

No. 10 of 2010.

*Protection of Transport Infrastructure Act 2010.*

Certified on : 16.05.2011

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No. of 2010.

*Protection of Transport Infrastructure Act 2010.*

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No. of 2010.

AN ACT

entitled

***Protection of Transport Infrastructure Act 2010.***

Being an Act to provide for the protection of transport infrastructure and the land, water and air on or in which transport infrastructure is located and for related purposes,

MADE by the National Parliament to come into effect in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) For the purposes of Section 38 of the *Constitution*, this Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely -

- (a) the right to liberty of the person conferred by Section 42 of the *Constitution*; and
- (b) the right to freedom from arbitrary search of the person or property and entry of premises, conferred by Section 44 of the *Constitution*; and
- (c) the right to freedom of expression and publication, conferred by Section 46 of the *Constitution*; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations and other associations, conferred by Section 47 of the *Constitution*; and
- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required, conferred by Section 48 of the *Constitution*; and
- (f) the right to reasonable privacy in respect of private and family life, communications with other persons and personal papers and effects, conferred by Section 49 of the *Constitution*; and
- (g) the right of reasonable access to official documents, conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in defence, public safety, public order, public welfare and public health, and in order to protect the exercise of the rights and freedoms of others.

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(2) In so far as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution*, the purposes and reasons for such taking and acquisition are declared and described to be -

- (a) to facilitate and maintain the efficient and safe provision of essential transport infrastructure for Papua New Guinea in the national interest; and
- (b) to maintain the peace and good order of Papua New Guinea, and
- (c) a public purpose and a reason that is reasonably justified in a democratic society for the purposes of Section 53 of the *Constitution* and any other applicable law.

(3) For the purpose of the *Organic Law on Provincial and Local-level Governments*, it is declared that this Act relates to a matter of national interest and it is further declared that this Act deals with a matter of urgent national importance and it is in the national interest that this Act is made.

(4) For the purpose of Section 41(6) of the *Organic Law on Provincial and Local-level Governments*, it is declared that this Act is an Act of Parliament on a matter specified in sections 42 and 44 of the Organic Law and prevails over any Provincial or Local-Level Government law to the extent of any inconsistency.

(5) This Act binds the State.

## 2. INTERPRETATION.

In this Act unless the contrary intention appears:-

“family” includes a husband, wife, child, grandchild, brother, sister, parent, grandparent, nephew, niece, brother in law, sister in law and cousin;

“Local – Level Road” means any Local-Level road declared, proclaimed or reserved under any law and any road classified as a Local-Level road by regulation made under the *National Roads Authority Act 2003*;

“National Road” means any national or international road declared, proclaimed or reserved under any law and any road classified as a national road or international road by regulation made under the *National Roads Authority Act 2003*;

“National Roads Authority” means the National Roads Authority established under the *National Roads Authority Act 2003*;

“Provincial Road” means any provincial road declared, proclaimed or reserved under any law or any road classified as a provincial road by regulation made under the *National Roads Authority Act 2003*;

“road” means a highway, street, road, lane, footpath, footway or thoroughfare open to or used by the public, and includes -

- (a) a bridge, culvert, ford and any waterway crossing structure on a road; and

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- (b) a vehicular ferry used as a link between two roads; and
- (c) any building, structure, traffic sign, safety sign, traffic light, road marking or line, illumination light, post, guard rail, other roadside furniture and advertising sign located on a road reserve;

“road reserve” means any land declared, proclaimed or reserved for a road under any law;

“Transport Infrastructure” means any road, road reserve, port, harbour, haven, roadstead, channel or navigable river or creek where a vessel can ship or unship passengers or goods, aerodrome (as defined in Section 3 of the *Civil Aviation Act 2000*, navigation installation as defined in Section 3 of the *Civil Aviation Act 2000*, marine navigational aid as defined in Section 1 of the *Merchant Shipping Act 1975*, any land, water or underwater area on which any Transport Infrastructure is located, and includes -

- (a) any building or structure of any kind located on or within any Transport Infrastructure; and
- (b) the air space above any Transport Infrastructure.

