

Chapter 296.

***Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act
1974.***

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 296.

Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act
1974.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act
1974,

Being an Act 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, and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears–

“**assessment officer**” means an assessment officer appointed under Section 5, and includes a Magistrate of a District Court and a coroner;

“**assessor**” means an assessor appointed under Section 7;

“**award**” means an award of compensation made under Section 19;

“**compensation**” means compensation payable under this Act;

“**deceased person**” means a deceased person to whom this Act applies;

“**dependent child**”, in relation to a deceased person, means–

(a) a child (including an ex-nuptial child) of the deceased person; and

(b) a person to whom the deceased person stood *in loco parentis*;

“**dependent wife**”, in relation to a deceased person, means a wife of the deceased person who was wholly or in part dependent, by custom or otherwise, on the deceased person at the date of his death;

“**entitled person**”, in relation to a deceased person, means the person to whom compensation is payable under Section 17;

“Government motor vehicle” means a motor vehicle the property of the State;

“immediate customary kinship group”, in relation to a deceased person, means—

- (a) any wife or child of the deceased who was not wholly or in part dependent on the deceased person at the time of his death; and
- (b) any member of the family, extended family, sub-clan or clan to which he was most closely affiliated during his lifetime, who is entitled to a beneficial share in the customary estate of the deceased;

“inquiry” means an inquiry conducted under this Act;

¹**“insured motor vehicle”** means a motor vehicle that, at the relevant time—

- (a) is insured by the successor company under this Act; or
- (b) is a Government motor vehicle;

“motor vehicle” means a motor car, motor carriage, motor cycle, motor truck, motor omnibus, motor tractor or other vehicle propelled wholly or partly by a volatile spirit or by steam, gas, oil or electricity, or by means other than human or animal power, and includes a trailer, but does not include a vehicle used on a railway or tramway;

“the regulations” means any regulations made under this Act;

²**“successor company”** means—

- (a) for the period from 14 January to 31 December 1998 inclusive, the successor company nominated under Section 65 of the *Motor Vehicles (Third Party Insurance) Act 1974*; and
- (b) on and from 1 January 1999, Motor Vehicles Insurance Ltd. or such other company as may be nominated under Section 72 of the *Motor Vehicles (Third Party Insurance) Act 1974*;

³**“this Act”** includes the regulations;

“uninsured motor vehicle” means a motor vehicle that is not an insured motor vehicle.

2. APPLICATION TO THE STATE.

This Act binds the State.

¹ Section 1 (definition of “insured motor vehicle”) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

² Section 1 (definition of “successor company”) repealed and replaced by No 51 of 2000.

³ Section 1 (definition of “the Trust”) repealed by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

3. EXCLUSION OF CERTAIN DEATHS.

This Act does not apply to or in relation to the death of a person that is directly or indirectly attributable to personal injury suffered by him as a result of a motor vehicle accident where the death occurred more than 90 days after the accident.

4. SAVING OF CORONERS ACT.

This Act does not affect the operation of the *Coroners Act 1953*, and a coroner is not bound by any decision given by an assessment officer under this Act.

PART II. – INQUIRIES.

5. ASSESSMENT OFFICERS.

(1) The Minister may, by notice in the National Gazette—

- (a) appoint an officer to be an assessment officer for the purposes of this Act; and
- (b) specify the area within which he has jurisdiction, power and authority.

(2) An assessment officer appointed under Subsection (1) may conduct an inquiry relating to the death of a person where he has reasonable cause to believe that the death of that person was directly or indirectly attributable to the use of a motor vehicle in the area within which he has jurisdiction.

6. MAGISTRATES AND CORONERS TO BE ASSESSMENT OFFICERS.

A Magistrate of a District Court and a coroner are, by virtue of their offices, assessment officers and have jurisdiction, power and authority throughout the country.

