

# **BOUGAINVILLE MINING ACT 2015**

(Unofficial consolidation – as at 31 December 2016)<sup>1</sup>

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#### SCHEDULE 1 – DEFINITIONS



## **BOUGAINVILLE MINING ACT 2015**

(Unofficial consolidation – as at 31 December 2016)<sup>1</sup>

Being an Act to regulate the law relating to minerals and mining, and for related purposes.

MADE by the House of Representatives, to commence in accordance with Section 1(2).

### **PART 1 — PRELIMINARY**

#### **1 Short title and commencement**

- (1) This is the *Bougainville Mining Act 2015*.
- (2) This Act comes into operation in accordance with a notice from the Minister in the Bougainville Gazette.
- (3) The Minister may, in the notice under Subsection (2), direct that the Mining Registrar must not accept or register an application for a tenement under this Act before a date specified in the notice, and the Mining Registrar must comply with the direction.
- (4) Before the date specified under Subsection (3), the Minister may, by notice in the Bougainville Gazette, specify a different date, before which the Mining Registrar must not accept or register an application for a tenement.

#### **2 Constitutional rights and freedoms**

- (1) For Section 303(2) of the National Constitution and Section 180(3) of the Bougainville Constitution—
  - (a) this Act regulates or restricts the following qualified rights set out in Part III.3.C of the National Constitution—
    - (i) freedom from arbitrary search and entry (Section 44);
    - (ii) freedom of employment (Section 48);
    - (iii) the right to privacy (Section 49);
    - (iv) the right to freedom of information (Section 51); and
  - (b) any such regulation or restriction is, in the considered opinion of the House of Representatives, necessary for the purpose of giving effect to the public interest in—
    - (i) public safety; and
    - (ii) public order; and
    - (iii) public welfare.

- (2) For Section 53(1) of the National Constitution, to the extent that this Act permits possession to be compulsorily taken of property and permits an interest in or right over property to be compulsorily acquired, such property is required for a public purpose, namely mining, exploration for minerals, and other activities ancillary to mining.

### **3 Public purposes**

Mining, exploration for minerals, and other activities ancillary to mining are declared to be public purposes for—

- (a) the Land Act; and
- (b) Section 64(2) of the *Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*.

### **4 Act binds the Autonomous Bougainville Government**

- (1) This Act binds the Autonomous Bougainville Government.
- (2) However, the Autonomous Bougainville Government is not liable for prosecution for an offence under this Act.

### **5 Definitions**

- (1) The table in Schedule 1 contains definitions of certain expressions used in this Act.
- (2) A reference in this Act to an Act of the National Parliament means the referenced Act or a successor Act of the National Parliament but, at such time as the House of Representatives legislates to regulate the corresponding subject matter, means such Bougainville law.
- (3) A reference in this Act to minerals existing on, in or below the surface of land includes minerals contained in water lying on the land.
- (4) The term of a tenement or community mining licence is calculated from, and includes, the date on which it was granted by the granting authority.
- (5) If there is more than 1 person holding a tenement or community mining licence, their obligations in respect of that tenement or licence are joint and several, except if such obligations are, by express provision or necessary implication, several obligations.
- (6) A tenement or community mining licence granted under this Act is not an interest in land for the purposes of the Land Act.

## **PART 2 — APPLICATION**

### **Division 1 — Available land**

#### **6 Land available for tenements**

- (1) Subject to this Act and applicable law, all land in Bougainville is available for reconnaissance, exploration and mining and the grant of tenements over it.
- (2) However, a tenement or community mining licence must not be granted over land—
  - (a) without the approval of the Bougainville Executive Council, if that land—
    - (i) is reserved for public use and infrastructure, such as public cemeteries, roads, schools, hospitals, railways or airports; or
    - (ii) has historical, cultural or an iconic national significance, or forms a part of a special preservation area; or
    - (iii) is identified as having substantial archaeological significance; or
    - (iv) is reserved for a nature habitat or national park, or containing a forest management area; or
    - (v) is situated within 1000 metres of the boundary of a town or city; or
  - (b) without the permission of the landowner or the occupier of that land, if that land is—
    - (i) situated within 500 metres of the boundary of a village having a total population of 200 people or more; or
    - (ii) used for housing estates or buildings, reservoirs, dams or private water reserves for the cultivation of crops or raising of animals.

### **Division 2 — Ownership of minerals and customary rights**

#### **7 Minerals not property of the State of Papua New Guinea**

All minerals existing on, in or below the surface of land in Bougainville ceased to be the property of the State on 8 September 2014, in accordance with Section 12 of the Transitional Mining Act.

#### **8 Property in minerals – customary land**

All minerals existing on, in or below the surface of customary land in Bougainville are the property of the owners of the customary land.

#### **9 Property in minerals – land other than customary land**

- (1) All minerals existing on, in or below the surface of land in Bougainville that is not customary land are the property of the Autonomous Bougainville Government.

- (2) All minerals existing on, in or below the seabed underlying Bougainville waters are the property of the Autonomous Bougainville Government.
- (3) Nothing in this section is to be construed as an acquisition of property by the Autonomous Bougainville Government in relation to Section 53 of the National Constitution.

## **10 Rights of landowners under this Act**

Without limiting the customary rights over minerals of the owners of customary land, landowners have the following rights under this Act—

- (a) owners of customary land may apply to form landowner organisations to represent their interests under Section 35;
- (b) landowners may deny physical entry upon the land the subject of a reconnaissance licence other than under an agreement under Section 91 between the landowners and the holder of the reconnaissance licence;
- (c) landowners who satisfy the qualification criteria under Section 113 can apply for an exploration licence;
- (d) landowners may deny access to land the subject of an exploration licence other than under a land access and compensation agreement under Section 105;
- (e) landowners are entitled to receive the prescribed land access fee for land the subject of an exploration licence;
- (f) a mining lease must not be granted without the prior permission of landowners in accordance with Section 126;
- (g) if an application is made for the grant of a mining lease, a lease for mining purposes or a mining easement over the land, landowners have the right—
  - (i) to be consulted at a Mineral Resources Forum under Section 140; and
  - (ii) to participate in mediation under Section 142;
- (h) landowners have the right to acquire a free equity ownership interest and to buy a working equity ownership interest in mining lease projects located on their lands under Section 41;
- (i) landowners have the right to apply for the grant of an artisanal mining licence on their land under Section 159;
- (j) landowners are entitled to receive landowners' royalty paid by the holders of mining and quarry leases;
- (k) landowners are entitled to participate in employment, training, business and other opportunities arising from large-scale mining leases;
- (l) landowners are entitled to receive annual rent paid by the holders of mining leases, leases for mining purposes, mining easements and quarry leases, under Section 289;



- (m) landowners are entitled to compensation for losses and damages from mining development on their land in accordance with Part 11;
- (n) landowners who must be resettled because of a mining lease operation have the right to participate in a resettlement process in accordance with a resettlement management plan under Section 124.

## **11 Determining customary rights over minerals**

The regulations may prescribe procedures and other matters for determining, in relation to the customary rights over minerals of the owners of customary land—

- (a) whether an individual or a group of individuals is the holder of all or some of those customary rights; and
- (b) the nature of the customary rights so held.

## **12 Resolving disputes by consensus**

So far as practicable, disputes about minerals involving the owners of customary land are to be resolved by consensus.

## **13 Land dispute settlement**

- (1) If a dispute arises as to interests in customary land or the position of boundaries of customary land or coastal areas of benefit such dispute does not affect—
  - (a) the right of a person to make application for and be granted a tenement under this Act; or
  - (b) the validity of a tenement granted under this Act.
- (2) A dispute referred to in Subsection (1) must be settled under—
  - (a) the regulations; or
  - (b) the Land Disputes Settlement Act.

# **Division 3 — Exclusive powers of Autonomous Bougainville Government over minerals**

## **14 Exclusive power to grant tenements**

- (1) The Autonomous Bougainville Government has exclusive power to grant tenements under this Act, because of the multiplicity of landowners' interests mentioned in Subsection (2) that are, or are likely to be, affected directly or indirectly by the grant of a tenement.
- (2) The interests include the interests of the landowners of—
  - (a) the land the subject of a tenement; and
  - (b) the land adjacent to the land mentioned in Paragraph (a); and

- (c) the land that is the subject of, or likely to be the subject of, an application for an associated tenement; and
- (d) other land that can reasonably be expected to experience financial, environmental, social, cultural or other impacts should mining commence.

## **15 Exclusive power to distribute mining revenues**

The Autonomous Bougainville Government has exclusive power to determine the amount, and the manner of distribution, of revenue from mining developments having regard to the following—

- (a) laws imposing taxation on or in relation to minerals or mining developments;
- (b) the outcomes of the Mineral Resources Forums;
- (c) the agreements referred to in Part 5;
- (d) compensation under Part 11 to landowners and approved landowner organisations;
- (e) the distribution of royalties and production levy under Section 291;
- (f) the equity held by landowners and approved landowner organisations in mining developments;
- (g) achieving integrated development, sustainable development and enterprise development by distributing revenue to local government and organisations;
- (h) other prescribed matters.

## **16 Exercise of exclusive powers**

The Autonomous Bougainville Government, in exercising its exclusive powers under Section 14 or 15, must take into account the following—

- (a) the Objectives and Directive Principles set out in Part 3 of the Bougainville Constitution;
- (b) the customary rights of Bougainvilleans, and the common interests, and desire for unity, of all Bougainvilleans;
- (c) the benefits to all Bougainvilleans of undertaking the exploration and development of minerals in a sustainable way so as to avoid or minimise deleterious environmental, social and cultural impacts;
- (d) the need for the gradual and orderly exploration and development of minerals to build and preserve wealth, and maintain a balance between the needs of present and future generations of Bougainvilleans;
- (e) the promotion of equitable development amongst all parts of Bougainville, including less developed areas and areas without minerals so as to avoid or minimise tensions and conflict likely to be associated with significant inequality;

- (f) the need to broaden the economy in Bougainville so as to give employment and other opportunities to as many Bougainvilleans as practicable;
- (g) the need to develop the autonomy of the Autonomous Bougainville Government and for the Autonomous Bougainville Government to achieve fiscal self-reliance;
- (h) the need to develop the capacity of the Autonomous Bougainville Government to regulate exploration and mining;
- (i) the interests and wishes of approved landowner organisations;
- (j) the outcome of a Mineral Resources Forum;
- (k) the outcome of mediation held under Section 142.

## **17 Customary rights do not affect exclusive powers**

To avoid doubt, the exclusive powers of the Autonomous Bougainville Government under Sections 14 and 15 are not affected by customary rights, other than the right—

- (a) to withhold permission to access an exploration licence area; or
- (b) to withhold permission to approve the grant of a mining lease, quarry lease, lease for mining purposes or mining easement.

# **PART 3 — ADMINISTRATION**

## **Division 1 — Secretary**

### **18 Secretary**

- (1) The Secretary has the functions and powers set out in this Act.
- (2) The Secretary may, by instrument in writing, delegate any of the Secretary's functions and powers (except this power of delegation) to an authorised officer.

## **Division 2 — Bougainville Mining Advisory Council**

### **19 Bougainville Mining Advisory Council**

The Bougainville Mining Advisory Council is established.

### **20 Membership**

- (1) The Advisory Council comprises—<sup>2</sup>
  - (a) the Secretary; and
  - (b) 3 authorised officers, appointed by the Secretary, of whom at least 1 must be a woman; and
  - (c) a women's representative, appointed under Section 20A; and

- (ca) a representative of faith-based organisations, appointed under Section 20B; and
  - (cb) a mining engineer, appointed under Section 20C; and
  - (d) the Secretary of the Department of the Bougainville Public Service responsible for treasury matters; and
  - (e) the Principal Legal Adviser; and
  - (f) if a matter before the Advisory Council relates to an area of land –<sup>3</sup> a representative of each community government of a community government area<sup>4</sup> in which that land is situated.
- (2) If it is not possible under Subsection (1)(b) to appoint at least 1 woman from the Department, the Secretary must appoint a woman from another Department of the Bougainville Public Service.
- (3) Before making an appointment under Subsection (1)(b)<sup>5</sup> the Secretary must be satisfied that the person is—
  - (a) is of good character; and
  - (b) is of strong integrity; and
  - (c) is capable of performing the functions of a member of the Advisory Council in a competent and objective manner; and
  - (d) has appropriate qualifications and experience in mining, geology, finance, law, environment, landowner matters, or a related field; and
  - (e) has substantial experience in Bougainville.
- (4) If a member of the Advisory Council, other than the Chair, is unable to attend a meeting of the Advisory Council or otherwise to perform the member's functions, the member, with the consent of the Secretary, may, by notice in writing, appoint a person to act as the member's alternate, and a member's alternate is taken to be a member of the Advisory Council for the duration of the member's disability.
- (5) A member of the Advisory Council vacates office as a member—
  - (a) for a member under Subsection 1(a), 1(d) or 1(e) – if the person ceases to hold the office that qualifies the member as a member; and
  - (b) for a member under Subsection 1(b) – if the person ceases to be an authorised officer; and
  - (c) for a member under Subsection (1)(c), (ca) or (cb) – on the expiration of the member's term of office under Section 20D.<sup>6</sup>

## **20A Appointment of women's representative<sup>7</sup>**

- (1) If a vacancy exists on the Advisory Council for the women's representative, the Secretary must write to the Bougainville Women's Federation, inviting the

Federation to nominate a person to represent the women of Bougainville on the Advisory Council.

- (2) On receipt of a nomination to fill the vacancy, the Secretary must appoint the person to the Advisory Council by notice published in the Bougainville Gazette.
- (3) If the Bougainville Women's Federation does not, within 21 days after having been invited to make a nomination, nominate a person, the Secretary may, by notice published in the Bougainville Gazette, appoint a person to fill the vacancy.
- (4) A person appointed under Subsection (3) is taken to have been appointed under Subsection (2) on the nomination of the Bougainville Women's Federation.
- (5) If the Bougainville Women's Federation is defunct or has been reconstituted or renamed, the Bougainville Executive Council may, by notice published in the Bougainville Gazette, designate an organisation to perform the function of the Bougainville Women's Federation for the purposes of Subsection (1).
- (6) An organisation designated under Subsection (5) must be an organisation that represents the interests of women throughout Bougainville.

#### **20B Appointment of representative of faith-based organisations<sup>7</sup>**

- (1) If a vacancy exists on the Advisory Council for the representative of faith-based organisations, the Secretary must write to the Bougainville Council of Churches, inviting the Council to nominate a person to represent the faith-based organisations of Bougainville on the Advisory Council.
- (2) On receipt of a nomination to fill the vacancy, the Secretary must appoint the person to the Advisory Council by notice published in the Bougainville Gazette.
- (3) If the Bougainville Council of Churches does not, within 21 days after having been invited to make a nomination, nominate a person, the Secretary may, by notice published in the Bougainville Gazette, appoint a person to fill the vacancy.
- (4) A person appointed under Subsection (3) is taken to have been appointed under Subsection (2) on the nomination of the Bougainville Council of Churches.
- (5) If the Bougainville Council of Churches is defunct or has been reconstituted or renamed, the Bougainville Executive Council may, by notice published in the Bougainville Gazette, designate an organisation to perform the function of the Bougainville Council of Churches for the purposes of Subsection (1).
- (6) An organisation designated under Subsection (5) must be an organisation that represents the interests of faith-based organisations throughout Bougainville.

#### **20C Appointment of mining engineer<sup>7</sup>**

- (1) If a vacancy exists on the Advisory Council for the member under Section 20(1)(cb), the Secretary must write to the Institution of Professional Engineers Papua New

Guinea Incorporated, inviting the Institution to nominate a person to be a member of the Advisory Council.

- (2) A person nominated by the Institution must be—
  - (a) a mining engineer, with at least 10 years' experience working in the mining industry in Papua New Guinea; and
  - (b) registered under the *Professional Engineers (Registration) Act* 1986 of the National Parliament; and
  - (c) a Bougainvillean, unless no Bougainvillean meets the requirements of Paragraphs (a) and (b).
- (3) On receipt of a nomination to fill the vacancy, the Secretary must, unless the person does not meet the requirements of Subsection (2), appoint the person to the Advisory Council by notice published in the Bougainville Gazette.
- (4) If the Institution is defunct or has been reconstituted or renamed, the Bougainville Executive Council may, by notice published in the Bougainville Gazette, designate a similar organisation to perform the function of the Institution for the purposes of Subsection (1).
- (5) If the Bougainville Executive Council is satisfied that there exists an organisation that represents the interests of registered engineers in Bougainville, the Council may, by notice published in the Bougainville Gazette, designate that organisation to perform the function of the Institution for the purposes of Subsection (1).

## **20D Term of office<sup>7</sup>**

- (1) A member of the Advisory Council under Section 20(1)(c), (ca) or (cb) holds office for 3 years from the date of appointment, or until—
  - (a) the member dies; or
  - (b) the member resigns by written notice to the Secretary; or
  - (c) for a member under Section 20(1)(cb) – the member ceases to be registered under the *Professional Engineers (Registration) Act* 1986 of the National Parliament; or
  - (d) the member's appointment is revoked by the Secretary under Subsection (2).
- (2) If a member to whom Subsection (1) applies is absent from 3 consecutive meetings of the Advisory Council without the permission of the Secretary, the Secretary may, by notice published in the Bougainville Gazette, revoke the member's appointment.
- (3) A member to whom Subsection (1) applies is eligible for reappointment.

## **21 Chair**

- (1) The Secretary is the Chair of the Advisory Council.

- (2) If the Chair is unable to attend a meeting of the Advisory Council, or otherwise perform the Chair's functions, the Chair must appoint a member of the Advisory Council to act as Chair for the duration of the Chair's disability.

## **22 Executive Officer to the Advisory Council**

- (1) The Secretary must appoint an officer of the Department to be the Executive Officer to the Advisory Council.
- (2) The Executive Officer is—
- (a) responsible for providing administrative support to the Advisory Council; and
  - (b) the secretariat to the Advisory Council.

## **23 Functions of the Advisory Council**

The functions of the Advisory Council are—

- (a) as provided for in this Act; and
- (b) to advise the Minister on matters—
  - (i) referred to the Advisory Council by the Minister; and
  - (ii) relevant to mining and mineral resources in Bougainville, which the Advisory Council considers should be brought to the attention of the Minister, including—
    - (A) sustainable development; and
    - (B) integrated infrastructure development; and
    - (C) enterprise development; and
    - (D) development planning.

## **24 Meetings of the Advisory Council**

- (1) The Advisory Council must meet—
- (a) as often as is necessary to carry out its functions; and
  - (b) at such times and places as the Chair directs.
- (2) At a meeting of the Advisory Council—
- (a) a quorum consists of—
    - (i) the Chair (or acting Chair, appointed under Section 20(4)); and
    - (ii) 6 other members; and<sup>8</sup>
  - (b) the Chair is to preside; and
  - (c) all matters arising are to be decided by consensus, if possible; and

- (d) if consensus on a matter cannot be reached, the matter may be decided by a majority of votes cast by members present, with the Chair having a casting vote; and
  - (e) the Advisory Council is to otherwise determine its own procedures.
- (3) The Executive Officer must keep full and accurate minutes of the Advisory Council's proceedings and decisions.
- (4) Members of the Advisory Council are to be paid a sitting allowance for attending a meeting of the Council, at a rate determined by the Bougainville Executive Council.

## **25 Disclosure of interest**

- (1) If a member has a direct or indirect interest in a matter being considered or about to be considered by the Advisory Council, the member must disclose the nature of the interest at a meeting of the Advisory Council as soon as practicable after the relevant facts come to the member's knowledge.
- (2) The Advisory Council must keep a record of the disclosure.
- (3) The member, while having the interest—
  - (a) must not take part in a deliberation or decision of the Advisory Council about the matter; and
  - (b) does not form part of the quorum of the Advisory Council in a deliberation or decision of the Advisory Council relating to the matter.

## **Division 3 — Bougainville Mining Registrar of Tenements**

### **26 Mining Registrar**

- (1) The Secretary must, by notice in the Bougainville Gazette, appoint an authorised officer to be the Bougainville Mining Registrar of Tenements.
- (2) The functions and powers of the Mining Registrar are as provided for in this Act.
- (3) The Mining Registrar may, by instrument in writing, delegate any of the Mining Registrar's functions and powers (except this power of delegation) to an authorised officer.
- (4) A document that must be lodged for registration under this Act must be lodged with the Mining Registrar, unless otherwise provided.
- (5) It is a function of the Mining Registrar to present each application for the grant of a tenement to the Advisory Council for its consideration and determination.



## **Division 4 — Bougainville Wardens**

### **27 Bougainville Wardens**

- (1) The Secretary, by notice in the Bougainville Gazette,—
  - (a) may appoint appropriately qualified authorised officers to be Bougainville Wardens; and
  - (b) must appoint a Bougainville Warden to be the Bougainville Chief Warden.
- (2) The functions and powers of a Bougainville Warden are as provided for in this Act.
- (3) The functions and powers of the Bougainville Chief Warden are as provided for in this Act, and include—
  - (a) the functions and powers of a Bougainville Warden; and
  - (b) such additional functions as the Secretary may assign.
- (4) The Bougainville Chief Warden may, by instrument in writing, delegate any of the Bougainville Chief Warden's functions and powers (except this power of delegation) to a Bougainville Warden.

## **Division 5 — Bougainville Geological Survey**

### **28 Director of Bougainville Geological Survey**

- (1) The Secretary must, by notice in the Bougainville Gazette, appoint an appropriately qualified authorised officer to be the Director of the Bougainville Geological Survey.
- (2) The functions and powers of the Director of the Bougainville Geological Survey—
  - (a) are as provided for in this Act; and
  - (b) include such additional functions as the Secretary may assign.
- (3) The Director of the Bougainville Geological Survey may, by instrument in writing, delegate any of the Director's functions and powers (except this power of delegation) to an authorised officer.

### **29 Bougainville Geological Survey to carry out geological investigations**

- (1) For the purpose of determining mineral characteristics and undertaking an inventory of mineral occurrences, the Bougainville Geological Survey may
  - (a) promote or carry out systematic geological investigations, studies and mapping of Bougainville; and
  - (b) propose areas to be reserved under Section 47 for the purpose of investigating their mineral potential prior to possible competitive bidding; and

- (c) give advice on geohazards.
- (2) The Director of the Bougainville Geological Survey may authorise an agent to carry out geology-related activity described in Subsection (1)(a) on land in Bougainville.
- (3) An agent authorised under Subsection (2) must not be granted a mining lease in respect of land that the agent has investigated, studied or mapped on behalf of the Bougainville Geological Survey.

### **30 Geological investigation by educational institution**

An educational institution, with the prior written authorisation of the Secretary, given in accordance with the advice of the Director of the Bougainville Geological Survey, may carry out geological investigations, studies and mapping on land that is not closed to such activities by this Act or other law.

### **31 Tenement not required in some cases**

Geological investigations, studies and mapping performed under Sections 29 and 30 do not require a tenement.

## **PART 4 — LANDOWNER MATTERS**

### **Division 1 — Landowner permission**

#### **32 Landowner permission**

- (1) If landowner permission is required for a purpose under this Act, the person required to obtain such permission must obtain, for the land the subject of the requirement, permission for the purpose required from—
  - (a) for customary land—
    - (i) each approved landowner organisation representing the owners of the land; and
    - (ii) each owner of the land not represented by an approved landowner organisation; and
  - (b) for land other than customary land – each landowner of the land.
- (2) However, if land is held in common by more than 1 individual person, it is not necessary to obtain the permission of every individual person having an interest in the land, but permission must be obtained in the manner that is customary for decision-making for the group or groups comprising the landowners of that land.

## Division 2 — Approved landowner organisations

### 33 Definition

In this Division, **owners** means the owners of customary land that—

- (a) is, or is likely to be, the subject of—
  - (i) an application for the grant of a tenement; or
  - (ii) a proposal for the establishment of a community mining licence reserve area; or
  - (iii) a tenement; or
  - (iv) a community mining licence reserve area; or
- (b) is adjacent to land referred to in Paragraph (a); or
- (c) can reasonably be expected to experience environmental or other significant impacts if an application for a tenement or community mining licence is granted.

### 34 Procedure for approval of landowner organisation

- (1) A group of owners may, in such form and manner as are prescribed, apply to the Advisory Council to become an approved landowner organisation.
- (2) The Advisory Council may, of its own motion, propose that a group of owners become an approved landowner organisation.
- (3) The Advisory Council must—
  - (a) give notice of an application or proposal to each community government of a community government area<sup>9</sup> in which the owners' land is located; and
  - (b) cause notice of the application or proposal to be published in—
    - (i) the Bougainville Gazette; and
    - (ii) a newspaper circulating throughout Bougainville; and
  - (c) keep posted, for at least 60 days, notice of the application or proposal—
    - (i) on a public noticeboard at the Department's headquarters; and
    - (ii) on the Department website; and
  - (d) undertake such other measures as the Advisory Council considers necessary to bring notice of the application or proposal to the attention of other landowners who may be affected by the application or proposal.
- (4) A notice under Subsection (2) must—
  - (a) include details of the application or proposal; and
  - (b) invite the public to comment on the application or proposal; and

- (c) specify—
  - (i) the day by which comments must be received by the Advisory Council, which must be at least 60 days after the date on which the notice is first published in the Bougainville Gazette; and
  - (ii) the place to which comments are to be sent.
- (5) The Advisory Council must—
  - (a) be satisfied that—
    - (i) landowner identification studies have been completed in the area where the owners' land is located; and
    - (ii) the results of those studies are reasonably accurate and up to date; and
    - (iii) the proposed membership and structures of the organisation are such that it will be representative of the owners; and
    - (iv) the organisation will be able to perform satisfactorily the functions of an approved landowner organisation under this Act; and
    - (v) the proposed constitution of the organisation—
      - (A) is consistent with democratic principles, including the democratic election of the governing body of the organisation in accordance with a timetable specified in the constitution; and
      - (B) contains governance rules for the organisation consistent with principles of good governance and transparency; and
      - (C) makes provision for the resolution of disputes internal to the operation of the organisation; and
      - (D) makes provision for annual performance and financial audits of the organisation; and
      - (E) requires compliance with and implementation of landowner organisation trust fund account guidelines issued under Section 36(4); and
    - (vi) there is a balance of skills, expertise and gender among members of the governing body of the organisation; and
    - (vii) the organisation satisfies such requirements for registration or incorporation as are prescribed by the regulations or other law; and
  - (b) consider all comments made in response to the invitation for comments under Subsection (4); and
  - (c) prepare a report on the application proposal for the Bougainville Executive Council, which must include—
    - (i) the comments made; and

- (ii) the Advisory Council's views on—
  - (A) the comments; and
  - (B) the application or proposal.

### **35 Establishment of approved landowner organisation**

- (1) The Bougainville Executive Council may, by notice in the Bougainville Gazette, approve the establishment of an approved landowner organisation.
- (2) Before the Bougainville Executive Council approves the establishment of an approved landowner organisation, it must—
  - (a) consider a report prepared by the Advisory Council on the application or proposal under Section 34(5)(c); and
  - (b) give the House of Representatives an opportunity to debate the merits of the application or proposal.
- (3) If the Bougainville Executive Council refuses an application under Section 34, the Bougainville Executive Council must give the landowner organisation written notice of its decision setting out the reasons for its refusal.

### **36 Landowner organisation trust fund account**

- (1) Within 60 days after the establishment of an approved landowner organisation under Section 35, the organisation must establish a landowner organisation trust fund account in its name.
- (2) An amount payable to an approved landowner organisation must be paid into that landowner organisation's trust fund account.
- (3) If the Autonomous Bougainville Government receives from the holder of a tenement or community mining licence an amount to which an approved landowner organisation is entitled, the Government must deposit the amount to the credit of the landowner organisation trust fund account within 60 days after the date on which the amount was received by the Government.
- (4) The Minister may issue landowner organisation trust fund account guidelines that address the following operational matters—
  - (a) who will have authority to access funds held in a trust fund account;
  - (b) financial institutions where trust fund accounts may reside;
  - (c) for what purposes the money in a trust fund account can be used;
  - (d) for what purposes the money in a trust fund account may not be used;
  - (e) what records must be kept and by whom;
  - (f) who may access trust fund account records;
  - (g) detailed auditing requirements;

- (h) procedures that must be followed to avoid abuse of funds;
- (i) rewards for identification of abuse of funds leading to a criminal conviction;
- (j) other matters as the Minister considers fit.

### **37 Landowner organisation reporting requirements**

- (1) An approved landowner organisation must submit an annual report in such form and manner as are prescribed.
- (2) An annual report must include the following information in respect of the period to which the report relates—
  - (a) a summary of the activities of the organisation;
  - (b) a complete table listing in detail all payments, disbursements, reimbursements and other remuneration paid to or on behalf of—
    - (i) a director, officer or representative of the organisation (including that person's name); and
    - (ii) an immediate family member of a director, officer or representative of the organisation (including that person's name); and
    - (iii) a corporate body, all or a substantial part of which is owned by a director, officer or representative of the organisation;
  - (c) copies of the annual performance and financial audits of the organisation;
  - (d) such other information as the organisation wishes to include.
- (3) Copies of an annual report submitted under this section must be accessible by the public at the office of the Mining Registrar.
- (4) A person commits an offence if—
  - (a) the person is a member of the governing body of an approved landowner organisation; and
  - (b) the organisation fails to submit an annual report, in contravention of Subsection (1).

*Penalty:* K50,000.

*Default penalty:* K1000.

### **38 Landowner organisation audit requirements**

- (1) An approved landowner organisation must submit to the Mining Registrar an audit of its accounts if the organisation has—
  - (a) a net book value worth of more than K500,000 at the end of its fiscal year; or
  - (b) income in a fiscal year greater than K500,000.

- (2) An audit report must be—
  - (a) prepared by a professional auditor—
    - (i) of good repute; and
    - (ii) who is not a landowner represented by the organisation; and
  - (b) submitted within 60 days after the end of the fiscal year to which the report relates.
- (3) Copies of an audit report submitted under this section must be accessible by the public at the office of the Mining Registrar.
- (4) A person commits an offence if—
  - (a) the person is a member of the governing body of an approved landowner organisation; and
  - (b) the organisation fails to submit an audit report, in contravention of Subsection (1).

*Penalty:* K50,000.

*Default penalty:* K1000.

### **39 Disestablishment of approved landowner organisation**

- (1) The Bougainville Executive Council, on the recommendation of the Advisory Council, may, by notice in the Bougainville Gazette, disestablish an approved landowner organisation.
- (2) The Advisory Council must not recommend the disestablishment of an organisation unless it is satisfied, on reasonable grounds, that—
  - (a) the organisation has failed to submit—
    - (i) an annual report under Section 37; or
    - (ii) an audit report under Section 38; or
  - (b) there are serious or repeated irregularities in the financial management or governance of the organisation; or
  - (c) there are serious or repeated breaches by the organisation—
    - (i) of the organisation's constitution; or
    - (ii) of this Act.
- (3) Before recommending the disestablishment of an organisation, the Advisory Council must—
  - (a) give to the organisation written notice—
    - (i) informing the organisation that it is considering recommending the disestablishment of the organisation; and

- (ii) setting out the reasons why it is considering taking such action; and
    - (iii) inviting the organisation to make a written submission to the Advisory Council in relation to the matter; and
    - (iv) specifying—
      - (A) the day by which the organisation’s submission must be received by the Advisory Council, which must be at least 30 days after the date of the notice; and
      - (B) the place to which the organisation’s submission is to be sent; and
  - (b) consider the submission from the organisation.
- (4) The Advisory Council must prepare a report on the matter for the Bougainville Executive Council, which must include—
- (a) the submission received from the organisation; and
  - (b) the Advisory Council’s views on the matters raised in the submission.

### **Division 3 — Landowner equity**

#### **40 Landowner equity participation not to affect entitlements**

To avoid doubt, nothing in this Division affects the entitlement of a person to—

- (a) be compensated under Part 11; or
- (b) receive—
  - (i) annual rent under Section 289; and
  - (ii) landowners’ royalty under Section 291.

#### **41 Equity participation of landowners**

- (1) In this section, **applicant** means the applicant for the grant of a mining lease and any associated lease for mining purposes.
- (2) If an application for the grant of a mining lease and any associated application for a lease for mining purposes is registered, landowners of the land the subject of the applications may, under this section—
  - (a) elect to acquire, without cost, a free equity ownership interest in the applicant; and
  - (b) elect to purchase a working equity ownership interest in the applicant.
- (3) The holder of an ownership interest acquired following an election made under Subsection (2)(a) is not responsible for meeting the exploration, development, operating and other costs of the applicant’s mining project.



- (4) The holder of an ownership interest purchased following an election made under Subsection (2)(b) is responsible for meeting the exploration, development, operating and other costs of the applicant's mining project, in proportion to its equity holding.
- (5) An election under Subsection (2)—
  - (a) may be made by—
    - (i) an approved landowner organisation representing the owners of customary land the subject of the applications; and
    - (ii) an owner of—
      - (A) customary land the subject of the applications not represented by an approved landowner organisation; and
      - (B) land the subject of the applications, other than customary land; and
  - (b) must be submitted in writing to the Mining Registrar within 30 days after the date on which the application for the mining lease was registered, after which the Mining Registrar must not accept notice of a purported election.
- (6) An applicant must—
  - (a) make available a 5% free equity ownership interest in the applicant on a free, sustained and non-dilutable, non-contributing equity basis for acquisition by landowners under this section; and
  - (b) make available an additional 5% working equity ownership interest in the applicant for purchase by landowners under this section; and
  - (c) enter into shareholder agreements with those landowners and approved landowner organisations acquiring or purchasing an interest under this section that clearly identify their rights as minority shareholders with regards to when and how profit, dividend and other distributions will be made.
- (7) If more than 1 landowner or approved landowner organisation makes an election under Subsection (2)(a) to acquire an interest in the applicant, the interest made available under Subsection (6)(a) must be allocated amongst those landowners and organisations in proportion to the land area the subject of the applications owned by the landowner or the landowners represented by the organisation.
- (8) If more than 1 landowner or approved landowner organisation makes an election under Subsection (2)(b) to purchase an interest in the applicant, and the total interest sought to be purchased would exceed 5% of the applicant's share capital, the Advisory Council may determine the distribution of the interest made available under Subsection (6)(b) amongst those landowners and organisations.
- (9) An applicant is not prevented by this section from allowing landowners and approved landowner organisations to purchase an aggregate working equity ownership interest in excess of 5% of its share capital.

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- (10) A mining lease or associated lease for mining purposes must not be granted prior to—
- (a) the issue of shares required as a consequence of an election made under Subsection (2)(a); and
  - (b) the execution of shareholder agreements required under Subsection (6)(c).
- (11) A purchase of a working equity ownership interest by a landowner or approved landowner organisation as a consequence of an election made under Subsection (2)(b) must—
- (a) be on commercial terms, based on market value; and
  - (b) be financed by the landowner or organisation through its own arrangements.
- (12) Nothing in this section obliges—
- (a) an applicant, or the holder of a working equity ownership interest in the applicant, to sell a portion of its interest or an interest in another asset; or
  - (b) the Autonomous Bougainville Government to give a guarantee, provide or procure finance or to procure an agreement with the holder of the working equity ownership interest.
- (13) If a landowner or approved landowner organisation has elected to purchase a working equity ownership interest under Subsection (2)(b), but is not able to negotiate the purchase of such ownership interest within 60 days after the date on which the application for the mining lease was registered, the applicant is no longer obligated to make available the ownership interest under Subsection (6)(b) to which the failed purchase relates.
- (14) Subject to a shareholder agreement entered into under Subsection (6)(c), the applicant is free to deal with a working equity ownership interest as it considers fit, in accordance with its constitution and the Companies Act.
- (15) If the holder of a mining lease has allocated an ownership interest to a landowner or approved landowner organisation under this section, it must have on its board at least 1 director nominated by the landowner or organisation holding the largest percentage of its share capital.
- (16) If a dispute arises as to interests in customary land the subject of applications to which this section applies, or as to the position of boundaries of that land, so that it is not possible to identify with confidence all landowners and approved landowner organisations entitled to make an election under Subsection (2), or their respective shares of the land area, the Advisory Council may give such directions with regard to compliance with this section as it considers appropriate.
- (17) A direction under Subsection (16) may provide for a free equity ownership interest made available under Subsection (6)(a) to be vested in a trustee, pending the resolution of the dispute.

## PART 5 — MINING DEVELOPMENT AGREEMENTS

### 42 Autonomous Bougainville Government agreements

- (1) The Autonomous Bougainville Government may enter into such mining development agreements as it considers necessary for the purposes of the exploration or development of minerals.
- (2) A mining development agreement under this section must—
  - (a) not be inconsistent with this Act; and
  - (b) not be entered into without the prior approval of the Bougainville Executive Council; and
  - (c) be available at the office of the Mining Registrar for inspection by the public.
- (3) Nothing in this section authorises the Autonomous Bougainville Government to enter into a special agreement relating to the payment or stabilisation of an applicable tax, royalty, duty, annual rent or fee, or to grant in respect thereof an exemption, moratorium, tax holiday or other concession.
- (4) If this Act confers on the Minister or the Secretary discretion, the Minister or the Secretary must exercise that discretion subject to and in accordance with a relevant stipulation in an agreement made under this section.
- (5) In entering into a mining development agreement, the Autonomous Bougainville Government must have regard to the following, if relevant to the agreement—
  - (a) the outcome of a Mineral Resources Forum;
  - (b) the outcome of mediation;
  - (c) the matters required to be taken into account in exercising the exclusive powers of the Autonomous Bougainville Government under Section 16;
  - (d) compliance with Bougainville laws.

### 43 Approved landowner organisation agreements

- (1) Subject to this Act, an approved landowner organisation may enter into such agreements as it considers necessary for the purposes of the exploration or development of minerals.
- (2) An agreement made under this section must—
  - (a) not be inconsistent with this Act; and
  - (b) not be entered into without the prior approval of the governing body of the approved landowner organisation; and
  - (c) be entered into in accordance with the requirements of the approved landowner organisation's constitution; and
  - (d) be available at the office of the Mining Registrar for inspection by the public.

- (3) In entering into an agreement under this section, the approved landowner organisation must have regard to the following, if relevant to the agreement—
  - (a) the outcome of a Mineral Resources Forum;
  - (b) the outcome of mediation;
  - (c) a decision of the Bougainville Executive Council or the Minister that is relevant to the agreement.
- (4) To avoid doubt, an approved landowner organisation agreement cannot authorise exploration or mining separate from a tenement or community mining licence granted for that purpose under this Act.

#### **44 Register of agreements**

- (1) The Mining Registrar must establish and maintain a Register of agreements entered into under Sections 42 and 43.
- (2) The Register must contain, for each agreement—
  - (a) the names of the parties to the agreement; and
  - (b) the area of land to which the agreement relates; and
  - (c) the date of commencement of the agreement; and
  - (d) a brief description of the subject matter of the agreement; and
  - (e) such other information as the Secretary determines.
- (3) The Register is to be received by all courts as *prima facie* evidence of all matters required or authorised under this Act to be entered in the Register.
- (4) The Mining Registrar is to determine the form of the Register and must keep it up to date.
- (5) The Register must be available for inspection by the public at the office of the Mining Registrar.

#### **45 Content of agreements**

- (1) An agreement under Section 42 or 43 may contain provisions relating to the following—
  - (a) monitoring and evaluation, by reference to international performance standards, of—
    - (i) the implementation of the agreement; and
    - (ii) the compliance by the parties with their obligations under the agreement;
  - (b) review of the agreement by an independent person or body, the frequency of reviews, and the publication of the results of those reviews;

- (c) reporting obligations of the parties to the agreement, and the publication of those reports;
  - (d) resolution of disputes arising out of or relating to the agreement, including provisions relating to the settlement of disputes by mediation or arbitration;
  - (e) acquisition by a party to the agreement, either directly or indirectly, of an interest in a mining project;
  - (f) protection of minority shareholder rights, including the timing and manner of profit distribution, dividends and other payments;
  - (g) agreement of the parties as to the grant of a tenement under this Act;
  - (h) any other matter that the parties to the agreement may consider necessary.
- (2) If a conflict exists between an agreement under Section 42 or 43 and a Bougainville law (including this Act), the law prevails to the extent of the conflict.

## **PART 6 — RESERVE AREAS AND RELATED MATTERS**

### **Division 1 — Geological survey reserve areas**

#### ***Sub-division A — Designation***

#### **46 Proposal for designation of geological survey reserve area**

- (1) The Director of the Bougainville Geological Survey may propose to the Advisory Council an area to be designated as a geological survey reserve area, to allow the Bougainville Geological Survey to further study, evaluate and explore the area's mineral potential for possible competitive bidding purposes.
- (2) A geological survey reserve area must not be proposed over land—
- (a) reserved from exploration or mining, under this Act or other law; or
  - (b) the subject of—
    - (i) an existing tenement; or
    - (ii) a registered application from a landowner-controlled entity for the grant of an exploration licence; or
  - (c) the subject of an existing tenement; or
  - (d) located within a community mining licence reserve area.
- (3) The Advisory Council must—
- (a) give notice of the proposal to—
    - (i) the Mining Registrar; and
    - (ii) each community government of a community government area in which the proposed geological survey reserve area is located<sup>10</sup>; and

- (b) cause notice of the proposal to be published in—
    - (i) the Bougainville Gazette; and
    - (ii) a newspaper circulating throughout Bougainville; and
  - (c) keep posted, for at least 60 days, notice of the proposal—
    - (i) on a public noticeboard at the Department’s headquarters; and
    - (ii) on the Department website; and
  - (d) undertake such other measures as the Advisory Council considers necessary to bring notice of the proposal to the attention of landowners who may be affected by the proposal.
- (4) A notice under Subsection (3) must—
  - (a) include a description or sketch map of the proposed geological survey reserve area, as will enable the area to be correctly located; and
  - (b) invite the public to comment on the proposal; and
  - (c) specify—
    - (i) the day by which comments regarding the proposal must be received by the Advisory Council, which must be at least 60 days after the date on which the notice is first published in the Bougainville Gazette; and
    - (ii) the place to which comments are to be sent.
- (5) The Advisory Council must—
  - (a) consider all comments made in response to the invitation; and
  - (b) prepare a report on the proposal for the Bougainville Executive Council, which must include—
    - (i) the comments made; and
    - (ii) the Advisory Council’s views on—
      - (A) the comments; and
      - (B) the proposal.
- (6) If, at the time notice is given to the Mining Registrar under Subsection (3)(a)(i), there is pending a registered application for a tenement over the area of the proposed geological survey reserve area, other than an application from a landowner-controlled entity for an exploration licence, no further action may be taken with respect to the application until a decision is made by the Bougainville Executive Council regarding the proposal.
- (7) The Mining Registrar must not accept or register an application for a tenement located wholly or partly within a proposed geological survey reserve area until a decision is made by the Bougainville Executive Council regarding the proposal.