### **PART II. - PROTECTION OF ROAD RESERVE.**

#### **3. APPLICATION OF THIS PART.**

(1) This Part applies to -

- (a) any road reserve provided for in the *Roads (Classification and Standards) Regulation 2010*; and
- (b) any road reserve or road declared, proclaimed or reserved under any National, Provincial or Local - Level Government law before the commencement of this Act.

(2) Where, under this Part, reference is made to a relevant authority, such relevant authority is -

- (a) in the case of a national road, the National Roads Authority or the Secretary of the Department responsible for works matters, or a delegate appointed in writing by the National Roads Authority or the Secretary of the Department responsible for works matters; or
- (b) in the case of a provincial road, the relevant Provincial Administrator, or a delegate appointed in writing by the relevant Provincial Administrator; or
- (c) in the case of a Local-Level Road, the relevant Local-Level Government Administrator, or a delegate appointed in writing by the relevant Local-Level Government Administrator.

#### **4. DAMAGE TO OR ENCROACHMENT ON A ROAD RESERVE.**

(1) A person shall not, without written permission of the relevant authority, intentionally or recklessly or carelessly -

- (a) build, locate, move or occupy any land, building or structure; or

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- (b) dismantle, destroy or alter any land, building or structure; or
  - (c) plant or establish any tree, garden or plant; or
  - (d) remove or destroy any existing tree, garden or plant; or
  - (e) erect, dismantle, destroy, deface, alter or remove any traffic sign, safety sign, survey peg or marker, traffic light, road marking or line, illumination light, post, guard rail, other roadside furniture or advertising sign; or
  - (f) place any obstruction or speed hump or other structure or device designed or intended to impede vehicles or control the speed of vehicles; or
  - (g) place any thing on a road; or
  - (h) excavate, remove, destroy or alter; or
  - (i) block, dismantle, destroy, alter or remove any bridge, drain or culvert; or
  - (j) discharge or spill any matter, liquid or thing,
- on any road or road reserve.

- (2) Any person who contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding 2 years or both.

#### **5. OTHER DAMAGE TO A ROAD RESERVE.**

(1) A person shall not, without the written permission of the relevant authority, deliberately or recklessly or carelessly -

- (a) divert, block or alter any river, stream, creek, drain, water course, lake, reservoir or other body of water so as to cause any blockage, alteration or damage to a road or road reserve or any building or structure located on a road reserve; or
- (b) excavate, alter, remove or deposit any land, soil or rock so as to cause any blockage, alteration or damage to a road or road reserve or any building or structure located on a road reserve.

- (2) Any person who contravenes Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K100,000 or imprisonment for a term not exceeding 2 years or both.

#### **6. REQUIREMENT TO CEASE AND RESTORE.**

(1) Where a person commits an offence under Section 5 or 6, the relevant authority may serve the person with a notice requiring the person to -

- (a) cease any action which constitutes an offence; or
- (b) undo or remove any item or thing referred to in Section 5 or 6 which has been placed or located on a road reserve; or

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(c) restore and make good any damage or alteration to a road reserve or any building or structure located on a road reserve.

(2) A notice under Subsection (1) may include specific requirements for compliance under Subsection (1)(b) and (c).

(3) Any person who, having been served with a notice under Subsection (1), fails to comply with the notice is guilty of an offence.

Penalty: A fine not exceeding K100,000 or imprisonment for a term not exceeding 2 years or both.

(4) A person who commits an offence under Section 5 or 6 may be forcibly prevented from continuing to commit the offence by a member of the Police Force using such reasonable force as is required in the circumstances.

### **PART III. - PROTECTION OF TRANSPORT INFRASTRUCTURE.**

#### **7. TRESPASS, ETC., ON TRANSPORT INFRASTRUCTURE.**

- (1) A person who intentionally or recklessly and without lawful authority -
- (a) enters, occupies or uses transport infrastructure; or
  - (b) refuses to leave transport infrastructure when directed to do so by a person in authority, or apparent authority, of the transport infrastructure,

is guilty of an offence.

Penalty: A fine not exceeding K50,000 or imprisonment for a term not exceeding 1 year or both.

(2) It is not a defence to an offence under Subsection (1) that the act of entry, occupation or use of the transport infrastructure was done under a claim of right.