7. APPOINTMENT OF ASSESSORS.

(1) An assessment officer may, where he thinks it necessary or desirable to do so in relation to any inquiry conducted or to be conducted under this Act, appoint not more than three persons to assist him with the inquiry.

(2) An assessor appointed under Subsection (1) has and shall perform such functions and duties, other than the making of a determination under Part III., as are directed by the assessment officer.

8. ESTABLISHMENT OF INQUIRY.

(1) Where an assessment officer has reasonable cause to believe that the death of a person was directly or indirectly attributable to the use of a motor vehicle, he—

- (a) may, of his own motion; and
- (b) shall, as soon as practicable after receiving a request to do so from an entitled person, a member of the Police Force or the Minister,

conduct a full inquiry into the cause of the death.

(2) Where an assessment officer is unable to conclude an inquiry held under Subsection (1) within two weeks after the date on which he receives a request from an entitled person, a member of the Police Force or the Minister, he shall forward a report to the Minister setting out the reasons for his being unable to do so.

9. INQUIRY TO BE CONDUCTED WITHOUT REGARD TO LEGAL FORMALITIES.

An inquiry under this Act shall be conducted without regard to legal forms and solemnities, and the assessment officer conducting the inquiry is not bound to apply technical rules of evidence but shall admit and consider such relevant information as is available, including hearsay.

10. POWER TO SUMMON WITNESSES.

(1) An assessment officer may summon before him any person for the purpose of giving evidence or producing documents.

(2) A summons under Subsection (1) shall be served, and proof of service given, in such manner and subject to such conditions as the assessment officer determines.

(3) A summons under this section may be oral or written, and in the case of an oral summons may be served by being communicated to the person concerned by the assessment officer or by a person authorized by the assessment officer for the purpose.

11. REPRESENTATION.

An entitled person is entitled to be represented before an assessment officer by any person other than a lawyer.

12. CONTEMPT OF ASSESSMENT OFFICER.

A person who—

- (a) when summoned under Section 10 to appear before an assessment officer refuses or fails, without reasonable excuse (proof of which is on him), to do so; or
- (b) wilfully interrupts, interferes with or disturbs any proceedings before an assessment officer; or
- (c) wilfully obstructs or attempts to obstruct an assessment officer acting under this Act; or
- (d) refuses or fails to give evidence or to answer a lawful question when lawfully required to do so by an assessment officer,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

13. TRANSFER OF PROCEEDINGS.

Where an inquiry has been commenced by an assessment officer, he may at any time before decision, of his own motion or otherwise, for reasons that shall be recorded, make an order staying the inquiry and, on such terms as seem to him just, transferring the inquiry for hearing by some other assessment officer.

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14. EFFECT OF TRANSFER.

Where an inquiry is ordered to be transferred to or heard before another assessment officer under Section 13, the assessment officer who instituted the inquiry shall report the proceedings to the other assessment officer, and thereupon the last-mentioned assessment officer shall proceed with the inquiry as though a request under Section 8 had been made to him.

PART III. – COMPENSATION.

15. DETERMINATION OF CAUSE OF DEATH.

An assessment officer shall, after he has completed an inquiry under this Act, determine whether the death of the person or persons the subject of the inquiry, or any of them, is directly or indirectly attributable to the use of a motor vehicle.

16. DETERMINATION AS TO ENTITLED PERSONS, ETC.

Where an assessment officer determines under Section 15 that the death of a person the subject of the inquiry was directly or indirectly attributable to the use of a motor vehicle, he shall at the same time determine—

- (a) where the deceased was not an occupant of a motor vehicle and where it is possible to do so, the motor vehicle or motor vehicles that was or were most closely associated with the death; and
- (b) where compensation is payable under Section 17(b), the person who is for the time being the head of the deceased person's immediate customary kinship group.

17. ENTITLEMENT TO COMPENSATION.

Compensation awarded under Section 19 is payable—

- (a) where the deceased died leaving a dependent wife or dependent child—to the 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.