**47 Designation of reserve area**

- (1) The Bougainville Executive Council may, by notice in the Bougainville Gazette, designate a geological survey reserve area.
- (2) Before the Bougainville Executive Council designates a geological survey reserve area, it must consider a report prepared by the Advisory Council on the proposal under Section 46(5)(b).
- (3) A geological survey reserve area must not be designated over land—
  - (a) reserved from exploration or mining, under this Act or other law; or
  - (b) the subject of a tenement; or
  - (c) located wholly or partly within a community mining licence reserve area.
- (4) A notice under Subsection (1) must specify—
  - (a) the term of the reservation, which must not exceed 2 years; and
  - (b) the area of land under reservation, by reference to a description of the land in latitude and longitude, which must have the shape of—
    - (i) 1 cadastral block; or
    - (ii) more than 1 cadastral block, each of which must share a common side with at least 1 other cadastral block.
- (5) The Mining Registrar must not accept or register an application for a tenement located wholly or partly within a geological survey reserve area.
- (6) If, at the time a designation under Subsection (1) comes into effect, there is pending a registered application for a tenement over the area of the reservation, other than an application from a landowner-controlled entity for an exploration licence—
  - (a) if the area the subject of the application is located wholly within the area of the reservation – the application is taken to have been refused, and the applicant is to be advised accordingly; or
  - (b) if the area the subject of the application is located partly within the area of the reservation – the application is taken to have been amended to excise from the area the subject of the application that part of the area that is located within the area of the reservation, and the applicant is to be advised accordingly.
- (7) A tenement must not be granted over an area located within a geological survey reserve area other than an exploration licence granted to the winning bidder after a competitive bid process under Section 49.

- (8) If an exploration licence is granted following a bid process under Section 49—
- (a) if the area of the licence is smaller than the area of the geological survey reserve area – the area of the licence is taken to have been excised from the geological survey reserve area in which it is located; or
  - (b) if the area of the licence comprises the entire area of the geological survey reserve area – the reservation is taken to have been revoked.
- (9) If a competitive bid process under Section 49 is commenced with respect to land the subject of a geological survey reserve area before the expiry of the reservation, the term of the reservation is taken to have been extended until—
- (a) the winning bidder's application for an exploration licence is granted or refused; or
  - (b) the bid process is terminated.
- (10) The Bougainville Executive Council may, by notice in the Bougainville Gazette, revoke, in whole or in part, a reservation made under this section.
- (11) Notice of a partial revocation of a reservation under Subsection (10) must specify the area of land remaining under reservation, by reference to a description of the land in latitude and longitude, which must have the shape of—
- (a) 1 cadastral block; or
  - (b) more than 1 cadastral block, each of which must share a common side with at least 1 other cadastral block.

### ***Sub-division B — Competitive bid process***

#### **48 Area available for competitive bidding**

All of a geological survey reserve area is available for competitive bidding under this Sub-division.

#### **49 Competitive bid process**

- (1) The Minister, in accordance with the advice of the Bougainville Executive Council, may, by notice in the Bougainville Gazette, approve a competitive bid process for the purpose of identifying a preferred applicant for an exploration licence over an area that is located within a geological survey reserve area.
- (2) A notice under Subsection (1) must set out the requirements of the bid process, which must include—
- (a) the criteria for determining who is qualified to bid; and
  - (b) a description of the prequalification process; and
  - (c) the amount of—
    - (i) the prequalification application fee; and



- (ii) the bid processing fee; and
    - (iii) the minimum acceptable bonus payment; and
  - (d) the requirement that the winning bidder must be the prequalified bidder who, at a single meeting at which all prequalified bidders are entitled to attend, has pledged the highest bonus payment at the conclusion of 3 rounds of open bidding; and
  - (e) the requirement that representatives of the media must be invited to attend, observe and report on the meeting held under Paragraph (d).
- (3) If the winning bidder will be required to enter into a mining development agreement with the Autonomous Bougainville Government under Section 42—
- (a) a draft mining development agreement must be prepared; and
  - (b) a copy of the draft agreement must be given to each prequalified bidder; and
  - (c) a reasonable time must be given for prequalified bidders to offer comments on the draft mining development agreement; and
  - (d) the Autonomous Bougainville Government must—
    - (i) consider all comments made by prequalified bidders; and
    - (ii) prepare a final mining development agreement; and
    - (iii) give a copy of the final agreement to each prequalified bidder at least 10 days before the meeting held under Subsection (2)(d); and
  - (e) it must be a requirement of the bid process that—
    - (i) the winning bidder must agree to enter into the final mining development agreement, without modification; and
    - (ii) a request from the winning bidder to alter a material provision of the final agreement will result in—
      - (A) the winning bidder being disqualified; and
      - (B) the prequalified bidder that pledged the next highest bonus payment at the meeting held under Subsection (2)(d) being taken to be the winning bidder.
- (4) The winning bidder determined under this section—
- (a) must submit its application for an exploration licence to the Mining Registrar under Section 97 within—
    - (i) 60 days after the date of the meeting held under Subsection (2)(d); or
    - (ii) if it has been appointed the winning bidder under Subsection (7) – 60 days after the date of appointment; and
  - (b) has the right, in priority over all other applicants, to have its application considered and determined.

- (5) Before an exploration licence can be granted to the winning bidder determined under this section, it must comply with the requirements under this Act for the grant of an exploration licence.
- (6) However, the requirement for consultation with community governments<sup>11</sup> under Section 98 is waived with respect to the winning bidder's application for an exploration licence.
- (7) If a winning bidder fails to comply with Subsection (4)(a), or if the bidder advises the Minister in writing that it does not intend to proceed with an application for an exploration licence, the Minister may—
  - (a) revoke the bidder's appointment as the winning bidder; and
  - (b) without undertaking a further bid process, appoint the bidder that pledged the next highest bonus payment to be the winning bidder.

## **50 Bonus payment**

- (1) A bonus payment pledged by the winning bidder identified under this Sub-division is payable when the exploration licence to which the bidding process relates is granted.
- (2) A bonus payment is to be paid in the following shares—
  - (a) 50% to the Autonomous Bougainville Government; and
  - (b) 50% to the landowners of the land subject to the exploration licence, in such form and manner as are prescribed.
- (3) If a bonus payment has not been paid within 30 days after the date on which payment was due, the Secretary must initiate the procedure under Section 284 for cancellation of the exploration licence.

## **51 Termination of bid process**

- (1) The Minister, in accordance with the advice of the Bougainville Executive Council, may, by notice in the Bougainville Gazette, terminate the competitive bid process at any time before a meeting is held under Section 49(2)(d).
- (2) No compensation is payable as a result of the termination of the bid process.
- (3) However, the Autonomous Bougainville Government must refund an amount paid for—
  - (i) a prequalification application fee; or
  - (ii) a bid processing fee.

**52 Interference with competitive bid process**

A person commits an offence if the person interferes with or exerts improper influence on the outcome of a competitive bid process initiated under this Sub-division, other than in accordance with this Act.

*Penalty:* K250,000 and 4 years' imprisonment.

**53 Contracts and Tenders Act does not apply**

The *Autonomous Bougainville Government Contracts and Tenders Act 2014* does not apply to a competitive bid process under this Sub-division.

**Division 2 — Community mining licence reserve areas****54 Proposal for community mining licence reserve area**

- (1) A community government may submit to the Advisory Council a proposal that land areas within its community government area be reserved for the purposes of mining under community mining licences.<sup>12</sup>
- (2) A proposal for the establishment of a community mining licence reserve area must—
  - (a) be in the prescribed form; and
  - (b) include—
    - (i) a schedule in the prescribed form describing the corners of the boundary of the proposed reserve area in latitude and longitude; and
    - (ii) a sketch map showing the boundary of the proposed reserve area and such other natural features and the location of principal villages as will allow the area to be correctly located; and
    - (iii) a proposed management plan, which must—
      - (A) provide for the granting, administration and oversight of community mining licences within the reserve area; and
      - (B) include particulars of the key people who will oversee and implement the plan; and
    - (iv) other information as is prescribed; and
  - (c) be submitted in triplicate, unless submitted electronically; and
  - (d) be accompanied by the prescribed application fee; and
  - (e) comply with—
    - (i) Part 10 Division 2; and
    - (ii) guidelines issued under Subsection (3).

- (3) The Secretary, in accordance with the advice of the Advisory Council, may issue guidelines on the required content of a proposal for the establishment of a community mining licence reserve area, including the content of a management plan for the granting, administration and oversight of community mining licences within the reserve area, and a proposal submitted under this section must comply with the guidelines.

## **55 Approval of management plan**

- (1) In assessing a proposal for the establishment of a community mining licence reserve area, the Advisory Council—
- (a) must consider whether the proposed management plan of the community government<sup>13</sup>—
    - (i) provides an adequate framework for the granting, administration and oversight of community mining licences within the reserve area; and
    - (ii) provides for training programmes regarding the use of mercury and other prescribed chemicals in the recovery of minerals; and
  - (b) may request the community government<sup>14</sup> to provide further information and amend the management plan.
- (2) The Advisory Council may approve a proposed community mining licence reserve area management plan submitted under Section 54(2)(b)(iii).

## **56 Decision on proposal**

- (1) The Bougainville Executive Council, in accordance with the advice of the Advisory Council, may, by notice in the Bougainville Gazette, establish a community mining licence reserve area.
- (2) A community mining licence reserve area must not be established unless the Secretary has confirmed in writing that the community government<sup>15</sup> proposing the reservation (or its appointed representative) has received training under Section 60.
- (3) A community mining licence reserve area must not be established over land—
- (a) reserved from exploration or mining, under this Act or other law, unless the establishment of a community mining licence reserve area is expressly authorised by the notice designating the reservation<sup>16</sup>; or
  - (b) within a geological survey reserve area; or
  - (c) the subject of—
    - (i) an existing tenement, other than a reconnaissance licence, mining easement or channel dredging permit, unless the holder of the tenement has, in writing, and subject to such conditions as it

determines, consented to the inclusion of part or all of its tenement area in the reserve area; or

- (ii) a registered application for the grant of a tenement, other than an application for the grant of a reconnaissance licence, mining easement or channel dredging permit.

(4) A notice under Subsection (1) must specify the extent of the community mining licence reserve area, by reference to a description of the land in latitude and longitude.

(5) More than 1 community mining licence reserve area may be established within the boundaries of a community government area<sup>17</sup>.

#### **57 Term of community mining licence reserve area**

(1) The term of a community mining licence reserve area is for a period not exceeding 5 years, as specified in the notice under Section 56(1), which term commences on the date of publication of the notice.

(2) The term of a community mining licence reserve area cannot be extended, however, in anticipation of the expiry of the term of a reserve area, the community government in whose community government area the reserve area is located<sup>18</sup> may lodge a new proposal with the Advisory Council under Section 54(1) for a community mining licence reserve area covering some or all of the land over which that reserve area was established.

#### **58 No application for tenement over land within reserve area**

(1) The Mining Registrar must not accept or register an application for a tenement if the area to which the application relates is located wholly or partly within a community mining licence reserve area.

(2) However, the holder of community mining licence may, in the form and manner set out in this Act, apply for the grant of a tenement on all or part of the area of the holder's licence and, if the tenement is granted, the community mining licence reserve area is taken to have been disestablished under Section 64 to the extent of the area of the new tenement.

#### **59 Community mining licence reserve area management plan**

(1) Mining activities within a community mining licence reserve area must be managed in accordance with the approved community mining licence reserve area management plan.

(2) An approved community mining licence reserve area management plan may be revised with the approval of the Advisory Council.

(3) A community government<sup>19</sup> may request technical assistance from the Secretary with drafting a management plan or revised management plan.

**60 Training to be given to granting authorities and potential applicants<sup>20</sup>**

- (1) The Department must give training under Subsection (2) to—
  - (a) the granting authority or proposed granting authority (within the meaning of Part 7 Division 1) for community mining licences in the area; and<sup>21</sup>
  - (b) *[Repealed]*
  - (c) potential applicants for community mining licences, if a need for such training is identified by the Secretary.
- (2) Training under this section must include—
  - (a) best-practice procedures for the granting, administration and oversight of community mining licences; and
  - (b) instruction on practices to be followed or avoided when mercury or a prescribed chemical is used to recover minerals; and
  - (c) instruction on mining methods; and
  - (d) other subjects as may be decided by the Secretary.

**61 Community mining licence rules**

- (1) After establishment of a community mining licence reserve area, the community government of a community government area in which the reserve area is located<sup>22</sup> may, in consultation with the Secretary, make rules for the granting and regulation of community mining licences in the area.
- (2) The Secretary may issue guidelines on the required minimum content of community mining licence rules.
- (3) Community mining licence rules made under Subsection (1) must comply with—
  - (a) this Act; and
  - (b) the approved community mining licence reserve area management plan; and
  - (c) guidelines issued under Subsection (2).
- (4) Community mining licence rules may include provision for payment of community mining licence application fees to the relevant granting authority, subject to such upper limit for a community mining licence application fee as is prescribed.
- (5) Community mining licence rules may include provision for offences against the rules, with the maximum penalty on conviction being a fine not exceeding K10,000.
- (6) Community mining licence rules—
  - (a) must be submitted for registration by the Mining Registrar; and
  - (b) enter into force on the date the rules are registered by the Mining Registrar.

- (7) A community government<sup>23</sup> may request technical assistance from the Secretary with drafting community mining licence rules.

## **62 Community government to submit annual report<sup>24</sup>**

- (1) After establishment of a community mining licence reserve area, the community government of the community government area in which the reserve area is located<sup>25</sup> must, by 28 February in each year, give the Secretary a report covering the 12-month period ending on the preceding 31 December, which report must include the following information—
- (a) the number of community mining licences granted;
  - (b) the number of community mining licences revoked, and the reasons for their revocation;
  - (c) the name and contact details of the person responsible for administration of the community mining licence reserve area management plan;
  - (d) how the community mining licence reserve area management plan is working, any problems that have occurred and what steps were or will be taken to address them;
  - (e) the names of all the wards of the community government area, the steering committees of which<sup>26</sup> have been delegated community mining licence granting authority;
  - (f) a description of community mining licence activities in the reserve area.
- (2) Failure by a community government to submit an annual report under Subsection (1) is grounds for—
- (a) suspension of the authority of the community government to grant community mining licences under Section 63(a); or
  - (b) disestablishment of the community mining licence reserve area under Section 64(2).<sup>27</sup>

## **63 Suspension of power to grant licences and revocation of licences**

The Bougainville Executive Council may—

- (a) suspend the power of a community government or delegate of a community government<sup>28</sup> to grant community mining licences; and
- (b) revoke a community mining licence previously granted; and
- (c) revoke all community mining licences granted in a community mining licence reserve area.

**64 Disestablishment of community mining licence reservation area**

- (1) The Advisory Council may, of its own motion or after receipt of a request from a community government<sup>29</sup>, advise the Bougainville Executive Council that all or part of a community mining licence reserve area be disestablished.
- (2) The Bougainville Executive Council, in accordance with the advice of the Advisory Council, may, by notice in the Bougainville Gazette, disestablish, in whole or in part, a community mining licence reserve area established under Section 56.
- (3) The disestablishment of a community mining licence reserve area has effect from the date of the publication of the notice under Subsection (2).
- (4) A notice under Subsection (2) must, if the disestablishment relates only to part of a community mining licence reserve area, specify the extent of the remaining reserve area, by reference to a description of the land in latitude and longitude.
- (5) No compensation is payable as a result of the disestablishment of all or part of a community mining licence reserve area.

**Division 3 — Mining reserve areas****65 Proposal for designation of mining reserve area**

- (1) The Advisory Council may propose that an area be designated as a mining reserve area, reserved from exploration or mining, within which further exploration and mining will be prohibited or restricted<sup>30</sup>.
- (2) The Advisory Council must—
  - (a) give notice of the proposal to—
    - (i) the Mining Registrar; and
    - (ii) each community government of a community government area in which the proposed mining reserve area is located<sup>31</sup>; and
  - (b) cause notice of the proposal to be published in—
    - (i) the Bougainville Gazette; and
    - (ii) a newspaper circulating throughout Bougainville; and
  - (c) keep posted, for at least 60 days, notice of the proposal—
    - (i) on a public noticeboard at the Department's headquarters; and
    - (ii) on the Department website; and
  - (d) undertake such other measures as the Advisory Council considers necessary to bring notice of the proposal to the attention of landowners who may be affected by the proposal.



- (3) A notice under Subsection (2) must—
- (a) include a description or sketch map of the proposed mining reserve area, as will enable the area to be correctly located; and
  - (b) invite the public to comment on the proposal; and
  - (c) specify—
    - (i) the day by which comments regarding the proposal must be received by the Advisory Council, which must be at least 60 days after the date on which the notice is first published in the Bougainville Gazette; and
    - (ii) the place to which comments are to be sent.
- (4) The Advisory Council must—
- (a) consider all comments made in response to the invitation; and
  - (b) prepare a report on the proposal for the Bougainville Executive Council, which must include—
    - (i) the comments made; and
    - (ii) the Advisory Council's views on—
      - (A) the comments; and
      - (B) the proposal.
- (5) The Mining Registrar must not accept or register an application for a tenement located wholly or partly within a proposed mining reserve area until a decision is made by the Bougainville Executive Council regarding the proposal.

## **66 Designation of reserve area**

- (1) The Bougainville Executive Council may, by notice in the Bougainville Gazette, designate a mining reserve area.
- (2) Before the Bougainville Executive Council designates a mining reserve area, it must—
- (a) have regard to the limit on the number of large-scale mining leases under Section 115; and
  - (b) consider a report prepared by the Advisory Council on the proposal under Section 65(4)(b); and
  - (c) give the House of Representatives an opportunity to debate the merits of the proposal.
- (3) A notice under Subsection (1)—
- (a) must specify the area of land under reservation, by reference to a description of the land in latitude and longitude, which must have the shape of—
    - (i) 1 cadastral block; or

- (ii) more than 1 cadastral block, each of which must share a common side with at least 1 other cadastral block; and
- (b) may specify limitations on the extent of the reservation to authorise, over all or part of the land under reservation—
  - (i) the establishment of community mining licence reserve areas; and
  - (ii) the grant of specified classes of tenement.<sup>32</sup>
- (4) A reservation under this section has no effect on—
  - (a) a community mining licence reserve area approved prior to the date on which the reservation comes into effect; or
  - (b) a tenement granted prior to the date on which the reservation comes into effect; or
  - (c) an application for the grant of a tenement registered prior to the date on which the reservation comes into effect; or
  - (d) an application for an extension of the term of a tenement to which Paragraph (b) refers.
- (5) Unless the grant of a tenement of that class is authorised under Subsection (3)(b), the Mining Registrar must not accept or register an application for a tenement located wholly or partly within a mining reserve area.<sup>33</sup>
- (6) With respect to a reservation made under this section, the Bougainville Executive Council may, by notice in the Bougainville Gazette—
  - (a) revoke, in whole or in part, the reservation; or
  - (b) specify limitations on the extent of the reservation to authorise, over all or part of the land under reservation—
    - (i) the establishment of community mining licence reserve areas; and
    - (ii) the grant of a specified class of tenement; or
  - (c) vary the terms of any limitation on the extent of the reservation.<sup>34</sup>
- (7) Before the Bougainville Executive Council takes action under Subsection (6), it must—
  - (a) seek the advice of the Advisory Council regarding the proposed revocation or variation; and<sup>35</sup>
  - (b) give the House of Representatives an opportunity to debate the merits of the proposed revocation or variation.<sup>36</sup>
- (8) A notice under Subsection (6) must specify—
  - (a) the area of land remaining under reservation, by reference to a description of the land in latitude and longitude, which must have the shape of—
    - (i) 1 cadastral block; or

- (ii) more than 1 cadastral block, each of which must share a common side with at least 1 other cadastral block; and
- (b) the terms of any limitation on the extent of the reservation.<sup>37</sup>

#### **Division 4 — Seabed protection areas**

##### **67 Proposal for designation of seabed protection area**

- (1) The Advisory Council may propose that an offshore area be designated as a seabed protection area, reserved from exploration or mining, within which further exploration and mining will be prohibited.
- (2) The Advisory Council must—
  - (a) give notice of the proposal to the Mining Registrar; and
  - (b) cause notice of the proposal to be published in—
    - (i) the Bougainville Gazette; and
    - (ii) a newspaper circulating throughout Bougainville; and
  - (c) keep posted, for at least 60 days, notice of the proposal—
    - (i) on a public noticeboard at the Department’s headquarters; and
    - (ii) on the Department website; and
  - (d) undertake such other measures as the Advisory Council considers necessary to bring notice of the proposal to the attention of customary sea users who may be affected by the proposal.
- (3) A notice under Subsection (2) must—
  - (a) include a description or sketch map of the proposed seabed protection area, as will enable the area to be correctly located; and
  - (b) invite the public to comment on the proposal; and
  - (c) specify—
    - (i) the day by which comments regarding the proposal must be received by the Advisory Council, which must be at least 60 days after the date on which the notice is first published in the Bougainville Gazette; and
    - (ii) the place to which comments are to be sent.
- (4) The Advisory Council must—
  - (a) consider all comments made in response to the invitation; and
  - (b) consider—
    - (i) the need to protect fisheries and ecologically important areas of seabed habitats from offshore mining and related activities; and
    - (ii) the need to maintain access to areas of high mining potential; and

- (iii) the importance of balancing the competing demands of various uses and users of the seabed, including seabed biodiversity conservation, fishing and offshore mining activities.
- (c) prepare a report on the proposal for the Bougainville Executive Council, which must—
  - (i) include the comments made; and
  - (ii) include the Advisory Council's views on—
    - (A) the comments; and
    - (B) the proposal; and
- (5) The Mining Registrar must not accept or register an application for a tenement located wholly or partly within a proposed seabed protection area until a decision is made by the Bougainville Executive Council regarding the proposal.

## **68 Designation of seabed protection area**

- (1) The Bougainville Executive Council may, by notice in the Bougainville Gazette, designate a seabed protection area.
- (2) Before the Bougainville Executive Council designates a seabed protection area, it must—
  - (a) consider a report prepared by the Advisory Council on the proposal under Section 67(4)(c); and
  - (b) give the House of Representatives an opportunity to debate the merits of the proposal.
- (3) A notice under Subsection (1) must specify the offshore area under reservation, by reference to a description of the area in latitude and longitude.
- (4) A reservation under this section has no effect on—
  - (a) a tenement granted prior to the date on which the reservation comes into effect; or
  - (b) an application for the grant of a tenement registered prior to the date on which the reservation comes into effect; or
  - (c) an application for an extension of the term of a tenement to which Paragraph (a) refers.
- (5) The Mining Registrar must not accept or register an application for a tenement located wholly or partly within a seabed protection area.
- (6) The Bougainville Executive Council may, by notice in the Bougainville Gazette, revoke, in whole or in part, a reservation made under this section.

- (7) Before the Bougainville Executive Council takes action under Subsection (6), it must—
- (a) seek the advice of the Advisory Council regarding the proposed revocation; and
  - (b) give the House of Representatives an opportunity to debate the merits of the proposed revocation.
- (8) Notice of a partial revocation of a reservation under Subsection (6) must specify the offshore area remaining under reservation, by reference to a description of the area in latitude and longitude.

### Division 5 — Reservation under other law

#### 69 Exploration and mining on land reserved under another law

- (1) An application for the grant of a tenement or community mining licence over reserved land or land reserved for exclusive use under a law other than this Act may not be granted without the consent of—
- (a) if the other law is a Bougainville law – the Minister responsible for that law; or
  - (b) if the other law is an Act of the National Parliament – the National Minister responsible for that law.
- (2) An applicant for the grant of a tenement or community mining licence over reserved land or land reserved for exclusive use under a law other than this Act must also comply with any requirement under that other law.
- (3) If consent is obtained under Subsection (1), no further consent is required if the tenement is converted to another tenement.

## PART 7 — COMMUNITY MINING LICENCES AND TENEMENTS

### Division 1 — Community mining licences

#### 70 Definitions

In this Sub-division—

- (a) **granting authority** means a community government or delegate of a community government with power under Section 71 to grant<sup>38</sup> community mining licences; and
- (b) **qualified applicant** means an applicant for a community mining licence qualified to hold such a licence under Section 72(1).

**71 Granting authority**

- (1) The community government of the community government area in which an approved community mining licence reserve area is located<sup>39</sup> may grant, suspend or revoke community mining licences over land located within the reserve area.
- (2) If the area of a ward within a community government area includes land subject to a community mining licence reserve area, the community government may, by notice in writing, delegate its power to grant community mining licences with respect to that part of the reserve area to the steering committee of the ward, but only if training has been given to the delegate under Section 60(1)(b).<sup>40</sup>
- (3) A copy of a notice under Subsection (2) must be given to the Secretary.
- (4) *[Repealed]*<sup>41</sup>

**72 Person qualified to hold community mining licence**

- (1) The holder of a community mining licence must be—
  - (a) a Bougainvillean who is a landowner of the land to which the licence relates; or
  - (b) a group of Bougainvilleans, all of whom are landowners of the land to which the licence relates; or
  - (c) an approved landowner organisation that represents the landowners of the land to which the licence relates; or
  - (d) a Bougainvillean who is not a landowner of the land to which the licence relates, but who has obtained the written permission of the landowners of the land; or
  - (e) a group of Bougainvilleans, none of whom, or not all of whom are landowners of the land to which the licence relates, but who have obtained the written permission of the landowners of the land.
- (2) It is a condition of the grant of a community mining licence that the holder of the licence must, at all times, be a person qualified to hold a community mining licence under this section and, if the holder ceases to be a qualified person, the licence must be cancelled.
- (3) To avoid doubt, a community mining licence must not be granted to or held by a person or a group of people who, or an approved landowner organisation that does not comply with Subsection (1).

**73 Application for community mining licence**

- (1) An application for the grant of a community mining licence over a land area within a community mining licence reserve area must—
- (a) be submitted to—
    - (i) the community government of the community government area in which the community mining licence reserve area is located; or<sup>42</sup>
    - (ii) if the land area over which the licence is sought is located wholly within the area of a Village Assembly to which the power to grant community mining licences has been delegated under Section 71(2) – that Village Assembly; and
  - (b) describe the land area over which the licence is sought; and
  - (c) be accompanied by—
    - (i) proof of land ownership or landowner permission for the grant of a community mining licence, in accordance with Subsection (3); and
    - (ii) the applicant’s proposed plan, which must include a description of the proposed mining method and how the environment will be protected; and
    - (iii) a written statement that—
      - (A) the persons who will mine on the community mining licence area are familiar with the dangers inherent in the use of mercury and will take measures to ensure the safe use of mercury and other prescribed chemicals; and
      - (B) the area of land to which the application relates has been marked out; and
    - (iv) if the law requires that the applicant or, if the applicant is a group, 1 of the applicants, be the recipient of a certificate of training in artisanal mining – proof that the applicant, or 1 of the applicants, has received such a certificate.
- (2) An application must comply with—
- (a) community mining licence rules for that community mining licence reserve area; or
  - (b) if no community mining licence rules have been made, such requirements as to manner and form as are required by the community government of the community government area in which the community mining licence reserve area is located<sup>43</sup>.

- (3) The requirement under Subsection (1)(c)(i) must be satisfied by provision of—
- (a) if the applicant is a Bougainvillean who is a landowner of the land – a written declaration to the effect that the applicant—
    - (i) is Bougainvillean; and
    - (ii) is the owner, or an owner of the land to which the application relates; and
    - (iii) unless the applicant is the sole owner of the land – has obtained the permission of—
      - (A) the other owners of the land; or
      - (B) the customary heads of the clan lineage that owns the land; or
  - (b) if the applicant is a group of Bougainvilleans, all of whom are landowners of the land—
    - (i) a list of the names of all members of the group; and
    - (ii) a written declaration to the effect that—
      - (A) each member of the group is Bougainvillean; and
      - (B) each member of the group is an owner of the land to which the application relates; and
      - (C) unless the members of the group are the only owners of the land – the applicant has obtained the permission of—
        - (1) the other owners of the land; or
        - (2) the customary heads of the clan lineage that owns the land; or
  - (c) if the applicant is an approved landowner organisation that represents the landowners of the land—
    - (i) a copy of the organisation’s constitution; and
    - (ii) a written declaration that the organisation represents some or all of the owners of the land to which the application relates; or
  - (d) if the applicant is a Bougainvillean who is not a landowner of the land—
    - (i) a written declaration to the effect that the applicant is Bougainvillean; and
    - (ii) written evidence that the applicant has obtained the permission of—
      - (A) the owners of the land; or
      - (B) the customary heads of the clan lineage that owns the land; or
  - (e) if the applicant is a group of Bougainvilleans, none of whom, or not all of whom are landowners of the land—
    - (i) a list of the names of all members of the group; and



- (ii) a written declaration to the effect that each member of the group is Bougainvillean; and
- (iii) written evidence that the applicant has obtained the permission of—
  - (A) the owners of the land; or
  - (B) the customary heads of the clan lineage that owns the land.

#### **74 Proposed plans for community mining licence**

- (1) In assessing an application for a community mining licence, a granting authority must consider whether the proposed plans and any associated tribute agreement are appropriate given the circumstances, and may request the applicant to provide further information or amend the application or the proposed plans.
- (2) Community mining licence rules may contain guidelines on the required content of proposed plans for a community mining licence in a community mining licence reserve area, and proposed plans submitted under this Sub-division must comply with the guidelines.
- (3) If a granting authority is satisfied that an applicant's proposed plans (or amended proposed plans) comply with the requirements of this Act, and are appropriate for the applicant's proposed operations, the granting authority may approve the proposed plans (or amended proposed plans) as approved plans.

#### **75 Grant of community mining licence**

- (1) On the application of a qualified applicant, if the granting authority is satisfied that the application complies with this Act it may grant to the applicant a community mining licence.
- (2) A community mining licence can be granted only in respect of land located within the boundaries of an approved community mining licence reserve area.
- (3) A community mining licence—
  - (a) must be in the prescribed form; and
  - (b) must require, as a condition of the licence, that the holder—
    - (i) comply with the plans approved by the granting authority; and
    - (ii) keep a copy of the licence at the mine site whenever mining is taking place; and
    - (iii) use only non-mechanised mining methods; and
    - (iv) use safe practices whenever mercury or a prescribed chemical is used to recover minerals; and
    - (v) not employ or use child labour; and
    - (vi) not mine deeper than 5 metres below the natural surface of the ground; and

- (vii) not use explosives; and
  - (viii) not discharge water from a sluice, pump or other equipment except into a holding pond, settlement dam or similar structure or apparatus designed to protect a waterway from the discharge of silt, solids and other suspended matter; and
  - (ix) keep the licence area free of alcohol and illicit drugs and ensure that miners are not in any way intoxicated while at the mine site; and
- (c) may include such other conditions as the granting authority determines.
- (4) Despite Section 72, mining under a community mining licence may be carried on—
  - (a) jointly by the holder of the licence with 1 or more persons who are not landowners of the licence area, whether or not in partnership, in accordance with a tribute agreement; or
  - (b) by a body corporate formed by the holder of the licence and 1 or more persons who are not Bougainvilleans for the purpose of enabling those persons to carry on that activity jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate.
- (5) If a community mining licence is granted, the granting authority must—
  - (a) issue a copy of the licence to the licence holder; and
  - (b) give a copy of the licence to the Mining Registrar.

## **76 Term of community mining licence**

- (1) A community mining licence may—
  - (a) be granted for a term not exceeding 1 year; and
  - (b) may be renewed for a further term not exceeding 1 year.
- (2) The term of a community mining licence must not extend beyond the term of the community mining licence reserve area within which the licence area is located.
- (3) If all or part of a community mining licence reserve area is disestablished under Section 64(2), a community mining licence previously granted within the disestablished area is taken to have been terminated with effect from the date of the publication of the disestablishment notice.

## **77 Area and shape of community mining licence**

- (1) The area of land in respect of which a community mining licence is granted may have such size and shape as is approved by the granting authority.
- (2) To avoid doubt, the shape of a community mining licence need not conform to cadastral blocks, and may be aligned with customary ownership boundaries or other boundaries approved by the granting authority.

**78 Permissible depth**

- (1) A community mining licence may only be granted to a depth which is consistent with the safe conduct of the mining development described in the approved plans, and the depth must be specified on the licence, but in all cases must not exceed 5 metres below the natural surface of the ground.
- (2) A community mining licence that purports to convey the right to mine deeper than 5 metres below the natural surface of the ground is null and void.

**79 Marking out of community mining licence area**

- (1) The holder of a community mining licence must mark out the area of the licence with markers measuring at least 1.2 metres vertically from the surface of the ground, with each marker visible from its 2 adjacent markers.
- (2) The holder of a community mining licence must at all times maintain visible markers marking out the boundaries of the licence area.
- (3) Failure to comply with this section is grounds for revocation of a community mining licence by the granting authority.

**80 Rights conferred by community mining licence**

- (1) A community mining licence authorises the holder, in accordance with this Act, the Mining (Safety) Act, the Environment Act, and conditions to which it is subject, to—
  - (a) enter and occupy the land for the purpose of mining minerals located on that land and carry on such operations and undertake such works as may be necessary or expedient for that purpose and for the purpose of treating those minerals; and
  - (b) use non-mechanised mining methods to take and remove rock, earth, soil and minerals from that land, with or without treatment; and
  - (c) take and divert water situated on or flowing through such land and use it for a purpose necessary for the holder's mining or treatment activities subject to and in accordance with the Mining (Safety) Act, Water Resources Act and Environment Act; and
  - (d) do all things necessary or expedient for the undertaking of mining or treatment operations on that land.
- (2) However, the exercise of these rights by the holder of a community mining licence is subject to—
  - (a) a restriction imposed under a law; and
  - (b) the community mining rules applicable to the community mining licence reserve area.

**81 Variation of approved plans**

- (1) The holder of a community mining licence may apply to the granting authority for a variation of its approved plans.
- (2) The granting authority may—
  - (a) require the applicant to provide further information or to amend revised proposed plans submitted with the application; or
  - (b) approve the variation which approval—
    - (i) must be substituted for the previously approved plans; and
    - (ii) may include such other conditions the granting authority may consider necessary; or
  - (c) refuse the variation.

**82 Suspension and revocation of a community mining licence**

- (1) A granting authority may suspend or revoke a community mining licence granted by it if the holder of the licence—
  - (a) contravenes a community mining licence rule for the community mining licence reserve area; or
  - (b) fails to comply with a condition of the licence.
- (2) A granting authority may suspend a community mining licence granted by it and require the miners operating under that licence to undertake training or additional training in—
  - (a) the safe use of mercury or other prescribed chemicals; or
  - (b) safe mining methods; or
  - (c) good environmental practices; or
  - (d) any other matter.

**83 No transfer of community mining licence**

A community mining licence cannot be transferred.

**Division 2 — Reconnaissance licences****84 Person qualified to hold reconnaissance licence**

- (1) To be qualified to hold a reconnaissance licence, a person must—
  - (a) be a corporate body—
    - (i) incorporated under the Companies Act; or
    - (ii) registered as an overseas company under the Companies Act; and

- (b) have the technical competence and financial ability to fulfil all obligations under the reconnaissance licence; and
  - (c) be a fit and proper person to hold a reconnaissance licence.
- (2) It is a condition of the grant of a reconnaissance licence that the holder of the licence must, at all times, be a person qualified to hold a reconnaissance licence under this section and, if the holder ceases to be a qualified person, the Secretary must initiate the procedure under Section 284 for cancellation of the licence.

## **85 Application for reconnaissance licence**

- (1) An application for the grant of a reconnaissance licence must—
  - (a) be in the prescribed form; and
  - (b) include—
    - (i) a schedule in the prescribed form describing the corners of the boundary of the area of the proposed reconnaissance licence in latitude and longitude; and
    - (ii) a sketch map showing the boundary of the area of the proposed reconnaissance licence and such other natural features as will allow the area to be correctly located; and
    - (iii) a copy of the applicant's certificate of incorporation or registration issued under the Companies Act; and
    - (iv) a proposed reconnaissance work programme, containing such information as is prescribed; and
    - (v) a statement giving particulars of the technical and financial resources available to the applicant; and
  - (c) be submitted in triplicate, unless submitted electronically; and
  - (d) be accompanied by the prescribed application fee; and
  - (e) comply with Part 10 Division 2.
- (2) An application for the grant of a reconnaissance licence must not be accepted or approved if—
  - (a) the applicant has previously held a reconnaissance licence; and
  - (b) the area of the previous reconnaissance licence is wholly or partly within the area to which the application relates; and
  - (c) the application was submitted within 2 years after the date on which the previous reconnaissance licence expired or was cancelled.

**86 Proposed reconnaissance work programme**

- (1) The Advisory Council, in assessing an application for the grant of a reconnaissance licence—
  - (a) must consider whether the applicant’s proposed reconnaissance work programme—
    - (i) provides for a substantial increase in the acquisition and interpretation of reconnaissance data from the area of the reconnaissance licence; and
    - (ii) meets all prescribed content requirements; and
  - (b) may request the applicant to provide further information and amend the application or reconnaissance work programme.
- (2) The Advisory Council may approve a proposed reconnaissance work programme.

**87 Decision on application**

- (1) On the application of a person who satisfies the qualification criteria under Section 84, the Minister, in accordance with the advice of the Advisory Council, may grant or refuse to grant a reconnaissance licence.
- (2) A decision by the Minister under Subsection (1) must be made within 30 days after the date of the advice from the Advisory Council.
- (3) The Minister may, within the 30-day period under Subsection (2), direct the Advisory Council to reconsider its advice, and in doing so the Minister—
  - (a) must state the Minister’s reasons for directing the Advisory Council to reconsider its advice; and
  - (b) may give to the Advisory Council such other directions as the Minister considers appropriate, which—
    - (i) may include a direction that the Advisory Council—
      - (A) consider a matter not previously considered by the Advisory Council; and
      - (B) reconsider a matter in more detail; and
    - (ii) must not include a direction that the Advisory Council consider a matter not relevant to a consideration of an application under this Act.
- (4) In reconsidering any matter referred back to it under Subsection (3), the Advisory Council must have regard to—
  - (a) the Minister’s directions; and
  - (b) the Minister’s reasons for directing the Advisory Council to reconsider its advice.

- (5) A reconnaissance licence—
- (a) must be in the prescribed form; and
  - (b) must require that, as a condition of the reconnaissance licence, the holder—
    - (i) comply with the approved reconnaissance work programme; and
    - (ii) submit copies of all raw data from the reconnaissance work programme to the Department; and
  - (c) may include such other conditions as the Minister, in accordance with the advice of the Advisory Council, determines.
- (6) A refusal to grant a reconnaissance licence must—
- (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

## **88 Term of reconnaissance licence**

A reconnaissance licence may be granted for a term not exceeding 2 years, and cannot be extended.

## **89 Area and shape of reconnaissance licence**

The area in respect of which a reconnaissance licence may be granted must—

- (a) not exceed—
- (i) 1000 square kilometres of onshore area; or
  - (ii) 10,000 square kilometres of offshore area; or
  - (iii) 10,000 square kilometres of onshore and offshore area, of which no more than 1000 square kilometres is onshore area; and
- (b) have the shape of—
- (i) 1 cadastral block; or
  - (ii) more than 1 cadastral block, each of which must share a common side with at least 1 other cadastral block.

## **90 Rights conferred by reconnaissance licence**

- (1) A reconnaissance licence authorises its holder, in accordance with its approved reconnaissance work programme and the conditions to which the licence is subject, to—
- (a) use remote sensing to gather data and useful information to understand the licence area's geological, environmental and geographical attributes; and
  - (b) fly over the reconnaissance licence area; and

- (c) enter upon the land in the licence area for the purpose of carrying out reconnaissance on that land, subject to first obtaining permission of the landowners; and
  - (d) take and remove specimens and samples from the licence area not exceeding such limit as is reasonably required for reconnaissance and to analyse such specimens; and
  - (e) erect camps and temporary buildings, including installations in a water-forming part of the area; and
  - (f) remove camps, temporary buildings or installations erected by the holder; and
  - (g) do all other things necessary or expedient for the undertaking of reconnaissance on the land.
- (2) The erection of a camp or temporary building under Subsection (1)(e) cannot confer any right, title or interest in the land on which the camp or building is constructed.
- (3) The holder of a reconnaissance licence is not entitled to the exclusive occupancy for reconnaissance purposes of land the subject of the reconnaissance licence.

#### **91 Landowner permission required to enter upon reconnaissance licence area**

- (1) Before entering upon land the subject of a reconnaissance licence, the holder of the licence must obtain landowner permission.
- (2) To avoid doubt, permission to enter upon land is only required for that part or parts of the area of the reconnaissance licence where the holder of the licence intends to enter upon the land.

#### **92 No limit on the number of reconnaissance licences held**

There is no limit to the number of reconnaissance licences that may be held by a person.

#### **93 Effects of application for and grant of tenement over licence area**

- (1) If the holder of a reconnaissance licence applies for the grant of a tenement of a different type over land or part of land the subject of the licence, the rights and obligations of the holder of the licence are not affected until such time as the application is determined.
- (2) If a community mining licence, exploration licence, mining lease, quarry lease, artisanal mining licence, lease for mining purposes or mining easement is granted over land or part of land the subject of a reconnaissance licence, the area of land the subject of the new licence, lease or easement is excised from the area of the reconnaissance licence, and all rights under the reconnaissance licence cease to have effect with respect to the excised land.



- (3) If a community mining licence, exploration licence, mining lease, quarry lease, artisanal mining licence, lease for mining purposes or mining easement to which Subsection (2) refers expires, or is surrendered or cancelled, land excised from the area of a reconnaissance licence reverts to that reconnaissance licence.

#### **94 Reporting requirements in respect of reconnaissance licence**

- (1) The holder of a reconnaissance licence must submit a reconnaissance licence summary report to the Mining Registrar.
- (2) A reconnaissance licence summary report must—
- (a) be submitted—
    - (i) no later than 60 days after the date of expiry, surrender or cancellation of the reconnaissance licence; and
    - (ii) in such form as is prescribed; and
  - (b) include such information and be organised as is prescribed.
- (3) Except with the consent of the holder of the licence to which the reconnaissance licence summary report relates, and subject to such conditions as the holder may specify in writing to the Secretary, until 90 days after the date of expiry, surrender or cancellation of the licence—
- (a) a summary report must not be made available to a person outside the Department; and
  - (b) the contents of a summary report must not be revealed except to the extent necessary—
    - (i) to publish statistical information concerning the geology and mineral resources of Bougainville; or
    - (ii) for the Secretary to give advice to the Bougainville Executive Council on a confidential basis.
- (4) After the expiry of the 90-day period referred to in Subsection (3), a reconnaissance licence summary report must be accessible by the public at the office of the Mining Registrar.