(3) A person who commits an offence under Subsection (1) may be forcibly ejected from the transport infrastructure by a member of the Police Force using such reasonable force as is required in the circumstances.

#### **8. OBSTRUCTION OF TRANSPORT INFRASTRUCTURE.**

- (1) Any person who intentionally or recklessly and without lawful authority -
- (a) obstructs, hinders or otherwise prevents the lawful entry or departure of any person, vehicle, vessel or aircraft to or from any transport infrastructure; or
  - (b) obstructs, hinders or otherwise prevents any person, vehicle, vessel or aircraft from lawfully using any transport infrastructure,

is guilty of an offence.



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Penalty: A fine not exceeding K50,000 or imprisonment for a term not exceeding 1 year or both.

(2) It is not a defence to an offence under Subsection (1) that the act of obstruction, hindering or prevention was done under a claim of right.

(3) A person who commits an offence under Subsection (1) may be forcibly prevented from continuing to obstruct or hinder by a member of the Police Force using such reasonable force as is required in the circumstances.

#### **9. DAMAGE TO TRANSPORT INFRASTRUCTURE.**

(1) A person who, intentionally or recklessly or carelessly and without lawful Authority, destroys or damages any transport infrastructure is guilty of an offence.

Penalty: A fine not exceeding K1 million or imprisonment for a term not exceeding 10 years, or both.

(2) It is not a defence to an offence under Subsection (1) that the act of destruction or damage was done under a claim of right.

(3) A person who commits an offence under Subsection (1) may be forcibly prevented from continuing to commit the offence by a member of the Police Force using such reasonable force as is required in the circumstances.

#### **PART IV. - OTHER OFFENCES.**

#### **10. DEMANDS FOR COMPENSATION OR OTHER PAYMENT.**

(1) A person who, intentionally and without lawful authority, and with intent to extort or gain any thing, payment or compensation from any person in authority, or any person who has apparent authority, of any transport infrastructure or any person lawfully using any transport infrastructure -

(a) demands the thing, payment or compensation; or

(b) in order to obtain compliance with the demand -

(i) causes or threatens to cause injury to any person or damage any property; or

(ii) commits or threatens to commit any act which is an offence under this Act; or

(iii) does or threatens to do any act which renders, or is likely to render, any transport infrastructure unusable or impassable or less safe for the use of any person; or

(iv) otherwise threatens or intimidates any person,

is guilty of an offence.

Penalty: A fine not exceeding K500,000 or imprisonment for a term not exceeding 5 years or both.

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(2) It is not a defence to an offence under Subsection (1) that the person committing the offence acted under a claim of right.

**11. EXTENDED RESPONSIBILITY FOR FAMILY AND OTHER PERSONS.**

- (1) A person who knowingly fails to take all reasonable action to -
- (a) prevent a member of the person's family or an employee of the person or another person residing on land occupied or owned by the person from committing an offence under this Act; or
  - (b) dissociate himself or herself from the commission of an offence under this Act by a person referred to in Paragraph (a); or
  - (c) mitigate, to the best of the person's lawful ability, the commission of an offence under this Act by a person referred to in Paragraph (a),

is guilty of an offence.

Penalty: A fine not exceeding K50,000 or imprisonment for a term not exceeding 1 year, or both.

(2) It is not a defence to an offence under Subsection (1) that the person committing the offence acted under a claim of right.

**12. ATTEMPTS AND LIKE OFFENCES.**

Any person who -

- (a) attempts to commit an offence under this Act; or
- (b) aids, abets, counsels or otherwise assists another person to commit an offence under this Act; or
- (c) conspires with another person or persons to commit an offence under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K50,000 or imprisonment for a term not exceeding 1 year, or both.

**13. THREAT TO COMMIT AN OFFENCE.**

Any person who makes or otherwise issues a threat to commit an offence under this Act is guilty of an offence.

Penalty: A fine not exceeding K50,000 or a term of imprisonment not exceeding 1 year, or both.

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I certify that the above is a fair print of the *Protection of Transport Infrastructure Act 2010* which has been made by the National Parliament.

Clerk of the National Parliament.

I certify that the above is a fair print of the *Protection of Transport Infrastructure Act 2010* which was made by the National Parliament on 25 November 2010.

Speaker of the National Parliament.