18. MAXIMUM AMOUNT OF COMPENSATION PAYABLE.

⁴The total amount of compensation awarded under this Act by an assessment officer in respect of the death of any person shall not exceed—

- (a) in the case of a person who died leaving a dependent wife or dependent child or both—K5,000.00; and
- (b) in any other case—K2,500.00.

19. AWARD OF COMPENSATION.

(1) Subject to Sections 17 and 18, an assessment officer may award compensation to the entitled person, or each of the entitled persons, in such amount as he fixes.

(2) An award of compensation under Subsection (1) is subject to such conditions as the assessment officer specifies in the award.

⁴ Section 18 amended by *Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) (Amendment) Act* 1991 (No. 20 of 1991), s1.

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(3) In assessing—

- (a) the amount of compensation payable to an entitled person or entitled persons; or
- (b) the proportionate amount of compensation payable to each entitled person,

under Subsection (1), the assessment officer shall have regard to—

- (c) customary disposition of property on death; and
- (d) any economic loss suffered by any or all of the entitled persons; and
- (e) any other factor that he thinks relevant.

20. PAYMENT OF COMPENSATION.

(1) Compensation is payable under this Act—

(a)⁵ in the case of the death of—

- (i) an occupant of a motor vehicle; or
- (ii) a person, in relation to whose death the assessment officer has determined under Section 16(a) that the vehicle most closely associated with the death was a vehicle other than a Government motor vehicle,

by the successor company; and

(b) in the case of the death of—

- (i) an occupant of a Government motor vehicle; or
- (ii) a person, in relation to whose death the assessment officer has determined under Section 16(a) that the motor vehicle most closely associated with the death was a Government motor vehicle,

by the State; and

(c)⁶ in any other case, by the successor company and the State in such proportions as are determined by the Minister.

(2)⁷ ⁸The assessment officer shall, in any award made by him under Section 19, specify whether the successor company, the State or both is or are liable under Subsection (1) for payment of the compensation.

⁵ Section 20(1)(a) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

⁶ Section 20(1)(c) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

⁷ Section 20(2) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

(3)⁹ ¹⁰Subsection (1) applies to the successor company and the State whether the motor vehicle, at the time of the occurrence of the accident in respect of which compensation is payable, was being used on a public street or otherwise.

(4) Compensation under this Act is payable within the prescribed time and in the prescribed manner.

(5)¹¹ ¹²Where compensation is not paid within the prescribed time the person liable to pay the compensation shall pay, in addition to any other penalty, interest on the amount of the compensation outstanding at the rate of 5% per annum from the date of the last day on which the compensation should have been paid until the date on which the compensation is paid.

21. DISTRIBUTION OF COPIES OF AWARD.

Where an award is made under this Act relating to the payment of compensation, the assessment officer shall, as soon as practicable after the making of the award, give or forward a copy of the award certified under his hand to—

- (a) the Minister for Justice; and
- (b) the Minister; and
- (c) the entitled person or entitled persons in whose favour the award was made, or the person or persons appointed by the entitled person or entitled persons to represent him or them; and
- (d)¹³ the successor company.

22. ENFORCEMENT OF AWARDS.

(1) An award operates as an order for the payment of a sum of money under the *District Courts Act 1963*.

(2) For the purposes of Subsection (1), an award may be entered in such manner as is prescribed in the records at the District Court exercising jurisdiction at the place where the award was made.

⁸ Section 20(2) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

⁹ Section 20(3) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s 3 and Schedule 2.

¹⁰ Section 20(3) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s 3 and Schedule 2.

¹¹ Section 20(5) added by *Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) (Amendment) Act 1991* (No. 20 of 1991), s2.

¹² Section 20(5) added by *Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) (Amendment) Act 1991* (No. 20 of 1991), s2.

¹³ Section 21(d) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s 3 and Schedule 2.