#### **95 Unlawful reconnaissance**

A person commits an offence if the person carries out reconnaissance in Bougainville other than in accordance with a valid reconnaissance licence.

*Penalty:* In the case of—

- (a) an individual – K50,000; or
- (b) a corporate body – K100,000.

### **Division 3 — Exploration licences**

#### **96 Person qualified to hold exploration licence**

- (1) To be qualified to hold an exploration licence, a person must—
  - (a) be a corporate body—
    - (i) incorporated under the Companies Act; or
    - (ii) registered as an overseas company under the Companies Act; and
  - (b) have the technical competence and financial ability to fulfil all obligations under the exploration licence; and
  - (c) be a fit and proper person to hold an exploration licence.
- (2) Section 113 provides additional criteria that must be met by a landowner-controlled entity.
- (3) It is a condition of the grant of an exploration licence that the holder of the licence must, at all times, be a person qualified to hold an exploration licence under this section and, if the holder ceases to be a qualified person, the Secretary must initiate the procedure under Section 284 for cancellation of the licence.

#### **97 Application for exploration licence**

- (1) An application for the grant of an exploration licence must—
  - (a) be in the prescribed form; and
  - (b) include—
    - (i) a schedule in the prescribed form describing the corners of the boundary of the area of the proposed exploration licence in latitude and longitude; and
    - (ii) a sketch map showing the boundary of the area of the proposed exploration licence, such other natural features and the location of principal villages, as will allow the area to be correctly located; and
    - (iii) a copy of the applicant's certificate of incorporation or registration under the Companies Act; and
    - (iv) a proposed exploration work programme in the prescribed form; and
    - (v) a statement giving particulars of the technical and financial resources available to the applicant; and
  - (c) be submitted in triplicate, unless submitted electronically; and
  - (d) be accompanied by the prescribed application fee; and
  - (e) comply with Part 10 Division 2.

- (2) An application for the grant of an exploration licence must not be accepted or approved if—
  - (a) the applicant has previously held an exploration licence; and
  - (b) the area of the previous exploration licence is wholly or partly within the area to which the application relates; and
  - (c) the application was submitted within 2 years after the date on which the previous exploration licence was cancelled.
- (3) An application for the grant of an exploration licence must not be accepted or approved if—
  - (a) all or part of the area to which the application relates has previously been the subject of an exploration licence; and
  - (b) the application was submitted within 30 days after the date on which—
    - (i) the previous exploration licence expired, or was surrendered or cancelled; or
    - (ii) the area ceased to be part of the previous exploration licence as a consequence of the surrender or relinquishment of the area.

## **98 Consultation prior to consideration of application for exploration licence**

- (1) On receipt of an application for the grant of an exploration licence, the Mining Registrar must—
  - (a) give notice of the application to each community government of a community government area in which the area of the proposed exploration licence is located<sup>44</sup>; and
  - (b) invite each community government<sup>45</sup> to submit comments regarding the application to the Mining Registrar; and
  - (c) specify the day by which comments regarding the application must be received by the Mining Registrar, which must be at least 30 days after the date of the notice.
- (2) The Advisory Council, in assessing the application, must take into account all comments received from community governments<sup>46</sup> in response to an invitation under Subsection (1).

## **99 Proposed exploration work programme**

- (1) The Advisory Council, in assessing an application for the grant of an exploration licence—
  - (a) must consider whether the applicant's proposed exploration work programme—
    - (i) makes provision for a substantial increase in the acquisition and interpretation of exploration data from the area of the exploration

- licence, or the conduct of related laboratory or prefeasibility or feasibility work; and
  - (ii) meets the prescribed minimum expenditure requirements; and
  - (iii) gives a detailed description of the exploration activities for at least the first year, and a general description of the activities for the remaining years of the licence; and
  - (iv) demonstrates that the applicant has the technical and financial resources available to effectively carry out the programme and meet the minimum expenditure requirements; and
  - (b) may request the applicant to provide further information and amend the application or the proposed exploration work programme.
- (2) A proposed exploration work programme may include—
- (a) measures for the maintenance of harmonious relations with landowners of the land the subject of the application; and
  - (b) strategies for the maintenance of airstrips, helipads, buildings and services established in the course of exploration on the land the subject of the application; and
  - (c) a review of the feasibility of commencing mining operations; and
  - (d) other prescribed activities.
- (3) The Secretary, after consultation with the Advisory Council, may issue guidelines on the required content of an exploration work programme, and a proposed programme must comply with the guidelines.
- (4) The Advisory Council may approve the applicant's exploration work programme if it is satisfied that—
- (a) the applicant has complied with a request under Subsection (1)(b); and
  - (b) the applicant's proposed exploration work programme—
    - (i) addresses the matters referred to in Subsection (1)(a); and
    - (ii) complies with the requirements of the Secretary's guidelines under Subsection (3).
- (5) However, the Advisory Council may approve an exploration work programme, despite not being satisfied as required under Subsection (4), if—
- (a) the applicant has located a mineral deposit, the reserves of which have been estimated according to a standard and method acceptable to the Secretary; and

- (b) the Advisory Council is reasonably satisfied that the applicant—
  - (i) has progressed exploration in the area as far as is practicable at the time and therefore does not intend to undertake further substantive exploration activities; and
  - (ii) the applicant cannot reasonably mine the deposit at that time for any of the following reasons—
    - (A) the deposit is not capable of being developed at current market prices, utilising proven technology or with financing on commercial terms that reflect current market conditions for other mining projects;
    - (B) the deposit is required to sustain future operations of an existing or proposed mining operation at another location;
    - (C) difficulties in obtaining requisite government approvals prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable.

## **100 Decision on application**

- (1) On the application of a person who satisfies the qualification criteria under Section 96, the Bougainville Executive Council, in accordance with the advice of Advisory Council, may grant or refuse to grant an exploration licence.
- (2) A decision by the Bougainville Executive Council under Subsection (1) must be made within 30 days after the date of the advice from the Advisory Council.
- (3) The Bougainville Executive Council may, within the 30-day period under Subsection (2), direct the Advisory Council to reconsider its advice, and in doing so the Bougainville Executive Council—
  - (a) must state its reasons for directing the Advisory Council to reconsider its advice; and
  - (b) may give to the Advisory Council such other directions as the Bougainville Executive Council considers appropriate, which—
    - (i) may include a direction that the Advisory Council—
      - (A) consider a matter not previously considered by the Advisory Council; and
      - (B) reconsider a matter in more detail; and
    - (ii) must not include a direction that the Advisory Council consider a matter not relevant to a consideration of an application under this Act.
- (4) In reconsidering any matter referred back to it under Subsection (3), the Advisory Council must have regard to—
  - (a) the directions of the Bougainville Executive Council; and

- (b) the reasons given by the Bougainville Executive Council for directing the Advisory Council to reconsider its advice.
- (5) An exploration licence—
  - (a) must be in the prescribed form; and
  - (b) must require that, as a condition of the exploration licence, the holder—
    - (i) comply with the approved exploration work programme; and
    - (ii) submit copies of all raw data from the exploration work programme to the Department; and
  - (c) may include such other conditions as the Bougainville Executive Council, in accordance with the advice of the Advisory Council, determines.
- (6) A refusal to grant an exploration licence must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

#### **101 Term of exploration licence**

- (1) An exploration licence may be granted for a term not exceeding 5 years, which may be extended any number of times under Section 109.
- (2) Each extension of the term of an exploration licence must not exceed 5 years.
- (3) If the holder of an exploration licence has submitted, at least 60 days before the date on which the licence is to expire, an application for extension of the term of the licence under Section 109, the term of the licence is taken to have been extended until the application is either granted or refused.
- (4) The term of an exploration licence taken to have been extended under Section 115(2)(c) is not subject to a term limit or extension requirement.

#### **102 Area and shape of exploration licence**

- (1) The area in respect of which an exploration licence may be granted must—
  - (a) not exceed—
    - (i) 1000 square kilometres of onshore area; or
    - (ii) 5000 square kilometres of offshore area; or
    - (iii) 5000 square kilometres of onshore and offshore area, of which no more than 1000 square kilometres is onshore area; and
  - (b) consist of 1 area having the shape of—
    - (i) 1 cadastral block; or
    - (ii) more than 1 cadastral block, each of which has a common side with at least 1 other cadastral block.

- (2) If the area of another tenement or community mining licence granted prior to the date on which an exploration licence is granted overlaps the area of the exploration licence, the area of the other tenement or licence is taken to have been excised from the exploration licence area.

### **103 Rights conferred by exploration licence**

- (1) An exploration licence authorises the holder, in accordance with its approved exploration work programme and the conditions to which it is subject, to—
- (a) subject to an approved exploration licence land access and compensation agreement under Section 105 – enter and occupy land the subject of the licence for the purpose of carrying out exploration for minerals on that land in accordance with the holder’s approved exploration work programme; and
  - (b) extract, remove and dispose of such quantity of rock, earth, soil or minerals as may be permitted under the approved exploration work programme; and
  - (c) take and divert water situated on or flowing through such land and use it for a purpose necessary for the holder’s exploration activities, subject to and in accordance with the Water Resources Act and Environment Act; and
  - (d) do all other things necessary or expedient for the undertaking of exploration on the land.
- (2) Subject to Sections 305 and 368, the holder of an exploration licence is entitled to the exclusive occupancy for exploration purposes of the land in respect of which the exploration licence was granted.
- (3) The holder of an exploration licence has the exclusive right to apply for a mining lease or quarry lease over land for which the exploration licence was granted.

### **104 Obligations of holder of exploration licence**

- (1) The holder of an exploration licence must—
- (a) substantially implement its approved exploration work programme; and
  - (b) do all things required by this Act of a holder of an exploration licence; and
  - (c) pay compensation for damages caused by its work; and
  - (d) fulfil all exploration licence holder obligations as are prescribed.
- (2) If the holder of an exploration licence fails to comply with Subsection (1), the Secretary must initiate the procedure under Section 284 for cancellation of the exploration licence.

### **105 Exploration licence land access and compensation agreement**

- (1) Before entering upon and disturbing land the subject of an exploration licence, the holder of the licence must—
- (a) obtain landowner permission; and

- (b) enter into an exploration licence land access and compensation agreement with respect to the land.
- (2) An exploration licence land access and compensation agreement must—
  - (a) be in the prescribed form; and
  - (b) be entered into between—
    - (i) the holder of the exploration licence; and
    - (ii) for customary land—
      - (A) each approved landowner organisation representing the owners of the land; and
      - (B) each owner of the land not represented by an approved landowner organisation; and
    - (iii) for land other than customary land – each landowner of the land; and
  - (c) provide that the agreement enters into force on registration by the Bougainville Chief Warden; and
  - (d) provide for payment by the holder of the licence of—
    - (i) a land access fee at such rate as is prescribed; and
    - (ii) compensation in respect of such of the holder’s activities that cause damage, at such rates—
      - (A) as are prescribed; or
      - (B) if no rate of compensation is prescribed for an activity – as are agreed; and
  - (e) comply with such other requirements as are prescribed; and
  - (f) once the agreement has been executed by the parties – be submitted to the Bougainville Chief Warden for review and registration.
- (3) The Bougainville Chief Warden must—
  - (a) review an exploration licence land access and compensation agreement submitted under Subsection (2)(f); and
  - (b) determine whether the agreement substantially complies with Subsection (2).
- (4) The Bougainville Chief Warden must, within 14 days after an exploration licence land access and compensation agreement is submitted under Subsection (2)(f)—
  - (a) if the agreement substantially complies with Subsection (2)—
    - (i) register the agreement; and
    - (ii) give notice to the parties of the registration of the agreement; or



- (b) otherwise—
    - (i) refuse to register the agreement; and
    - (ii) give notice to the parties of the reasons for the refusal.
- (5) If there are multiple landowners or approved landowner organisations, the holder of an exploration licence must enter into such number of exploration licence land access and compensation agreements as are necessary.
- (6) To avoid doubt, an exploration licence land access and compensation agreement is only required for that part or parts of the area of the exploration licence where the holder of the licence intends to enter upon and disturb the land.
- (7) The term of an exploration licence land access and compensation agreement is as provided for in the agreement.
- (8) A payment of a fee or compensation under an exploration licence land access and compensation agreement must be paid as provided for in the agreement.
- (9) A registered exploration licence land access and compensation agreement must be accessible by the public at the office of the Mining Registrar.

#### **106 Reporting requirements in respect of exploration licence**

- (1) The holder of an exploration licence must, at such time and in such form as are prescribed, submit to the Mining Registrar the following reports—
  - (a) an annual technical report;
  - (b) an annual exploration expenditure report;
  - (c) a termination report.
- (2) An annual technical report must include the following information for the period to which the report relates—
  - (a) a summary of all work undertaken in connection with the licence;
  - (b) such additional information as is required to give full details of all work undertaken in connection with the licence so as to convey accurately and comprehensively the aims of the work, the procedures adopted and the conclusions reached, and containing all data which may be of relevance to the geology and mineral resources in Bougainville;
  - (c) a summary of all compensation payments made by the licence holder, setting out the aggregate amount of such payments made, and the details of each compensation payment;
  - (d) a summary of difficulties encountered by the licence holder in implementing the approved exploration work programme, or otherwise in undertaking operations under the licence;

- (e) a summary of issues which have arisen between the holder and affected communities and the actions taken by the holder to resolve those issues;
  - (f) instances of non-compliance by the licence holder with a requirement of this Act (including the conditions of the exploration licence) and, in respect of each such instance—
    - (i) the cause of the non-compliance; and
    - (ii) the actions taken, or proposed to be taken, by the licence holder to remedy the non-compliance and prevent its recurrence;
  - (g) such other information as is prescribed.
- (3) An annual expenditure report must include the following information for the period to which the report relates—
  - (a) information sufficiently detailed for the Secretary to determine and verify the expenditure by the licence holder that qualifies to satisfy the minimum required annual exploration expenditure under Section 107;
  - (b) such other information as is prescribed.
- (4) A termination report must—
  - (a) be submitted to the Mining Registrar not later than 60 days after the date of surrender, expiry or cancellation of the exploration licence; and
  - (b) include—
    - (i) a summary of all exploration activities and results obtained during the term of the licence; and
    - (ii) the information referred to in Subsection (2) for the period from the end of period covered in the most recent annual technical report until the date of surrender, expiry or cancellation of the licence; and
    - (iii) such other information as is prescribed.
- (5) The holder of an exploration licence must, if the Mining Registrar directs, submit a report under Subsection (1) by electronic means, in such manner as the Mining Registrar directs.
- (6) Except with the consent of the holder of the exploration licence to which a report submitted under Subsection (1) relates, and subject to such conditions as the holder may specify in writing to the Secretary, until 90 days after the date of expiry, surrender or cancellation of the licence—
  - (a) a report submitted under Subsection (1) must not be made available to a person outside the Department; and

- (b) the contents of a report submitted under Subsection (1) must not be revealed except to the extent necessary—
    - (i) to publish statistical information concerning the geology and mineral resources of Bougainville; or
    - (ii) for the Secretary to give advice to the Bougainville Executive Council on a confidential basis.
- (7) However, if an exploration licence has been converted to a mining lease, the 90-day period referred to in Subsection (6) does not commence until the date of expiry, surrender or cancellation of the mining lease.
- (8) After the expiry of the 90-day period referred to in Subsection (6), and any further period under Subsection (7), a report submitted under Subsection (1) must be accessible by the public at the office of the Mining Registrar.

#### **107 Minimum exploration expenditure requirements<sup>47</sup>**

- (1) The minimum required annual exploration expenditure under an approved exploration work programme is as prescribed.
- (2) If an exploration work programme is approved under Section 99(5), the holder of the exploration licence to which the work programme relates must pay an annual retention fee in the amount of the minimum required annual exploration expenditure, less the amount of acceptable exploration expenditure<sup>48</sup> expended by the licence holder to implement its approved exploration work programme in that year.
- (3) The time for payment of a retention fee is no later than 31 March in each year for the 12-month period ending on the preceding 31 December.
- (4) If the holder of an exploration licence is required to pay a retention fee under Subsection (2), and the licence holder fails to pay the fee, the Secretary must initiate the procedure under Section 284 for cancellation of the exploration licence.
- (5) In this section, ***acceptable exploration expenditure*** has such meaning as is prescribed.

#### **108 Variation of approved exploration work programme**

- (1) The holder of an exploration licence—
  - (a) may apply for a variation of its approved exploration work programme; and
  - (b) must, if the holder's approved exploration work programme does not contain a detailed description of its proposed exploration activities for a calendar year, apply, no later than the preceding 31 October, for a variation of its approved exploration work programme to include that information.

- (2) An application for the variation of an exploration work programme must—
- (a) be in the prescribed form; and
  - (b) specify the grounds on which the variation is sought, which may include—
    - (i) events beyond the reasonable control of the holder of the licence have prevented the licence holder from carrying out the approved exploration work programme; or
    - (ii) the holder of the licence wishes to conduct exploration in a manner different from that originally proposed; or
    - (iii) the holder of the licence wishes to give a detailed description of its exploration activities for the next calendar year or years; or
    - (iv) the term of the exploration licence has been extended; or
    - (v) the holder of the licence is unable to establish a mining operation for 1 or more of the reasons referred to in Section 99(5); and
  - (c) include a proposed revised exploration work programme in the prescribed form; and
  - (d) be accompanied by the prescribed application fee.
- (3) The Advisory Council—
- (a) must assess the application; and
  - (b) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend the proposed revised exploration work programme; and
  - (c) may approve the applicant's revised exploration work programme if it is satisfied that—
    - (i) the applicant has complied with a request under Paragraph (b); and
    - (ii) the applicant's proposed revised exploration work programme—
      - (A) addresses the matters referred to in Section 99(1)(a); and
      - (B) complies with the requirements of the Secretary's guidelines under Section 99(3).
- (4) An approved revised exploration work programme must be substituted for the previously approved exploration work programme.

### **109 Extension of term of exploration licence**

- (1) The holder of an exploration licence may apply for extension of the term of the licence.
- (2) An application for extension of the term of an exploration licence must—
- (a) be in the prescribed form; and

- (b) be submitted at least 60 days before the date on which the licence is to expire; and
  - (c) include—
    - (i) a schedule in the prescribed form describing, in latitude and longitude, the corners of the boundary of the area of the exploration licence that will remain after relinquishing the area that must be relinquished under Section 110; and
    - (ii) a sketch map showing the boundary of the area of the exploration licence after relinquishment, as well as such other natural features and the location of principal villages, as will allow the area to be correctly located; and
  - (d) be submitted in triplicate, unless submitted electronically; and
  - (e) be accompanied by the prescribed application fee; and
  - (f) comply with Part 10 Division 2.
- (3) The Advisory Council, in assessing an application for an extension of the term of an exploration licence must consider whether the applicant —
  - (a) has, during the previous term of the licence—
    - (i) substantially complied with the conditions of its licence; and
    - (ii) submitted all required reports; and
    - (iii) met the minimum annual expenditure and retention fee requirements under Section 107; and
    - (iv) paid compensation as required by this Act; and
    - (v) substantially complied with the terms and conditions of each exploration licence land access and compensation agreement; and
  - (b) has—
    - (i) an approved exploration work programme that, for the period of the proposed extension, satisfies the requirements under Section 99; or
    - (ii) applied for a variation of its approved exploration work programme under Section 108.
- (4) The Minister, in accordance with the advice of the Advisory Council, may grant or refuse to grant an application to extend the term of an exploration licence.
- (5) A decision by the Minister under Subsection (4) must be made within 30 days after the date of the advice from the Advisory Council.
- (6) The Minister may, within the 30-day period under Subsection (5), direct the Advisory Council to reconsider its advice, and in doing so the Minister—
  - (a) must state the Minister's reasons for directing the Advisory Council to reconsider its advice; and

- (b) may give to the Advisory Council such other directions as the Minister considers appropriate, which—
    - (i) may include a direction that the Advisory Council—
      - (A) consider a matter not previously considered by the Advisory Council; and
      - (B) reconsider a matter in more detail; and
    - (ii) must not include a direction that the Advisory Council consider a matter not relevant to a consideration of an application under this Act.
- (7) In reconsidering any matter referred back to it under Subsection (6), the Advisory Council must have regard to—
  - (a) the Minister's directions; and
  - (b) the Minister's reasons for directing the Advisory Council to reconsider its advice.
- (8) An extension of the term of an exploration licence—
  - (a) must be in the prescribed form; and
  - (b) may include such conditions as the Minister, in accordance with the advice of the Advisory Council, determines.
- (9) A refusal to grant an extension of the term of an exploration licence must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

#### **110 Relinquishment on extension**

- (1) If the term of an exploration licence is extended under Section 109, the holder of the licence must relinquish 1 or more portions of the area subject to the licence, comprising in aggregate at least 50% of the area subject to the licence on the date the application for extension of the term is submitted.
- (2) Relinquishment under Subsection (1) must be effected so that the area remaining subject to the exploration licence consists of 1 area, having the shape of—
  - (a) 1 cadastral block; or
  - (b) more than 1 cadastral block, each of which must share a common side with at least 1 other cadastral block.
- (3) However, if relinquishment under Subsection (1) will result in the area subject to the licence being reduced to less than 100 square kilometres, the holder of the exploration licence—
  - (a) must relinquish only so much of the area as will result in the area subject to the licence being reduced to not more than 100 square kilometres; and

- (b) is not required to comply with Subsection (1) with respect to any future extension of the term of the licence.
- (4) If relinquishment under Subsection (1) will result in the area subject to the licence being reduced to less than 250 square kilometres, the holder of the exploration licence may apply for relief from the requirements of Subsection (1), and the Minister, acting in accordance with the advice of the Advisory Council, may grant or refuse to grant the application for relief.
- (5) If the Minister grants an application for relief under Subsection (4), the Minister must fix an area, being not less than 100 square kilometres and not more than 250 square kilometres, as is appropriate in the circumstances, and the holder of the licence—
  - (a) must relinquish only so much of the area as will result in the area subject to the licence being reduced to not more than the area so fixed; and
  - (b) is not required to comply with Subsection (1) with respect to any future extension of the term of the licence.
- (6) Relinquishment under this section takes effect on the date on which the exploration licence would have expired had the application to extend the term of the licence not been granted.

#### **111 Application for and grant of mining lease over exploration licence area**

- (1) If the holder of an exploration licence applies for the grant of a mining lease over land or part of the land the subject of the licence, until such time as the application is determined—
  - (a) the rights and obligations of the holder of the exploration licence are not affected; and
  - (b) the term of the exploration licence over land the subject of the application continues.
- (2) If a mining lease is granted over land or part of land the subject of an exploration licence, the natural surface of the land and the land lying beneath it are excised from the area of the exploration licence, and all rights under the exploration licence cease to have effect with respect to the excised land.
- (3) If a mining lease to which Subsection (2) refers expires, or is surrendered or cancelled—
  - (a) land excised from the area of an exploration licence reverts to that exploration licence; or
  - (b) if another tenement has been granted to surround or partially surround the land the subject of the mining lease – that part of land that would have reasonably been included in the other tenement, were it not for the existence of the mining lease, must be amalgamated with land the subject of that other tenement.

**112 Consent to dealing in exploration licence during first 2 years**

- (1) During the first 2 years of the term for which an exploration licence is granted, a legal or equitable interest in or affecting the exploration licence must not be transferred or otherwise dealt with, whether directly or indirectly, unless—
  - (a) the dealing or other transaction in or affecting the interest arises in the due administration of the affairs of a holder that is in the course of being wound up (not being a voluntary winding up); or
  - (b) prior written consent to the dealing or other transaction in or affecting the interest is given by the Bougainville Executive Council.
- (2) A transfer of or other dealing in a legal or equitable interest in the shares of a holder of an exploration licence is taken to contravene Subsection (1) if more than 25% of the issued shares of the holder are so affected within the 2-year period.
- (3) If a transfer of or other dealing in an interest results in a contravention of Subsection (1), the Secretary must initiate the procedure under Section 284 for cancellation of the exploration licence.
- (4) Nothing in Subsection (1) prevents, or affects the validity of, any agreement made in contemplation of a dealing or other transaction to which that subsection applies where the agreement expressly provides that the consent required by that subsection is to be obtained as a condition of the dealing or other transaction.

**113 Landowner-controlled entities**

- (1) Owners of customary land may establish a corporate body (a **landowner-controlled entity**) for the purpose of submitting an application for the grant of an exploration licence in respect of an area of land that consists in whole or in part of that land.
- (2) In addition to the criteria under Section 96, the following criteria must be satisfied before a landowner-controlled entity can be considered a person qualified to hold an exploration licence for the purposes of that section—
  - (a) if 1 or more approved landowner organisations exist that represent all or some of the owners of the customary land – each approved landowner organisation must have approved the establishment of the landowner-controlled entity;
  - (b) the landowner-controlled entity must be representative of the owners of the customary land;
  - (c) the landowner-controlled entity must comply with prescribed criteria;
  - (d) in respect of land to which the application relates that is not customary land, the landowners of that land must consent to—
    - (i) the establishment of the landowner-controlled entity; or
    - (ii) the grant of the exploration licence;



- (e) the landowner-controlled entity must have—
  - (i) the technical competence and financial ability to fulfil all obligations under the licence; or
  - (ii) entered into a permissible arrangement under Subsection (3), in which case—
    - (A) the persons involved in the arrangement must have the technical competence and financial ability to fulfil all obligations under the licence; and
    - (B) the landowner-controlled entity must not be exposed to unreasonable financial risk.
- (3) Each of the following is a permissible arrangement under Subsection (2)(e)(ii)—
  - (a) the exploration licence is to be granted to a body corporate formed by the landowner-controlled entity and 1 or more other persons for the purpose of the grant of the exploration licence to carry out exploration jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate;
  - (b) a joint venture of another kind involving the landowner-controlled entity and 1 or more other persons;
  - (c) a commercial arrangement approved by the Bougainville Executive Council in accordance with the advice of the Advisory Council.

## **Division 4 — Mining leases**

### ***Sub-division A — General***

#### **114 Types of mining leases**

A mining lease must be granted as either a large-scale mining lease or a small-scale mining lease, in accordance with the criteria set out in this Sub-division.

#### **115 Limit on number of large-scale mining leases**

- (1) No more than 2 large-scale mining leases granted under this Act are to be in force at one time.
- (2) If the holder of an exploration licence has applied for a large-scale mining lease and the application is complete but there are already 2 large-scale mining leases in force—
  - (a) the application must be registered but must not be processed until such time as 1 of the 2 large-scale mining leases is no longer in force; and
  - (b) the holder of the exploration licence may request a waiver by the Bougainville Executive Council of the annual exploration expenditure, annual reporting or other obligation required of the holder under this Act, and the

Bougainville Executive Council, in accordance with the advice of the Advisory Council, may grant such a waiver; and

- (c) the term of the exploration licence is taken to be extended until such time as the application is decided by the Bougainville Executive Council.
- (3) If 2 or more applications for a large-scale mining lease have been registered under Subsection (2)(a), the first registered application must be decided before any other application for a large-scale mining lease can be considered.

#### **116 When large-scale mining lease required**

A large-scale mining lease is required for a mining project—

- (a) that will or does exceed the following limits—
  - (i) for extraction of minerals from primarily alluvial deposits – annual throughput of more than 1,000,000 cubic metres;
  - (ii) for underground mining operations – annual combined run-of-mine ore and waste production of more than 500,000 tonnes (excluding waste material not exiting the mine mouth);
  - (iii) for open-cast mining operations extracting minerals from primarily non-alluvial deposits – annual combined run-of-mine ore, rock, waste and overburden production of more than 5,000,000 tonnes;
  - (iv) the holder of the lease employs or contracts, after construction is complete, more than 1000 employees or workers within Bougainville on a typical working day (including all shifts); or
- (b) if the Bougainville Executive Council is of the opinion that the economic, social or environmental scope or circumstances of the mining project require a large-scale mining lease.

#### **117 Autonomous Bougainville Government equity participation**

- (1) The Autonomous Bougainville Government has the right, but not the obligation, to acquire, directly or through a nominee, a working equity ownership interest of up to 20% in a large-scale mining project.
- (2) If an application for the grant of a large-scale mining lease is registered, the Autonomous Bougainville Government may, under this section, elect to exercise its right under Subsection (1).
- (3) Notice of the Government's election under Subsection (2), including the percentage of working equity ownership interest requested, must be given in writing by the Minister, within 60 days after the date on which the application for the mining lease was registered, to—
  - (a) the applicant for the grant of the mining lease; and
  - (b) the Mining Registrar.

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- (4) The Mining Registrar must not accept notice of a purported election submitted later than 60 days after the date on which the application for the mining lease was registered, and such notice is invalid.
  - (5) An applicant for a large-scale mining lease must make available for purchase by the Autonomous Bougainville Government the working equity ownership interest stated in the notice under Subsection (3).
  - (6) The consideration payable by the Autonomous Bougainville Government for a working equity ownership interest acquired under this section must be—
    - (a) a percentage of the un-recouped sunk costs of the vendor attributable to the vendor's interest in the mining project, adjusted for inflation using the national consumer price index, equal to the percentage working equity ownership interest in the mining project being acquired by the Government; and
    - (b) independently audited, by an internationally recognised and reputable accounting firm selected and paid for by the Government, to verify the costs incurred by the applicant and to determine the percentage inflation adjusted sunk costs; and
    - (c) in accordance with the specific conditions of an agreement entered into under Section 42.
  - (7) If an applicant for a large-scale mining lease has agreed to the purchase of a working equity ownership interest by the Autonomous Bougainville Government, the applicant must enter into a shareholder agreement with the Government that clearly identifies the Government's rights as a minority shareholder with regards to when and how profit, dividend and other distributions will be made.
  - (8) An agreement under Subsection (7) may—
    - (a) be part of the agreement entered into under Section 42; or
    - (b) be a separate agreement.
  - (9) A large-scale mining lease must not be issued prior to—
    - (a) the issue of shares required as a consequence of an election made under Subsection (2); and
    - (b) the execution of the shareholder agreement required under Subsection (7).
  - (10) A purchase of an ownership interest by the Autonomous Bougainville Government as a consequence of an election made under Subsection (2) must be financed by the Government through its own arrangements.
  - (11) If the Autonomous Bougainville Government has elected to purchase a working equity ownership interest under Subsection (2), but is not able to complete the purchase of such ownership interest within 180 days after the date on which the

application for the grant of a mining lease was registered, the applicant is no longer obliged to make available the ownership interest required under Subsection (5).

- (12) Subject to a shareholder agreement entered into under Subsection (7), the holder of a large-scale mining lease is free to deal with a working equity ownership interest as it considers fit, in accordance with its constitution and the Companies Act.
- (13) The Autonomous Bougainville Government is responsible for meeting the exploration, development, operating and other costs of the mining project to which the interest relates, in proportion to its equity holding.
- (14) If the holder of a large-scale mining lease has allocated a working equity ownership interest to the Autonomous Bougainville Government under this section, it must have on its board at least 1 director nominated by the Bougainville Executive Council.

### ***Sub-division B — Application requirements***

#### **118 Person qualified to hold mining lease**

- (1) To be qualified to hold a mining lease, a person must—
  - (a) be a corporate body—
    - (i) incorporated under the Companies Act; and
    - (ii) legally constituted in such a way that the landowners and approved landowner organisations of the lease area may elect to acquire equity interests in the corporate body under Section 41; and
  - (b) have the technical competence and financial ability to fulfil all obligations under the mining lease; and
  - (c) be a fit and proper person to hold a mining lease.
- (2) It is a condition of the grant of a mining lease that the holder of the lease must, at all times, be a person qualified to hold a mining lease under this section and, if the holder ceases to be a qualified person, the Secretary must initiate the procedure under Section 284 for cancellation of the lease.

#### **119 Application for mining lease**

- (1) An application for the grant of a mining lease must—
  - (a) be in the prescribed form; and
  - (b) include—
    - (i) a schedule in the prescribed form describing the corners of the boundary of the area of the proposed mining lease in latitude and longitude; and

- (ii) a sketch map showing the boundary of the area of the proposed mining lease, such other natural features and the location of principal villages, as will enable the area to be correctly located; and
  - (iii) a copy of the applicant's certificate of incorporation; and
  - (iv) a statutory declaration that the area of land to which the application relates has been marked out in accordance with Section 238; and
  - (v) a survey under Section 239; and
  - (vi) the applicant's proposed plans, including—
    - (A) an employment and training plan (Section 121); and
    - (B) a goods and services procurement plan (Section 122); and
    - (C) a resettlement management plan (Section 124); and
    - (D) a mine site plan (Section 205); and
    - (E) a mine waste management plan (Section 206); and
    - (F) a rehabilitation and closure plan (Section 231); and
    - (G) a community engagement plan (Section 297); and
  - (vii) a landowner identification study (Section 323); and
  - (viii) for an application for the grant of a small-scale mining lease – a prefeasibility study, containing such information as is prescribed; and
  - (ix) for an application for the grant of a large-scale mining lease—
    - (A) a feasibility study, containing such information as is prescribed; and
    - (B) a proposed business development assistance plan (Section 123); and
    - (C) any community development agreements (Section 138); and
    - (D) a social mapping study (Section 324); and
  - (x) written evidence of landowner permission for the mining project; and
  - (xi) proof that—
    - (A) all required permits and approvals for the proposed activities have been issued under the Environment Act; or
    - (B) applications for such permits and approvals have been submitted to the relevant authority; and
  - (xii) a statement giving the particulars of the technical and financial resources available to the applicant; and
  - (xiii) a detailed justification for the area sought, setting out why all of the area is necessary for the proposed activities; and
- (c) be submitted in triplicate, unless submitted electronically; and

- (d) be accompanied by the prescribed application fee; and
  - (e) comply with Part 10 Division 2.
- (2) An application for a large-scale mining lease must not be accepted or approved if—
  - (a) the applicant has previously held a mining lease that was cancelled; and
  - (b) the area of the previous mining lease is wholly or partly within the area to which the application relates; and
  - (c) the application was registered within 2 years after the date on which the previous mining lease was cancelled.

## **120 Assessment of application**

- (1) In assessing an application for the grant of a mining lease, the Advisory Council must consider—
  - (a) the outcome of the Mineral Resources Forum held in respect of the application; and
  - (b) whether—
    - (i) the proposed plans submitted by the applicant—
      - (A) provide for the development of the mineral deposits situated on the land in accordance with good mining industry practice; and
      - (B) make adequate provision for the protection of the environment, in which case evidence that the applicant has complied with the Environment Act, related environment policies and regulations will be conclusive of adequate protection under this section; and
      - (C) meet the content requirements for such plans as set out in this Act and as are prescribed; and
    - (ii) the area and term applied for are appropriate for the proposed operations; and
    - (iii) the consents required under other applicable laws have been obtained; and
    - (iv) landowner permission has been obtained.
- (2) In assessing an application for a mining lease, the Advisory Council may request the applicant to—
  - (a) provide further information, including information regarding the acquisition by landowners and approved landowner organisations of free and working equity interest ownership in the mining project to which the application relates; and
  - (b) amend the application or proposed plans.

- (3) If the Advisory Council is satisfied that an applicant's proposed plans (or amended proposed plans) comply with the requirements of this Act, and are appropriate for the applicant's proposed operations, the Advisory Council must approve the proposed plans (or amended proposed plans) as approved plans.
- (4) The Advisory Council may give notice to an applicant under Subsection (6) if—
  - (a) the Advisory Council has assessed the applicant's application for the grant of a mining lease (including any information provided or amendments made in response to a request under Subsection (2)); and
  - (b) the Advisory Council has resolved, in principle, to advise the Bougainville Executive Council that it should refuse to grant a mining lease to the applicant; and
  - (c) the Advisory Council considers that it would be prepared to instead advise that a mining lease be granted if the applicant—
    - (i) provided specified information; or
    - (ii) amended its application or proposed plans.
- (5) The notice to which Subsection (5) refers must—
  - (a) be in writing; and
  - (b) inform the applicant of the substance of the Advisory Council's deliberations regarding the applicant's application; and
  - (c) set out particulars of—
    - (i) the required information, the provision of which will satisfy the Advisory Council; or
    - (ii) the required amendments to the application or proposed plans, the making of which will satisfy the Advisory Council; and
  - (d) invite the applicant to—
    - (i) provide the information; or
    - (ii) amend its application or proposed plans as suggested; and
  - (e) specify a date by which, if the applicant wishes to pursue its application, it must—
    - (i) provide the information; or
    - (ii) amend its application or proposed plans as suggested; and
  - (f) state that the Advisory Council will advise the Bougainville Executive Council that it should refuse to grant a mining lease to the applicant if, by the specified date, the applicant has not—
    - (i) provided the information; or
    - (ii) amended its application or proposed plans as suggested.

- (6) If the applicant responds to the notice under Subsection (5), to the satisfaction of the Advisory Council, the Advisory Council must advise the Bougainville Executive Council that it should grant a mining lease to the applicant.
- (7) The Advisory Council must not advise the Bougainville Executive Council that it should refuse to grant a mining lease to an applicant without first having given the applicant a full opportunity to consult with the Advisory Council.

## **121 Employment and training plan**

- (1) An application for the grant of a mining lease must be accompanied by particulars of the applicant's proposed employment and training plan, which must contain such information as is prescribed with respect to—
  - (a) the recruitment of expatriates and non-Bougainvilleans; and
  - (b) the employment and training of Bougainvilleans.
- (2) Under an employment and training plan, the holder of a mining lease—
  - (a) must give employment preference to Bougainvilleans—
    - (i) to the maximum extent practicable consistent with efficient operations; and
    - (ii) in so far as such Bougainvilleans are qualified to perform corresponding work and without hazard to the safety of mining operations; and
  - (b) must give training preference to landowners of the area of the mining lease, and to other persons customarily resident in neighbouring communities, who have the aptitude to acquire the necessary skills and expertise; and
  - (c) must, when recruiting and training employees, take into account employment and training provisions set out in a community development agreement; and
  - (d) must not—
    - (i) import, from outside Bougainville, unskilled labour for the carrying out of mining operations undertaken under the lease; or
    - (ii) employ or use child labour; and
  - (e) must not be hindered from employing employees of its own selection for technical and specialised work that, in the lease holder's judgment, requires specialised training or long experience; and
  - (f) may, subject to other laws, employ a reasonable number of expatriate and non-Bougainvillean workers who have specialised skills, knowledge or experience.



- (3) For Subsection (2)(f), a **reasonable number** means—
- (a) during initial mine development – no more than 75% of the lease holder’s workforce; and
  - (b) after the mining of minerals commences on a commercial scale – no more than 50% of the lease holder’s related workforce; and
  - (c) after mining minerals on a commercial scale for 10 years – no more than 10% of the lease holder’s related workforce.
- (4) The holder of a mining lease must periodically, as is prescribed, update its approved employment and training plan.

## **122 Goods and services procurement plan**

- (1) An application for the grant of a mining lease must be accompanied by particulars of the applicant’s proposed goods and services procurement plan, which must contain such information as is prescribed.
- (2) Under a goods and services procurement plan, the holder of a mining lease must—
- (a) give preference, in the following priority order, to procuring goods and services from supplier and contractor entities owned or operated by—
    - (i) landowners from the area of the mining lease;
    - (ii) for a mining lease including an offshore area – persons living in the coastal area of benefit;
    - (iii) Bougainvilleans;
    - (iv) Papua New Guineans other than Bougainvilleans,provided such supplier and contractor entities offer terms as to prices, quantities, qualities and delivery schedules that are at least comparable to terms offered by non-Bougainvillean contractors and suppliers, to the maximum extent practicable consistent with efficient operations; and
  - (b) demonstrate how it intends to assist Bougainvillean suppliers and contractors to build the capacity to supply a greater part of the project’s goods and services needs over time; and
  - (c) take into account goods and services provisions set out in a community development agreement in the procurement of goods and services; and
  - (d) not be hindered from procuring goods and services from providers outside of Bougainville that, in its judgment, are only available from specialised suppliers and contractors.
- (3) The holder of a mining lease must periodically, as is prescribed, update its approved goods and services procurement plan.

**123 Business development assistance plan**

- (1) An application for the grant of a large-scale mining lease must be accompanied by particulars of the applicant's proposed business development assistance plan, which must contain such information as is prescribed.
- (2) Under a business development assistance plan, the holder of a large-scale mining lease must—
  - (a) describe how the lease holder intends to assist business entities owned or operated by—
    - (i) landowners from the area of the mining lease; and
    - (ii) for a mining lease including an offshore area – persons living in the coastal area of benefit; and
    - (iii) women resident in the vicinity of the mining operations; and
    - (iv) other Bougainvilleans,to build the capacity to own and operate sustainable businesses, whether or not related to mining; and
  - (b) take into account business development provisions set out in a community development agreement in its operations.
- (3) For the purpose of Subsection (2)(a), a sustainable business need not be, but can be, associated with mining operations.
- (4) The holder of a large-scale mining lease must periodically, as is prescribed, update its approved business development assistance plan.

**124 Resettlement management plan**

- (1) An application for the grant of a mining lease must be accompanied by particulars of the applicant's proposed resettlement management plan, which must contain such information as is prescribed.
- (2) However, if the area of a mining lease area will comprise only offshore area, a proposed resettlement management plan is not required.
- (3) Under a resettlement management plan, the holder of a mining lease must manage displacement caused by its operations through—
  - (a) if acquiring or gaining access to land causes physical displacement – resettlement processes; or
  - (b) if acquiring or gaining access to land causes economic displacement, as identified in Section 302, but no physical displacement – compensation processes.

- (4) The holder of a mining lease must periodically, as is prescribed, update its approved resettlement management plan.

## **125 Exemptions**

- (1) The Bougainville Executive Council, in accordance with the advice of the Advisory Council, may exempt an applicant for the grant of a mining lease from an obligation to include with its application the following—
- (a) a proposed employment and training plan (Section 121);
  - (b) a proposed goods and services procurement plan (Section 122);
  - (c) a proposed resettlement management plan (Section 124);
  - (d) a proposed rehabilitation and closure plan (Section 231).
- (2) An applicant for the grant of a mining lease, or for an expansion of the area of a mining lease, may, in such form and manner as are prescribed, apply for an exemption under Subsection (1), on the ground that the scale of the applicant's proposed mining operation or other circumstances are such that compliance with the obligations under 1 or more of the sections referred to in Subsection (1) is not necessary or imposes an unjustified burden on the applicant.
- (3) If an exemption is granted under Subsection (1)—
- (a) the applicant is not required to comply with the obligation under Section 119 to submit a proposed plan to which the exemption relates; and
  - (b) if the application for the grant of a mining lease, or for the expansion of the area of the mining lease, is approved – the holder of the mining lease is not required to—
    - (i) have an approved plan to which the exemption relates; or
    - (ii) comply with a reporting or other obligation with respect to the plan.
- (4) If an exemption is granted under Subsection (1), the Bougainville Executive Council, in accordance with the advice of the Advisory Council, may impose such other conditions on the grant of the mining lease as are appropriate in the circumstances.
- (5) The Bougainville Executive Council, in accordance with the advice of the Advisory Council, may revoke an exemption granted under this section.

