between Accident and "Final Payment"

	First Period	Second Period	
1 week delay		2	Claims
2 weeks delay	10	8	"
3 weeks delay	5	10	"
4 weeks "	10	13	"
5 weeks "	1	11	"
6 weeks "	3	6	"
7 weeks "	1	4	"
8 weeks "	2	3	"
9 weeks "	6	3	"
10 weeks or more delay	40	41	"
Unknown	5	-	
	83	101	
T O T A L			

The delays in payment under the Act continue to be excessive. More than 40% of claims still take ten weeks or more to be settled. As the purpose of the Act is "to provide for the speedy payment of a limited amount of compensation" these delays are still a cause for concern.

After a motor accident in which a person loses his or her life the police are usually informed. The police then investigate the accident and collect statements from witnesses and others such as doctors who attended and victims and mechanics who inspected the vehicle involved. A Police Accident Report is completed and this report and the 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 or surviving dependants of K1500 to relatives where 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 either directly or indirectly attributable to the use of motor vehicles 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. 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 or awards 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 that the money is disbursed in accordance with the order.

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

Delays between the Assessment Order and "Final Payment" in the Second Period

1 weeks	.....	49 Claims
2 weeks	.....	22 "
3 weeks	.....	13 "
4 weeks	.....	7 "
5 weeks	.....	2 "
6 weeks	.....	1 "
7 weeks	.....	0 "
8 weeks	.....	4 "
9 weeks	.....	3 "
10 weeks	.....	0 "
	TOTAL	101

The Motor Vehicles (Third Party Insurance) (Basic Protection Compensation)

Regulation 28 of 1974. Regulation 28 of 1974 requires that payments under the Act be deposited with the originating District Court within seven days after the date of service of the order. The above table shows the delays that have occurred between the making of the order and the date of "final payment", "final payment" being the issue of a cheque or of an order to BMS to issue a cheque. Inevitably there would also be further delays in posting. BMS cheque processing, the contacting of relatives and so on.

Comparison of this table with the previous one suggests that the major delays are not occurring after the assessment orders are made, but earlier in the chain of events following an accident. These earlier delays could arise in a number of ways such as those listed below:

- (a) The potential claimants may not be aware of their rights under the Act.
- (b) Difficulty may be encountered in making a claim.
- (c) The initial investigation of the claim may be slow.
- (d) Administrative mishandling.

PROPOSED IMPROVEMENTS

The Further Training of Police and Field Staff. In November 1977 the Law Reform Commission approached Senior Magistrates throughout the country for their views as to how the delays encountered in settlements could be reduced. The replies received showed that magistrates 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 reports and witnesses are readily available. The inquiry 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 one time. It is therefore suggested that both police prosecutors and field staff be instructed 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.

It appears that Police and Government staff are still unaware of the Act's potential as a means of rapidly assisting the dependants of a deceased person. Further publication of the aims of the Act and further serious training is necessary.

Possible Alterations to Section 17. Section 17 is as follows:

"Compensation awarded under Section 19 is payable -

- (a) in the case where the deceased dies leaving a dependant wife or dependant child - to that wife or child; 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."

If the references to "wife" in Section 17(a) are altered to "spouse", a husband whose wife was killed in a motor vehicle accident would be entitled to claim compensation up to K2000 and a minor ambiguity would thereby be removed from the Act.

The Insurance Commissioner has proposed the following amendments to Section 17 -

- (a) in Section 17(a) after the second 'child', delete 'and' and add "or apportioned to wife and children and the head of the kinship group where custom so requires; and
- (b) in section 17(b) after "in any other case to the head of deceased person's immediate customary kinship group" add "or apportioned to the deceased's kinship group and the head of the survivor's kinship group where custom so requires."

The Insurance Commissioner notes that such apportionment would only take place where this was an established practice. This amendment has the support of experienced field staff in the Department of Decentralization. The proposed amendments raise the issue of the relationship between insurance and customary compensation in Papua New Guinea. In many cases under customary law a dependant wife and child would not be entitled to compensation.