23. RECOVERY BY SUCCESSOR COMPANY, ETC., IN CERTAIN CASES.

(1)¹⁴ ¹⁵Subject to Subsection (2), any amount paid by the successor company or the State under this Act in relation to an uninsured, unidentified or unknown motor vehicle may be recovered by the successor company or the State, as the case may be, as a debt from the person who—

- (a) at the time of the occurrence of the event out of which the award was made—was the owner of the motor vehicle; or
- (b) where at the time of the event some other person was driving the vehicle—from the owner and the driver jointly or from either of them severally.

(2) It is a sufficient defence in any proceedings under this section—

- (a) 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 occurrence, some other person was driving the motor vehicle without his authority; or
- (b) against the driver of an uninsured motor vehicle (whether severally or jointly with the owner)—if he establishes to the satisfaction of the court that, at the time of the occurrence—
 - (i) he was driving the motor vehicle with the authority of the owner or had reasonable grounds for believing, and did in fact believe, that he had such authority; and
 - (ii) he had reasonable grounds for believing, and did in fact believe, that the motor vehicle was an insured motor vehicle.

(3)¹⁶ ¹⁷Any amount recovered by the successor company under this section in relation to a payment made by it in connection with an unidentified or unknown motor vehicle shall be paid by the successor company, in proportions determined by the Minister, to the State and to itself.

(4)¹⁸ ¹⁹In making a determination under Subsection (3), the Minister shall have regard as far as practicable to the proportion of the amount provided by the State or the successor company, as the case may be.

¹⁴ Section 23(1) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

¹⁵ Section 23(1) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

¹⁶ Section 23(3) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

¹⁷ Section 23(3) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

¹⁸ Section 23(4) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

¹⁹ Section 23(4) amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

24. RECOVERY BY SUCCESSOR COMPANY WHERE DECISION OF ASSESSMENT OFFICER SUBSEQUENTLY OVERRULED.

²⁰Where the successor company has paid moneys under an award and subsequently a court of competent jurisdiction determines that the death of the person in respect of whom the award was made was not directly or indirectly attributable to the use of a motor vehicle, the successor company may recover from the State the amount paid under the award as a debt.

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 for the death of the person in respect of whom the award was made; and
- (b) any damages 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.

(2) Subject to Subsection (1), this Act does not affect the operation of—

- (a) the *Motor Vehicles (Third Party Insurance) Act 1974*; or
- (b) the *Workers' Compensation Act 1978*; or
- (c) the *Wrongs (Miscellaneous Provisions) Act 1962*.

²⁰ Section 24 amended by *Motor Vehicles (Third Party Insurance) (Amendment) Act 1997* (No. 28 of 1997), s3 and Schedule 2.

PART IV. – MISCELLANEOUS.

26. JUDICIAL NOTICE.

All courts, Judges and persons acting judicially shall take judicial notice of–

- (a) the official signature of a person who holds or has held the office of assessment officer; and
- (b) the fact that the person holds or has held that office,

if the signature purports to be attached or appended to a decision or other document issued by the assessment officer.

27. ACTS DONE ON SUNDAYS.

No act, matter or thing done or suffered by or under the authority of an assessment officer shall be deemed to have been invalidly or unlawfully done or suffered merely by reason of the fact that it was so done or suffered on a Sunday.

28. INDEMNITY.

(1) An assessment officer is not liable to be sued for an act done or an award made by him in the exercise of jurisdiction conferred by this Act, or for an act done by him beyond the limits of that jurisdiction, if, at the time when he did the act or made the award, he believed in good faith that he had jurisdiction to do the act or make the award.

(2) In any proceedings referred to in Subsection (1), the burden of proof of lack of good faith is on the person asserting it.

29. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing–

- (a) the manner of recording a decision of an assessment officer; and
- (b) the time within which compensation is payable; and
- (c) the manner in which compensation is payable; and
- (d) the imposition of penalties of fines not exceeding K500.00 or imprisonment for terms not exceeding six months, or both, for offences against the regulations.