- (6) The Advisory Council must not advise that an exemption granted to the holder of a mining lease be revoked unless it is satisfied that circumstances have changed so that the exemption is no longer justified.
- (7) Before advising that an exemption be revoked, the Advisory Council must—
  - (a) give to the holder of the mining lease written notice—
    - (i) informing the lease holder that it is considering advising that the exemption be revoked; and
    - (ii) setting out the reasons why it is considering taking such action; and
    - (iii) inviting the lease holder to make a written submission to the Advisory Council in relation to the matter; and
  - (b) consider the submission from the lease holder.
- (8) The revocation of an exemption under Subsection (5) takes effect on the date on which the revocation is registered.
- (9) If an exemption is revoked under Subsection (5), the holder of the mining lease must, within 60 days after the registration of the revocation, act to comply with all requirements of the section from which it was previously exempt.

### ***Sub-division C — Decision on application***

#### **126 Decision on application**

- (1) On the application of a person who satisfies the qualification criteria under Section 118, the Bougainville Executive Council, in accordance with the advice of Advisory Council, may grant or refuse to grant—
  - (a) a small-scale mining lease; or
  - (b) a large-scale mining lease.
- (2) A mining lease must not be granted—
  - (a) in respect of land the subject of an exploration licence – to a person other than—
    - (i) the holder of the exploration licence; or
    - (ii) a person to whom the holder of the exploration licence has applied to transfer the licence holder’s interest in the licence under Section 260; or
  - (b) in respect of land that is the subject of another tenement, other than land that is the subject of —
    - (i) a reconnaissance licence; or
    - (ii) a mining easement; or
  - (c) if landowner permission for the mining lease has not been obtained; or

- (d) if all approvals and permits required under the Environment Act for the proposed activities have not been approved and issued.
- (3) A decision by the Bougainville Executive Council under Subsection (1) must be made—
  - (a) for an application for the grant of a large-scale mining lease – within 12 months after the date of the advice from the Advisory Council; or
  - (b) for an application for the grant of a small-scale mining lease— within 90 days after the date of the advice from the Advisory Council.
- (4) If the Bougainville Executive Council is satisfied that exceptional circumstances exist with regard to a particular application for the grant of a mining lease, it—
  - (a) may extend a time limit under Subsection (4); and
  - (b) must give to the applicant for the mining lease written notice, informing the applicant of—
    - (i) the reason for the extension; and
    - (ii) the revised time limit.
- (5) The Bougainville Executive Council may, within the relevant period under Subsection (3), or, if the time limit has been extended under Subsection (4), within the revised period, direct the Advisory Council to reconsider its advice, and in doing so the Bougainville Executive Council—
  - (a) must state its reasons for directing the Advisory Council to reconsider its advice; and
  - (b) may give to the Advisory Council such other directions as the Bougainville Executive Council considers appropriate, which—
    - (i) may include a direction that the Advisory Council—
      - (A) consider a matter not previously considered by the Advisory Council; and
      - (B) reconsider a matter in more detail; and
    - (ii) must not include a direction that the Advisory Council consider a matter not relevant to a consideration of an application under this Act.
- (6) In reconsidering any matter referred back to it under Subsection (5), the Advisory Council must have regard to—
  - (a) the directions of the Bougainville Executive Council; and
  - (b) the reasons given by the Bougainville Executive Council for directing the Advisory Council to reconsider its advice.
- (7) A mining lease—
  - (a) must be in the prescribed form; and

- (b) must require that, as a condition of the mining lease, the holder substantially comply with the approved plans; and
  - (c) may include exemptions granted under Section 125; and
  - (d) may include such other conditions as the Bougainville Executive Council, in accordance with the advice of the Advisory Council, determines.
- (8) A refusal to grant a mining lease must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

### **127 Term of mining lease**

- (1) A mining lease may be granted for a term not exceeding 25 years, which may be extended under Section 136.
- (2) However, the term of a mining lease must not exceed the duration justifiably established in—
  - (a) for a small-scale mining lease – the applicant’s prefeasibility study; or
  - (b) for a large-scale mining lease – the applicant’s feasibility study.
- (3) Each extension of the term of a mining lease must not exceed 20 years.
- (4) If the holder of a mining lease has submitted, at least 180 days before the date on which the lease is to expire, an application for extension of the term of the lease under Section 136, the term of the lease is taken to have been extended until the application is either granted or refused.

### **128 Area and shape of mining lease**

- (1) The area in respect of which a mining lease may be granted must—
  - (a) not exceed 60 square kilometres; and
  - (b) consist of 1 area having the shape of—
    - (i) 1 cadastral block; or
    - (ii) more than 1 cadastral block, each of which shares a common side with at least 1 other cadastral block.
- (2) All of the area included under a mining lease must be necessary for the purpose of mining the minerals and must be justifiably established as so in—
  - (a) for a small-scale mining lease – the applicant’s prefeasibility study; or
  - (b) for a large-scale mining lease – the applicant’s feasibility study.
- (3) Land thought to be prospective for minerals, but where mineral reserves have not been identified, measured and confirmed, must not be included in the area of a

mining lease unless such land has been shown, in the applicant's prefeasibility or feasibility study, to be necessary for the purpose of mining minerals.

### ***Sub-division D — Rights and obligations***

#### **129 Rights conferred by mining lease**

- (1) A mining lease authorises the holder, in accordance with the Mining (Safety) Act, the Environment Act and all other relevant laws, and the conditions to which the mining lease is subject, to—
  - (a) subject to an approved landowner compensation agreement under Section 306 or 307—
    - (i) enter and occupy land the subject of the mining lease for the purpose of mining the minerals on that land; and
    - (ii) carry on such operations and undertake such works as may be necessary or expedient for that purpose; and
  - (b) construct a treatment plant on that land and treat minerals derived from mining operations, whether on that land or elsewhere; and
  - (c) construct other facilities required for treatment, including waste dumps and tailings dams; and
  - (d) take and remove rock, earth, soil and minerals from the land, with or without treatment; and
  - (e) take and divert water situated on or flowing through such land and use it for a purpose necessary for the holder's mining or treatment operations, subject to and in accordance with the Water Resources Act and Environment Act; and
  - (f) do all other things necessary or expedient for the undertaking of mining or treatment operations on that land.
- (2) Subject to this Act, the holder of a mining lease—
  - (a) is entitled to the exclusive occupancy for mining and mining purposes of land the subject of the mining lease; and
  - (b) owns all minerals lawfully mined from that land from the time that the minerals are separated from the land.
- (3) To avoid doubt, ownership of minerals as provided for under Section 8 or 9 ceases at such time that the minerals are separated from the land.

**130 Reporting requirements in respect of mining lease**

- (1) The holder of a mining lease must, in such form as is prescribed, submit to the Mining Registrar the following reports—
- (a) for each calendar year—
    - (i) a report giving full details of all work undertaken on or in connection with the mining lease, including particulars of production of minerals, development work, exploration and all other information that may reasonably be thought to be of relevance to the geology and mineral resources of Bougainville; and
    - (ii) an employment and training plan report; and
    - (iii) an goods and services procurement plan report; and
    - (iv) for the holder of a large-scale mining lease – an business development plan report;
  - (b) if all or part of the area of the mining lease is surrendered, or if the mining lease expires or is cancelled—
    - (i) for the period from the date the licence is registered to the date of surrender, expiry or cancellation – a final summary report that summarises all work undertaken on and all production from—
      - (A) for the surrender of part of the area of the mining lease – that part; and
      - (B) otherwise – from the whole of the area of the mining lease; and
    - (ii) for the period from the end of the preceding calendar year to the date of surrender, expiry or cancellation – the reports referred to in Paragraph (a).
- (2) A report under Subsection (1) must be submitted within 90 days after the end of the period to which the report relates.
- (3) Except with the written consent of the holder of the mining lease to which a report submitted under Subsection (1) relates, and subject to such conditions as the holder may specify in writing to the Secretary, until the mining lease has expired or been surrendered or cancelled—
- (a) a report submitted under Subsection (1)(a) must not be made available to a person outside—
    - (i) the Department; or
    - (ii) an authority charged with the responsibility for tax matters; and
  - (b) the contents of a report submitted under Subsection (1)(a) must not be revealed except to the extent necessary—
    - (i) to publish statistical information concerning the geology and mineral resources in Bougainville; or



- (ii) for the Secretary to give advice on a confidential basis to the Minister, the Bougainville Executive Council, other Departments, the Mineral Resources Authority or the Central Bank.
- (4) After a mining lease has expired or been surrendered or cancelled, all reports submitted by the lease holder under Subsection (1) must be accessible by the public at the office of the Mining Registrar.

### **131 Obligation to commence mine development and maintain production**

- (1) The holder of a large-scale mining lease must—
  - (a) commence substantial on-site mine development within 18 months after the date on which the mining lease is registered; and
  - (b) commence substantial mineral production no later than 60 months after the date on which the mining lease is registered; and
  - (c) maintain continuous commercial production, as is prescribed, after mineral production has commenced; and
  - (d) notify the Secretary at least 30 days prior to temporarily or permanently ceasing mineral production.
- (2) The holder of a small-scale mining lease must—
  - (a) commence substantial on-site mine development within 12 months after the date on which the mining lease is registered; and
  - (b) commence substantial mineral production no later than 24 months after the date on which the mining lease is registered; and
  - (c) maintain continuous commercial production, as is prescribed, after mineral production has commenced; and
  - (d) notify the Secretary at least 30 days prior to temporarily or permanently ceasing mineral production.
- (3) However, if the approved plans of the holder of a mining lease provide for time limits shorter than those set out in Subsection (1) or (2), the shorter time limits apply.
- (4) A mining lease proposed plan must not provide for time limits greater than those set out in Subsection (1) or (2).
- (5) If a purported time limit in an approved plan exceeds a time limit provided for in Subsection (1) or (2), the time limit in the approved plan must be disregarded, and the time limit provided for in Subsection (1) or (2) applies.
- (6) If the holder of a mining lease fails to comply with Subsection (1) or (2), the Secretary must initiate the procedure under Section 284 for cancellation of the mining lease.

**132 Downstream processing**

- (1) If there are smelters, refineries or other secondary processing plants operating in Papua New Guinea that can use the mine products, the holder of a mining lease must make available to those plants, for processing, no less than 50% of the mine products, or such lesser portion as the contracted processors notify in writing, not less than 12 months before delivery to the processing plants is required, provided that—
  - (a) the processing plant has the capacity and has demonstrated its current ability to—
    - (i) produce internationally acceptable and marketable products; and
    - (ii) provide appropriate security for mine products at all stages of production, storage and delivery; and
  - (b) the terms and conditions offered by the processor are commercially competitive with those available from international processors or traders in all respects, including in pricing (after taking account of freight differentials and currency of payment) and time of delivery of refined product; and
  - (c) the processor and the holder of the mining lease can agree a contract negotiated on a good-faith basis; and
  - (d) there is no interference with the mining lease holder's existing contracts with international traders and processors that were entered into in good faith.
- (2) If more than 1 processing plant is operating in Papua New Guinea, the holder of a mining lease can comply with Subsection (1) through contractual arrangements with 1 or more of such plants.
- (3) If the holder of a mining lease has established its own refinery or smelter or other secondary processing plant in Papua New Guinea for the purpose of processing the mine products, the lease holder is taken to have complied with this section.

***Sub-division E — Variation and expansion*****133 Variation of approved plans**

- (1) The holder of a mining lease—
  - (a) may apply for a variation of an approved plan; and
  - (b) must, if the lease holder must periodically update an approved plan, apply for approval of a proposed updated plan.
- (2) An application under this section must—
  - (a) be in the prescribed form; and
  - (b) specify the grounds on which a variation is sought, which may include—
    - (i) approval of an updated plan is required under this Act; and

- (ii) events beyond the reasonable control of the holder of the mining lease prevent the lease holder from carrying out the approved plan; or
  - (iii) experience has demonstrated the approved plan is not succeeding; or
  - (iv) the holder of the mining lease wishes to develop the mine or conduct mining operations or conduct operations ancillary to mining in a manner that is different from that originally proposed; or
  - (v) the holder wishes to reduce or suspend production because—
    - (A) at the time of making the application for a variation, economic or marketing conditions are such that the mining operation is not economically viable; or
    - (B) difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable; and
  - (c) include a proposed revised plan in the prescribed form; and
  - (d) be accompanied by the prescribed application fee.
- (3) The Advisory Council—
  - (a) must assess the application; and
  - (b) must consult with—
    - (i) each approved landowner organisation representing the owners of customary land subject to the mining lease; and
    - (ii) other landowners of land subject to the mining lease; and
  - (c) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend a proposed revised plan submitted with the application; and
  - (d) may, if it considers that the nature of the variation applied for is such that a Mineral Resources Forum should be convened, request that the Minister convene a Mineral Resources Forum under Section 140 (with appropriate changes) to consider the application; and
  - (e) may approve the applicant's revised plan, if it is satisfied that—
    - (i) the applicant has complied with a request under Paragraph (c); and
    - (ii) the applicant's proposed revised plan complies with the requirements for that type of plan, under this Act or as are prescribed; and
    - (iii) if a Mineral Resources Forum was convened to consider the application under Paragraph (d) – approval of the revised plan is in accordance with the outcome of the Mineral Resources Forum.
- (4) An approved revised plan must be substituted for the previously approved plan.

- (5) To avoid doubt, a Bougainville Warden's hearing is not required when considering an application under this section.

### **134 Application for mining lease area expansion**

- (1) An application for the expansion of the area of a mining lease must—
- (a) be in the prescribed form; and
  - (b) include—
    - (i) a schedule in the prescribed form describing the corners of the boundary of the proposed expanded area of the mining lease in latitude and longitude; and
    - (ii) a sketch map showing the boundary of the proposed expanded area of the mining lease, such other natural features and the location of principal villages, as will enable the area to be correctly located; and
    - (iii) a statutory declaration that the area of land to which the application relates has been marked out in accordance with Section 238; and
    - (iv) a survey under Section 239; and
    - (v) the applicant's proposed revised plans; and
    - (vi) a revised landowner identification study; and
    - (vii) written evidence of landowner permission for the expansion of the area of the mining lease; and
    - (viii) proof that—
      - (A) all required permits and approvals for the proposed expansion have been issued under the Environment Act; or
      - (B) applications for such permits and approvals have been submitted to the relevant authority; and
  - (c) be submitted in triplicate, unless submitted electronically; and
  - (d) be accompanied by the prescribed application fee; and
  - (e) comply with Part 10 Division 2.
- (2) In assessing an application for the expansion of the area of a mining lease, the Advisory Council must follow the procedure under Section 120, with appropriate changes.

### **135 Approval of a mining lease area expansion**

- (1) On the application of the holder of a mining lease, the Bougainville Executive Council, in accordance with the advice of Advisory Council, may approve or refuse to approve the expansion of the area of the mining lease.

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- (2) A mining lease area expansion must not be granted until—
- (a) all approvals and permits required under the Environment Act for the proposed activities have been approved and issued; and
  - (b) a landowner identification study has been completed; and
  - (c) landowner permission to approve the application has been obtained.
- (3) An application for the expansion of the area of a mining lease must not be granted—
- (a) in respect of land that is the subject of another tenement, other than land that is the subject of—
    - (i) a reconnaissance licence; or
    - (ii) a mining easement; or
  - (b) if the expansion will result in the area of the mining lease exceeding the limits under Section 128; or
  - (c) if landowner permission for the expansion of the area has not been obtained; or
  - (d) if all approvals and permits required under the Environment Act for the proposed expansion have not been approved and issued.
- (4) A decision by the Bougainville Executive Council under Subsection (1) must be made within 30 days after the date of the advice from the Advisory Council.
- (5) The Bougainville Executive Council may, within the 30-day period under Subsection (4), direct the Advisory Council to reconsider its advice, and in doing so the Bougainville Executive Council—
- (a) must state its reasons for directing the Advisory Council to reconsider its advice; and
  - (b) may give to the Advisory Council such other directions as the Bougainville Executive Council considers appropriate, which—
    - (i) may include a direction that the Advisory Council—
      - (A) consider a matter not previously considered by the Advisory Council; and
      - (B) reconsider a matter in more detail; and
    - (ii) must not include a direction that the Advisory Council consider a matter not relevant to a consideration of an application under this Act.
- (6) In reconsidering any matter referred back to it under Subsection (5), the Advisory Council must have regard to—
- (a) the directions of the Bougainville Executive Council; and

- (b) the reasons given by the Bougainville Executive Council for directing the Advisory Council to reconsider its advice.
- (7) If the expansion of the area of a mining lease is approved, the mining lease must be amended in the prescribed manner to reflect the approval.
- (8) A refusal to approve the expansion of the area of a mining lease must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

### **136 Extension of term of mining lease**

- (1) The holder of a mining lease may apply for extension of the term of the lease.
- (2) An application for extension of the term of a mining lease must—
  - (a) be in the prescribed form; and
  - (b) be submitted at least 180 days before the date on which the lease is to expire; and
  - (c) include a report demonstrating—
    - (i) that mineral reserves exist justifying an extension; or
    - (ii) the need to maintain the area of the mining lease for use as an integral part of mining operations under another mining lease; and
  - (d) be submitted in triplicate, unless submitted electronically; and
  - (e) be accompanied by the prescribed application fee; and
  - (f) comply with Part 10 Division 2.
- (3) The Advisory Council, in assessing an application for an extension of the term of a mining lease must—
  - (a) follow the procedure under Section 120, with appropriate changes; and
  - (b) consider whether the applicant has, during the previous term of the lease—
    - (i) substantially complied with the conditions of its lease; and
    - (ii) submitted all required reports; and
    - (iii) paid compensation as required by this Act.
- (4) The Bougainville Executive Council, in accordance with the advice of the Advisory Council, may grant or refuse to grant an application to extend the term of a mining lease.
- (5) A decision by the Bougainville Executive Council under Subsection (4) must be made—
  - (a) for a large-scale mining lease – within 180 days after the date of the advice from the Advisory Council; or

- (b) for a small-scale mining lease— within 45 days after the date of the advice from the Advisory Council.
- (6) The Bougainville Executive Council may, within the relevant period under Subsection (5), direct the Advisory Council to reconsider its advice, and in doing so the Bougainville Executive Council—
  - (a) must state its reasons for directing the Advisory Council to reconsider its advice; and
  - (b) may give to the Advisory Council such other directions as the Bougainville Executive Council considers appropriate, which—
    - (i) may include a direction that the Advisory Council—
      - (A) consider a matter not previously considered by the Advisory Council; and
      - (B) reconsider a matter in more detail; and
    - (ii) must not include a direction that the Advisory Council consider a matter not relevant to a consideration of an application under this Act.
- (7) In reconsidering any matter referred back to it under Subsection (6), the Advisory Council must have regard to—
  - (a) the directions of the Bougainville Executive Council; and
  - (b) the reasons given by the Bougainville Executive Council for directing the Advisory Council to reconsider its advice.
- (8) An extension of the term of a mining lease—
  - (a) must be in the prescribed form; and
  - (b) may include such conditions as the Bougainville Executive Council, in accordance with the advice of the Advisory Council, determines.
- (9) A refusal to grant an extension of the term of a mining lease must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

### **137 Consolidation of mining leases**

If a person holds 2 or more contiguous mining leases, the person may apply under Section 274 to consolidate such leases into a single mining lease.

***Sub-division F — Community development agreements*****138 Community development agreements**

- (1) The holder of a large-scale mining lease must—
  - (a) assist qualified communities affected by its operations, by—
    - (i) promoting their sustainable development; and
    - (ii) enhancing the general welfare and the quality of life of their inhabitants; and
  - (b) recognise and respect the rights, customs and traditions of qualified communities and their inhabitants.
- (2) It is a condition of the grant of a large-scale mining lease that the holder of the lease must—
  - (a) have and implement a community development agreement with each qualified community that is willing to enter into a community development agreement; and
  - (b) substantially comply with its obligations under an approved community development agreement.
- (3) Mine development must not proceed in the area of a large-scale mining lease until the holder of the mining lease has, for each qualified community, a community development agreement executed, ratified and approved in such form and manner, and containing such content as are prescribed.
- (4) A community development agreement enters into force on the date it is approved in the prescribed manner.
- (5) The holder of large-scale mining lease may submit a revised community development agreement for approval in such form and manner and containing such content as are prescribed.
- (6) If the Secretary considers that a qualified community lacks the capacity to effectively negotiate a community development agreement, the Secretary may require the holder of a large-scale mining lease to assist in building that capacity, including through the provision by the lease holder of such funds to the qualified community for capacity-building and preparation as are reasonable in the circumstances.
- (7) The holder of a large-scale mining lease must—
  - (a) expend on community development no less than 1.25% of mineral value, in such manner, at such time and on such activities as are prescribed; and
  - (b) submit annually, at such time and in such form and manner as are prescribed, a community development expenditure report; and



- (c) submit biannually, at such time and in such form and manner as are prescribed, a community development agreement report for each community development agreement associated with its mining lease; and
  - (d) periodically, as prescribed, update its community development agreements.
- (8) The holder of a large-scale mining lease commits an offence if the holder contravenes Subsection (7)(b) or (7)(c).

*Penalty:* K50,000.

*Default penalty:* K2000.
- (9) If a large-scale mining lease is transferred to another person, the transferee is taken to have assumed all of the transferor's rights and obligations under a community development agreement entered into by the transferor in relation to that mining lease.
- (10) The Secretary must suspend operations of a large-scale mining lease under Section 338 if the holder of the lease fails to substantially comply with prescribed requirements—
  - (a) to identify all qualified communities; or
  - (b) to have and implement approved and ratified community development agreements with all qualified communities; or
  - (c) to expend the minimum annual amount on community development.
- (11) In this section, **mineral value** has the same meaning as in Section 291.

### 139 Exemption

- (1) The Minister, in accordance with the advice of the Advisory Council, may exempt the holder of a large-scale mining lease from an obligation under Section 138 to enter into a community development agreement with a specified qualified community.
- (2) The holder of a large-scale mining lease may, in such form and manner as are prescribed, apply for an exemption under Subsection (1), on the ground that the qualified community is unwilling or unable to enter into a community development agreement.
- (3) If an exemption is granted under Subsection (1), the lease holder—
  - (a) is not required to comply with an obligation under Section 138 to enter into a community development agreement with the qualified community identified in the exemption notice; and
  - (b) is not required to give development assistance to that community.
- (4) However, the lease holder is not relieved of its general obligations to the qualified community under Section 138(1)

- (5) If an exemption is granted under Subsection (1), the Minister, in accordance with the advice of the Advisory Council, may impose such other conditions on the lease holder as are appropriate in the circumstances.
- (6) The Minister, in accordance with the advice of the Advisory Council, may revoke an exemption granted under this section.
- (7) The Advisory Council must not advise that an exemption granted to the holder of a large-scale mining lease be revoked unless it is satisfied that circumstances have changed so that the exemption is no longer justified.
- (8) Before advising that an exemption be revoked, the Advisory Council must—
  - (a) give to the holder of the mining lease written notice—
    - (i) informing the lease holder that it is considering advising that the exemption be revoked; and
    - (ii) setting out the reasons why it is considering taking such action; and
    - (iii) inviting the lease holder to make a written submission to the Advisory Council in relation to the matter; and
  - (b) consider the submission from the lease holder.
- (9) The revocation of an exemption under Subsection (6) takes effect on the date on which the revocation is registered.
- (10) If an exemption is revoked under Subsection (6), the holder of the mining lease must, within 60 days after the registration of the revocation, act to comply with all requirements of the section from which it was previously exempt.

***Sub-division G — Mineral Resources Forum and related matters***

**140 Mineral Resources Forum process**

- (1) This section applies to an application for the grant of a large-scale mining lease.
- (2) The Minister must convene a Mineral Resources Forum process—
  - (a) before the Advisory Council completes its assessment of the application under Section 120; and
  - (b) if the Advisory Council requests that a Mineral Resources Forum be convened under Section 133(3)(d), 180(3)(d) or 196(3)(d); and
  - (c) if the Bougainville Executive Council decides that a Mineral Resources Forum should be convened to consider any matter connected with the grant of a large-scale mining lease.
- (3) A Mineral Resources Forum process is to be conducted—
  - (a) in the prescribed manner; or

- (b) in such other way or according to such other timetable as is expedient in the circumstances, as approved by the Bougainville Executive Council.
- (4) The Minister must not convene a Mineral Resources Forum process until—
  - (a) the relevant approved landowner organisations have been established under Section 35; and
  - (b) a landowner identification study under Section 323 has been completed and submitted to the Mining Registrar; and
  - (c) a social mapping study under Section 324 has been completed and submitted to the Mining Registrar; and
  - (d) the applicant has submitted to the Mining Registrar, and to the Minister responsible for environmental matters, a copy of an environmental impact assessment prepared in accordance with the Environment Act, which must include a socio-economic impact study.
- (5) The purposes of a Mineral Resources Forum process are to—
  - (a) obtain the views of approved landowner organisations, the applicant, the Autonomous Bougainville Government and other persons who will be, or are likely to be, affected by the grant of the application; and
  - (b) share information about the proposed mining development, including opportunities for integrated development with regard to infrastructure, other enterprises and development planning; and
  - (c) obtain the permission to approve the application (if such permission has not already been obtained) for the grant of the large-scale mining lease, from—
    - (i) for customary land—
      - (A) each approved landowner organisation representing the owners of the land in respect of which the application has been made; and
      - (B) all owners of that land not represented by an approved landowner organisation; and
    - (ii) for land other than customary land – all landowners of the land in respect of which the application has been made; and
  - (d) achieve agreement on the following matters, in accordance with this Act—
    - (i) the equitable sharing of landowners' royalty, annual rent, compensation and other benefits from the proposed mining development that are due to landowners of the proposed tenement under this Act;
    - (ii) the equitable sharing of non-revenue benefits from the proposed mining development by likely project-affected persons;

- (iii) the management and governance arrangements for the distribution of such revenue and other benefits;
  - (iv) the agreements required to give effect to the outcomes of the Forum and the in-principle content of those agreements; and
- (e) finalise compensation agreements (if not already finalised) referred to in Section 306.
- (6) To avoid doubt with regard to Subparagraph (5)(d)(i), an agreement reached at a Mineral Resources Forum cannot vary the rate of landowners' royalty or annual rent, which must be determined in strict accordance with this Act, but such agreements can deal with the distribution of landowners' royalty and annual rent under this Act.
- (7) The Minister must invite the following to attend a Mineral Resources Forum—
  - (a) representatives of the approved landowner organisations referred to in Subsection (5)(c)(i);
  - (b) representatives of approved landowner organisations representing the owners of customary land that—
    - (i) is adjacent to the land in respect of which the application has been made; or
    - (ii) can reasonably be expected to experience financial, environmental, social, cultural or other impacts should the application be granted;
  - (c) representatives of each community government of a community government area in which land the subject of the application is located<sup>49</sup>;
  - (d) representatives of women's groups;
  - (e) the applicant;
  - (f) representatives of the Autonomous Bougainville Government, at least half of whom must be women;
  - (g) local and district authorities responsible for integrated development;
  - (h) the members of the Advisory Council;
  - (i) the Mining Registrar;
  - (j) the Bougainville Chief Warden and the other Bougainville Wardens;
  - (k) the other members of the Bougainville Executive Council;
  - (l) the landowners of non-customary land referred to in Subsection (5)(c)(iii);
  - (m) landowners of non-customary land that—
    - (i) is adjacent to the land in respect of which the application has been made; or
    - (ii) can reasonably be expected to experience financial, environmental, social, cultural or other impacts should the application be granted;

- (n) such other project-affected persons and other persons as the Minister considers appropriate.
- (8) The owners of customary land referred to Subsection (5)(c)(ii) may, in writing, request approval from the Minister for their representatives to attend the Forum.
- (9) The owners of customary land to which Subsection (7)(b) refers who are not represented by an approved landowner organisation may, in writing, request approval from the Minister for their representatives to attend the Forum.
- (10) If the Minister agrees to a request under Subsection (8) or (9), the Minister must determine the number of representatives of the owners who can attend the Forum and the criteria for selecting those representatives.

#### **141 Report and recommendation from Mineral Resources Forum**

- (1) Within 30 days after the conclusion of a Mineral Resources Forum process, the Secretary must prepare a report on the outcome of the Forum and submit it to the Advisory Council.
- (2) Within 30 days after the receipt of the Secretary's report, the Advisory Council must advise the Bougainville Executive Council—
  - (a) if the necessary landowner permission to grant the application under Section 140 has not been obtained – that mediation under Section 142 should be considered; or
  - (b) if the necessary landowner permission to grant the application has been obtained – what further steps are required to complete the Advisory Council's assessment of the application.
- (3) If a community government<sup>50</sup> is represented at a Mineral Resources Forum, it may, within 60 days after the conclusion of the Mineral Resources Forum process, submit a report to the Advisory Council.

#### **142 Mediation**

- (1) This section applies to an application for the grant of a large-scale mining lease.
- (2) The Bougainville Executive Council may refer the application for mediation if—
  - (a) a Mineral Resources Forum has been held under Section 140 in respect of the application; and
  - (b) the landowner permission referred to in Section 140(5)(c) was not obtained.
- (3) Before the Bougainville Executive Council refers the application for mediation, the Minister—
  - (a) must consult with stakeholders, in an attempt to obtain the outstanding landowner permission for the grant of the application; and

- (b) may request from the relevant persons a written statement of their concerns that have resulted in the decision to withhold permission.
- (4) The purposes of the mediation are—
  - (a) to attempt to obtain the outstanding landowner permission for the grant of the application; and
  - (b) to resolve other issues from the Mineral Resources Forum that remain in dispute.
- (5) The mediation—
  - (a) must be conducted by a mediator—
    - (i) chosen by agreement of the parties to the mediation; or
    - (ii) if the parties are not able to agree – appointed by the Bougainville Executive Council, who must be an independent person, with suitable training, qualifications and experience; and
  - (b) must be conducted in accordance with the prescribed requirements; and
  - (c) may end, at any time, by decision of the mediator or by agreement of the parties to the mediation.
- (6) The parties to the mediation must include—
  - (a) the Minister and such other members of the Bougainville Executive Council as the Minister nominates; and
  - (b) the applicant; and
  - (c) representatives of the approved landowner organisations and landowners referred to in Section 140(5)(c); and
  - (d) such other persons as the mediator considers appropriate.
- (7) The mediator must, as soon as practicable after the mediation is conducted or should have been conducted, prepare a report for the parties to the mediation and the Secretary about—
  - (a) whether the mediation was conducted; and
  - (b) if the mediation failed – the reasons for the failure; and
  - (c) if landowner permission to grant the application was obtained – the terms on which the permission was given; and
  - (d) if the parties resolved other issues in dispute relating to the application – the manner in which those issues were resolved, including what further action is to be taken by the parties.
- (8) The Bougainville Executive Council may refer the application to mediation—
  - (a) of its own motion; or

- (b) at the request of—
  - (i) the applicant for the grant of the mining lease; or
  - (ii) an approved landowner organisation.

#### **143 Mutually acceptable decision**

- (1) This section applies to an application for the grant of a large-scale mining lease if mediation in respect of the applications has been conducted under Section 142 but has not achieved the desired outcomes.
- (2) The Bougainville Executive Council must use its best endeavours to—
  - (a) consult with approved landowner organisations, the applicant and other stakeholders; and
  - (b) reach a mutually acceptable decision.
- (3) The consultations must take into account the following—
  - (a) whether the mining development is necessary for the rehabilitation of Bougainville and its people from the destruction, injuries, trauma and dislocation suffered during the Bougainville Conflict;
  - (b) the importance of the mining development to Bougainville achieving autonomy and fiscal self-reliance;
  - (c) the extent to which the application has been dealt with in compliance with this Act;
  - (d) how the mining development will be undertaken so as to contribute significantly to the development and environmental needs of present and future generations of Bougainvilleans;
  - (e) the measures that will be taken to prevent or minimise damage and destruction to land, sea, air and water resources arising from the mining development, and to restore damage caused by the development or a variation to it;
  - (f) financial and other benefits of the mining development for Bougainvilleans.

#### **144 Sub-division also applies to related applications**

- (1) In this section, ***related application*** means—
  - (a) an application for the grant of a lease for mining purposes or a mining easement related to—
    - (i) an application for the grant of a large-scale mining lease; or
    - (ii) a large-scale mining lease; and
  - (b) an application to extend the term of a large-scale mining lease, or a lease for mining purposes or a mining easement related to the mining lease; and

- (c) an application to otherwise vary a large-scale mining lease, or a lease for mining purposes or a mining easement related to the mining lease, unless the Bougainville Executive Council decides otherwise.
- (2) Sections 140, 141, 142 and 143 apply to a related application as if a reference in those sections to an application were a reference to a related application, as the case requires.
- (3) To avoid doubt, a Mineral Resources Forum may deal with 1 or more related applications. For example, an application for the grant of a mining lease and an application for the grant of a lease for mining purposes associated with that proposed mining lease may be dealt with at the same Mineral Resources Forum.

## **Division 5 — Quarry leases**

### **145 Certain quarry operations require tenement**

- (1) The mining of quarry minerals requires the miner to be the holder of a quarry lease or a community mining licence, unless otherwise provided for in this section.
- (2) The mining of quarry minerals from a temporary site solely for use in a project relating to the construction of public works, administered by the Department of the Bougainville Public Service responsible for such works does not require a tenement under this Act.
- (3) The mining of quarry minerals by a landowner from a temporary site on the landowner's land, for personal use by that landowner on the landowner's land, such as in construction of a road, wall, foundation, building or earthwork, does not require a tenement or community mining licence under this Act.
- (4) To avoid doubt, the mining of quarry minerals for sale by a landowner from the landowner's land requires the landowner to be the holder of a quarry lease or a community mining licence.
- (5) The holder of a mining lease, artisanal mining licence or community mining licence may mine quarry minerals if so authorised by the tenement or licence, and does not require a separate quarry lease.
- (6) If the Advisory Council considers that the scale and location of a proposed quarry mining operation is small, it may, by notice in writing, grant a waiver from the requirement that the operation be done under a tenement or community mining licence.
- (7) The Secretary, in accordance with the advice of the Advisory Council, may issue guidelines specifying the criteria for exemption of a quarry mining operation under Subsection (6).



**146 Person qualified to hold quarry lease**

- (1) To be qualified to hold a quarry lease must, a person must—
- (a) be—
    - (i) a corporate body incorporated under the Companies Act; or
    - (ii) an individual person; and
  - (b) have the technical competence and financial ability to fulfil all obligations under the quarry lease; and
  - (c) be a fit and proper person to hold a quarry lease.
- (2) It is a condition of the grant of a quarry lease that the holder of the lease must, at all times, be a person qualified to hold a quarry lease under this section and, if the holder ceases to be a qualified person, the Secretary must initiate the procedure under Section 284 for cancellation of the lease.

**147 Application for quarry lease**

An application for the grant of a quarry lease must—

- (a) be in the prescribed form; and
- (b) include—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the area of the proposed quarry lease in latitude and longitude; and
  - (ii) a sketch map showing the boundary of the area of the proposed quarry lease and such other natural features as will allow the area to be correctly located; and
  - (iii) for a corporate body – a copy of the applicant’s certificate of incorporation; and
  - (iv) a statutory declaration that the area of land to which the application relates has been marked out in accordance with Section 238; and
  - (v) a survey under Section 239; and
  - (vi) the applicant’s proposed plans, including—
    - (A) a mine site plan (Section 205); and
    - (B) a mine waste management plan (Section 206); and
    - (C) a rehabilitation and closure plan (Section 231); and
    - (D) a community engagement plan (Section 297); and
  - (vii) a landowner identification study (Section 323); and
  - (viii) written evidence of landowner permission for the quarry project; and

- (ix) proof that—
  - (A) all required permits and approvals for the proposed activities have been issued under the Environment Act; or
  - (B) applications for such permits and approvals have been submitted to the relevant authority; and
- (x) a detailed justification for the area sought, setting out why all of the area is necessary for the proposed activities; and
- (c) be submitted in triplicate, unless submitted electronically; and
- (d) be accompanied by the prescribed application fee; and
- (e) comply with Part 10 Division 2.

#### **148 Proposed plans for quarry lease**

- (1) In assessing an application for the grant of a quarry lease, the Advisory Council—
  - (a) must consider whether the proposed plans submitted by the applicant—
    - (i) are appropriate; and
    - (ii) make adequate provision for the protection of the environment, in which case evidence that the applicant has complied with the Environment Act, related environment policies and regulations will be conclusive of adequate protection under this section; and
    - (iii) meet the content requirements for such plans as set out in this Act and as are prescribed; and
  - (b) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend the application or the proposed plans.
- (2) The applicant's proposed plans must be prepared in consultation with landowners regarding the disposition of mine waste on their lands with the objective to facilitate the sustainable and safe future use of their lands.
- (3) The Secretary, after consultation with the Advisory Council, may issue guidelines on the required content of proposed plans for a quarry lease, and proposed plans must comply with the guidelines.
- (4) If the Advisory Council is satisfied that an applicant's proposed plans (or amended proposed plans) comply with the requirements of this Act, and are appropriate for the applicant's proposed operations, the Advisory Council may approve the proposed plans (or amended proposed plans) as approved plans.

**149 Decision on application**

- (1) On the application of a person who satisfies the qualification criteria under Section 146, the Bougainville Executive Council, in accordance with the advice of Advisory Council, may grant or refuse to grant a quarry lease.
- (2) A quarry lease must not be granted—
  - (a) in respect of land that is the subject of another tenement, other than land that is the subject of—
    - (i) a reconnaissance licence; or
    - (ii) a mining easement; or
  - (b) if landowner permission for the quarry lease has not been obtained; or
  - (c) if all approvals and permits required under the Environment Act for the proposed activities have not been approved and issued.
- (3) A quarry lease—
  - (a) must be in the prescribed form; and
  - (b) must require that, as a condition of the lease, the holder substantially complies with the approved plans; and
  - (c) may include such other conditions as the Bougainville Executive Council, in accordance with the advice of the Advisory Council, determines.
- (4) A refusal to grant a quarry lease must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

**150 Term of quarry lease**

- (1) A quarry lease may be granted for a term not exceeding 10 years, which may be extended under Section 156.
- (2) However, the term of a quarry lease must not exceed the duration justifiably established in the applicant's proposed plans.
- (3) Each extension of the term of a quarry lease must not exceed 10 years.
- (4) If the holder of a quarry lease has submitted, at least 60 days before the date on which the lease is to expire, an application for extension of the term of the lease under Section 156, the term of the lease is taken to have been extended until the application is either granted or refused.

**151 Area and shape of quarry lease**

- (1) The area of land in respect of which a quarry lease is granted must consist of 1 area having the shape of—
  - (a) 1 cadastral block; or
  - (b) more than 1 cadastral block, each of which shares a common side with at least 1 other cadastral block.
- (2) All of the area included under a quarry lease must be necessary for the purpose of mining and preparing the quarry minerals.

**152 Rights conferred by quarry lease**

- (1) A quarry lease authorises the holder, in accordance with the Mining (Safety) Act, the Environment Act and all other relevant laws, and the conditions to which the quarry lease is subject, to—
  - (a) subject to an approved landowner compensation agreement under Section 307—
    - (i) enter and occupy land the subject of the quarry lease for the purpose of mining the quarry minerals on that land; and
    - (ii) carry on such operations and undertake such works as may be necessary or expedient for that purpose; and
  - (b) construct a preparation plant on that land and prepare quarry minerals derived from quarrying operations, whether on that land or elsewhere; and
  - (c) construct other facilities required for preparation, including waste dumps and tailings dams; and
  - (d) take and remove quarry minerals from the land, with or without preparation; and
  - (e) take and divert water situated on or flowing through such land and use it for a purpose necessary for the holder's quarrying or preparation operations subject to and in accordance with the Water Resources Act and Environment Act; and
  - (f) do all other things necessary or expedient for the undertaking of quarrying or preparation operations on that land.
- (2) Subject to this Act, the holder of a quarry lease—
  - (a) is entitled to the exclusive occupancy for quarrying and quarry purposes of land the subject of the quarry lease; and
  - (b) owns all quarry minerals lawfully mined from that land from the time the minerals are separated from the land.
- (3) To avoid doubt, ownership of quarry minerals as provided for under Section 8 or 9 ceases at such time that the minerals are separated from the land.

**153 Reporting requirements in respect of a quarry lease**

- (1) The holder of a quarry lease must submit to the Mining Registrar such reports as the Secretary may require.
- (2) The holder of a quarry lease must, if the Mining Registrar directs, submit a report under Subsection (1) by electronic means, in such manner as the Mining Registrar directs.

**154 Obligation to commence quarry development and maintain production**

- (1) The holder of a quarry lease must—
  - (a) commence substantial on-site development work within 6 months after the date on which the quarry lease is registered; and
  - (b) commence substantial production of quarry minerals no later than 12 months after the date on which the quarry lease is registered; and
  - (c) maintain continuous commercial production, as is prescribed, after the production of quarry minerals has commenced; and
  - (d) notify the Secretary at least 30 days prior to temporarily or permanently ceasing mineral production.
- (2) However, if the approved plans of the holder of a quarry lease provide for time limits shorter than those set out in Subsection (1), the shorter time limits apply.
- (3) A quarry lease proposed plan must not provide for time limits greater than those set out in Subsection (1).
- (4) If a purported time limit in an approved plan exceeds a time limit provided for in Subsection (1), the time limit in the approved plan must be disregarded, and the time limit provided for in Subsection (1) applies.
- (5) If the holder of a quarry lease fails to comply with Subsection (1), the Secretary must initiate the procedure under Section 284 for cancellation of the quarry lease.

**155 Variation of approved plans**

- (1) The holder of a quarry lease may apply for a variation of an approved plan.
- (2) An application under Subsection (1) must—
  - (a) be in the prescribed form; and
  - (b) specify the grounds on which the variation is sought; and
  - (c) include a proposed revised plan in the prescribed form, which must have been prepared in consultation with landowners regarding the disposition of mine waste on their lands with the objective to facilitate the sustainable and safe future use of their lands; and
  - (d) be accompanied by the prescribed application fee.

- (3) The Advisory Council—
  - (a) must assess the application; and
  - (b) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend a proposed revised plan submitted with the application; and
  - (c) may approve the applicant's revised plan, if it is satisfied that—
    - (i) the applicant has complied with a request under Paragraph (b); and
    - (ii) the applicant's proposed revised plan complies with the requirements for that type of plan, under this Act or as are prescribed.
- (4) An approved revised plan must be substituted for the previously approved plan.