The Law Reform Commission's view is that the interests of the widow and child should remain paramount under the Act and that customary claims to compensation should continue to be met by customary procedures for settlement.

The Establishment of Trust Funds. The Act should be amended to allow trust funds for dependant wives and children to be established. Simple arrangements should allow a trust fund to be used to cover education, medical and other expenses as necessary.

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	8800
1968 - 69	96	2915	1280
1969 - 70	115	3037	1097
1970 - 71	103	3725	998
1972 - 73			
1973 - 74			
1974 - 75			
1975 - 76	207	4803	1068
1976 - 77	224	6220	1757

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 and personal injury have improved because only two offices, those of the Trust and the Finance Department, are now handling the claims.

In the fourteen months under review, from 1st September 1976 to 31st October 1977, police statistics state that there were 259 road deaths, 6643 reported accidents and 1806 injuries. However in the same period only 101 claims were lodged for compensation under the Act. Even allowing for late claims and claims under the ordinary third party legislation it is clear that less than 50% of possible claims for death only are ever lodged. By contrast in Australia and New Zealand, well over 90% of all motor vehicle deaths and injuries result in claims. The full potential of the Act to alleviate the hardship and suffering of dependants remains unrealized.

The Maximum Amount of Compensation Payable Under the Act. Of these 101 claims, after compensation under the Act has been paid only 14 have been the subject of further claims under the ordinary third party legislation. Of the 14, 5 have been settled for sums of K1000, 500, 500, 1000 and 500 respectively, a total of K3,500. The other nine claims have either lapsed or continue to be negotiated. It would simplify the administration of claims following motor vehicle accident deaths if assessment officers were empowered to order compensation up to a maximum of K4000 where

there were dependants and K3000 where there were none. Assessment officers would need to be provided with information concerning comparable awards to help them recognize excessive claims but the information concerning the size of awards given above shows that they can be relied upon to exercise such an additional jurisdiction with restraint.

MOTOR VEHICLE ACCIDENTS IN THE HIGHLANDS PROVINCES

At the present time the following payments may occur after the death of a person in a road accident:

- (a) a sum of up to K1500 or K2000 under the Basic Protection Compensation Act.
- (b) a sum under the ordinary Third Party Legislation, if negligence can be shown. The amount varies and often nothing is paid because all due compensation has been covered by the initial payment under the Basic Protection Compensation Act.
- (c) a sum in settlement of the deceased's estate.
- (d) a customary payment by one clan to another for the death of a clan member. Any such payment is not covered by legislation, unlike the other three payments listed above.

The last payment serves important ceremonial social and cultural purposes. It is a means whereby everyone "comes to terms" with their loss and should not be simply regarded as extortion to be dealt with by the criminal law. At the same time it is generally believed that excessive demands for compensation have been made by Highlands clans in recent years and that those demands have become so great as to threaten the fabric of Highlands society. The Law Reform Commission has proposed that these demands for compensation between groups be limited to K5000 for any one death and K10,000 for any one accident, with stiff penalties for those who make demands in excess of these limits.

There have also been suggestions that in some provinces the payments under the Act are no longer particularly effective in preventing pay-back killings following motor accidents. With clan payments as high as K20,000 in recent months it would not be surprising if payments under the Basic Protection Compensation Act were not as important as in previous years. However this situation could change and the payments under the Act could assume their former importance if economic conditions change in the Highlands.

Experienced officers of the Department of Decentralization based in the Highlands provinces have suggested that assessment officers 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.¹

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 much smaller than the payment 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.

¹Letter to Law Reform Commission from Department of Provincial Affairs (1-8-17 of 4th May 1977).

CONCLUSION

The *Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act 1974* has become the main method by which financial assistance in the form of lump sum payments reaches the dependants and relatives of Papua New Guineans killed in motor vehicle accidents. However the full potential of the Act to alleviate hardship remains unrealized because less than 50% of all possible claims are ever commenced. The delays in administering those claims that are commenced continue to be excessive.

Above and beyond the immediate problems of administering the Act is the question whether the present "system" of third party motor vehicle insurance is adequate for Papua New Guinea. Certain aspects of this further review suggest that it is not.