#### **156 Extension of term of quarry lease**

- (1) The holder of a quarry lease may apply for extension of the term of the lease.
- (2) An application for extension of the term of a quarry lease must—
  - (a) be in the prescribed form; and
  - (b) be submitted at least 60 days before the date on which the lease is to expire; and
  - (c) be submitted in triplicate, unless submitted electronically; and
  - (d) be accompanied by the prescribed application fee; and
  - (e) comply with Part 10 Division 2.
- (3) The Advisory Council, in assessing an application for an extension of the term of a quarry lease must consider whether the applicant has, during the previous term of the lease—
  - (a) substantially complied with the conditions of its lease; and
  - (b) submitted all required reports; and
  - (c) paid compensation as required by this Act.
- (4) The Bougainville Executive Council, in accordance with the advice of the Advisory Council, may grant or refuse to grant an application to extend the term of a quarry lease.
- (5) An extension of the term of a quarry lease—
  - (a) must be in the prescribed form; and
  - (b) may include such conditions as the Bougainville Executive Council, in accordance with the advice of the Advisory Council, determines.

- (6) A refusal to grant an extension of the term of a quarry lease must—
- (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

### **157 Consolidation of quarry leases**

If a person holds 2 or more contiguous quarry leases, the person may apply under Section 274 to consolidate such leases into a single quarry lease.

## **Division 6 — Artisanal mining licences**

### **158 Person qualified to hold artisanal mining licence**

- (1) The holder of an artisanal mining licence must be—
- (a) a Bougainvillean who is a landowner of the land to which the licence relates; or
  - (b) a group of Bougainvilleans, all of whom are landowners of the land to which the licence relates; or
  - (c) an approved landowner organisation that represents the owners of the land to which the licence relates; or
  - (d) a Bougainvillean who is not a landowner of the land to which the licence relates, but who has obtained the written permission of the landowners of the land; or
  - (e) a group of Bougainvilleans, none of whom, or not all of whom are landowners of the land to which the licence relates, but who have obtained the written permission of the landowners of the land; or
  - (f) an approved landowner organisation that—
    - (i) represents landowners other than the landowners of the land to which the licence relates; and
    - (ii) has obtained the written permission of the landowners of the land.
- (2) It is a condition of the grant of an artisanal mining licence that the holder of the licence must, at all times, be a person qualified to hold an artisanal mining licence under this section and, if the holder ceases to be a qualified person, the Secretary must initiate the procedure under Section 284 for cancellation of the licence.

### **159 Application for artisanal mining licence**

- (1) An application for the grant of an artisanal mining licence must—
- (a) be in the prescribed form; and

- (b) include—
    - (i) a schedule in the prescribed form describing the corners of the boundary of the area of the proposed artisanal mining licence in latitude and longitude; and
    - (ii) a sketch map showing the boundary of the area of the proposed artisanal mining licence, such other natural features and the location of principal villages, as will allow the area to be correctly located; and
  - (c) be accompanied by—
    - (i) proof of land ownership or landowner permission for the grant of a artisanal mining licence, in accordance with Subsection (2); and
    - (ii) the applicant's proposed plan, which must include a mine site map and a description of—
      - (A) the proposed mining method; and
      - (B) the equipment to be used; and
      - (C) how the environment will be protected;
    - (iii) any compensation agreements; and
    - (iv) if the law requires that the applicant or, if the applicant is a group, 1 of the applicants, be the recipient of a certificate of training in artisanal mining – proof that the applicant, or 1 of the applicants, has received such a certificate; and
    - (v) proof that all relevant permits and approvals for the proposed activities have been issued under the Environment Act, or proof that an applications for such permits or approvals have been submitted to the relevant authority, or a statement that such permits or approvals are not required with reasons why they are not required; and
    - (vi) a statutory declaration that the area of land to which the application relates has been marked out in accordance with Section 238; and
  - (d) be submitted in triplicate, unless submitted electronically; and
  - (e) accompanied by the prescribed application fee; and
  - (f) comply with Part 10 Division 2.
- (2) The requirement under Subsection (1)(c)(i) must be satisfied by provision of—
- (a) if the applicant is a Bougainvillean who is a landowner of the land – a written declaration to the effect that the applicant—
    - (i) is Bougainvillean; and
    - (ii) is the owner, or an owner of the land to which the application relates; and



- (iii) unless the applicant is the sole owner of the land – has obtained the permission of—
    - (A) the other owners of the land; or
    - (B) the customary heads of the clan lineage that owns the land; or
- (b) if the applicant is a group of Bougainvilleans, all of whom are landowners of the land—
  - (i) a list of the names of all members of the group; and
  - (ii) a written declaration to the effect that—
    - (A) each member of the group is Bougainvillean; and
    - (B) each member of the group is an owner of the land to which the application relates; and
    - (C) unless the members of the group are the only owners of the land – the applicant has obtained the permission of—
      - (1) the other owners of the land; or
      - (2) the customary heads of the clan lineage that owns the land; or
- (c) if the applicant is an approved landowner organisation that represents the landowners of the land—
  - (i) a copy of the organisation’s constitution; and
  - (ii) a written declaration that the organisation represents some or all of the owners of the land to which the application relates; or
- (d) if the applicant is a Bougainvillean who is not a landowner of the land—
  - (i) a written declaration to the effect that the applicant is Bougainvillean; and
  - (ii) written evidence that the applicant has obtained the permission of—
    - (A) the owners of the land; or
    - (B) the customary heads of the clan lineage that owns the land; or
- (e) if the applicant is a group of Bougainvilleans, none of whom, or not all of whom are landowners of the land—
  - (i) a list of the names of all members of the group; and
  - (ii) a written declaration to the effect that each member of the group is Bougainvillean; and
  - (iii) written evidence that the applicant has obtained the permission of—
    - (A) the owners of the land; or
    - (B) the customary heads of the clan lineage that owns the land; or

- (f) if the applicant is an approved landowner organisation that represents landowners other than the landowners of the land—
  - (i) a copy of the organisation’s constitution; and
  - (ii) written evidence that the applicant has obtained the permission of—
    - (A) the owners of the land; or
    - (B) the customary heads of the clan lineage that owns the land.

## **160 Proposed plans for artisanal mining licence**

- (1) In assessing an application for the grant of an artisanal mining licence, the Advisory Council—
  - (a) must consider whether the proposed plans are appropriate; and
  - (b) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend the application or the proposed plans.
- (2) The Secretary, after consultation with the Advisory Council, may issue guidelines on the required content of proposed plans for an artisanal mining licence, and proposed plans must comply with the guidelines.
- (3) If the Advisory Council is satisfied that an applicant’s proposed plans (or amended proposed plans) comply with the requirements of this Act, and are appropriate for the applicant’s proposed operations, the Advisory Council may approve the proposed plans (or amended proposed plans) as approved plans.

## **161 Grant of artisanal mining licence**

- (1) On the application of 1 or more persons who satisfy the qualification criteria under Section 158, the Minister, in accordance with the advice of Advisory Council, may grant or refuse to grant an artisanal mining licence.
- (2) An artisanal mining licence must not be granted—
  - (a) in respect of land that is the subject of another tenement, other than land that is the subject of—
    - (i) a reconnaissance licence; or
    - (ii) a mining easement; or
  - (b) if landowner permission for the artisanal mining licence has not been obtained.
- (3) An artisanal mining licence—
  - (a) must be in the prescribed form; and

- (b) must require that, as a condition of the licence, the holder—
    - (i) comply with the approved plans; and
    - (ii) keep a copy of the licence at the mine site whenever mining is taking place; and
    - (iii) use safe practices whenever mercury or a prescribed chemical is used to recover minerals; and
    - (iv) not employ or use child labour; and
    - (v) not mine deeper than the depth specified in the licence, which must not exceed 10 metres below the natural surface of the ground; and
    - (vi) not use explosives; and
    - (vii) not discharge water from a sluice, pump or other equipment except into a holding pond, settlement dam or similar structure or apparatus designed to protect waterways from the discharge of silt, solids and other suspended matter; and
  - (c) may include a requirement that the licence holder implement such rehabilitation measures as are attached to the licence; and
  - (d) may include such other conditions as the Minister, in accordance with the advice of the Advisory Council, determines.
- (4) A refusal to grant an artisanal mining licence must be in the prescribed form.
- (5) Despite Section 158, mining under an artisanal mining licence may be carried on—
- (a) jointly by the holder of the licence with 1 or more other persons who are not Bougainvilleans, whether or not in partnership, in accordance with a tribute agreement; or
  - (b) by a body corporate formed by the holder of the licence and 1 or more persons who are not Bougainvilleans for the purpose of enabling those persons to carry on that activity jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate.

## **162 Term of artisanal mining licence**

- (1) An artisanal mining licence may be granted for a term not exceeding 10 years, which may be extended under Section 169.
- (2) Each extension of the term of an artisanal mining licence must not exceed 5 years.
- (3) If the holder of an artisanal mining licence has submitted, at least 60 days before the date on which the licence is to expire, an application for extension of the term of the licence under Section 169, the term of the licence is taken to have been extended until the application is either granted or refused.

**163 Area and shape of artisanal mining licence**

The area of land in respect of which an artisanal mining licence is granted must—

- (a) not exceed 5 hectares; and
- (b) consist of 1 area having the shape of—
  - (i) 1 cadastral block; or
  - (ii) more than 1 cadastral block, each of which shares a common side with at least 1 other cadastral block.

**164 Permissible depth**

- (1) An artisanal mining licence may only be granted to a depth which is consistent with the safe conduct of the mining development described in the approved plans, and the depth must be specified on the licence, but in all cases must not exceed 10 metres below the natural surface of the ground.
- (2) An artisanal mining licence that purports to convey the right to mine deeper than 10 metres below the natural surface of the ground is null and void.

**165 Rights conferred by artisanal mining licence**

- (1) An artisanal mining licence authorises the holder, in accordance with the Mining (Safety) Act, the Environment Act and conditions to which the licence is subject, to—
  - (a) enter and occupy the land for the purpose of mining minerals; and
  - (b) carry on such operations and undertake such works as may be necessary or expedient for the purposes of mining and treating minerals; and
  - (c) take and remove rock, earth, soil and minerals from that land, with or without treatment; and
  - (d) take and divert water situated on or flowing through such land and use it for a purpose necessary for the holder's mining or treatment activities, subject to and in accordance with the Water Resources Act and Environment Act; and
  - (e) do all things necessary or expedient for the undertaking of mining or treatment operations on that land.
- (2) Subject to this Act, the holder of an artisanal mining licence—
  - (a) is entitled, for mining purposes, to the exclusive occupancy of land the subject of the artisanal mining licence; and
  - (b) owns all minerals lawfully mined from that land from the time the minerals are separated from the land.
- (3) To avoid doubt, ownership of minerals as provided for under Section 8 or 9 ceases at such time that the minerals are separated from the land.

**166 Reporting requirements in respect of an artisanal mining licence**

- (1) The holder of an artisanal mining licence must, in respect of each calendar quarter during which minerals are produced or obtained from the land, record the quantity and value of the minerals recovered in a form that is available for inspection on demand from an authorised officer.
- (2) The holder of an artisanal mining licence must submit annually to the Mining Registrar the records under Subsection (1).
- (3) The holder of an artisanal mining licence must, if the Mining Registrar directs, submit a report under this section by electronic means, in such manner as the Mining Registrar directs.

**167 Obligation to commence development and maintain production**

- (1) The holder of an artisanal mining licence must—
  - (a) commence substantial mineral production no later than 6 months after the date on which the licence is registered; and
  - (b) maintain continuous commercial production, as is prescribed, after mineral production has commenced; and
  - (c) notify the Secretary at least 30 days prior to permanently ceasing mineral production.
- (2) If the holder of an artisanal mining licence fails to comply with Subsection (1), the Secretary must initiate the procedure under Section 284 for cancellation of the artisanal mining licence.

**168 Variation of approved plans**

- (1) The holder of an artisanal mining licence may apply for a variation of an approved plan.
- (2) An application under Subsection (1) must—
  - (a) be in the prescribed form; and
  - (b) specify the grounds on which the variation is sought; and
  - (c) include a proposed revised plan in the prescribed form; and
  - (d) be accompanied by the prescribed application fee.
- (3) An application for a variation of an approved plan must not be granted unless—
  - (a) landowner permission for the variation has been obtained; or
  - (b) the applicant for the variation is the only landowner of the land subject to the licence.

- (4) The Advisory Council—
  - (a) must assess the application; and
  - (b) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend a proposed revised plan submitted with the application; and
  - (c) may approve the applicant's revised plan, if it is satisfied that—
    - (i) the applicant has complied with a request under Paragraph (b); and
    - (ii) the applicant's proposed revised plan complies with the requirements for that type of plan, under this Act or as are prescribed.
- (5) An approved revised plan must be substituted for the previously approved plan.

#### **169 Extension of term of artisanal mining licence**

- (1) The holder of an artisanal mining licence may apply for extension of the term of the licence.
- (2) An application for extension of the term of an artisanal mining licence must—
  - (a) be in the prescribed form; and
  - (b) be submitted at least 60 days before the date on which the licence is to expire; and
  - (c) be submitted in triplicate, unless submitted electronically; and
  - (d) be accompanied by the prescribed application fee; and
  - (e) comply with Part 10 Division 2.
- (3) The Advisory Council, in assessing an application for an extension of the term of an artisanal mining licence, must consider whether the applicant has, during the previous term of the licence—
  - (a) substantially complied with the conditions of its licence; and
  - (b) submitted all required reports; and
  - (c) paid compensation as required by this Act.
- (4) An application for extension of the term of an artisanal mining licence must not be granted unless—
  - (a) landowner permission for the extension has been obtained; or
  - (b) the applicant for the extension is the only landowner of the land subject to the licence.
- (5) The Minister, in accordance with the advice of the Advisory Council, may grant or refuse to grant an application to extend the term of an artisanal mining licence.

- (6) An extension of the term of an artisanal mining licence —
  - (a) must be in the prescribed form; and
  - (b) may include such conditions as the Minister, in accordance with the advice of the Advisory Council, determines.
- (7) A refusal to grant an extension of the term of an artisanal mining licence must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

#### **170 Transfer or other dealings in an artisanal mining licence**

- (1) A legal or equitable interest in or affecting an artisanal mining licence may be validly created, transferred or otherwise disposed of, whether directly or indirectly, only if—
  - (a) the dealing arises in the due administration of the estate or affairs of a licence holder who—
    - (i) is dead; or
    - (ii) is a person who is insolvent or bankrupt; or
    - (iii) is otherwise incapacitated at law; and
  - (b) prior written consent to the dealing is given by the Secretary.
- (2) Nothing in Subsection (1) prevents, or affects the validity of, an agreement made in contemplation of a dealing to which that subsection applies, if the agreement expressly provides that the consent required by that subsection is to be obtained as a condition of the agreement.
- (3) The Secretary may consent to the dealing only if—
  - (a) the transferee or person in whose favour the interest is to be created will be the sole landowner of the land the subject of the artisanal mining licence; or
  - (b) the landowners of the land the subject of the artisanal mining licence have consented to the transferee or person in whose favour the interest is to be created holding the interest.

## **Division 7 — Leases for mining purposes**

### ***Sub-division A — General***

#### **171 Purposes for which lease for mining purposes may be granted**

A lease for mining purposes may be granted in connection with mining operations conducted or to be conducted by the applicant for the grant of a lease for mining purposes or some other person, for 1 or more of the following purposes—

- (a) the construction of buildings and other improvements, and operating plant, machinery and equipment;
- (b) the installation of a treatment plant and the treatment of minerals in it;
- (c) the deposit of tailings or waste;
- (d) housing and other infrastructure required in connection with mining or treatment operations;
- (e) transport facilities including roads, airstrips and ports;
- (f) a purpose ancillary to mining or treatment operations or to any of the preceding purposes, which purpose may be approved by the Bougainville Executive Council, in accordance with the advice of the Advisory Council.

#### **172 Application for lease for mining purposes**

An application for the grant of a lease for mining purposes must—

- (a) be in the prescribed form; and
- (b) include—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the proposed area of the lease for mining purposes in latitude and longitude; and
  - (ii) a sketch map showing the boundary of the proposed area of the lease for mining purposes, such other natural features and the location of principal villages as will allow the area to be correctly located; and
  - (iii) for a corporate body – a copy of the applicant’s certificate of incorporation; and
  - (iv) a statutory declaration that the area of land to which the application relates has been marked out in accordance with Section 238; and
  - (v) a survey under Section 239; and
  - (vi) the applicant’s proposed plans; and
  - (vii) a landowner identification study; and
  - (viii) written evidence of landowner permission for the lease; and



- (ix) proof that—
  - (A) all required permits and approvals for the proposed activities have been issued under the Environment Act; or
  - (B) applications for such permits and approvals have been submitted to the relevant authority; and
- (x) a detailed justification for the area sought, setting out why all of the area is necessary for the proposed activities; and
- (c) be submitted in triplicate, unless submitted electronically; and
- (d) be accompanied by the prescribed application fee; and
- (e) comply with Part 10 Division 2.

### **173 Proposed plans for lease for mining purposes**

- (1) In assessing an application for the grant of a lease for mining purposes, the Advisory Council—
  - (a) must consider whether the proposed plans submitted by the applicant—
    - (i) are appropriate; and
    - (ii) meet the content requirements for such plans as set out in this Act and as are prescribed; and
  - (b) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend the application or the proposed plans.
- (2) The Secretary, after consultation with the Advisory Council, may issue guidelines on the required content of proposed plans for a lease for mining purposes, and proposed plans must comply with the guidelines.
- (3) If the Advisory Council is satisfied that an applicant's proposed plans (or amended proposed plans) comply with the requirements of this Act, and are appropriate for the applicant's proposed operations, the Advisory Council may approve the proposed plans (or amended proposed plans) as approved plans.

### **174 Decision on application**

- (1) On the application of a person, the Bougainville Executive Council, in accordance with the advice of Advisory Council, may grant or refuse to grant a lease for mining purposes.
- (2) A lease for mining purposes must not be granted—
  - (a) for a lease for mining purposes related to a large-scale mining lease – unless agreement has been reached on the grant of the lease for mining purposes—
    - (i) at the Mineral Resources Forum under Section 140; or

- (ii) after mediation under Section 142; or
    - (iii) in accordance with a mutually acceptable decision reached under Section 143; and
  - (b) in respect of land that is the subject of another tenement, other than land that is the subject of—
    - (i) an exploration licence under Section 183; or
    - (ii) a mining easement under Section 199; or
  - (c) if landowner permission for the lease for mining purposes has not been obtained; or
  - (d) if all approvals and permits required under the Environment Act for the proposed activities have not been approved and issued.
- (3) A lease for mining purposes—
- (a) must be in the prescribed form; and
  - (b) must specify each purpose under Section 171 for which it was granted; and
  - (c) must require that, as a condition of the lease, the holder substantially complies with the approved plans; and
  - (d) may include such other conditions as the Bougainville Executive Council, in accordance with the advice of the Advisory Council, determines.
- (4) A refusal to grant a lease for mining purposes must—
- (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

### **175 Term of lease for mining purposes**

- (1) A lease for mining purposes may be granted for a term—
- (a) that is equal to the term of the mining lease in relation to which the lease for mining purposes is granted; or
  - (b) if there is no related lease – not exceeding 20 years.
- (2) The term of a lease for mining purposes may be extended under Section 181—
- (a) to coincide with an extension of the term of the mining lease in relation to which the lease for mining purposes was granted; or
  - (b) for a period equal to the remaining term of any other mining lease referred to in the proposed plans for the lease for mining purposes; or
  - (c) if there is no related lease – for a further term not exceeding 20 years.
- (3) If the holder of a lease for mining purposes has submitted, at least 180 days before the date on which the lease is to expire, an application for extension of the term

of the lease under Section 181, the term of the lease is taken to have been extended until the application is either granted or refused.

#### **176 Area and shape of lease for mining purposes**

- (1) The area of land in respect of which a lease for mining purposes may be granted must—
  - (a) be an area consistent with the purposes for which it is granted; and
  - (b) not exceed 50 square kilometres; and
  - (c) consist of 1 area having the shape of—
    - (i) 1 cadastral block; or
    - (ii) more than 1 cadastral block, each of which shares a common side with at least 1 other cadastral block.
- (2) A lease for mining purposes must be granted to a depth consistent with the purposes for which it was granted.

#### **177 Rights conferred by lease for mining purposes**

- (1) A lease for mining purposes authorises the holder, in accordance with the Mining (Safety) Act, the Environment Act and the conditions to which it may be subject, to—
  - (a) subject to an approved landowner compensation agreement under Section 306 – enter and occupy land the subject of the lease; and
  - (b) develop that land and undertake such works as may be necessary or expedient; and
  - (c) take and divert water situated on or flowing through such land and use it, in accordance with the Water Resources Act and Environment Act; and
  - (d) do all other things necessary or expedient to achieve the purposes for which the lease for mining purposes was granted.
- (2) The holder of a lease for mining purposes is entitled, for the purposes for which the lease for mining purposes was granted, to the exclusive occupancy of the land over which the lease for mining purposes was granted.

#### **178 Reporting requirements in respect of lease for mining purposes**

- (1) The holder of a lease for mining purposes must submit to the Mining Registrar such reports as the Secretary may require.
- (2) The holder of a lease for mining purposes must, if the Mining Registrar directs, submit a report under Subsection (1) by electronic means, in such manner as the Mining Registrar directs.

**179 Obligation to commence development and maintain operations**

- (1) The holder of a lease for mining purposes must—
  - (a) commence substantial operations within the area of the lease no later than 60 months after the date on which the lease is registered; and
  - (b) maintain continuous operations after operations have commenced; and
  - (c) notify the Secretary at least 30 days prior to temporarily or permanently ceasing operations.
- (2) However, if the approved plans of the holder of a lease for mining purposes provide for a time limit shorter than that set out in Subsection (1)(a), the shorter time limit applies.
- (3) A lease for mining purposes proposed plan must not provide for a time limit greater than that set out in Subsection (1)(a).
- (4) If a purported time limit in an approved plan exceeds a time limit provided for in Subsection (1)(a), the time limit in the approved plan must be disregarded, and the time limit provided for in Subsection (1)(a) applies.
- (5) If the holder of a lease for mining purposes fails to comply with Subsection (1), the Secretary must initiate the procedure under Section 284 for cancellation of the lease.

**180 Variation of approved plans**

- (1) The holder of a lease for mining purposes may apply for a variation of an approved plan.
- (2) An application under Subsection (1) must—
  - (a) be in the prescribed form; and
  - (b) specify the grounds on which the variation is sought; and
  - (c) include a proposed revised plan in the prescribed form; and
  - (d) be accompanied by the prescribed application fee.
- (3) The Advisory Council—
  - (a) must assess the application; and
  - (b) must consult with—
    - (i) each approved landowner organisation representing the owners of customary land subject to the lease for mining purposes; and
    - (ii) other landowners of land subject to the lease for mining purposes; and
  - (c) may request the applicant to—
    - (i) provide further information; or

- (ii) amend a proposed revised plan submitted with the application; and
- (d) may, if it considers that the nature of the variation applied for is such that a Mineral Resources Forum should be convened, request that the Minister convene a Mineral Resources Forum under Section 140 (with appropriate changes) to consider the application; and
- (e) may approve the applicant's revised plan, if it is satisfied that—
  - (i) the applicant has complied with a request under Paragraph (c); and
  - (ii) the applicant's proposed revised plan complies with the requirements for that type of plan, under this Act or as are prescribed; and
  - (iii) if a Mineral Resources Forum was convened to consider the application under Paragraph (d) – approval of the revised plan is in accordance with the outcome of the Mineral Resources Forum.
- (4) An approved revised plan must be substituted for the previously approved plan.
- (5) To avoid doubt, a Bougainville Warden's hearing is not required when considering an application under this section.

#### **181 Extension of term of lease for mining purposes**

- (1) The holder of a lease for mining purposes may apply for extension of the term of the lease.
- (2) An application for extension of the term of a lease for mining purposes must—
  - (a) be in the prescribed form; and
  - (b) be submitted at least 180 days before the date on which the lease is to expire; and
  - (c) be submitted in triplicate, unless submitted electronically; and
  - (d) be accompanied by the prescribed application fee; and
  - (e) comply with Part 10 Division 2.
- (3) The Advisory Council, in assessing an application for an extension of the term of a lease for mining purposes must consider whether the applicant has, during the previous term of the lease—
  - (a) substantially complied with the conditions of its lease; and
  - (b) submitted all required reports; and
  - (c) paid compensation as required by this Act.
- (4) The Bougainville Executive Council, in accordance with the advice of the Advisory Council, may grant or refuse to grant an application to extend the term of a lease for mining purposes.

- (5) An extension of the term of a lease for mining purposes—
  - (a) must be in the prescribed form; and
  - (b) may include such conditions as the Bougainville Executive Council, in accordance with the advice of the Advisory Council, determines.
- (6) A refusal to grant an extension of the term of a lease for mining purposes must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

## **182 Consolidation of leases for mining purposes**

If a person holds 2 or more contiguous leases for mining purposes, the person may apply under Section 274 to consolidate such leases into a single lease for mining purposes.

### ***Sub-division B — Application over existing tenements***

## **183 Leases for mining purposes and existing exploration licences, and *vice versa***

- (1) A lease for mining purposes may be granted over land or part of land the subject of an existing exploration licence.
- (2) A person may apply for the grant of an exploration licence over land the subject of a lease for mining purposes, and the person may be granted an exploration licence over such portion of the land as is below the depth to which the lease for mining purposes was granted.

## **184 Lease for mining purposes and exploration licence over same area**

- (1) The effect of the grant of a lease for mining purposes over land the subject of an exploration licence is to excise from the exploration licence—
  - (a) the natural surface of land the subject of the lease; and
  - (b) land beneath the surface, to the depth to which the lease for mining purposes has been granted.
- (2) If a lease for mining purposes and an exploration licence area have been granted over the same area of land, the exploration licence has full force and effect below the depth to which the lease for mining purposes has been granted.
- (3) After consultation with the holder of a lease for mining purposes, the holder of an exploration licence may enter on and occupy land the subject of the lease, without unreasonably interfering with the operations of the holder of the lease for mining purposes, for the purpose of—
  - (a) exploring the land below the depth to which the lease for mining purposes was granted; and

- (b) if the exploration licence is converted to a mining lease – mining that land below that depth.
- (4) On the surrender, cancellation or expiry of a lease for mining purposes, the lease for mining purposes ceases to have effect and—
  - (a) land excised from an exploration licence under Subsection (1) reverts to that exploration licence; or
  - (b) if another tenement has been granted over all or part of land the subject of the lease for mining purposes – that part of the land that would otherwise have reasonably been included in the other tenement but for the existence of the lease for mining purposes is amalgamated with land the subject of that other tenement.

#### **185 Notice to exploration licence holder of lease for mining purposes application**

If an application for the grant or extension of the term of a lease for mining purposes is registered in respect of land the subject of an exploration licence, the Mining Registrar must, if the applicant is not the holder of the exploration licence, immediately give notice of the application to the licence holder, and supply the licence holder with a copy of the application and the proposed plans.

#### **186 Exploration licence holder may object to lease for mining purposes application**

- (1) The holder of an exploration licence may, within 30 days after receiving notice of an application under Section 185, submit a written objection to the application in the prescribed form to the Mining Registrar.
- (2) On receipt of an objection under Subsection (1), the Mining Registrar must forward it to the Advisory Council.
- (3) The Advisory Council must advise the Bougainville Executive Council that it refuse an application for the grant of a lease for mining purposes if the Advisory Council considers that operations on land the subject of the application will be of material detriment to—
  - (a) the exploration work programme of the holder of the exploration licence; or
  - (b) mining operations or operations ancillary to mining proposed or to be established by that holder.

#### **187 Objector to be given notice of meeting of Advisory Council**

If the holder of an exploration licence submits an objection under Section 186(1) to an application for a lease for mining purposes, the Mining Registrar must give to the licence holder notice of the date and place of the meeting of the Advisory Council at which the application is to be considered, and the licence holder may attend the meeting for the purpose of supporting its objection.

## **Division 8 — Mining easements**

### ***Sub-division A — General***

#### **188 Purposes for which mining easement may be granted**

A mining easement may be granted in connection with mining or treatment or ancillary operations conducted by the applicant for the mining easement or some other person for the purpose of constructing and operating 1 or more of the following facilities—

- (a) a road;
- (b) a tramway or railway;
- (c) an aerial ropeway;
- (d) a power transmission line;
- (e) a pipeline;
- (f) a conveyor system;
- (g) a bridge or tunnel;
- (h) a waterway;
- (i) any other facility ancillary to mining or treatment or ancillary operations in connection with any of the preceding purposes, which may be approved by the Bougainville Executive Council.

#### **189 Application for mining easement**

An application for the grant of a mining easement must—

- (a) be in the prescribed form; and
- (b) include—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the proposed area of the mining easement in latitude and longitude; and
  - (ii) a sketch map showing the boundary of the proposed area of the mining easement, such other natural features and the location of principal villages, as will allow the area to be correctly located; and
  - (iii) for a corporate body – a copy of the applicant’s certificate of incorporation; and
  - (iv) a statutory declaration that the area of land to which the application relates has been marked out in accordance with Section 238; and
  - (v) a survey under Section 239; and
  - (vi) the applicant’s proposed plans; and
  - (vii) a landowner identification study; and



- (viii) written evidence of landowner permission for the easement; and
- (ix) a detailed justification for the area sought, setting out why all of the area is necessary for the proposed activities; and
- (c) be submitted in triplicate, unless submitted electronically; and
- (d) be accompanied by the prescribed application fee; and
- (e) comply with Part 10 Division 2.

## **190 Proposed plans for mining easement**

- (1) In assessing an application for the grant of a mining easement, the Advisory Council—
  - (a) must consider whether the proposed plans submitted by the applicant—
    - (i) are appropriate; and
    - (ii) meet the content requirements for such plans as set out in this Act and as are prescribed; and
  - (b) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend the application or the proposed plans.
- (2) The Secretary, after consultation with the Advisory Council, may issue guidelines on the required content of proposed plans for a mining easement, and proposed plans must comply with the guidelines.
- (3) If the Advisory Council is satisfied that an applicant's proposed plans (or amended proposed plans) comply with the requirements of this Act, and are appropriate for the applicant's proposed operations, the Advisory Council may approve the proposed plans (or amended proposed plans) as approved plans.

## **191 Decision on application**

- (1) On the application of a person, the Bougainville Executive Council, in accordance with the advice of Advisory Council, may grant or refuse to grant a mining easement.
- (2) A mining easement must not be granted—
  - (a) for a mining easement related to a large-scale mining lease – unless agreement has been reached on the grant of the mining easement—
    - (i) at the Mineral Resources Forum under Section 140; or
    - (ii) after mediation under Section 142; or
    - (iii) in accordance with a mutually acceptable decision reached under Section 143; and
  - (b) if landowner permission for the mining easement has not been obtained; or

- (c) if all approvals and permits required under the Environment Act for the proposed activities have not been approved and issued.
- (3) A mining easement—
  - (a) must be in the prescribed form; and
  - (b) must specify each purpose under Section 188 for which it was granted; and
  - (c) must require that, as a condition of the easement, the holder substantially complies with the approved plans; and
  - (d) may include such other conditions as the Bougainville Executive Council, in accordance with the advice of the Advisory Council, determines.
- (4) A refusal to grant a mining easement must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

### **192 Term of mining easement**

- (1) The term of a mining easement is identical to the term of the tenement in relation to which the mining easement is granted.
- (2) The term of a mining easement may be extended under Section 197—
  - (a) to coincide with the extension of the term of the mining lease in relation to which the mining easement was granted; or
  - (b) for a period equal to the remaining term of any other mining lease or lease for mining purposes referred to in the approved plans for the mining easement.
- (3) If the holder of a mining easement has submitted, at least 180 days before the date on which the easement is to expire, an application for extension of the term of the easement under Section 197, the term of the easement is taken to have been extended until the application is either granted or refused.

### **193 Area of mining easement**

The area of land over which a mining easement may be granted must—

- (a) be that sufficient for the purposes for which it was granted; and
- (b) be in a rectangular or polygonal shape.

**194 Rights conferred by mining easement**

- (1) A mining easement authorises the holder, in accordance with the Mining (Safety) Act, the Environment Act and the conditions to which the easement may be subject, to—
  - (a) subject to an approved landowner compensation agreement under Section 306 – enter and occupy land the subject of the easement; and
  - (b) develop that land and undertake such works as may be necessary or expedient; and
  - (c) take and divert water situated on or flowing through such land and use it, in accordance with the Water Resources Act and Environment Act; and
  - (d) do all other things necessary or expedient to achieve the purposes for which the easement was granted.
- (2) The holder of a mining easement is entitled, for the purposes for which the easement was granted, to exclusive occupancy of land the subject of the easement.

**195 Reporting requirements in respect of mining easement**

- (1) The holder of a mining easement must submit to the Mining Registrar such reports as the Secretary may require.
- (2) The holder of a mining easement must, if the Mining Registrar directs, submit a report under Subsection (1) by electronic means, in such manner as the Mining Registrar directs.

**196 Variation of approved plans**

- (1) The holder of a mining easement may apply for a variation of an approved plan.
- (2) An application under Subsection (1) must—
  - (a) be in the prescribed form; and
  - (b) specify the grounds on which a variation is sought; and
  - (c) include a proposed revised plan in the prescribed form; and
  - (d) be accompanied by the prescribed application fee.
- (3) The Advisory Council—
  - (a) must assess the application; and
  - (b) must consult with—
    - (i) each approved landowner organisation representing the owners of customary land the subject of the easement; and
    - (ii) other landowners of land the subject of the easement; and

- (c) may request the applicant to—
  - (i) provide further information; or
  - (ii) amend a proposed revised plan submitted with the application; and
- (d) may, if it considers that the nature of the variation applied for is such that a Mineral Resources Forum should be convened, request that the Minister convene a Mineral Resources Forum under Section 140 (with appropriate changes) to consider the application; and
- (e) may approve the applicant's revised plan, if it is satisfied that—
  - (i) the applicant has complied with a request under Paragraph (c); and
  - (ii) the applicant's proposed revised plan complies with the requirements for that type of plan, under this Act or as are prescribed; and
  - (iii) if a Mineral Resources Forum was convened to consider the application under Paragraph (d) – approval of the revised plan is in accordance with the outcome of the Mineral Resources Forum.
- (4) An approved revised plan must be substituted for the previously approved plan.
- (5) To avoid doubt, a Bougainville Warden's hearing is not required when considering an application under this section.

#### **197 Extension of term of mining easement**

- (1) The holder of a mining easement may apply for extension of the term of the easement.
- (2) An application for extension of the term of a mining easement must—
  - (a) be in the prescribed form; and
  - (b) be submitted at least 180 days before the date on which the easement is to expire; and
  - (c) be submitted in triplicate, unless submitted electronically; and
  - (d) be accompanied by the prescribed application fee; and
  - (e) comply with Part 10 Division 2.
- (3) The Advisory Council, in assessing an application for an extension of the term of a mining easement, must consider whether the applicant has, during the previous term of the easement—
  - (a) substantially complied with the conditions of the easement; and
  - (b) submitted all required reports; and
  - (c) paid compensation as required by this Act.

- (4) The Bougainville Executive Council, in accordance with the advice of the Advisory Council, may grant or refuse to grant an application to extend the term of a mining easement.
- (5) An extension of the term of a mining easement—
  - (a) must be in the prescribed form; and
  - (b) may include such conditions as the Bougainville Executive Council, in accordance with the advice of the Advisory Council, determines.
- (6) A refusal to grant an extension of the term of a mining easement must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

## **198 Consolidation of mining easements**

If a person holds 2 or more contiguous mining easements, the person may apply under Section 274 to consolidate such easements into a single mining easement.

### ***Sub-division B — Application over existing tenement***

## **199 Mining easements and existing tenements, and vice versa**

- (1) A mining easement may be granted over land or part of land the subject of an existing tenement or community mining licence only if the mining easement will not unduly interfere with the activities of the existing tenement or licence.
- (2) A person may apply for the grant of a tenement over land the subject of a mining easement, and the person may be granted a tenement over all or such portion of the land as the Advisory Council considers will not be of material detriment to the operations of the holder of the mining easement.
- (3) In this Sub-division, ***primary tenement*** means the tenement or community mining licence over which a mining easement may be granted under this section.

## **200 Grant of mining easement over land the subject of existing tenement**

- (1) If the Advisory Council intends to advise the Bougainville Executive Council that it should grant a mining easement over land the subject of a primary tenement, the Advisory Council must ensure, wherever practicable, that the manner in which the mining easement is granted is such that the easement holder is allowed proper use and enjoyment of the easement without the need to excise from the land over which the primary tenement was granted the land over which the mining easement is granted.
- (2) If a mining easement is granted over land the subject of a primary tenement, and it is not possible to comply with Subsection (1), the Bougainville Executive Council, in accordance with the advice of the Advisory Council, must excise from land the

subject of the primary tenement such portion, to such depth, as is reasonably necessary to allow the easement holder proper use and enjoyment of the mining easement.

## **201 Effect of mining easement on primary tenement**

- (1) A primary tenement continues in full force and effect, subject only to an excision made under Section 200.
- (2) The holder of a primary tenement (whether or not there has been an excision under Section 200) may enter on and occupy the surface of land the subject of a mining easement, for the purpose of exercising the rights conferred by the primary tenement, but must not unreasonably interfere with the operations of the holder of the mining easement.
- (3) On the surrender, cancellation or expiry of a mining easement—
  - (a) land excised from a primary tenement under Section 200 reverts to that primary tenement; or
  - (b) if another tenement has been granted over all or part of land the subject of the mining easement, that part of the land that would otherwise have reasonably been included in the other tenement, but for the existence of the mining easement, must be amalgamated with land the subject of that other tenement.

## **202 Notice to tenement holder of mining easement application**

If an application for the grant or extension of the term of a mining easement is registered in respect of land the subject of another tenement or community mining licence, the Mining Registrar must, if the applicant is not the holder of that other tenement, immediately give notice of the application to the holder of that other tenement or licence, and supply that holder with a copy of the application and the proposed plans

## **203 Tenement holder may object to mining easement application**

- (1) The holder of another tenement or community mining licence may, within 30 days after receiving notice of an application under Section 202, submit a written objection to the application in the prescribed form to the Mining Registrar.
- (2) On receipt of an objection under Subsection (1), the Mining Registrar must forward it to the Advisory Council.
- (3) The Advisory Council must advise the Bougainville Executive Council that it refuse an application for the grant of a mining easement if the Advisory Council considers that operations on land the subject of the application will be of material detriment to the operations of the holder of the other tenement or community mining licence.

**204 Objector to be given notice of meeting of Advisory Council**

If the holder of another tenement or community mining licence submits an objection under Section 203(1) to an application for the grant of a mining easement, the Mining Registrar must give to the objector notice of the date and place of the meeting of the Advisory Council at which the application is to be considered, and the objector may attend the meeting for the purpose of supporting its objection.

**Division 9 — General****205 Mine site plan**

- (1) An application for the grant of a mining lease or quarry lease must be accompanied by particulars of the applicant's proposed mine site plan, which must contain such information as is prescribed.
- (2) The holder of a mining lease or quarry lease must at all times maintain an up-to-date mine site plan.

**206 Mine waste management plan**

- (1) An application for the grant a mining lease or quarry lease must be accompanied by particulars of the applicant's proposed mine waste management plan, which must—
  - (a) comply with Section 207; and
  - (b) contain such information as is prescribed.
- (2) The holder of a mining lease or quarry lease must periodically, as is prescribed, update its approved mine waste management plan.
- (3) If an applicant for the grant of a mining lease or quarry lease, or a holder of a mining lease or quarry lease submits a revised mine waste management plan, it must consult with landowners regarding the disposition of mine waste on their land, with the objective of facilitating the sustainable and safe future use of the land.

**207 Treatment of waste**

- (1) The holder of a tenement or community mining licence must ensure that waste generated by its operation is handled, treated, stored and disposed of in such manner that the waste does not pose a hazard to mine workers, landowners, and the public or to the environment, at or after the time the waste is generated.
- (2) The holder of a mining lease must implement its approved mine waste management plan.

- (3) The Secretary must, under Section 338, suspend an operation that does not comply with Subsection (1).
- (4) If the holder of a mining lease, quarry lease, or artisanal mining licence fails to comply with Subsection (1) on an ongoing basis, the Secretary must initiate the procedure under Section 284 for cancellation of the lease or licence.
- (5) If the holder of a community mining licence fails to comply with Subsection (1) on an ongoing basis, the community government or delegate of the community government<sup>51</sup> that granted the licence may suspend or revoke the licence.
- (6) A producer of mine waste is financially responsible for the safe and environmentally sound disposal of its mine waste, and for all damage resulting from the disposal of its mines waste.
- (7) The holder of a large-scale mining lease that produces waste containing high levels of heavy metals must institute programmes to monitor the food chain for the presence of such heavy metals.
- (8) Mine waste must not be disposed of in a river.
- (9) Ocean disposal of mine waste must be done only in accordance with a mine waste management plan approved under Section 206.
- (10) Nothing in this section absolves the holder of a tenement or community mining licence from meeting an obligation or requirement arising under the Environment Act, and a penalty imposed under this Act is separate from and additional to any penalty that may be imposed under the Environment Act.

## **208 Hydraulic mining**

- (1) If the holder of a community mining licence, mining lease, quarry lease or artisanal mining licence uses hydraulic mining methods that rely on pressurised water to extract minerals, the holder must control the water discharge of such operations to protect natural waterways from silt, solids and suspended matter.
- (2) A holder of a licence or lease commits an offence if the holder contravenes Subsection (1).  
*Penalty:* K500,000.  
*Default penalty:* K10,000.
- (3) The Secretary must, under Section 338, suspend an operation that does not comply with Subsection (1).
- (4) If the holder of a mining lease, quarry lease or artisanal mining licence fails to comply with Subsection (1) on an ongoing basis, the Secretary must initiate the procedure under Section 284 for cancellation of the lease or licence.



- (5) Nothing in this section absolves the holder of a tenement or community mining licence from meeting an obligation or requirement arising under the Environment Act, and a penalty imposed under this Act is separate from and additional to any penalty that may be imposed under the Environment Act.

## **PART 8 — OFFSHORE AND DREDGING ACTIVITIES**

### **Division 1 — Offshore exploration and mining**

#### **209 Application of Act to offshore exploration and mining**

Subject to this Part, the requirements of this Act apply to the exploration for and mining of minerals located in an offshore area in the same way as they apply to the exploration for and the mining of minerals located on land.

#### **210 Customary sea users residing in a coastal area of benefit**

Customary sea users residing in a coastal area of benefit are entitled to a share of the benefits from a mining lease including an offshore area in the same way that landowners are entitled under this Act to a share of benefits from a mining lease.

#### **211 Marine scientific research**

- (1) The Secretary, in accordance with the advice of the Advisory Council, may issue guidelines with regard to marine scientific research conducted as a prelude to, in association with or as part of mineral exploration and mining in an offshore area, and such research must comply with the guidelines.
- (2) All raw data collected from marine scientific research to which Subsection (1) applies must be submitted to the Department within 30 days after completion of the voyage or other research activity.

#### **212 Offshore technology**

- (1) When submitting a proposed exploration work programme or a prefeasibility or feasibility study for mining in the offshore area, an applicant must include a general description of the equipment and methods to be used in carrying out activities in the offshore area and other relevant non-proprietary information about the characteristics of such technology.
- (2) The holder of a tenement that includes offshore area must inform the Department of revisions in the description and information provided under Subsection (1) whenever a substantial technological change or innovation is introduced.

#### **213 Offshore environment protection**

- (1) The holder of a tenement that includes offshore area must apply the precautionary approach, and employ best environmental practices in its operations in order to

avoid, remedy, or mitigate the adverse effects of the operations on the marine environment.

- (2) In addition to the requirements of this Act, the Environment Act and related environment policies and regulations, and other relevant laws, the operations of an applicant for or holder of a tenement that includes offshore area must comply with such environmental codes of practice as are prescribed for offshore tenement areas.
- (3) A tenement that includes offshore area must not be granted if the applicant for the grant of the tenement does not have a formal policy and practice for compliance with the environmental codes of practice referred to in Subsection (2).
- (4) In this section—
  - (a) **precautionary approach** means that, if there is a lack of scientific certainty regarding the extent of adverse effects, the lack of certainty must not be used as a reason for postponing cost-effective measures to prevent or minimise environmental degradation arising as a result of the operations of the holder of the tenement; and
  - (b) **best environmental practices** means using the best available technology and techniques in accordance with prevailing international standards, and the most appropriate combination of control measures and strategies, with the aim to minimise the adverse impact on the marine environment caused by the tenement holder's operations.

## 214 Tenement area outside Bougainville's boundaries

If a tenement area includes or purports to include area that is outside the boundaries of Bougainville, the tenement remains valid but does not authorise operations to be carried out within that part of the tenement that is outside Bougainville's boundaries.

## 215 Consent required when harm is likely

The holder of a tenement that includes offshore area must not proceed or continue with its operations in the offshore area without obtaining prior written consent from the Secretary, in accordance with the advice of the Advisory Council, if there is evidence that proceeding or continuing would likely cause serious harm to—

- (a) the safety, health or welfare of a person; or
- (b) other existing or planned legitimate sea uses.

**216 Additional application matters to be considered**

If the area to which an application for a tenement relates includes offshore area, the Advisory Council—

- (a) may direct the Secretary to—
  - (i) provide relevant information about the application to any other government whose territory may be affected by the operations proposed within the area to which the application relates; and
  - (ii) give an opportunity for that government to provide information that will be taken into account by the Advisory Council in its advice to the Minister or Bougainville Executive Council in relation to such application; and
- (b) must consider whether the proposed plans will unduly affect—
  - (i) the rights of—
    - (A) the State; or
    - (B) any other nation; or
    - (C) any Province; or
    - (D) legitimate sea users; or
  - (ii) international and domestic relations and security.

**217 Additional obligations**

- (1) The holder of a tenement that includes offshore area must carry out its operations in such a way that will not interfere unreasonably with—
  - (a) the exercise of the freedom of the high seas, as reflected in Article 87 of the *United Nations Convention on the Law of the Sea* of 10 December 1982; or
  - (b) other legitimate uses of the sea or the seabed, including—
    - (i) navigation; or
    - (ii) fishing; or
    - (iii) submarine cabling; or
    - (iv) marine scientific research; or
    - (v) conservation of the resources of the sea or the seabed.
- (2) For Subsection (1), interference is unreasonable if it is greater than is necessary for the reasonable exercise of the rights or performance of the duties of the tenement holder under the tenement.

**218 Safety zone**

- (1) For the purpose of protecting an installation, infrastructure facility, mining vessel or mining support vessel being used for offshore mining operations, the Minister, in accordance with the advice of the Bougainville Executive Council, may, by notice in the Bougainville Gazette, prohibit all vessels or specified classes of vessels, from entering or being present in a specified area (the **safety zone**) surrounding the installation, infrastructure facility or vessel without the written consent of the Secretary.
- (2) A person commits an offence if—
- (a) the person is—
    - (i) the owner of a vessel; or
    - (ii) a person in formal or substantive command of a vessel; and
  - (b) the vessel, in contravention of a prohibition notice under Subsection (1)—
    - (i) enters a safety zone; or
    - (ii) remains in a safety zone.

*Penalty:* K50,000.

- (3) It is a defence to a prosecution for an offence under Subsection (2) for the person to establish that—
- (a) an unforeseen emergency made it necessary for the vessel to enter or remain in the safety zone in order to attempt to secure the safety of human life, a vessel, pipeline, structure or equipment; or
  - (b) the vessel entered or remained in the safety zone in circumstances beyond the control of the person who was in command or in charge of the vessel; or
  - (c) the person—
    - (i) is the owner of the vessel; and
    - (ii) had no knowledge that the person in command or in charge of the vessel intended to enter or remain in a safety zone in contravention of a prohibition notice under Subsection (1).

**Division 2 — Channel dredging permit****219 Purposes for which channel dredging permit may be granted**

A channel dredging permit may be granted for the purpose of deepening or widening of a streambed, riverbed, channel, canal, waterway, harbour, port or anchorage.

**220 Application for channel dredging permit**

An application for the grant of a channel dredging permit must—

- (a) be in the prescribed form; and
- (b) include—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the proposed area of the channel dredging permit in latitude and longitude; and
  - (ii) a sketch map showing the boundary of the proposed area of the channel dredging permit, and such other natural features as will allow the area to be correctly located; and
  - (iii) for a corporate body – a copy of the applicant’s certificate of incorporation; and
  - (iv) the applicant’s proposed plans; and
  - (v) a detailed justification for the area sought, setting out why all of the area is necessary for the proposed activities; and
- (c) be submitted in triplicate, unless submitted electronically; and
- (d) be accompanied by the prescribed application fee; and
- (e) comply with Part 10 Division 2.

**221 Proposed plans for channel dredging permit**

- (1) In assessing an application for the grant of a channel dredging permit, the Advisory Council—
  - (a) must consider whether the proposed plans submitted by the applicant—
    - (i) are appropriate; and
    - (ii) meet the content requirements for such plans as set out in this Act and as are prescribed; and
  - (b) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend the application or the proposed plans.
- (2) The Secretary, after consultation with the Advisory Council, may issue guidelines on the required content of proposed plans for a channel dredging permit, and proposed plans must comply with the guidelines.
- (3) If the Advisory Council is satisfied that an applicant’s proposed plans (or amended proposed plans) comply with the requirements of this Act, and are appropriate for the applicant’s proposed operations, the Advisory Council may approve the proposed plans (or amended proposed plans) as approved plans.

**222 Decision on application**

- (1) On the application of a person, the Minister, in accordance with the advice of the Advisory Council, may grant or refuse to grant a channel dredging permit.
- (2) A channel dredging permit—
  - (a) must be in the prescribed form; and
  - (b) must specify the purposes for which it is granted; and
  - (c) must require that, as a condition of the permit, the holder substantially complies with the approved plans; and
  - (d) may include such other conditions as the Minister, in accordance with the advice of the Advisory Council, determines.
- (3) However, a channel dredging permit must not be granted until all relevant approvals and permits for the proposed dredging activities have first been granted and issued under the Environment Act.
- (4) A refusal to grant a channel dredging permit must be in the prescribed form.

**223 Term of channel dredging permit**

- (1) The term of a channel dredging permit is the period specified in the permit, which may be extended under Section 229.
- (2) If the holder of a channel dredging permit has submitted, at least 45 days before the date on which the permit is to expire, an application for extension of the term of the permit under Section 229, the term of the permit is taken to have been extended until the application is either granted or refused.

**224 Area of channel dredging permit**

The area over which a channel dredging permit is granted must be—

- (a) no larger than is necessary for the purpose for which it is granted; and
- (b) in a rectangular or polygonal shape.

**225 Rights conferred by channel dredging permit**

A channel dredging permit authorises the holder, in accordance with the Environment Act and all other relevant laws, and the conditions of the permit, to—

- (a) enter and occupy the area subject to the permit; and
- (b) undertake such work as is necessary or expedient to achieve the purpose for which the permit was granted.

**226 Limit on use of minerals extracted under channel dredging permit**

Minerals extracted by dredging operations under a channel dredging permit must not be sold or traded other than for use as fill material.

**227 Reporting requirements in respect of a channel dredging permit**

- (1) The holder of a channel dredging permit must submit to the Mining Registrar such reports as the Secretary may require.
- (2) The holder of a channel dredging permit must, if the Mining Registrar directs, submit a report under Subsection (1) by electronic means, in such manner as the Mining Registrar directs.

**228 Variation of approved plans**

- (1) The holder of a channel dredging permit may apply for a variation of an approved plan.
- (2) The application must—
  - (a) be in the prescribed form; and
  - (b) specify the grounds on which the variation is sought; and
  - (c) include a proposed revised plan in the prescribed form; and
  - (d) be accompanied by the prescribed application fee.
- (3) The Advisory Council—
  - (a) must assess the application; and
  - (b) may request the applicant to—
    - (i) provide further information; or
    - (ii) amend a proposed revised plan submitted with the application; and
  - (c) may approve the applicant's revised plan, if it is satisfied that—
    - (i) the applicant has complied with a request under Paragraph (b); and
    - (ii) the applicant's proposed revised plan complies with the requirements for that type of plan, under this Act or as are prescribed; and
- (4) An approved revised plan must be substituted for the previously approved plan.

**229 Extension of term**

- (1) The holder of a channel dredging permit may apply for extension of the term of the permit.
- (2) The application must—
  - (a) be in the prescribed form; and

- (b) be submitted at least 45 days before date on which the permit is to expire; and
  - (c) be submitted in triplicate, unless submitted electronically; and
  - (d) be accompanied by the prescribed application fee; and
  - (e) comply with Part 10 Division 2.
- (3) The Advisory Council, in assessing an application for an extension of the term of a channel dredging permit, must consider whether the applicant has, during the previous term of the permit—
  - (a) substantially complied with the conditions of its permit; and
  - (b) submitted all required reports; and
  - (c) paid compensation as required by this Act.
- (4) The Minister, in accordance with the advice of the Advisory Council, may grant or refuse to grant an application to extend the term of a channel dredging permit.
- (5) An extension of the term of a channel dredging permit—
  - (a) must be in the prescribed form; and
  - (b) may include such conditions as the Minister, in accordance with the advice of the Advisory Council, determines.
- (6) A refusal to grant an extension of the term of a channel dredging permit must—
  - (a) be in the prescribed form; and
  - (b) state the reasons for the refusal.

### **230 Consolidation of channel dredging permits**

If a person holds 2 or more contiguous channel dredging permits, the person may apply under Section 274 to consolidate such permits into a single channel dredging permit.

## **PART 9 — REHABILITATION AND MINE CLOSURE**

### **231 Rehabilitation and closure plan**

- (1) A proposed rehabilitation and closure plan must be included with an application for the grant of a mining lease, and must be in such form as is prescribed.
- (2) If an application for a mining lease is granted, it must be granted on the condition that the mining lease holder substantially complies with its approved rehabilitation and closure plan.
- (3) The holder of a large-scale mining lease must, in its operations, take into account rehabilitation and closure provisions set out in a community development agreement.



- (4) The holder of a mining lease must submit an annual rehabilitation and closure plan report in such form and manner as are prescribed.
- (5) The holder of a mining lease must periodically update and have approved its rehabilitation and closure plan, as is prescribed.
- (6) The holder of a mining lease must implement its rehabilitation and closure plan.

### **232 Contents of rehabilitation and closure plan**

- (1) A proposed rehabilitation and closure plan included with an application for the grant of a mining lease application must include—
  - (a) a physical closure plan, including dismantling of infrastructure, machinery, equipment and buildings, underground workings and open pit workings; and
  - (b) environmental rehabilitation of the land area affected by mining operations, including rehabilitation throughout the life of the mine; and
  - (c) a social mitigation plan for the workforce, from the beginning of mining operations, up to and including post-closure; and
  - (d) strategies for consultation with affected communities and mine workers, from the commencement of operations up to and including mine closure; and
  - (e) post-closure monitoring, to ensure the safety and health of affected lands and communities; and
  - (f) other matters which may be prescribed.
- (2) If a rehabilitation and closure plan submitted under this Act includes provisions for a mine closure under the Environment Act, the proposed plan submitted under this Act must be reviewed and approved by both the Advisory Council and the Department of the Bougainville Public Service responsible for the Environment Act, and must comply with both Acts when approved.

### **233 Security for performance of rehabilitation and closure plan obligations**

- (1) This section does not apply to the holder of a mining lease granted an exemption under Section 125 from the obligation to have a rehabilitation and closure plan.
- (2) The holder of a mining lease with an approved rehabilitation and closure plan must submit a security as prescribed to support the performance of its obligations under the approved plan, and to ensure that the Autonomous Bougainville Government is not responsible for meeting the cost of performing those obligations.
- (3) The holder of a mining lease must not commence mining or ancillary operations under its lease or other related tenement until a security has been submitted under this section.

- (4) If an approved rehabilitation and closure plan complies with both this Act and the Environment Act, provision of 1 security is sufficient to satisfy the requirements of both this section and the Environment Act.
- (5) A security may include—
  - (a) an irrevocable, unconditional letter of credit issued to the Autonomous Bougainville Government by a bank or a parent company; or
  - (b) a security or guarantee issued to the Autonomous Bougainville Government by a bank or a corporate body legally able to do so; or
  - (c) security interests in unencumbered assets, goods, documents of title, securities, chattels, instruments, monies, intangibles or interests arising from assignment of accounts, including a pledge of assets; or
  - (d) a trust fund held by and administered by a recognised and competent entity; or
  - (e) any combination of these.

#### **234 Finalisation of rehabilitation and closure plan**

- (1) This section does not apply to the holder of a mining lease granted an exemption under Section 125 from the obligation to have a rehabilitation and closure plan.
- (2) No later than 2 years before the planned closure of a mine, the holder of the mining lease must prepare a proposed final rehabilitation and closure plan.
- (3) The final rehabilitation and closure plan must include the final end use of the area of the mining lease and areas the subject of related tenements granted in connection with the mining project.
- (4) The Secretary may, in accordance with the advice of the Advisory Council, approve the final rehabilitation and closure plan.
- (5) Despite the expiry of a mining lease, the prior holder of that lease remains liable to implement its approved final rehabilitation and closure plan.

#### **235 Use of security by Autonomous Bougainville Government**

- (1) If a mining lease is cancelled, or if a liquidator, receiver or similar insolvency official is appointed to the holder of the mining lease, or the holder of the mining lease fails to implement rehabilitation and closure obligations that are not remedied within 90 days after receipt of notice from the Secretary, the Autonomous Bougainville Government may draw upon a security provided by the holder under Section 233.
- (2) If a security is drawn upon by the Autonomous Bougainville Government, that security or funds may only be used by the Government for the purposes of implementing the mine closure obligations and environmental closure obligations of the holder of the mining lease.

## PART 10 — PROVISIONS GENERALLY APPLICABLE TO TENEMENTS

### Division 1 — General assessment criteria

#### 236 General criteria for assessment of applications

- (1) An application for the grant of a tenement, other than an application for the grant of an artisanal mining licence, and an application for approval of a dealing in a tenement must be assessed—
  - (a) in accordance with this section; and
  - (b) against the criteria relevant to the nature of the application.
- (2) The grant of a tenement must comply with the Environment Act, including a requirement relating to the restraint on the granting of any other licence or permit by other Government authorities without the applicant first obtaining an environment permit for an activity that would cause environmental harm.
- (3) Before an application for the grant of a tenement can be considered, a hearing must be held under Section 250, and the Bougainville Warden's report given to the Advisory Council under Section 251.
- (4) Before an application for the grant of a tenement can be considered, the Mining Registrar must first make a provisional assessment that the applicant—
  - (a) is a person of good repute with no significant criminal convictions or issues that may be of concern to the Autonomous Bougainville Government; and
  - (b) is not barred from being granted a tenement under this Act; and
  - (c) if a corporate body—
    - (i) is duly certified by the Papua New Guinea Investment Promotion Authority; and
    - (ii) has complied with the *Bougainville Inward Investment Act 2013*; and
  - (d) has sound financial standing and has either established an bank account in Papua New Guinea to carry out the proposed exploration work programme or mining proposal plans or can produce evidence of financial capacity from a duly authenticated source offshore; and
  - (e) has the expertise and the relevant personnel with proven technical capacity to conduct the activities; and
  - (f) has developed a proposed work programme or proposed plans, if required, in the prescribed form, that is appropriate for the proposed activities; and
  - (g) has obtained required landowner permission to approve an application, if required by this Act for the type of tenement; and
  - (h) has agreed required compensation agreements, if required by this Act for the type of tenement; and

- (i) for an extension application—
  - (i) has reasonably complied with the approved work programme or approved plans and the licence or lease conditions in addition to the above requirements; and
  - (ii) has paid all royalties, annual rents, duties, fees, compensation and other payments required under this Act; and
  - (iii) has submitted all reports required under this Act; and
  - (iv) is not in default of its other obligations under this Act; and
- (j) for a dealing in a tenement – has conducted its business without impropriety; and
- (k) has met such other considerations as the Advisory Council considers appropriate in the circumstances.

### **237 Fit and proper person determination**

The matters to be considered in determining that a person is not a fit and proper person to hold a tenement under this Act include—

- (a) if the person has been convicted of an offence involving fraud or dishonesty; or
- (b) if there is reasonable evidence that the person—
  - (i) has contravened a relevant law, whether or not the person has been prosecuted for or convicted of an offence arising from the contravention; or
  - (ii) has breached a condition of an approval to engage in reconnaissance, exploration or mining, which related to the protection or rehabilitation of the environment or the safeguarding of the interests of the local community; or
  - (iii) is not—
    - (A) of good repute; or
    - (B) of good character, with particular regard to honesty and integrity; or
- (c) if—
  - (i) the person has previously held an approval to engage in reconnaissance, exploration or mining; and
  - (ii) either—
    - (A) the approval was suspended, cancelled or revoked; or
    - (B) there is reasonable evidence that the person had a poor record of compliance with the conditions of that approval; or

- (d) if the person is—
  - (i) an undischarged bankrupt; or
  - (ii) currently insolvent; or
  - (iii) under administration; or
- (e) if the person—
  - (i) is a public official; or
  - (ii) has been, within the previous 2 years, a public official; or
- (f) for a corporate body— if any of the following is not a fit and proper person—
  - (i) a director;
  - (ii) a trustee;
  - (iii) a shareholder holding a controlling interest;
  - (iv) an executive officer;
  - (v) another person associated or connected with the ownership, administration or management of the corporate body.

## **Division 2 — Application for the grant and extension of term of a tenement**

### **238 Marking out of tenement**

- (1) An applicant for the grant of a tenement must, before submitting an application—
  - (a) mark out each corner of land the subject of the proposed tenement, by erecting a distinctively-coloured metal or concrete post measuring at least 1.2 metres vertically from the surface of the ground, or such survey marks as are permitted under the survey directions; and
  - (b) clear vegetation along the boundaries of the area, or place distinctively coloured metal or concrete markers sufficiently close together so as to clearly indicate the boundaries of the land.
- (2) Alternatively, the Secretary may authorise a method of marking out the tenement that is appropriate in the circumstances of a particular applicant, but so that land the subject of the application can be readily identified in the field.
- (3) Until the application for the grant of a tenement is determined, the applicant must maintain the posts, markers and cleared lines established under Subsections (1) and (2).
- (4) If the tenement is granted, the holder of the tenement must maintain posts and markers or cleared lines established in accordance with Subsection (1) throughout the term of the tenement.
- (5) The holder of a community mining licence must mark out the boundaries of the area of the licence as required under Section 79.

- (6) The Secretary may, in the prescribed form, authorise a person not otherwise authorised under this Act to enter land for the purposes of marking out the area of a tenement, or proposed tenement, and maintaining posts, markers or cleared lines under this section.
- (7) A person carrying out work under this section must not unreasonably interfere with the activities undertaken on the land over which the tenement is sought.
- (8) This section does not apply to—
  - (a) that part of the boundary of an area the subject of a tenement application or tenement that is located in an offshore area, unless so required by the Secretary; or
  - (b) a reconnaissance licence; or
  - (c) an exploration licence; or
  - (d) a channel dredging permit.

### **239 Survey**

- (1) Prior to the grant of a tenement, the boundary of land the subject of an application for the grant of a tenement must be surveyed under Subsection (2).
- (2) A survey of the land the subject of an application for the grant of a tenement must—
  - (a) be made by, or under the direction of, a registered surveyor; and
  - (b) be at the applicant's cost ; and
  - (c) comply with survey guidelines issued by the Secretary or, if no guidelines have been issued, with the class of survey permitted under the survey directions; and
  - (d) include a schedule in the prescribed form describing the corners of the boundary of the land in latitude and longitude.
- (3) A copy of the survey made under this section must be submitted to the Mining Registrar, who must immediately register the survey and—
  - (a) if the survey confirms that all the land the subject of the application is available for the purposes for which the application was made – cause a copy of the survey schedule to be published in the Bougainville Gazette; or
  - (b) if only part of the land is available—
    - (i) prepare a schedule of the land that is available for the tenement in the prescribed form in substitution of the schedule submitted with the survey; and
    - (ii) cause a copy of the revised schedule to be published in the Bougainville Gazette; and

- (iii) send a copy of the revised schedule to the applicant.
- (4) The Secretary, in the prescribed form, may authorise a person not otherwise authorised under this Act to enter land for the purposes of surveying a tenement under this section.
- (5) A person carrying out a survey under this section must not interfere unreasonably with the activities undertaken on the land the subject of the survey.
- (6) The regulations may authorise the Secretary to grant an exemption from the requirements of this section, in the prescribed manner.
- (7) This section does not apply to—
  - (a) that part of the boundary of an area the subject of a tenement application that is located in an offshore area, unless so required by the Secretary; or
  - (b) a reconnaissance licence; or
  - (c) an exploration licence; or
  - (d) an artisanal mining licence; or
  - (e) a channel dredging permit.

#### **240 Submission of applications for grant and extension**

- (1) An application for the grant or extension of the term of a tenement must be submitted to the Mining Registrar—
  - (a) at the office of the Mining Registrar, by the applicant in person, or by the applicant's agent; or
  - (b) electronically, using such system as has been designated for the purpose by the Mining Registrar.
- (2) The Mining Registrar may require an applicant to submit an application for the grant or extension of the term of a tenement in hard copy or by electronic means, or both in hard copy and by electronic means.

#### **241 Priority of applications**

- (1) Subject to this section and to Section 242, if 2 or more applications are made for the grant of a tenement over the same land or part of the same land, the applicant, other than an applicant for a reconnaissance licence, who first submits an application to the Mining Registrar has the right, in priority over all other applicants, to have its application considered and determined.
- (2) If the Mining Registrar is satisfied that 2 or more applicants for the grant of a tenement, other than a reconnaissance licence, over the same land or part of the same land were present in the Mining Registrar's office at the same time for the purpose of lodging applications for that tenement, then, despite the order in which the Mining Registrar receives the applications, priority must be determined by

ballot conducted by the Mining Registrar in the presence of the applicants and at least 1 other witness.

- (3) However, the procedure under Subsection (2) only applies to applications that comply with Section 242.
- (4) The applicant not accorded priority under a ballot under Subsection (2), or if there is more than 1 such applicant, each of the applicants in the order of priority determined by the ballot, has the right in priority over every person (other than another applicant who has priority over the applicant by virtue of the ballot) to have the applicant's application considered and determined—
  - (a) if the prior application for the grant of a tenement is refused; or
  - (b) over land not included within the tenement granted as a result of the prior application.
- (5) If applications to which Subsection (1) applies are made by persons associated with each other, only 1 such application may be submitted for ballot under Subsection (2) and if, on request by the Mining Registrar, those persons do not select 1 application, the Mining Registrar must select the application which the Mining Registrar received first.
- (6) If, subsequent to a ballot under Subsection (2), the Mining Registrar ascertains that the successful applicant was an associated person of a person whose application was also considered in the ballot, the Mining Registrar must—
  - (a) refuse that application; or
  - (b) if a tenement has already been granted, cancel the grant.

## **242 Preliminary examination of applications for grant, extension or consolidation**

- (1) The Mining Registrar, at the time of the submission of an application for the grant or extension of the term of a tenement, or for the consolidation of tenements must be reasonably satisfied of the following matters—
  - (a) a substantial portion of the land to which the application relates is available for the grant of that type of tenement or reserve under this Act;
  - (b) the application—
    - (i) if submitted in hard copy – is in the prescribed form; or
    - (ii) if submitted electronically – is in the prescribed format, using such system as has been designated for this purpose by the Mining Registrar, and
    - (iii) has been completed by inclusion of all required particulars;
  - (c) the application form, if submitted in hard copy, has been submitted in triplicate and signed by or on behalf of the applicant;



- (d) the documents required under this Act to accompany the application for the grant or extension of the term of the tenement, or for the consolidation of tenements, have been submitted;
  - (e) the prescribed application fee has been paid.
- (2) If an application for the grant or extension of the term of a tenement, or for the consolidation of tenements is not filed electronically, the Mining Registrar must verify the documents in the presence of the applicant or the applicant's agent.

#### **243 If requirements not met on preliminary examination**

If, after a preliminary examination of the matters referred to in Section 242, the Mining Registrar is not satisfied that all such matters have been verified and are complete, the Mining Registrar must—

- (a) not accept or register the application; and
- (b) immediately return all documents to the applicant or its agent, or delete them if such documents were filed electronically.

#### **244 If requirements met on preliminary examination**

If, after a preliminary examination of the matters referred to in Section 242, the Mining Registrar is satisfied that all such matters have been verified, the Mining Registrar must—

- (a) immediately—
  - (i) accept and register the application; and
  - (ii) note the registered number on the application form or in the electronic registration system; and
  - (iii) note the date and time when the application was accepted and registered; and
  - (iv) sign the application form; and
  - (v) return a copy of the application form to the applicant, or otherwise provide electronic verification that the application has been accepted and registered; and
- (b) subject to Section 6(2), as soon as possible thereafter—
  - (i) give a copy of the application form to such officers of the Department as the Secretary has determined will be responsible for the administration and technical assessment of applications; and
  - (ii) report in writing to the Advisory Council.

**245 Reports on application to Advisory Council**

Each of the officers to whom the Mining Registrar has given a copy of the application under Section 244(b)(i) must, as soon as practicable, give a report on the application to the Advisory Council.

**246 Time for objections and hearings**

- (1) An application for the grant or extension of the term of a tenement must be the subject of a Bougainville Warden's hearing.
- (2) Within 14 days after the acceptance and registration of an application under Section 244(a)(i), the Mining Registrar must—
  - (a) confer with the Bougainville Chief Warden; and
  - (b) fix a date, being not less than 60 days after the date on which the application was registered, as the date by which an objection to the application must be received by the Mining Registrar; and
  - (c) fix dates and places for each hearing, such dates being no earlier than 7 days and no later than 14 days after the last date for receipt of objections under Paragraph (b); and
  - (d) endorse the dates for objections and hearings, and the places for hearings on the application form; and
  - (e) give written notice of the dates and places fixed under Paragraphs (b) and (c) to—
    - (i) the applicant; and
    - (ii) the landowners of the land the subject of the application; and
    - (iii) the landowners of land adjacent to the land the subject of the application; and
    - (iv) the landowners of other land that the Mining Registrar is satisfied can reasonably be expected to experience financial, environmental, social, cultural or other impacts should exploration or mining commence; and
    - (v) if an approved landowner organisation represents all or some of the owners of land referred to in Subparagraph (ii), (iii) or (iv) that is customary land – give written notice of the dates and places to the organisation.

**247 Notice of application**

The Mining Registrar, as soon as practicable after complying with Section 246(2), must—

- (a) give a copy of the application form to each community government of a community government area in which land the subject of the application is located<sup>52</sup>; and

- (b) give a copy of the application form to each District Office nearest to the area the subject of the application; and
- (c) cause a copy of the application form to be published in—
  - (i) the Bougainville Gazette; and
  - (ii) a newspaper circulating throughout Bougainville; and
- (d) keep posted, until the application is determined, a copy of the application form—
  - (i) on a public noticeboard at the Department's headquarters; and
  - (ii) on the Department website; and
- (e) if, in the opinion of Mining Registrar, the granting of the application may impact on another tenement – give a copy of the application form and copies of any proposed programmes or plans to the holder of that tenement.

#### **248 Report from community government or District Office<sup>53</sup>**

- (1) A community government or District Office to which Section 247(a) or 247(b) refers must also be invited to submit a report, which must—
  - (a) address all matters regarding the application that the community government or District Office wishes to place before the Bougainville Warden conducting the hearing under Section 250; and
  - (b) must be received by the Mining Registrar no later than the last date for receipt of objections under Section 246(2)(b).
- (2) The Mining Registrar must—
  - (a) give a copy of each report received under Subsection (2) to—
    - (i) the applicant; and
    - (ii) the Executive Officer to the Advisory Council; and
  - (b) keep, until the application to which the report refers is determined, a copy of the report posted—
    - (i) on a public noticeboard at the Department's headquarters; and
    - (ii) on the Department website.

#### **249 Objections**

- (1) A person may object to—
  - (a) the grant of a tenement; or
  - (b) the extension of the term of a tenement.
- (2) An objection must be submitted to the Mining Registrar—
  - (a) in the prescribed form; and

- (b) no later than the last date for receipt of objections under Section 246(2)(b).
- (3) The Mining Registrar must not accept an objection submitted after the last date for receipt of objections under Section 246(2)(b).
- (4) The Mining Registrar must—
  - (a) give a copy of each objection to—
    - (i) the applicant; and
    - (ii) the Executive Officer to the Advisory Council; and
  - (b) keep, until the application to which the objection refers is determined, a copy of the objection posted—
    - (i) on a public noticeboard at the Department’s headquarters; and
    - (ii) on the Department website.

## **250 Conduct of Bougainville Warden’s hearing**

- (1) **The Bougainville Chief Warden may—**
  - (a) **conduct the hearing; or**
  - (b) **select a Bougainville Warden to conduct the hearing.**
- (2) The Bougainville Warden conducting the hearing must—
  - (a) attend at the places and on the dates fixed under Section 246(2)(c); and
  - (b) conduct a hearing, in accordance with Subsection (3) and such procedures as will afford a fair hearing to—
    - (i) the applicant; and
    - (ii) the landowners referred to in Section 246(2)(e) who are present at the hearing; and
    - (iii) the representatives of an approved landowner organisation referred to in Section 246(2)(e)(v) who are present at the hearing; and
    - (iv) other persons present at the hearing who the Bougainville Warden considers are likely to be affected by—
      - (A) the applicant’s proposed exploration work programme; or
      - (B) the applicant’s proposed plans for mining.
- (3) The Bougainville Warden must—
  - (a) be satisfied as to the identity of—
    - (i) the representatives of approved landowner organisations; and
    - (ii) persons to whom Subsection (2)(b)(iv) refers; and

- (b) allow the applicant to explain its proposed programme or proposed plans on the land the subject of the application; and
  - (c) record and assess the views of the landowners and the approved landowner organisations referred to in Section 246(2)(e), including whether each landowner and approved landowner organisation has given permission for the matters to which the application relates; and
  - (d) record and assess the views of persons referred to in Subsection (2)(b)(iv).
- (4) The Bougainville Warden may adjourn the hearing from time to time and from place to place on such conditions as to costs or otherwise as the Warden thinks fit.

## **251 Bougainville Warden to submit report on hearing to Advisory Council**

The Bougainville Warden must, within 14 days after the hearing concludes, submit a written report on the hearing to the Executive Officer of the Advisory Council.

## **252 Advisory Council advice**

- (1) The Advisory Council must consider each application for the following—
  - (a) the grant of a tenement;
  - (b) the extension of the term of a tenement.
- (2) In considering an application, the Advisory Council must also take into account—
  - (a) each report submitted under—
    - (i) Section 245; and
    - (ii) Section 248; and
    - (iii) Section 251; and
  - (b) each objection received—
    - (i) under Section 249; and
    - (ii) under Section 368(5); or
    - (iii) for an application for the grant of, or extension of the term of, a lease for mining purposes – under Section 186(1); or
    - (iv) for an application for the grant of, or extension of the term of, a mining easement – under Section 203(1).
- (3) The Advisory Council must also consider—
  - (a) for an application for the grant of a reconnaissance licence – the reconnaissance work programme approved under Section 86; or
  - (b) for an application for the grant of, or extension of the term of, an exploration licence – the exploration work programme approved under Section 99; or

- (c) for an application for the grant of—
  - (i) a mining lease – the proposed plans submitted under Section 119; or
  - (ii) a mining lease area expansion – the proposed revised plans submitted under Section 134; or
  - (iii) a quarry lease – the proposed plans submitted under Section 147; or
  - (iv) an artisanal mining licence – the proposed plans submitted under Section 159; or
  - (v) a lease for mining purposes – the proposed plans submitted under Section 172; or
  - (vi) a mining easement – the proposed plans submitted under Section 189; or
  - (vii) a channel dredging permit – the proposed plans submitted under Section 220.
- (4) Unless otherwise provided for in this Act, the Advisory Council may, after considering all matters under Subsections (1), (2) and (3)—
  - (a) advise that an application for the grant or extension of the term of a tenement be approved; or
  - (b) advise that the application be refused; or
  - (c) defer further consideration of the application and request the applicant to amend the application or to provide further information or revised programme, proposal or management plan under Sections 86, 99, 120, 148, 160, 173, 190 or 221 within a reasonable time specified by the Advisory Council.
- (5) If the Advisory Council defers consideration under Subsection (4)(c), the Executive Officer of the Advisory Council must give to the applicant written notification of the requirement for further information or for a revision of the applicant's programmes or proposals or plans and of the time specified within which the further information or revised programme or proposals or plans are to be provided.
- (6) If an applicant fails to provide further information or a revised exploration work programme or mining proposals or community mining licence reserve area management plan under this section within the specified time, the Advisory Council may advise that the application be refused.

## **253 Duties of Mining Registrar on grant and extension of term of tenement**

- (1) As soon as practicable after a decision is made to grant a tenement or an extension of the term of a tenement, the Mining Registrar must—
  - (a) advise the applicant of the decision; and

- (b) advise the landowners and the approved landowner organisations referred to in Section 246(2)(e), of the decision; and
  - (c) if applicable, require the applicant to submit proof that the prescribed annual rent has been paid; and
  - (d) for the grant of a tenement – if applicable, require the applicant to submit, within 30 days, the prescribed security, in the manner required by Section 296; and
  - (e) cause a notice of the grant of the tenement or the extension of the term of a tenement to be published in the Bougainville Gazette.
- (2) If the applicant fails to comply with Subsection (1)(c) or (1)(d), the granting authority may cancel the grant or extension of the term of the tenement by written notice to the applicant.
- (3) If the applicant complies with Subsection (1)(c) and (1)(d), the Mining Registrar must issue to the applicant a title document to the tenement in the prescribed form.

### **Division 3 — Registration and dealings**

#### **254 Bougainville Register of Tenements**

- (1) The Mining Registrar must establish and maintain the Bougainville Register of Tenements.
- (2) The Bougainville Register of Tenements must contain details of all—
  - (a) registered applications for tenements and community mining licence reserve areas and all details of their subsequent grant or refusal and of such other particulars as are prescribed in relation to those tenements; and
  - (b) matters requiring registration under this Act; and
  - (c) other matters as are prescribed.
- (3) The Bougainville Register of Tenements is to be received by all courts as *prima facie* evidence of all matters required or authorised by this Act to be entered in the Bougainville Register of Tenements.
- (4) The Mining Registrar, in consultation with the Secretary, is to determine the form of the Bougainville Register of Tenements, and the Mining Registrar must keep the Register up to date.
- (5) The Bougainville Register of Tenements must be available for inspection by the public during normal business hours.

**255 Registration**

- (1) An instrument requiring registration must—
  - (a) be submitted to the Mining Registrar in the manner specified in this Act or as prescribed; and
  - (b) be accompanied by the prescribed fee.
- (2) Subject to this Division, the time and date of submission to the Mining Registrar is taken to be the time and date at which registration was effected.

**256 Provisional registration**

- (1) If the Mining Registrar is of the opinion that a document submitted for registration is erroneous or defective, the Mining Registrar must reject the document.
- (2) However, if the Mining Registrar is of the opinion that the error or defect can be corrected, the Mining Registrar must—
  - (a) cause the time and date of submission and particulars of the instrument to be entered in the Bougainville Register and place the word “PROVISIONAL” next to the entry; and
  - (b) by written notice to the person who submitted the instrument, direct that person to ensure that the error or defect is corrected before a date specified in the notice.
- (3) If a direction under Subsection (2)(b)—
  - (a) is complied with on or before the date specified in the notice, the instrument is taken to have been registered at the time and date at which the instrument was originally submitted, and the Mining Registrar must delete the word “PROVISIONAL” from the Bougainville Register; or
  - (b) is not complied with on or before the date specified in the notice, the Mining Registrar must delete the entry from the Bougainville Register entirely.
- (4) This section does not apply to the preliminary examination of an application under Section 242.

**257 Time period commences on registration**

Subject to Section 256, and unless otherwise expressly provided, a time period under this Act in relation to a tenement or a community mining licence reserve area is to be calculated by reference to the date and time of registration of the tenement or reserve area, and not the date and time of submission of the application for registration.



**258 Interest in tenement to be created in writing**

A legal or equitable interest in an existing or future tenement is not capable of being created, assigned, or dealt with, whether directly or indirectly, except by a written instrument signed by the person creating, assigning or otherwise dealing with the interest, or by the person's duly authorised agent.

**259 Dealing in tenements**

Subject to this Act, a legal or equitable interest in a tenement may be sold, transferred, mortgaged, charged or otherwise encumbered, transmitted, seized under a warrant or writ of execution, or otherwise disposed of or made the subject of some other dealing.

**260 Transfer of tenement to be approved and registered**

- (1) An application for approval of a tenement transfer must be in writing and must be submitted with an instrument of transfer in the prescribed form to the Mining Registrar, who must submit the application to the Advisory Council for its consideration.
- (2) An application for approval of a transfer must include an attestation by the transferee that the transferee has the financial and technical capability to perform all obligations under the tenement.
- (3) The Bougainville Executive Council, in accordance with the advice of the Advisory Council, may—
  - (a) approve the transfer, subject to such conditions as the Bougainville Executive Council considers necessary; or
  - (b) refuse to approve the transfer.
- (4) If the Bougainville Executive Council approves a transfer, the Mining Registrar must register the instrument of transfer.
- (5) An instrument of transfer of a tenement does not convey a legal or equitable interest in the tenement unless and until it has been—
  - (a) approved by the Bougainville Executive Council; and
  - (b) registered under Subsection (4).

**261 Tribute agreements and other instruments, other than transfers, to be approved and registered<sup>54</sup>**

- (1) This section applies to—
  - (a) an instrument by which a legal or equitable interest in an existing or future tenement is or may be created, assigned, or otherwise dealt with, whether

- directly or indirectly, which is not an instrument of transfer to which Section 260 applies; and
- (b) a tribute agreement.
- (2) No legal or equitable interest is created, assigned or otherwise dealt with by an instrument, either directly or indirectly unless and until the instrument has been—
- (a) approved by the Minister under Subsection (5)(a); and
- (b) registered under Subsection (6).
- (3) No tribute agreement is valid unless and until it has been—
- (a) approved by the Minister under Subsection (5)(a); and
- (b) registered under Subsection (6).
- (4) An application for approval of a tribute agreement or instrument to which this section applies must be submitted in the prescribed form, together with the document for which approval is sought,<sup>55</sup> to the Mining Registrar, who must submit the application to the Advisory Council for its advice.
- (5) The Minister, in accordance with the advice of the Advisory Council, must—
- (a) approve the instrument or tribute agreement, subject to such conditions as the Minister, in accordance with the advice of the Advisory Council, considers necessary; or
- (b) refuse to approve the instrument or tribute agreement.
- (6) If the Minister approves an instrument or tribute agreement, the Mining Registrar must register the instrument or agreement.
- (7) If the Minister has approved an instrument under this section, a subsequent transfer of the tenement under Section 260 effected by the instrument is taken to have been approved by the Minister and must be registered by the Mining Registrar, provided that—
- (a) the transfer is made in accordance with the instrument; and
- (b) there has been substantial compliance with the conditions of the tenement to which the transfer relates.
- (8) The parties to an instrument or tribute agreement approved and registered under this section may jointly apply to the Secretary in the prescribed form to deregister the instrument or tribute agreement.
- (9) If the Secretary receives an application under Subsection (8), and the Secretary is satisfied that it is the desire of all parties to the instrument or tribute agreement that it be deregistered, the Secretary must approve the application.

- (10) The Mining Registrar must deregister an instrument or tribute agreement registered under Subsection (6) if—
- (a) the Secretary approves an application for deregistration of the instrument or tribute agreement under Subsection (9); or
  - (b) the Mining Registrar receives a court order directing that the instrument or tribute agreement be deregistered.

## **262 Effect of registration**

- (1) Except in the case of fraud, the registered holder of a tenement has priority over all other persons in respect of that tenement, subject only to—
- (a) an encumbrance or other interest which is notified on the Bougainville Register; and
  - (b) conditions—
    - (i) of the grant of the tenement; or
    - (ii) imposed in respect of the tenement under this Act.
- (2) Except in the case of fraud—
- (a) no informality or irregularity in the application for or in the proceedings previous to the grant or extension of term of a tenement affects the title of the registered holder of the tenement; and
  - (b) a person dealing with a registered holder of a tenement—
    - (i) does not need to inquire into the circumstances under which the registered holder or a previous registered holder became registered; and
    - (ii) is not affected by notice of an unregistered interest and the knowledge that an unregistered interest is in existence is not of itself to be imputed as fraud.
- (3) A grant of a freehold or leasehold estate in land does not affect an existing tenement acquired or continued in existence under this Act.

## **263 Approval of instrument not to have effect outside this Division**

The approval of an instrument lodged under this Division does not give it any force, effect or validity that it would not have had if this Division had not been enacted.

**264 Rights and obligations under Act only exercisable by and enforceable against holder**

Except in so far as is otherwise provided for in this Act—

- (a) the rights conferred by this Act in relation to a tenement or community mining licence are only exercisable by the holder of the tenement or licence; and
- (b) the obligations imposed by this Act in relation to a tenement or community mining licence are only enforceable against the holder of the tenement or licence.

**265 Instruments made in contemplation of approval**

If—

- (a) an instrument must be registered under this Act; and
- (b) the instrument is subject to the approval of the Minister, whether under this Act or by the agreement of the parties,

nothing in this Division prevents or affects the validity of an agreement made in contemplation of a dealing to which this section applies if the instrument evidencing the agreement expressly provides that registration under this Act is effected or such approval obtained, as the case may be, as a condition of the coming into force of those provisions of the instrument that require such registration or approval.

**266 Devolution**

- (1) If, on application in writing, the Mining Registrar is satisfied that the rights of the holder of a tenement have devolved by operation of law to another person, the Mining Registrar, on payment of the prescribed fee, must enter the name of that other person to whom the tenement has devolved in the Bougainville Register as the holder of the tenement.
- (2) When an entry is made in the Bougainville Register under Subsection (1), the person whose name is entered has the same rights and is subject to the same obligations in respect of the tenement as if the person were the person to whom the tenement was originally granted.

**267 Rectification of the Bougainville Register**

- (1) Application may be made to the Secretary by any person for rectification of the Bougainville Register if the Mining Registrar or another person discovers that there has been—
  - (a) an omission of an entry from the Bougainville Register that should not have been omitted; or

- (b) the rejection of an instrument presented for registration that should have been accepted and registered; or
  - (c) an entry made in the Bougainville Register without sufficient cause; or
  - (d) an entry wrongly existing in the Bougainville Register; or
  - (e) an error or defect in an entry in the Bougainville Register.
- (2) On receipt of an application under Subsection (1), the Secretary may—
  - (a) make an investigation into the matter; and
  - (b) direct the Mining Registrar to rectify the Bougainville Register in a matter that the Secretary considers requires rectification.
- (3) A person may appeal to the Bougainville High Court against a direction or decision, or to seek a decision by the Secretary under Subsection (2), and the Court may make such order as it considers necessary to resolve the matter.
- (4) The Mining Registrar must give effect to an order of the Bougainville High Court made under Subsection (3).

## **268 Effect of mortgage**

- (1) A mortgage has effect as a security only for the sum of money or the discharge of the liability intended to be secured by it and does not take effect as an assignment.
- (2) A mortgagor is entitled to redeem the property the subject of the mortgage before its sale by the mortgagee on tender of the money or discharge of the liability secured by the mortgage.
- (3) Subject to Subsections (1) and (2), a mortgage may contain such covenants and powers as are agreed between the parties.
- (4) To avoid doubt, the holder of a tenement is not capable of mortgaging minerals in the ground, as title to such minerals does not pass until such time as the minerals are separated from the ground.

## **Division 4 — Caveats**

### **269 Registering of caveats**

- (1) A person claiming an interest in a tenement may submit to the Mining Registrar a caveat forbidding the registration of a transfer or other instrument affecting the tenement or interest.
- (2) A caveat submitted under Subsection (1) must—
  - (a) be in the prescribed form; and
  - (b) give an address within Bougainville for the service of notices and proceedings in relation to the caveat; and

- (c) otherwise contain the prescribed particulars; and
- (d) be accompanied by the prescribed fee.

## **270 Duties of Mining Registrar on submission of caveat**

On the submission of a caveat under Section 269(1) the Mining Registrar must—

- (a) enter a memorandum of the caveat in the Bougainville Register; and
- (b) send, by registered post to the holder of the tenement affected by the caveat, notice that the caveat has been submitted.

## **271 Duration and effect of a caveat**

- (1) A caveat lapses and ceases to have effect upon—
  - (a) an order of the Bougainville High Court for its removal; or
  - (b) its withdrawal by the caveator or the caveator's agent; or
  - (c) the expiry of a period of 14 days after notification has been sent by the Mining Registrar by registered post to the caveator at the address for service given in the caveat that application has been made for the registration of a transfer or other instrument affecting the subject matter of the caveat, unless within that period the Bougainville High Court otherwise orders.
- (2) A transfer or other instrument affecting a tenement the subject of a caveat must not be registered while the caveat remains in force.
- (3) When a caveat lapses and ceases to have effect, the Mining Registrar must enter in the Bougainville Register a memorandum of that fact.

# **Division 5 — Consolidation**

## **272 Application of this Division**

This Division applies to the consolidation of existing tenements of the same type (in this Division, the **existing tenements**) into 1 or more tenements of that type (in this Division, a **consolidated tenement**).

## **273 Application for consolidation**

An application for the grant of a consolidated tenement must—

- (a) be in the prescribed form; and
- (b) include—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the area to be consolidated in latitude and longitude; and

- (ii) a sketch map showing the boundary of the area to be consolidated and such other natural features and the location of principal villages as will allow the area to be correctly located; and
  - (iii) the applicant's proposed plans for the consolidated tenement or tenements; and
- (c) be submitted—
  - (i) no later than the date 6 months before the expiry of the soonest-expiring existing tenement; and
  - (ii) in triplicate, unless submitted electronically; and
- (d) be accompanied by the prescribed application fee; and
- (e) comply with Part 10 Division 2.

## **274 Grant of consolidated tenement**

- (1) On the application of the holder of 2 or more adjoining tenements of the same type, the Minister, in accordance with the advice of the Advisory Council, may grant to the applicant 1 or more consolidated tenements of that type.
- (2) However, the following tenement types cannot be consolidated—
  - (a) reconnaissance licence;
  - (b) exploration licence;
  - (c) artisanal mining licence.
- (3) A consolidated tenement—
  - (a) must be in the prescribed form for the type of existing tenements being consolidated; and
  - (b) must be subject to such conditions as were attached to the existing tenements; and
  - (c) may contain such other conditions as the Minister, in accordance with the advice of the Advisory Council, may determine.
- (4) The Minister may grant a consolidated tenement under Subsection (1) without a Bougainville Warden's hearing.
- (5) If an application for the consolidation of existing tenements is submitted under Subsection (1) and the conditions attached to the existing tenements are not the same, the Minister, in accordance with the advice of the Advisory Council, must determine the conditions attaching to the consolidated tenement.

**275 Term of consolidated tenement**

The term of a consolidated tenement is—

- (a) if the unexpired terms of the existing tenements at the date of grant of the consolidated tenement are the same – that unexpired term; or
- (b) if the unexpired terms of the existing tenements at the date of grant of the consolidated tenement are not the same – the shorter or shortest of the unexpired terms.

**276 Area of consolidated tenement**

The area of land over which a consolidated tenement may be granted must not exceed the maximum area specified by this Act for a tenement of that type.

**277 Effect of consolidation**

- (1) Upon the grant of a consolidated tenement, every right, title and interest conferred by the existing tenements in respect of the whole of the land being consolidated ceases and terminates absolutely.
- (2) If an existing tenement is consolidated, an interest in that tenement is taken to be an equivalent interest in the consolidated tenement.
- (3) The consolidation of an existing tenement does not affect the liability of the holder of that existing tenement, arising on or before the date of the grant of the consolidated tenement—
  - (a) to pay annual rent, fee, royalties, production levy, penalty or other money or any other account, that is payable; or
  - (b) to perform an obligation required to be performed; or
  - (c) for an act done or default made.

**278 Provisions relating to tenements to apply to consolidate tenements**

Subject to this Division, the provisions of this Act applicable to tenements of the type held prior to consolidation also apply to a consolidated tenement of the same type.

**Division 6 — Surrender****279 Holder may surrender tenement**

The holder of a tenement may apply to the Mining Registrar in the prescribed form and manner to surrender the tenement, in whole or in part.



**280 Application for partial surrender**

An application for partial surrender of a tenement must have attached—

- (a) for a reconnaissance licence, exploration licence, artisanal mining licence or channel dredging permit—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the area to be retained in latitude and longitude, and complying with the area and shape requirements for a tenement of that type; and
  - (ii) a sketch map showing the boundary of the area to be retained, such other natural features and the location of principal villages as will allow the area to be correctly located<sup>56</sup>; or
- (b) otherwise—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the area to be retained in latitude and longitude and complying with the area and shape requirements for a tenement of that type; and
  - (ii) a survey of the area to be retained under Section 239; and
  - (iii) a statutory declaration that the area of land to be retained has been marked out in accordance with Section 238.

**281 Duties of Mining Registrar on surrender**

- (1) As soon as practicable after an application for surrender has been submitted under Section 279, the Mining Registrar must determine whether the tenement holder has, with respect to the area being surrendered, complied with such conditions of the tenement as relate to the cessation of exploration and mining operations, restoration of the land and surrender.
- (2) If the Mining Registrar is satisfied that the holder of the tenement has complied with the conditions of the tenement under Subsection (1), the Mining Registrar must—
  - (a) register the surrender in the Bougainville Register; and
  - (b) certify the registration of surrender on the application as prescribed; and
  - (c) for a partial surrender – endorse the surrender on the title document; and
  - (d) cause a notice of the registered surrender to be published in the Bougainville Gazette; and
  - (e) keep a copy of the registered surrender continuously posted on a public noticeboard at the Department’s headquarters for a period of 30 days; and
  - (f) keep a copy of the registered surrender continuously posted and accessible by the public on the Department’s website for a period of 30 days; and

- (g) send a copy of the registered surrender to the applicant.
- (3) If the whole of a tenement is surrendered, the Mining Registrar must, after complying with Subsection (2), remit the balance of the security to the former holder of the tenement, after deducting—
  - (a) the amount of a fee, annual rent, royalties, production levy, compensation, penalty or other money or other account that is payable on or before the date of surrender; and
  - (b) the amount of any costs incurred by the Autonomous Bougainville Government in ensuring that other liabilities are met.
- (4) If the Mining Registrar is satisfied that the holder of the tenement has not complied with all of the conditions of the tenement under Subsection (1), the Mining Registrar must notify the holder in writing accordingly and not take action under Subsection (2) until the outstanding conditions are complied with.

## **282 Liabilities of holder on surrender**

The surrender of a tenement does not affect the liability of the holder of that tenement, arising on or before the date of the surrender—

- (a) to pay annual rent, fee, royalties, production levy, penalty or other money or other account, that is payable; or
- (b) to perform an obligation required to be performed; or
- (c) for an act done or default made.

## **283 Rights of holder on surrender**

Despite anything to the contrary in this Act, if a tenement is surrendered in whole or in part, every right, title and interest held under the tenement in respect of the whole of the land or that part of the land which is being surrendered, as the case may be, absolutely ceases and terminates on the date the surrender is registered.

# **Division 7 — Cancellation and expiry of a tenement**

## **284 Cancellation of tenement**

- (1) The Secretary may, by written notice, require the holder of a tenement, within the time specified in the notice, to show cause why the tenement should not be cancelled for a breach by the holder of—
  - (a) a provision of this Act; or
  - (b) a condition on which the tenement was granted.
- (2) If the holder of a mining lease, lease for mining purposes or mining easement on whom notice has been served under Subsection (1) fails, in the opinion of the Bougainville Executive Council, after receiving the advice of the Advisory Council,

to show cause in accordance with the notice, the Bougainville Executive Council may, in the prescribed form, cancel the tenement.

- (3) If the holder of a reconnaissance licence, exploration licence, quarry lease, artisanal mining licence or channel dredging permit on whom notice has been served under Subsection (1) fails, in the opinion of the Minister, after receiving the advice of the Advisory Council, to show cause in accordance with the notice, the Minister may, in the prescribed form, cancel the tenement.
- (4) In a case where a mining development agreement has been entered into by the holder of the tenement with the Autonomous Bougainville Government, the tenement must not be cancelled unless the mining development agreement has been terminated.

## **285 Duties of Mining Registrar on cancellation**

- (1) The Mining Registrar, immediately after the Bougainville Executive Council has cancelled a tenement under Section 284(2), must—
  - (a) register the cancellation in the Bougainville Register; and
  - (b) cause notice of the registration of the cancellation in the prescribed form to be published in the Bougainville Gazette; and
  - (c) keep posted, for at least 30 days, notice of the registration of the cancellation—
    - (i) on a public noticeboard at the Department’s headquarters; and
    - (ii) on the Department website; and
  - (d) send a copy of the registered cancellation to the former holder of the tenement.
- (2) The Mining Registrar must, after complying with Subsection (1), remit the balance of the security to the former holder of the tenement, after deducting—
  - (a) the amount of a fee, annual rent, royalties, production levy, compensation, penalty or other money or other account that is payable on or before the date of cancellation; and
  - (b) the amount of any costs incurred by the Autonomous Bougainville Government in ensuring that other liabilities are met.

## **286 Duties of Mining Registrar on expiry**

- (1) The Mining Registrar, immediately after the expiry of a tenement, must register the expiry in the Bougainville Register.

- (2) The Mining Registrar must, after registering the expiry, remit the balance of the security to the former holder of the tenement, after deducting—
- (a) the amount of a fee, annual rent, royalties, production levy, compensation, penalty or other money or other account, that is payable on or before the date of expiry; and
  - (b) the amount of any costs incurred by the Autonomous Bougainville Government in ensuring that other liabilities are met.

## **287 Rights and liabilities of the tenement holder on cancellation or expiry**

On the cancellation or expiry of a tenement or community mining licence—

- (a) all rights conferred by or enjoyed under the tenement or licence cease as from the date of cancellation or expiry; and
- (b) an obligation or liability incurred before cancellation or expiry is not affected.

## **Division 8 — Fees, annual rents, royalties, production levy, security**

### **288 Fees**

- (1) The fees payable under this Act are as prescribed.
- (2) All fees payable under this Act must be paid to the account of the Autonomous Bougainville Government entity as is designated for this purpose by the Bougainville Executive Council.
- (3) However, exploration licence land access fees must be paid by the holder of the exploration licence to the landowner's exploration licence bank account set up in accordance with the exploration licence land access and compensation agreement.

### **289 Annual rent**

- (1) The holder of a mining lease, quarry lease, lease for mining purposes or mining easement must pay rent annually to the landowners, or approved landowner organisations representing the landowners, of the area of the holder's tenement, in such form and manner as are prescribed.
- (2) The holder of a reconnaissance licence, exploration licence, artisanal mining licence, community mining licence or channel dredging permit is not required to pay annual rent.
- (3) In respect of each tenement, the annual rent—
  - (a) is calculated by multiplying the total area of the tenement by the prescribed annual rent rate for that type of tenement; and
  - (b) must be paid in full, annually in advance, and no later than 31 December in the year preceding the calendar year for which the annual rent is being paid.

- (4) However, in the year that a tenement is granted, the holder of the tenement must, within 30 days after the grant of the tenement, pay in full the amount of annual rent for the tenement area, prorated for the period between the date on which the tenement was granted and 31 December of that year.
- (5) If a tenement is due to expire before 31 December in any year, the annual rent payable for the period between 1 January in that year and the date on which the tenement expires is the amount that would be payable for a full calendar year, and no portion of the annual rent paid is refundable.
- (6) Except for the first year of the tenement, failure by the holder of the tenement to pay annual rent in respect of any year by 31 December in the preceding year, incurs a late payment penalty of 50% of the annual rent payable.
- (7) Annual rent and late payment penalties payable by the holder of a tenement under this section must be paid in the prescribed manner directly to the landowners and approved landowner organisations of the tenement area.
- (8) An amount payable by the holder of a tenement under this section must be distributed amongst the landowners and approved landowner organisations in proportion to the land area contributed by each individual landowner and each landowner organisation to the total land area of the tenement.
- (9) If the holder of a tenement has not paid annual rent and late payment penalty by 28 February in the year in respect of which it is due, the Secretary must initiate the procedure under Section 284 for cancellation of the tenement.
- (10) If a tenement is held in common by more than 1 person, each person having an interest in the tenement is jointly and severally liable for the payment of annual rent in respect of the tenement.

## **290 Periodic review and adjustment of fee and rent levels**

- (1) A method for annual automatic adjustments to the prescribed levels of rent and fees, based on reference to an economic index, may be prescribed.
- (2) If an adjustment method has been prescribed under Subsection (1), the Secretary must make available to the public an annually-revised table of the levels of rent and fees, as adjusted using that method.
- (3) If an adjustment method has not been prescribed under Subsection (1)—
  - (a) the Secretary must, at least once in every 5-year period, review and recommend to the Bougainville Executive Council changes to the prescribed levels of fees and rent, taking into account inflation and other changed circumstances; and
  - (b) the Bougainville Executive Council must determine revised levels of fees and rent at least once in every 5-year period

- (4) A determination by the Bougainville Executive Council under Subsection (3)—
  - (a) must specify the date on which the revised rates take effect; and
  - (b) must not have retrospective effect.

## **291 Royalties and production levy**

- (1) The holder of a mining lease or quarry lease must pay quarterly—
  - (a) landowners' royalty, at the rate of 1.5% of mineral value; and
  - (b) regional development royalty, at the rate of 1.25% of mineral value; and
  - (c) health and education royalty, at the rate of 0.5% of mineral value; and
  - (d) production levy, at the rate of 0.5% of mineral value.
- (2) The holder of an artisanal mining licence or community mining licence is not required to pay royalty under this Act, but may be subject to negotiated royalty payments under a tribute agreement.
- (3) Landowners' royalty payable in respect of customary land under this section must be paid by a tenement holder in the prescribed manner directly to the landowners or approved landowner organisations.
- (4) If the area of a tenement includes both customary land and land that is not customary land, the share of the landowners' royalty available for distribution amongst the owners of the customary land will be in proportion to the area of the tenement that is customary land.
- (5) An amount of landowners' royalty payable by the holder of a tenement to owners of customary land under this section must be distributed amongst approved landowner organisations and owners of customary land not represented by approved landowner organisations, in proportion to the land area contributed by each landowner organisation and each individual landowner to the total area of customary land the subject of the tenement.
- (6) If any part of the area of a mining lease or quarry lease is land other than customary land, the landowners' royalty payable in respect of that part must be paid into the Bougainville Consolidated Revenue Fund.
- (7) The holder of a tenement required to pay regional development royalty, health and education royalty and production levy must remit such payments as follows—
  - (a) for the regional development royalty – to a Bougainville Trust Account established under the *Public Finances (Management and Administration) Act 2014* for the implementation of a regional development plan adopted by the Government; or
  - (b) for the health and education royalty – to a Bougainville Trust Account established under the *Public Finances (Management and Administration)*

Act 2014 for the implementation of a health and education development plan adopted by the Autonomous Bougainville Government; or

(c) for production levy – to the Bougainville Consolidated Revenue Fund.

- (8) Royalty and production levy payments must be paid in full.
- (9) If a tenement is held in common by more than 1 person, each person having an interest in the tenement is jointly and severally liable for the payment of royalties and production levy in respect of the tenement.
- (10) If an amount required to be paid by the holder of a tenement under this section has not been paid within 60 days after the date on which payment was due, the Secretary must initiate the procedure under Section 285 for cancellation of the tenement.
- (11) The Secretary and an officer of the Bougainville Public Service authorised by the Minister may inspect and examine all samples, books, records and accounts and obtain all information necessary to ascertain the quantity or value of minerals produced or obtained from a tenement, and all information necessary to verify the amount of a royalty or production levy payable.
- (12) In this section—
- (a) **mineral value** means the value of—
- (i) if the mine products are directly or indirectly for export from Papua New Guinea – the free-on-board revenue applicable to deliveries of the mine products by the miner under sales or other dispositions; or
  - (ii) if the mine products are smelted or smelted and refined in Papua New Guinea – the net smelter returns applicable to deliveries of the mine products; or
  - (iii) if the mine products are sold to buyers in Papua New Guinea, other than to a smelter or refinery in Papua New Guinea – the sales value revenue;
- (b) **free-on-board revenue** means—
- (i) for a delivery of mine products made under a sale by the miner, other than a sale to which Sub-paragraph (ii) applies – the whole of the consideration receivable by the miner for the mine products less the costs, charges and expenses incurred or suffered by the miner in respect of the mine products from the time when the mine products are loaded on board a ship or aircraft in Papua New Guinea until the mine products are delivered to and accepted by the purchaser, including—
    - (A) taxes, dues, duties, excise, tariffs and other levies imposed on the export of the mine products from the country; and
    - (B) trimming costs; and

- (C) ocean freight; and
    - (D) marine insurance premiums; and
    - (E) port and handling charges at the port of discharge; and
    - (F) delivery costs from the port of discharge to a place for the purpose of further processing; and
    - (G) weighing, sampling, assaying, inspection, representation and selling agency costs and charges; and
    - (H) shipping agency charges; and
    - (I) taxes, dues, duties, primage, tariffs and other levies imposed in the country of the port of discharge on the import of the mine products; and
  - (ii) for a delivery of mine products made under a sale by the miner for a consideration that is not a consideration that would be receivable by a willing seller from a willing buyer or that is made under a disposition by the miner otherwise than by way of sale—
    - (A) an amount equal to the whole of such consideration as would have been receivable by the miner if such mine products had been sold at the weighted average of the whole of the considerations receivable by the miner (less the costs, charges and expenses referred to in Sub-paragraph (i)) in respect of deliveries of mine products of substantially the same composition which were made during the period of 60 days immediately preceding the relevant delivery and to which Sub-paragraph (i) applied; or
    - (B) in the event of there being no such deliveries – such amounts as the Bougainville Warden may determine to be the value of the mine products after the miner has presented to the Warden evidence of its value;
- (c) **net smelter returns** means—
- (i) for a miner who is also the processor in Papua New Guinea – the value of the product of its smelter or its smelter and refinery, as the case may be, less the costs, charges and expenses incurred or suffered by the miner in respect of those products from the time when the mine products are delivered to the smelter until the time when the smelter or refinery products are delivered to and accepted by the purchasers, including—
    - (A) smelting and refining costs, which may include a reasonable profit element, but which must be no greater than amounts that are or would be charged to another person for the smelting or smelting or refining, as the case may be, of similar mine products; and



- (B) realisation costs; and
  - (C) the costs itemised in Paragraph (b)(i), to the extent the costs are payable by the miner in respect of the transporting of the smelter or refinery products to the point of delivery to the purchasers;
- (ii) for a miner who has its mine products smelted or smelted and refined in Papua New Guinea by another person – the value of the products of the smelter or the smelter and refinery, as the case may be, from mine products supplied by the miner less the costs, charges and expenses incurred or suffered in respect of the products, including—
- (A) smelting and refining charges payable by the miner to the processor, which, if the processor is an associated person or a related corporate body, must be no greater than amounts that are or would be charged to an unassociated person or an unrelated corporate body; and
  - (B) realisation costs incurred by the processor or by the miner; and
  - (C) the costs itemised in Paragraph (b)(i), to the extent the costs are payable by the processor or by the miner in respect of the transporting of the smelter or refinery products to the point of delivery to the purchasers.

## 292 Returns of minerals produced and provisional royalty

- (1) The holder of a mining lease or quarry lease must submit to the Mining Registrar, within 45 days after the end of each calendar quarter, a quarterly mineral production and provisional royalty return, in the prescribed form, showing—
  - (a) the amount of mine products extracted or produced by the miner during the calendar quarter immediately preceding the quarter in which the return is made; and
  - (b) the estimated mineral value, being as appropriate the free-on-board revenue, the net smelter returns or sales value revenue of the mine products, as defined in Section 291; and
  - (c) the provisional landowners' royalty, regional development royalty, health and education royalty<sup>57</sup> and production levy payable and paid.
- (2) A holder of a mining lease or quarry lease who furnishes a return under this section must, at the same time, pay the provisional royalties and production levy under Section 291 on the estimated mineral value of the mine products included in the return.
- (3) Within 60 days after the payment of the provisional royalties and production levy is due under Subsection (2), the miner must produce to the Secretary evidence regarding the actual price received for the mine products, and then the royalties

and production levy payable on the mine products must be finally determined and adjustments made in accordance with that determination.

- (4) Despite this section, the Secretary may—
  - (a) finally determine the amount of royalty and production levy payable on mine products found in Bougainville; and
  - (b) seize and retain the mine products until the royalty and production levy so determined have been paid.
- (5) In proceedings against a person for failure to comply with this section, the burden of proof that the section has been complied with is on that person.
- (6) In this section, **mineral value**, **free-on-board revenue** and **net smelter returns** have the same meanings as in Section 291.
- (7) A return submitted under this section must not be made available to a person outside—
  - (a) the Department; or
  - (b) an authority charged with the responsibility for tax matters; and
- (8) The contents of a report submitted under this section must not be revealed, except to the extent necessary for the Secretary—
  - (a) to publish statistical information concerning the geology and mineral resources in Bougainville; or
  - (b) to give advice on a confidential basis to the Minister or the Bougainville Executive Council.

### **293 Sales to affiliate**

- (1) A mine product sale or disposal commitment by the holder of a tenement to an affiliate must be made only at prices based on or equivalent to arm's length sales and in accordance with such terms and conditions at which such sale or disposal agreement would be made had the parties not been affiliated.
- (2) When a mine product produced in a tenement is sold or otherwise disposed of to an affiliate, the holder of the tenement must—
  - (a) report such sale or disposal to the Mining Registrar in such form and manner as is prescribed; and
  - (b) give to the Mining Registrar, in the prescribed manner, copies of all information, data, sales contracts, commissions, prices and receipts used in computing the prices pertaining to such transaction so that a determination can be made as to whether the transaction complies with Subsection (1).
- (3) All information submitted under Subsection (2) must be treated as confidential and must not be disclosed to a party outside the Department, except such information

may be shared with a department of government that levies and collects taxes based on the value of a mine product sale or transfer transaction.

- (4) After the Mining Registrar receives a report under Subsection (2), the Secretary may—
- (a) make an investigation as to whether the transaction complies with Subsection (1); and
  - (b) if the transaction does not comply with Subsection (1) – assess the value of the mine product that would have resulted had the transaction complied.
- (5) If the Secretary makes an assessment under Subsection (4)(b)—
- (a) the assessed value is taken to be the value of the transaction for the purposes of calculating royalties and production levy; and
  - (b) the Secretary must notify the holder of the tenement of the assessed value and the amount of additional royalties and production levy that is due and payable.
- (6) If the holder of a tenement disagrees with an assessment under Subsection (4)(b), the holder may—
- (a) appeal the assessment to the Bougainville High Court; or
  - (b) if the holder of the tenement is party to a mining development agreement with the Autonomous Bougainville Government that makes provision for arbitration of mine product sales related disputes – seek a review of the assessment through arbitration.
- (7) If a transaction does not comply with Subsection (1), the holder of the tenement is liable to pay royalties and production levy on the amount that would have resulted if the value of the transaction had been calculated in accordance with Subsection (1).
- (8) A holder of a tenement commits an offence if the holder—
- (a) makes a transaction to which Subsection (1) applies; and
  - (b) is liable to make a payment under Subsection (7) because the transaction did not comply with Subsection (1).
- Penalty:* An amount equal to 5 times the amount payable under Subsection (7).
- (9) The Secretary must initiate the procedure under Section 284 for cancellation of a tenement if the holder of the tenement has—
- (a) failed to comply with Subsection (2); or
  - (b) been required to make payments under Subsection (7), and it is the opinion of the Secretary that the conduct of the holder of the tenement demonstrates a pattern of non-compliance.
- (10) In this section, **affiliate** has such meaning as is prescribed.

**294 Fees, annual rent, royalties and levies not refundable**

The fees, annual rents, royalties and levies payable under this Division are non-refundable.

**295 Rent, royalty and levy still payable despite criminal proceedings**

A person who is liable to pay annual rent, royalty or production levy, or has an expenditure obligation under a community development agreement, is not relieved of that liability or obligation by—

- (a) the institution of proceedings for an offence under this Act; or
- (b) the imposition of a penalty under this Act.

**296 Security**

- (1) A person to whom a tenement has been granted must, within 30 days after being notified of the grant by the Mining Registrar, submit to the Mining Registrar a security for compliance with its obligations under this Act.
- (2) A security under Subsection (1)—
  - (a) must be the prescribed amount; and
  - (b) may, subject to the approval of the Secretary, be—
    - (i) by bank guarantee; or
    - (ii) by insurance company bond; or
    - (iii) by cash deposit; or
    - (iv) partly by cash deposit and partly by such other method as the Secretary allows; or
    - (v) by such other method as the Secretary allows.
- (3) The Secretary may discharge, wholly or in part, a security lodged under this section—
  - (a) on the expiry, surrender or cancellation of a tenement; and
  - (b) on the application in writing from the person who was the tenement holder, accompanied by evidence, to the satisfaction of the Secretary, justifying the discharge of the security.

**Division 9 — Community engagement****297 Community engagement plan<sup>58</sup>**

- (1) An application for the grant of a mining lease or a quarry lease must be accompanied by particulars of the applicant's proposed community engagement plan, which must contain such information as is prescribed with respect to the

applicant's interactions with the community across the entire life cycle of the activities under the lease.

- (2) A community engagement plan must be developed in collaboration with community governments, traditional leaders, women, communities, organisations and marginalised groups in the area in proximity to the lease.
- (3) If the holder of a mining lease or quarry lease holds more than 1 lease in a localised area, the holder may seek approval from the Secretary for preparation of a single community engagement plan that makes provision for community engagement in relation to all of the holder's leases in that area.
- (4) The holder of a mining lease or quarry lease must periodically, as is prescribed, update its approved community engagement plan.
- (5) An approved community engagement plan must be made available to the public at the office of the Mining Registrar.
- (6) The holder of a mining lease or quarry lease must, in such form as is prescribed, submit to the Mining Registrar a community engagement plan report for each calendar year.
- (7) A report under Subsection (6) must be submitted within 90 days after the end of the period to which the report relates.

## **Division 10 — General provisions**

### **298 Resettlement management plan for tenement other than mining lease**

If the operations of the holder of a tenement other than a mining lease require the resettlement of persons resident on the tenement area—

- (a) the tenement holder must notify the Minister before effecting resettlement of such persons; and
- (b) the Minister, in accordance with the advice of the Advisory Council, may require the holder to—
  - (i) prepare and implement a resettlement management plan, containing such information as is prescribed; or
  - (ii) take such other actions or refrain from taking such actions as the Minister may direct.

### **299 Conflicting boundary descriptions**

- (1) If, for the boundaries of a reconnaissance licence or an exploration licence, there is a conflict between the boundaries—
  - (a) as shown on the sketch plan; and
  - (b) plotted by reference to latitude and longitude descriptions,

the boundaries plotted by reference to latitude and longitude prevail and are taken to be the tenement boundaries.

- (2) If, for the boundaries of an area the subject of an application for the grant of a tenement other than a reconnaissance licence or an exploration licence, there is a conflict between—

- (a) the boundaries described in the schedule; and
- (b) the boundaries as shown on the sketch plan; and
- (c) the boundaries marked out on the ground,

the boundaries described in the schedule prevail until survey, and, after survey, the boundaries established by the survey prevail.

### **300 Removal of mining plant, ore, tailings, etc., on expiry, etc., of tenement**

- (1) In the event of a conflict between this section and an approved rehabilitation and closure plan, the rehabilitation and closure plan prevails, to the extent of the conflict.

- (2) In this section—

- (a) **mining plant** means a building, plant, machinery, equipment, tools or other property, whether or not affixed to land; and
- (b) **prescribed period** means a period of 3 months, or such longer period as the Secretary may determine after a tenement expires, is surrendered or is cancelled, or land the subject of the tenement is relinquished.

- (3) When a tenement expires, is surrendered, cancelled, or land the subject of the tenement is relinquished, the person who was the holder of the tenement immediately prior to the expiry, surrender, cancellation or relinquishment may, within the prescribed period, remove mining plant from the land related to the tenement.

- (4) If mining plant is not removed under Subsection (3)—

- (a) the mining plant is forfeited to the Autonomous Bougainville Government; and
- (b) the Secretary may arrange for the mining plant to be sold by public auction or public tender and removed; and
- (c) the proceeds of such sale are to be paid into the Bougainville Consolidated Revenue Fund.

- (5) If, at the time a tenement expires, is surrendered or cancelled, or land the subject of the tenement is relinquished, the holder of the tenement immediately prior to such expiry, surrender, cancellation or relinquishment—

- (a) leaves upon the land tailings, other materials or mined ore; and

- (b) does not, within the prescribed period, either remove or complete treatment of the tailings, other materials or mined ore,
- such tailings, other materials and mined ore, at the expiration of the prescribed period, are forfeited to the Autonomous Bougainville Government.
- (6) Nothing in this section affects a valid agreement made by the former holder of a tenement with the landowner of land to which the tenement relates in respect of mining plant left on such land after the prescribed period, and this section must be construed subject to such an agreement.
- (7) Despite this section, timber or other material used and applied in the construction or support of a shaft, drive, gallery, adit, terrace, race, dam or other mining work must not be removed without the consent in writing of an inspector appointed under Section 5 of the Mining (Safety) Act.

### **301 Cadastral grid and constitution of cadastral blocks**

For the purposes of this Act—

- (a) the surface of the Earth is taken to be divided into a cadastral grid as is prescribed; and
- (b) the cadastral grid must be used as the basis to identify the location of cadastral blocks; and
- (c) **cadastral block** has such meaning as is prescribed.

## **PART 11 — COMPENSATION TO LANDOWNERS AND DAMAGED PARTIES**

### **302 Principles of compensation**

- (1) The holder of a tenement is liable to pay compensation, in respect of the holder's entry or occupation of land or offshore area the subject of the tenement for the purposes of exploration or mining or operations ancillary to mining, to the landowners of the land or other project-affected person or entity for all loss or damage suffered or foreseen to be suffered by them from the exploration or mining or ancillary operations.
- (2) A payment of compensation for loss or damage under this section does not affect the liability of the holder of a tenement to pay landowners' royalty or annual rent.
- (3) The compensation to which landowners or project-affected persons or entities are entitled includes compensation for—
  - (a) deprivation of the possession or use of the natural surface of the land (or of customary sea use) due to destruction or damage to the natural surface of the land; and
  - (b) damage to the natural surface of the land; and
  - (c) the severance of land or part of land from other land held by the landowner; and

- (d) loss or restriction of a right of way, easement or other right; and
  - (e) loss of, or damage to, buildings, crops, economic trees, infrastructure or other improvements to the land; and
  - (f) loss of earnings from productive land or an impacted business; and
  - (g) disruption to agricultural activities, fisheries activities or customary sea use; and
  - (h) loss of community resources, including gathering, fishing and hunting activities.
- (4) In determining the amount of compensation payable for a circumstance referred to in Subsection (3), regard must be had to the following—
- (a) whether the circumstance is permanent;
  - (b) if a circumstance is not permanent, the actual or anticipated period of time of the circumstance;
  - (c) whether an asset is moveable or immoveable;
  - (d) costs of physical relocation;
  - (e) all related transaction costs;
  - (f) the effect of a circumstance on future generations;
  - (g) the need to review rates of compensation at regular intervals;
  - (h) whether compensation has been paid or is payable under another law, including the Environment Act.
- (5) If applicable, compensation rates must be determined with reference to—
- (a) the values for economic crops and trees published by the Valuer General of Papua New Guinea; and
  - (b) prescribed values.
- (6) Without limiting Subsection (3), if land, buildings, crops, economic trees, infrastructure or other improvements to the land, adjoining or in the vicinity of the land the subject of a tenement or community mining licence, is or are physically damaged by the exploration or mining of the tenement or licence area, the landowners of that land are entitled to compensation for all loss or damage sustained and the amount of such compensation must be determined under this Part.
- (7) For this section, if a tenement includes an offshore area, **landowner** includes a customary sea user.



**303 No compensation payable in certain circumstances**

- (1) Other than as provided for in this Act, no compensation is payable, under this Act or otherwise—
- (a) in consideration of permitting entry on to the land for mining purposes; or
  - (b) in respect of the value of a mineral which is or may be on or in the land; or
  - (c) by reference to annual rent, royalty, levy or other amount assessed in respect of the mining of the mineral.
- (2) A person commits an offence if the person pays, or agrees to pay, compensation in respect of a matter referred to in Subsection (1), other than as provided for under this Act.

*Penalty:* K10,000 and 12 months' imprisonment.

**304 Eligibility for compensation**

Persons and entities eligible for compensation include—

- (a) each approved landowner organisation representing the owners of customary land the subject of a tenement; and
- (b) each owner of customary land the subject of a tenement not represented by an approved landowner organisation; and
- (c) each landowner of land the subject of a tenement that is not customary land; and
- (d) other project-affected persons,

with reasonable cause to believe they own or are otherwise entitled to compensable property rights, as accorded under the National Constitution, that are affected by the tenement or community mining licence holder's operations.

**305 No entry until compensation agreed or determined**

The holder of a tenement must not enter onto or occupy land the subject of the tenement, for the purpose of exploration or mining, until—

- (a) compensation has been agreed under—
  - (i) for an exploration licence, for that portion of the licence area that will be entered upon and disturbed – Section 105; or
  - (ii) for a large-scale mining lease, lease for mining purposes associated with a large-scale mining lease or mining easement associated with a large-scale mining lease – Section 306; or
  - (iii) for a reconnaissance licence, small-scale mining lease, lease for mining purposes associated with a small-scale mining lease, mining easement associated with a small-scale mining lease, quarry lease, artisanal mining licence or channel dredging permit – Section 307; and

- (b) either—
  - (i) the compensation agreement has been registered; or
  - (ii) compensation has been determined under this Part and the holder of the tenement has paid or tendered such compensation as is then due.

### **306 Compensation agreements for certain tenements – large-scale mining**

- (1) This section applies to—
  - (a) a large-scale mining lease; and
  - (b) a lease for mining purposes associated with a large-scale mining lease; and
  - (c) a mining easement associated with a large-scale mining lease.
- (2) The compensation payable by the holder of a tenement to landowners in respect of land the subject of the tenement is to be determined before or during a Mineral Resources Forum process, or subsequent mediation, by written agreement of—
  - (a) the holder of the tenement; and
  - (b) each approved landowner organisation representing the owners of the customary land the subject of the tenement; and
  - (c) each owner of customary land the subject of the tenement not represented by an approved landowner organisation; and
  - (d) the landowners of land the subject of the tenement that is not customary land.
- (3) A compensation agreement entered into between the holder of a tenement and landowners or approved landowner organisations must be submitted to the Mining Registrar, who must register the agreement.
- (4) Nothing in this Act prevents a Bougainville Warden from dealing with issues and disputes concerning compensation arising from an agreement at the request of the parties to the agreement.

### **307 Compensation agreements for certain tenements – small-scale mining**

- (1) This section applies to—
  - (a) a reconnaissance licence; and
  - (b) a small-scale mining lease; and
  - (c) a lease for mining purposes associated with a small-scale mining lease; and
  - (d) a mining easement associated with a small-scale mining lease; and
  - (e) a quarry lease; and
  - (f) an artisanal mining licence; and
  - (g) a channel dredging permit.

- (2) The amount of compensation payable by the holder of a tenement to which this section applies in respect of land the subject of the tenement may be determined by agreement of the holder of the tenement and the landowners, whether or not the landowners are represented by an approved landowner organisation.
- (3) A compensation agreement is valid only if this section has been complied with.
- (4) If the holder of a tenement and landowners propose to enter into a compensation agreement, the holder of the tenement must, as soon as the terms of the agreement have been agreed between the parties and before the agreement has been executed, submit a copy of the proposed compensation agreement to the Bougainville Chief Warden.
- (5) Within 14 days after receipt of a proposed compensation agreement, the Bougainville Chief Warden must give written notice to the parties that the Bougainville Chief Warden—
  - (a) is prepared to recommend to the Mining Registrar registration of the agreement once it has been executed; or
  - (b) requests the parties to consider certain amendments specified in the notice.
- (6) The parties must consider a request from the Bougainville Chief Warden under Subsection (5)(b), but are not obliged to accept the amendments specified in the notice.
- (7) If Subsections (4), (5) and (6) have been complied with, the parties may then execute the compensation agreement and submit it to the Mining Registrar, who must register it.
- (8) To avoid doubt, this section does not apply to an exploration licence, a large-scale mining lease, a lease for mining purposes associated with a large-scale mining lease or a mining easement associated with a large-scale mining lease.

### **308 Determination of compensation by the Bougainville Warden for certain tenements**

- (1) If—
  - (a) the holder of a tenement to which Section 307 applies; and
  - (b) the landowners claiming an entitlement to compensation, including the claimants to disputed land,are unable to agree on the amount of compensation to be paid, the holder or the landowners may, by notice to the Bougainville Chief Warden, request a Bougainville Warden to determine the amount payable.
- (2) On receipt of a notice under Subsection (1), the Bougainville Chief Warden must—
  - (a) fix a place and date for conducting a determination of the amount of compensation to be paid; and

- (b) notify the holder of the tenement and the claimant of the place and date fixed; and
  - (c) at that place and on that date conduct a determination of the amount of compensation to be paid.
- (3) In conducting a determination under this section the Bougainville Warden must allow the holder of the tenement and the claimant to present their evidence and arguments to the Warden in such manner as the Warden thinks fit, at all times having regard for the principles of natural justice.
- (4) The Bougainville Warden must—
  - (a) make a determination—
    - (i) on the basis of the evidence presented and the arguments submitted to the Warden; and
    - (ii) in accordance with the principle of compensation specified in Section 302; and
  - (b) record the decision in writing; and
  - (c) give a copy of the decision to the holder of the tenement and the claimant.
- (5) If the Bougainville Warden considers it impracticable or inexpedient to assess the amount of compensation to be paid in full satisfaction of the loss or damage, the Warden may make a determination as to the compensation payable in respect of a part of the total claim for compensation and defer the assessment of the total claim until a later hearing.
- (6) A determination in part under Subsection (5) must comply with Section 302.
- (7) To avoid doubt, this section does not apply to an exploration licence, large-scale mining lease, a lease for mining purposes associated with a large-scale mining lease or a mining easement associated with a large-scale mining lease.

### **309 Appeal from Bougainville Warden's determination**

If—

- (a) the holder of a tenement is aggrieved by a determination of the Bougainville Warden under Section 308(4)(a) as to the amount of compensation which the tenement holder is obliged to pay; or
- (b) a landowner claiming an entitlement to compensation is aggrieved by such a determination as to the amount of compensation to which the landowner is entitled,

the holder or the landowner may appeal the Bougainville Warden's determination to the Bougainville High Court, and the Court may make such order as it considers necessary to resolve the matter.

**310 Compensation agreement or determination to be binding**

- (1) This section applies to—
  - (a) a compensation agreement registered under Section 105, 306 or 307; or
  - (b) a Bougainville Warden’s determination under Section 308.
- (2) It is a condition of the tenement to which an agreement or determination relates that the holder of the tenement must comply with the terms of that agreement or determination.
- (3) An agreement or determination is binding as a contract on both the holder of the tenement and the landowners or approved landowner organisations concerned.

**311 Compensation in the event of land dispute**

- (1) If a dispute, as defined in the *Land Disputes Settlement Act* (Chapter 45) of the National Parliament, concerning customary land the subject of a tenement under this Act renders agreement on compensation impracticable, the amount of compensation to be paid by the holder of the tenement must be determined under Section 308.
- (2) The amount of compensation so determined is payable into a statutory trust established for that purpose, to be held on trust until the dispute is resolved.
- (3) After the dispute is resolved, the compensation must be paid from the trust account as determined by the Bougainville Chief Warden, or in accordance with a compensation agreement, as the case may be.

**PART 12 — SPECIAL PROVISIONS RELATING TO GOLD****312 Application of Central Banking (Foreign Exchange and Gold) Regulation**

- (1) Except for Sections 316 and 317, nothing in this Part affects the application of the Central Banking (Foreign Exchange and Gold) Regulation to the purchase, sale or other dealing in gold in Bougainville.
- (2) Nothing in this Part affects the application of the Central Banking (Foreign Exchange and Gold) Regulation to the export of gold from Papua New Guinea.

**313 Exception**

This Part does not apply to the sale of gold by the holder of a mining lease if the sale complies with the terms of the mining lease.

**314 Grant of gold dealer’s licence**

- (1) The Minister, in accordance with the advice of the Advisory Council, may grant a gold dealer’s licence for Bougainville to—
  - (a) a bank licensed to operate in Papua New Guinea; or

- (b) a corporate body incorporated under the Companies Act; or
  - (c) an individual person who—
    - (i) is over 21 years of age; and
    - (ii) is a Bougainvillean; and
    - (iii) is a fit and proper person to hold such a licence; and
    - (iv) in the opinion of the Advisory Council, appears to understand the requirements of this Act, to such an extent as to enable the person to comply with this Act; and
    - (v) has not been convicted of an offence—
      - (A) under this Act; or
      - (B) involving dishonesty or fraud.
- (2) An application for a gold dealer's licence must be—
- (a) submitted to the Mining Registrar in the prescribed form; and
  - (b) accompanied by the prescribed application fee.
- (3) The term of a gold dealer's licence is 1 year.
- (4) A gold dealer's licence—
- (a) may be renewed; and
  - (b) is not transferable.
- (5) Despite Subsections (1) and (2), the Minister may grant a gold dealer's licence to a government agency, on such conditions as the Minister determines.

### **315 Form and content of gold dealer's licence**

A gold dealer's licence is to be in the prescribed form and must specify—

- (a) the number and date of issue of the licence; and
- (b) the name of the gold dealer and the address of the licensee's place of business; and
- (c) the term of the licence; and
- (d) the conditions on which it is granted.

### **316 Licensed gold dealer may purchase certain gold**

- (1) Despite Section 26 of the Central Banking (Foreign Exchange and Gold) Regulation, a licensed gold dealer may purchase gold from—
- (a) the holder of—
    - (i) a small-scale mining lease; or
    - (ii) an artisanal mining licence; or

- (iii) a community mining licence; or
  - (b) another licensed gold dealer.
- (2) A licensed gold dealer must, when selling gold, comply with Section 25 of the Central Banking (Foreign Exchange and Gold) Regulation.

### **317 Sale of gold by certain persons**

Despite Section 25 of the Central Banking (Foreign Exchange and Gold) Regulation, the holder of a small-scale mining lease, artisanal mining licence, community mining licence or a licensed gold dealer may sell gold to a licensed gold dealer.

### **318 Obligations of licensed gold dealer**

- (1) A licensed gold dealer must deal in gold in such manner as is prescribed.
- (2) A licensed gold dealer must issue numbered receipts for all gold purchased, and the receipt must include—
  - (a) the date of the sale; and
  - (b) the name and address of the purchaser; and
  - (c) the registration number of the seller's tenement, or the particulars of the seller's community mining licence; and
  - (d) the weight of gold purchased; and
  - (e) the price paid by the dealer.
- (3) A licensed gold dealer must—
  - (a) at all times, keep the gold dealer's licence at the licensee's registered place of business in Bougainville; and
  - (b) produce the licence on request from the Secretary or an authorised officer.
- (4) A licensed gold dealer must record each purchase of gold by the licensee in a dealings register in the prescribed form, in which must be recorded—
  - (a) the receipt number and date of purchase; and
  - (b) the name and address of the seller; and
  - (c) the registration number of the seller's tenement or the particulars of the seller's community mining licence; and
  - (d) the weight of the gold purchased; and
  - (e) the purchase price paid to the seller.
- (5) An entry in a licensed gold dealer's dealings register regarding a purchase of gold must be signed—
  - (a) by—
    - (i) the dealer; or

- (ii) if the purchase is made by an agent of the dealer – the dealer’s agent; and
- (b) by the seller.
- (6) A licensed gold dealer must record each sale of gold by the licensee in a dealings register in the prescribed form, in which must be recorded—
  - (a) the date of the sale; and
  - (b) the name and address of the purchaser; and
  - (c) the weight of gold sold; and
  - (d) the price paid.
- (7) An entry in a licensed gold dealer’s dealings register regarding a sale of gold must be signed—
  - (a) by—
    - (i) the dealer; or
    - (ii) if the sale is made by an agent of the dealer – the dealer’s agent; and
  - (b) by the buyer.
- (8) A licensed gold dealer must record each use of gold purchased by the licensee used in the manufacture of an article, for trade or another purpose, in a dealings register in the prescribed form, in which must be recorded—
  - (a) the date of the gold was removed from inventory for use in the manufacture; and
  - (b) a description of the article manufactured; and
  - (c) the weight of gold used in the manufacturing the article; and
  - (d) the value of the gold used in manufacturing the article; and
  - (e) if the manufactured article is sold—
    - (i) the date of the sale; and
    - (ii) the name and address of the purchaser; and
    - (iii) a description of the article; and
    - (iv) the price paid.
- (9) A person commits an offence if the person—
  - (a) makes a false entry in a dealings register; or
  - (b) otherwise contravenes this section.

*Penalty:* K25,000 and 12 months’ imprisonment.



**319 Records and information on gold dealing**

- (1) The Mining Registrar must keep a register of licensed gold dealers, in which the following is to be recorded—
  - (a) the number of each gold dealer's licence;
  - (b) the name, and address of the place of business of, each dealer;
  - (c) such other particulars as the Advisory Council may require.
- (2) A licensed gold dealer must, no later than the 14th day of each month, submit to the Mining Registrar a copy of—
  - (a) each entry made in the licensee's dealings register under Section 318 for the previous month; and
  - (b) each refinery certificate received by the licensee during the previous month.
- (3) The Mining Registrar must keep confidential the specific information submitted by a licensed gold dealer under Subsection (2), however the Mining Registrar may—
  - (a) release to the public general statistical information relating to gold production; or
  - (b) disclose information under the Central Banking (Foreign Exchange and Gold) Regulation.

**320 Unlawful gold dealings**

- (1) A person commits an offence if the person—
  - (a) is not the holder of a gold dealer's licence; and
  - (b) purchases gold from the holder of—
    - (i) a small-scale mining lease; or
    - (ii) an artisanal mining licence; or
    - (iii) a community mining licence.

*Penalty:* K20,000 and 2 years' imprisonment.

- (2) A person commits an offence if the person—
  - (a) is the holder of—
    - (i) a small-scale mining lease; or
    - (ii) an artisanal mining licence; or
    - (iii) a community mining licence; and
  - (b) sells gold to a person who is not the holder of a gold dealer's licence.

*Penalty:* K20,000 and 2 years' imprisonment.

- (3) It is a defence to a prosecution for an offence under Subsection (1) or (2) for the person to establish that he or she is authorised to purchase or sell the gold under the Central Banking (Foreign Exchange and Gold) Regulation.
  - (4) A person commits an offence if—
    - (a) the person—
      - (i) sells gold; or
      - (ii) buys gold; and
    - (b) the transaction contravenes—
      - (i) this Part (other than a contravention for which express provision is made); and
      - (ii) the Central Banking (Foreign Exchange and Gold) Regulation.
- Penalty:* K20,000 and 2 years' imprisonment.

### **321 Cancellation of gold dealer's licence**

- (1) The Minister, in accordance with the advice of the Advisory Council, may cancel a gold dealer's licence if—
  - (a) the licensee is convicted of an offence that, in the opinion of the Advisory Council, renders the licensee unfit to hold the licence; or
  - (b) the Advisory Council is, after inquiry, satisfied that the licensee is not a fit and proper person to hold a gold dealer's licence.
- (2) Notice of the cancellation of a gold dealer's licence must be given in writing to the licensee.
- (3) The cancellation of a gold dealer's licence has effect from the date of the notice.

### **322 Application of Mining (Safety) Act to certain gold facilities in Bougainville**

To avoid doubt, the Mining (Safety) Act applies in relation to the operation of facilities in Bougainville used to assay or refine gold.

## **PART 13 — MISCELLANEOUS**

### **323 Landowner identification study**

- (1) A landowner identification study must, as a condition of the grant of the tenement, be prepared by the holder of—
  - (a) an exploration licence; or
  - (b) a mining lease; or
  - (c) a quarry lease; or
  - (d) a lease for mining purposes; or

- (e) a mining easement.
- (2) However, if a landowner identification study in respect of a tenement area has previously been prepared under Subsection (3), the holder of the tenement may, with the written approval of the Secretary, adopt the study, and is taken to have complied with the obligation under Subsection (1).
- (3) The Secretary may, in respect of an area not subject to a tenement, and in anticipation of an application for a tenement being made in respect of that area, authorise a person to prepare a landowner identification study of the owners of land in the area.
- (4) The approach used to prepare a landowner identification study must be—
  - (a) objective and independent; and
  - (b) approved by the Minister, in accordance with the advice of the Advisory Council, before the study is undertaken.
- (5) The holder of an exploration licence must—
  - (a) in the first year after the grant of the licence, commence preliminary landowner identification work; and
  - (b) progressively, over the term of the licence, seek to identify landowners in those areas of the licence where it believes there may be future mining potential; and
  - (c) submit a preliminary landowner identification study and updated preliminary landowner identification studies as are prescribed; and
  - (d) submit an annual landowner identification study report in such form and manner as are prescribed.
- (6) An applicant for a mining lease, quarry lease, lease for mining purposes or mining easement must submit a landowner identification study that identifies, to the extent reasonably determinable, each landowner who may have reasonable cause to believe he or she owns or is otherwise entitled to compensable property rights, as accorded under the National Constitution, that might be affected by the applicant's operations within the area of the tenement and its related tenements.
- (7) However, if the owners of customary land have formed an approved landowner organisation, a landowner identification study need not identify individual persons who are represented by the approved landowner organisation.
- (8) A landowner identification study must include—
  - (a) a list of—
    - (i) for land in the proposed tenement area that is not customary land – all identified landowners; and

- (ii) for customary land in the proposed tenement area—
    - (A) each approved landowner organisation representing owners of the customary land; and
    - (B) all identified owners of customary land not represented by an approved landowner organisation; and
  - (b) the percentage of the proposed tenement area as can be attributed to each—
    - (i) landowner of land not customary land; and
    - (ii) approved landowner organisation; and
    - (iii) owner of customary land not represented by an approved landowner organisation.
- (9) If a person claims to be entitled to be, but has not been, included on a list under Subsection (8)(a), the person may, in the prescribed manner, submit a claim for his or her name be added to the list.
- (10) The holder of a mining lease, quarry lease, lease for mining purposes or mining easement must—
  - (a) progressively, over the term of the tenement, seek to identify changes in landowners that occur within the tenement area; and
  - (b) submit updated landowner identification studies as are prescribed; and
  - (c) when necessary, update the information included with the landowner identification study under Subsection (8); and
  - (d) submit an annual landowner identification study report in such form and manner as are prescribed; and
  - (e) employ methods for disseminating its annual landowner identification study report so as to give landowners in the tenement area reasonable opportunity to be made aware of, and have access to, the report, including through—
    - (i) posting notices in principal villages throughout the tenement area; and
    - (ii) publishing summaries of the report in local and national newspapers.
- (11) If, in the opinion of the Secretary, the methods employed by a tenement holder under Subsection (10)(e) to disseminate its annual landowner identification study report are inadequate, the Secretary may direct the tenement holder to use another method.
- (12) If the holder of a mining lease applies for an expansion of the mining lease area, the applicant must submit with the application a landowner identification study for the additional land area in respect of which the application is made.
- (13) The Secretary may, in the prescribed form, authorise a person (not otherwise authorised under this Act) to enter land for the purposes of preparing a landowner identification study under this section.

- (14) Copies of a landowner identification study or report submitted under this section must be accessible by the public at the office of the Mining Registrar.
- (15) For this section, if a tenement includes an offshore area, **landowner** includes a customary sea user.

### 324 Social mapping study

- (1) A social mapping study<sup>59</sup> must, as a condition of the grant of the tenement, be prepared by—
  - (a) the holder of—
    - (i) an exploration licence; and
    - (ii) a large-scale mining lease; and
  - (b) unless the Minister is satisfied that a social mapping study prepared for the associated mining lease is adequate, the holder of—
    - (i) a lease for mining purposes associated with a large-scale mining lease; and
    - (ii) a mining easement associated with a large-scale mining lease.
- (2) However, if a social mapping study in respect of a tenement area has previously been prepared under Subsection (3), the holder of the tenement may, with the written approval of the Secretary, adopt the study, and is taken to have complied with the obligation under Subsection (1).
- (3) The Secretary may, in respect of an area not subject to a large-scale mining lease, and in anticipation of an application for a large-scale mining lease being made in respect of that area, authorise a person to prepare a social mapping study in the area.
- (4) The approach used to prepare a social mapping study must be—
  - (a) objective and independent; and
  - (b) approved by the Minister, in accordance with the advice of the Advisory Council, before the study is undertaken.
- (5) The holder of an exploration licence must—
  - (a) in the first year after the grant of the licence, commence preliminary social mapping work; and
  - (b) progressively, over the term of the licence, seek to improve its social mapping work in and around those areas of the licence where it believes there may be future mining potential; and
  - (c) submit a preliminary social mapping study and updated preliminary social mapping studies as are prescribed; and
  - (d) submit an annual social mapping study report in such form and manner as are prescribed.

- (6) An applicant for a large-scale mining lease (and, if required by the Minister, an applicant for a lease for mining purposes or mining easement) must submit a social mapping study, in such form and scope as are prescribed, which covers—
- (a) the proposed area of the lease or easement; and
  - (b) other tenement areas which pertain to that lease or easement; and
  - (c) the land area within 2 kilometres of any proposed facility that will be a dedicated project facility of the mining project, other than a facility that will be situated on the mining lease area; and
  - (d) other areas where it is reasonable to believe that residents will be substantially affected by the mining project.
- (7) The holder of a large-scale mining lease (and, if required as a condition of the grant of the tenement, the holder of a lease for mining purposes or mining easement) must—
- (a) over the term of the tenement, progressively monitor and study social changes that occur within the tenement area and in other areas where residents are substantially affected by the mining project; and
  - (b) submit up-dated social mapping studies at such times as are prescribed; and
  - (c) submit an annual social mapping study report in such form and manner as are prescribed.
- (8) If the holder of a large-scale mining lease applies for an expansion of the mining lease area, the applicant must submit with the application an updated social mapping study to include—
- (a) the proposed additional area of the mining lease; and
  - (b) other areas where it is reasonable to believe that residents will be substantially affected by expansion of the mining lease area.
- (9) The Secretary may, in the prescribed form, authorise a person (not otherwise authorised under this Act) to enter land for the purposes of preparing a social mapping study under this section.

### **325 Tribute agreement**

- (1) The holder of a community mining licence, artisanal mining licence or small-scale mining lease may enter into a tribute agreement with a tributee.
- (2) A tribute agreement must be approved the Minister under Section 261, and a tribute agreement that does not have such approval is null and void.
- (3) A tribute agreement must contain such information as is prescribed.
- (4) A tribute agreement may be deregistered under Section 261.

**326 Confidentiality**

- (1) Information and reports given to the Mining Registrar, or disclosed under this Act to the Bougainville Executive Council, the Minister, an officer of the Department or a member of the Advisory Council must not be disclosed to a person who is not an officer of the Department without the prior written approval of the person who provided the information, except—
- (a) to the extent that disclosure is authorised under this Act or other law; or
  - (b) to the extent the person or tenement holder submitting the information or report authorised its disclosure—
    - (i) at the time of providing the information or report; or
    - (ii) at a later date, in writing; or
  - (c) to the extent necessary for the Secretary to publish statistical information concerning the geology and mineral resources in Bougainville; or
  - (d) to the extent necessary for the Secretary to give advice, on a confidential basis, to the Bougainville Executive Council, another Department of the Bougainville Public Service, the Mineral Resources Authority, the Central Bank and such other agency as is prescribed.
- (2) A person commits an offence if the person—
- (a) is—
    - (i) a public official; or
    - (ii) other person performing a function or exercising a power under this Act; and
  - (b) has obtained information under this Act; and
  - (c) engages in conduct that results in the disclosure of the information to another person.

*Penalty:* K100,000 and 2 years' imprisonment.

- (3) However, a person does not commit an offence under Subsection (2) if the disclosure of the information is authorised under this Act.
- (4) A person commits an offence if the person—
- (a) is—
    - (i) a public official; or
    - (ii) other person performing a function or exercising a power under this Act; and
  - (b) has obtained information under this Act; and
  - (c) uses the information for his or her personal gain.

*Penalty:* K250,000 and 4 years' imprisonment.

**327 Transparency initiative publications**

- (1) The Autonomous Bougainville Government, the holder of a mining lease, and an approved landowner organisation associated with a mining project must prepare a quarterly benefits report of the benefits derived from a mining project.
- (2) A quarterly benefits report under Subsection (1) must comply with requirements or guidelines adopted by the Autonomous Bougainville Government or the National Government with regard to transparency reporting for extractive industries.
- (3) A quarterly benefits report must be submitted in duplicate to the Mining Registrar within 30 days after the end of each calendar quarter, and must report on the benefits derived during the calendar quarter.
- (4) At the time that a quarterly benefits report is submitted, the party submitting it must publish a summary of its report in a newspaper circulating throughout Papua New Guinea.
- (5) Nothing in this section prevents a party that submits a quarterly benefits report from using additional other means of communication to disseminate its report or a summary of its report to the public.
- (6) A person commits an offence if—
  - (a) the person is the chief executive of—
    - (i) the holder of a mining lease; or
    - (ii) an approved landowner organisation; and
  - (b) the entity in respect of which the person is the chief executive contravenes—
    - (i) Subsection (2); or
    - (ii) Subsection (3).

*Penalty:* K25,000.

- (7) For Subsection (6), **chief executive** means—
  - (a) for the holder of a mining lease – the chief executive officer; and
  - (b) for an approved landowner organisation – the chair of the organisation.

**328 Preservation of cores**

- (1) The holder of a tenement must preserve all cores and drilling samples, except such amounts as may be required for assaying and testing.
- (2) The holder of the tenement must advise the Secretary—
  - (a) if the tenement holder no longer requires the cores and drilling samples; or
  - (b) on the expiry, surrender or cancellation of the tenement.



- (3) On receiving advice under Subsection (2), the Secretary may ask the holder of the tenement to give the cores and drilling samples (or such of them as are required) to the Department, and the tenement holder must comply with the request, at the holder's expense.
- (4) The obligation of the holder of a tenement under Subsection (1) ceases 3 months after the tenement expires, is surrendered or is cancelled.

### **329 Authority to enter land**

- (1) The Secretary may authorise—
  - (a) a person contracted by the Autonomous Bougainville Government to enter land for the purpose of carrying out a geological, geotechnical or other investigation; or
  - (b) a person, not otherwise authorised under this Act, to enter land for the purpose of conducting a study for infrastructure or other works relevant to a mining project.
- (2) An authority to enter land under Subsection (1) must be in the prescribed form.
- (3) An officer of the Department may enter land for the purpose of carrying out a geological, geotechnical, safety or other investigation, and does not require a written authorisation to do so.

## **PART 14 — ENFORCEMENT**

### **Division 1 — Appointment and powers of authorised officers**

#### **330 Appointment of authorised officers**

- (1) The Secretary may, by notice in the Bougainville Gazette, appoint 1 or more appropriately qualified officers of the Department to be authorised officers for this Act.
- (2) An appointment under Subsection (1) may specify limitations on the powers of the authorised officer with respect to particular classes of activity or particular provisions of this Act.
- (3) The Secretary, in appointing an authorised officer and specifying limitations on the officer's powers, must ensure that the person has the necessary expertise or experience to carry out the duties that will be required of the person.
- (4) The Secretary must issue each authorised officer with an identity card bearing the photograph of the authorised officer.
- (5) When performing functions under this Act, an authorised officer must produce the officer's identity card if asked to do so.

**331 Powers and duties of authorised officers**

- (1) An authorised officer has the powers and duties attributed to that officer under this Act.
- (2) An authorised officer, in addition to the officer's other duties under this Act and subject to the direction of the Secretary, may, in the execution of the officer's assigned duties, enter upon land, a community mining licence area, a tenement area, or a building or working on or under the tenement or licence area, but not so as to pose a safety or security hazard or unreasonably interfere with mining operations.
- (3) An authorised officer may enter upon land, the area of a community mining licence or tenement, or a building or working on or under the tenement or licence area for the purpose of—
  - (a) ascertaining whether this Act is being complied with; or
  - (b) generally inspecting the area, building or workings, and examining exploration and mining operations or the treatment of minerals being performed or carried on; or
  - (c) taking soil samples or specimens of rocks, tailings, or minerals situated on or in the area, building or workings, for the purpose of examination or assay; or
  - (d) examining books, accounts, vouchers or records required to be kept under this Act or as a condition of a community mining licence or tenement, and taking copies of such books, accounts, vouchers, documents or records; or
  - (e) seizing evidence, including records or documents relating to the exercise of the power under Subsection (1), in which case the authorised officer must give the owner or occupier a reasonable opportunity to obtain copies of the records, documents or other evidence seized; or
  - (f) making such measurements and tests, and taking such photographs, as the officer considers necessary for the purposes of carrying out the officer's duties and functions under this Act; or
  - (g) obtaining other information the officer considers necessary.
- (4) If a building referred to in Subsection (2) is a private dwelling-house, an authorised officer must not enter the building, other than at a reasonable time, unless—
  - (a) the officer has previously obtained the permission of the building's owner or occupier; or
  - (b) the entry is authorised by a search warrant obtained under the *Search Act* (Chapter 341) of the National Parliament.

**332 Power to require name and address**

- (1) An authorised officer may require a person to state the person's name and address if the officer reasonably suspects that—
- (a) the person is committing an offence under this Act; or
  - (b) the person has committed an offence under this Act.
- (2) A person commits an offence if—
- (a) the person is required by an authorised officer to state his or her name and address under Subsection (1); and
  - (b) the person—
    - (i) refuses or fails to do so; or
    - (ii) gives information that is false or misleading.
- Penalty:* K25,000 and 12 months' imprisonment.
- (3) However, a person does not commit an offence under Subsection (2) if the person has a reasonable excuse.

**333 Power to require information**

- (1) This section applies if an authorised officer reasonably suspects that—
- (a) an offence under this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The authorised officer may require the person to answer questions about the offence.
- (3) A person commits an offence if—
- (a) the person is required by an authorised officer to answer questions under Subsection (2); and
  - (b) the person—
    - (i) refuses or fails to do so; or
    - (ii) gives information that the person knows, or could reasonably be expected to know, is false or misleading in a material particular.
- Penalty:* K25,000 and 12 months' imprisonment.
- (4) However, a person does not commit an offence under Subsection (3) if the person—
- (a) has a reasonable excuse; or

- (b) refuses to answer a question on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

### **334 Power to arrest without warrant**

- (1) An authorised officer or police officer may, without a warrant, arrest a person—
  - (a) if the officer reasonably suspects that the person has committed an offence under this Act punishable with imprisonment for 1 month or more; and
  - (b) if—
    - (i) the person—
      - (A) refuses to give his or her name and address; or
      - (B) gives a name and address that the officer reasonably believes is false; or
    - (ii) the officer reasonably believes that the person will abscond.
- (2) An authorised officer who arrests a person under this section must, without unnecessary delay, take the person, or cause the person to be taken, to the officer in charge of the nearest police station.

### **335 Power to seize minerals**

- (1) An authorised officer may seize—
  - (a) minerals that the officer reasonably believes have been mined, removed, sold or processed in contravention of—
    - (i) this Act; or
    - (ii) a condition of the grant of a tenement or community mining licence; and
  - (b) a boat, barge, vehicle or trailer in which is found, or that is towing, minerals to which Paragraph (a) applies.
- (2) A boat, barge, vehicle or trailer seized under Subsection (1)(b) must be released from seizure when the minerals thereon or towed thereby are delivered to a location as required by the authorised officer who made the seizure.
- (3) Minerals seized under Subsection (1) are forfeited to the Autonomous Bougainville Government, unless a return order is made under Subsection (5).
- (4) A person who claims in interest in minerals seized under Subsection (1) may, within 30 days after the day on which the minerals were seized, apply to the Bougainville High Court for an order that the minerals be returned to the person.
- (5) The Bougainville High Court must order the return of the minerals to a person claiming them under Subsection (4), if the Court is satisfied that—
  - (a) the person is entitled to possession of the minerals; and

- (b) the minerals have not been mined, removed, sold or processed in contravention of—
  - (i) this Act; or
  - (ii) a condition of the grant of a tenement or community mining licence.

### **336 Equipment used for illegal mining liable to seizure and forfeiture**

- (1) An authorised officer may seize equipment that the officer reasonably believes is being used to mine minerals in contravention of this Act.
- (2) Equipment seized under Subsection (1) is forfeited to the Autonomous Bougainville Government, unless a return order is made under Subsection (4).
- (3) A person who claims in interest in equipment seized under Subsection (1) may, within 30 days after the day on which the equipment was seized, apply to the Bougainville High Court for an order that the equipment be returned to the person.
- (4) The Bougainville High Court must order the return of the equipment to a person claiming it under Subsection (3), if the Court is satisfied that—
  - (a) the person is entitled to possession of the equipment; and
  - (b) the equipment was not being used to mine minerals in contravention of this Act.

### **337 Authorised officer not to trade**

An authorised officer commits an offence if the officer, whether as principal or agent—

- (a) trades in minerals; or
- (b) acquires or otherwise obtains an interest in a tenement or community mining licence.

*Penalty:* K50,000 and 12 months' imprisonment.

## **Division 2 — Orders and directions**

### **338 Secretary may suspend operations**

- (1) The Secretary may, by order in writing, suspend operations within the area of a tenement or community mining licence, for a period not exceeding 60 days, if—
  - (a) the holder of the tenement or licence has failed to comply with a condition of the grant of the tenement or licence; or
  - (b) the holder of the tenement or licence has failed to perform an action required under this Act; or
  - (c) the holder of the tenement or licence has contravened this Act; or
  - (d) the Secretary reasonably believes that circumstances require operations to be suspended.

- (2) The Secretary may cancel a suspension order under Subsection (1).
- (3) The Secretary must notify the holder of the tenement or community mining licence if a suspension order is —
  - (a) issued under Subsection (1); or
  - (b) cancelled under Subsection (2).
- (4) The holder of a tenement or community mining licence must comply with a suspension order issued under Subsection (1).
- (5) A suspension order under this section does not relieve the holder of the tenement or community mining licence of the obligation to comply with the conditions of the grant of its tenement or licence, unless the suspension order provides otherwise.
- (6) The term of a tenement or community mining licence is not affected by a suspension order.
- (7) A person commits an offence if the person fails to comply with a suspension order issued under Subsection (1).

*Penalty:* In the case of—

- (a) an individual—
  - (i) K50,000; and
  - (ii) a further K1000 for each day the offence continues; and
  - (iii) 2 years' imprisonment; or
- (b) a corporate body—
  - (i) K1,000,000; and
  - (ii) a further K10,000 for each day the offence continues.

*Default penalty:* K50,000.

### **339 Secretary may require report from tenement holder**

- (1) The Secretary may, by notice in writing, require the holder of a tenement to provide a report on a matter related to the tenement within such reasonable time period as is specified in the notice.
- (2) A person commits an offence if the person—
  - (a) is required under this section to provide a report; and
  - (b) without reasonable excuse, refuses or fails to provide the report.

*Penalty:* K50,000.

**340 Secretary may require appearance**

- (1) The Secretary may, by notice in writing, require the holder of a tenement or community mining licence, or a person employed or contracted by a tenement or licence holder, to—
  - (a) appear at such time and place as is specified in the notice; and
  - (b) give such information regarding reconnaissance, exploration, mining, quarrying or dredging operations in the area of the tenement or community mining licence as the Secretary may require.
- (2) The person to whom a notice under Subsection (1) is directed must comply with the notice.

**341 Secretary may require provision of information**

- (1) The Secretary may, by notice in writing, require a person who the Secretary reasonably believes to be in possession of information concerning the geology and mineral resources of Bougainville, including geotechnical or hydrogeological information, to provide to the Secretary details or copies of that information.
- (2) The Secretary may, by notice in writing, require a person to produce, or make available for inspection, a document or information in the possession or under the control of that person relating to—
  - (a) information required to be kept—
    - (i) under this Act; or
    - (ii) as a condition of the grant of a tenement or community mining licence; or
  - (b) an instrument, or transaction pertaining to that instrument, lodged for approval or approved under Part 10 or 11; and
  - (c) mining and exploration activities within Bougainville.
- (3) A person commits an offence if—
  - (a) the person is required under this section to—
    - (i) provide information; or
    - (ii) make available for inspection a document or information; and
  - (b) the person—
    - (i) without reasonable excuse, refuses or fails to do so; or
    - (ii) provides information or makes available a document or information that the person knows, or could reasonably be expected to know, is false or misleading in a material particular.

*Penalty:* K50,000.

**342 Police to assist Bougainville Wardens, etc.**

A Police officer must, when required by a Bougainville Warden, an authorised officer, or a public servant discharging duties under this Act under authorisation from the Secretary, act in aid of the person requiring the assistance in the exercise and discharge by that person of the person's powers, functions and duties under this Act.

**Division 3 — Offences****343 Unauthorised exploration or mining**

- (1) A person commits an offence if the person carries on exploration or mining in Bougainville without being authorised under this Act.

*Penalty:* K1,000,000 and 10 years' imprisonment.

- (2) A Court may, in addition to imposing a penalty for an offence under this section, order the person convicted to rehabilitate land on which the offence was committed, to the satisfaction of the Secretary and within a specified time.
- (3) If a person fails to carry out an order made under Subsection (2), the Court must require the offender to pay the costs of rehabilitation of the land and such a sum determined is a debt to the Autonomous Bougainville Government and may be recovered in a court of competent jurisdiction.

**344 Unlawful possession of minerals**

- (1) A person commits an offence if the person—
- (a) has minerals in the person's possession; and
  - (b) the minerals are reasonably suspected of having been unlawfully obtained.

*Penalty:* K100,000 and 4 years' imprisonment.

- (2) It is a defence to a prosecution for an offence under this section for the person to establish that he or she had no reasonable grounds for suspecting that the minerals concerned had been unlawfully obtained.

**345 Receiving minerals unlawfully obtained**

A person commits an offence if the person receives minerals, knowing them to have been unlawfully obtained.

*Penalty:* K100,000 and 4 years' imprisonment.

**346 Interfering with operations authorised by this Act**

A person commits an offence if the person unlawfully—

- (a) interferes with or obstructs exploration, mining or other operations authorised under this Act; or



- (b) interferes with machinery, plant, road, work or property on, in, under or over the area of a tenement or community mining licence, which is used in the exercise of a right conferred under this Act.

*Penalty:* K250,000 and 5 years' imprisonment.

### **347 Extortion**

A person commits an offence if the person—

- (a) demands a payment from the holder of a tenement or community mining licence, other than a payment to which the person is lawfully entitled; and
- (b) makes a threat to—
  - (i) interfere with or obstruct exploration, mining or other operation authorised under this Act, unless the payment is made; or
  - (ii) interfere with machinery, plant, road, work or property on, in, under or over the area of a tenement or community mining licence, which is used in the exercise of a right conferred under this Act, unless the payment is made; and
- (c) intends the holder of a tenement or community mining licence to fear that the threat will be carried out.

*Penalty:* K100,000 and 2 years' imprisonment.

### **348 Interference with boundary marks**

A person commits an offence if the person, without authority, breaks, defaces or removes, or otherwise interferes with a boundary mark erected under this Act.

*Penalty:* K25,000 and 30 days' imprisonment.

### **349 Offences in relation to authorised officers**

A person commits an offence if the person—

- (a) obstructs, hinders or delays an authorised officer in the performance of the officer's duties; or
- (b) fails to comply with a lawful requirement made by an authorised officer; or
- (c) refuses an authorised officer entry to premises or land into or on which the authorised officer may lawfully enter; or
- (d) fails, neglects or refuses to allow or provide all reasonable facilities and assistance to an authorised officer exercising a power under this Act; or
- (e) impersonates an authorised officer.

*Penalty:* K50,000 and 2 years' imprisonment.

**350 Salting**

A person commits an offence if the person, with intent to defraud—

- (a) at a place, places or deposits minerals, or causes minerals to be placed or deposited, with the intention of misleading another person as to the mining potential of the place; or
- (b) mingles, or causes to be mingled, with a sample of minerals or mineral product derived from minerals, a substance that may enhance the value or change the nature of the minerals or mineral product.

*Penalty:* K250,000 and 2 years' imprisonment.

**351 Using false or fraudulent scales**

A person commits an offence if the person knowingly—

- (a) keeps or uses a false or fraudulent scale or weight for weighing minerals; or
- (b) uses a false or fraudulent means or methods for ascertaining mineral quality.

*Penalty:* K250,000 and 2 years' imprisonment.

**352 False information**

A person commits an offence if the person—

- (a) in applying for a tenement or for the extension of a tenement under this Act, makes a statement that the person knows, or could reasonably be expected to know, is false or misleading in a material particular; or
- (b) in a report, return, notice or attestation submitted under this Act, gives information that the person knows, or could reasonably be expected to know, is false or misleading in a material particular.

*Penalty:* K100,000 and 12 months' imprisonment.

**353 Evasion of annual rent, royalty or production levy, etc.**

A person commits an offence if the person, with intent to evade, or to assist another person to evade, payment of annual rent, royalty or levy, or expenditure required under a community development agreement—

- (a) makes an incorrect return, by omitting or mis-stating a matter used to verify the amount of—
  - (i) annual rent, royalty, production levy payable; or
  - (ii) expenditure required under a community development agreement; or
- (b) makes a false or misleading statement or entry in a return made for the purpose of determining annual rent, royalty or production levy; or
- (c) gives a false or misleading answer, whether verbally or in writing, to a question or request, asked or made under this Act, for information about annual rent, royalty or production levy; or

- (d) prepares or maintains, or authorises the preparation or maintenance of, false books of account or other records relating to annual rent, royalty or production levy; or
- (e) falsifies or authorises the falsification of books of account or records relating to annual rent, royalty or production levy.

*Penalty:* In addition to a penalty that may be imposed under Section 293—

- (a) K250,000; and
- (b) an amount equal to 3 times the amount sought to be evaded; and
- (c) 3 years' imprisonment.

### **354 Liability of officers of corporate bodies**

If a corporate body commits an offence under this Act, each director and every other officer of the corporate body concerned in the management of the corporate body commits that offence, if it is proved that the act or omission that constituted the offence took place with that person's authority, permission or consent, or is attributable to the neglect of that person.

## **Division 4 — Proceedings**

### ***Sub-division A — Criminal proceedings***

### **355 Proof of intention**

Subject to an express provision in this Act to the contrary, it is not necessary to prove an intention or other state of mind in order to establish the commission of an offence under this Act.

### **356 Forfeiture of items on conviction**

- (1) If a court convicts a person of an offence under this Act, the court may, in addition to imposing a penalty, order the forfeiture of property connected with the offence.
- (2) However, a court must not order the forfeiture of property unless—
  - (a) it has first made enquiries to ascertain the ownership of the property; and
  - (b) it is satisfied that—
    - (i) the owner of the property cannot reasonably be found; or
    - (ii) the property—
      - (A) is the property of the person convicted of the offence; and
      - (B) was used in the commission of the offence.

**357 Damages and recovery of costs on conviction**

- (1) If a court convicts a person of an offence under this Act, the court may, in addition to imposing a penalty, order the person to—
  - (a) pay to the Autonomous Bougainville Government the costs of prosecuting the matter; and
  - (b) compensate another person, including the Autonomous Bougainville Government, who, because of the commission of the offence, suffered loss of income, loss or damage to property or incurred costs; and
  - (c) lodge a bond or equivalent security.
- (2) An application for an order under Subsection (1)(b) may be made—
  - (a) by the person who suffered the loss or damage or incurred the costs; and
  - (b) to the court—
    - (i) at the conclusion of the criminal proceedings for the offence; or
    - (ii) at a later time.

***Sub-division B — Generally*****358 Evidence**

- (1) This section applies to a legal proceeding under this Act.
- (2) An authorised officer who makes a technical assessment under this Act must prepare, sign and date a report or statement of the assessment and deliver it to the Secretary.
- (3) In a legal proceeding, a certificate executed by the Secretary certifying a matter relating to—
  - (a) a tenement or community mining licence issued under this Act; or
  - (b) the appointment or non-appointment of a person; or
  - (c) a delegation of powers or functions under this Act (other than a delegation of powers or functions by the Minister); or
  - (d) a notice, order, requirement, direction, declaration or determination of the Secretary or the Mining Registrar; or
  - (e) some other decision of the Secretary; or
  - (f) the receipt or non-receipt of a notice, report or other information required to be provided to the Secretary or to the Mining Registrar under this Act,constitutes proof, in the absence of proof to the contrary, of the matters so certified.

- (4) In a legal proceeding, an extract of the Bougainville Register certified by the Mining Registrar and containing—
- (a) a decision or approval by the Bougainville Executive Council; or
  - (b) a decision or approval of the Minister; or
  - (c) a decision or approval by the Secretary; or
  - (d) the advice, a referral or decision of the Advisory Council,
- constitutes proof, in the absence of proof to the contrary, of the decision, approval, advice or referral.
- (5) In a legal proceeding under this Act where a party intends to rely on the contents of an authorised officer's report or statement, the party must serve on the person against whom the proceedings are to be brought, with and in the same manner as a summons relevant to that action, a copy of the report or statement.
- (6) If, in proceedings for an offence under this Act, an authorised officer's report or statement has been served under Subsection (5), that report or statement is admissible in evidence, unless the defendant serves, not later than 5 days immediately before the date set down for the hearing, notice in writing on the prosecutor that the defendant requires the authorised officer to be called to give evidence.
- (7) A certificate, report or statement admitted in evidence under this section is sufficient evidence of anything stated in it.
- (8) A scale, instrument, equipment or installation that is used by an authorised person is taken to be accurate in the absence of evidence to the contrary.
- (9) In a proceeding in which the Autonomous Bougainville Government applies to recover its costs and expenses, a certificate by the Secretary stating that stated costs and expenses were incurred and the way and purpose for which the costs and expenses were incurred is evidence of the matters stated.

### **359 Service**

The service of an order, notice or other document under this Act may be effected—

- (a) by delivering it personally; or
- (b) by leaving it—
  - (i) at the person's place of residence or business premises; and
  - (ii) with a person apparently over the age of 16 years; or
- (c) for the holder of a tenement or community mining licence—
  - (i) by posting it to the last known address given by the holder to the Mining Registrar; or
  - (ii) by transmitting it by facsimile to the last facsimile number given by the holder to the Mining Registrar; or

- (iii) by transmitting it by electronic mail to the last email address given by the holder to the Mining Registrar; or
- (d) for a corporate body – by serving it at or posting it to the registered office of the corporate body.

### **360 Indemnity of public officials**

A public official or Police officer is not liable for anything done, or omitted to be done, in good faith in the performance of a function, the exercise of a power, or the discharge or purported discharge of a duty under this Act.

### **361 Forfeited property**

Property ordered forfeit under this Act becomes the property of the Autonomous Bougainville Government and may be disposed of under the *Bougainville Public Finances (Management and Administration) Act 2014*.

## **PART 15 — REGULATIONS**

### **362 Regulations**

- (1) The Bougainville Executive Council may make regulations not inconsistent with this Act, prescribing all matters that are required or permitted, or that are necessary or convenient, for carrying out or giving effect to this Act, and in particular for prescribing—
  - (a) the powers, functions and duties of the Secretary, the Advisory Council, a Bougainville Warden, the Mining Registrar and an authorised officer; and
  - (b) the amount of and payment of fees under this Act and the manner in which the fees are to be paid; and
  - (c) forms for this Act and the manner in which a form is to be executed; and
  - (d) the manner in which land is to be marked out for the purpose of making an application for a tenement; and
  - (e) the annual rent payable in respect of a tenement or class of tenements; and
  - (f) the times at which annual rent, royalties and production levy must be paid under this Act and the manner in which it is to be paid; and
  - (g) the manner in which, and the conditions subject to which, tenements may be surrendered; and
  - (h) the conditions subject to which a tenement or a class of tenements must be held, and the terms on which variations thereof may be applied for, and granted; and
  - (i) the persons or class of persons on whom copies of applications for tenements or other associated documents are to be served; and

- (j) provisions for the compilation of exploration and mining statistics and, for that purpose, provisions requiring the holder of a tenement to supply the Mining Registrar or Secretary with such particulars as are prescribed; and
  - (k) provisions for the furnishing of returns and records for the purposes and by the persons specified; and
  - (l) a matter relating to the surveying of tenements; and
  - (m) a matter relating to the registration of tenements and documents affecting tenements, and the keeping of the Bougainville Register, including inspection of the Bougainville Register by the public; and
  - (n) provisions for information to be supplied to the Secretary by the holder of a tenement in respect of boring for water or other operations, or for water obtained while boring for other purposes; and
  - (o) the mode of assigning, transferring, sub-letting, encumbering or otherwise dealing with tenements, the enforcement or discharge of an encumbrance over a tenement, the rights and obligations of an encumbrancer and an encumbrancee or of an assignee, transferee or sub-lessee, and the order of priority of 2 or more encumbrances; and
  - (p) the practice and procedure of Bougainville Warden's hearings; and
  - (q) the practice and procedure of a Mineral Resources Forum process; and
  - (r) the practice and procedure for mediation; and
  - (s) the conduct of a competitive bid process under Section 49; and
  - (t) provisions for community development agreements; and
  - (u) provisions for exploration licence land access and compensation agreements; and
  - (v) any matter relating to the sale and purchase of gold; and
  - (w) requirements for health and safety practices in artisanal mining, to protect the holders of artisanal mining licences and the public from harm; and
  - (x) any other matter to effect the proper administration of this Act.
- (2) The regulations may prescribe, for an offence against a regulation—
- (a) a penalty not exceeding—
    - (i) K50,000 for an individual; or
    - (ii) K100,000 for a corporate body; and
  - (b) a default penalty not exceeding—
    - (i) K250 for an individual; or
    - (ii) K10,000 for a corporate body.
- (3) A regulation may require a matter or thing to be verified by statutory declaration.

## PART 16 — REPEAL, SAVING AND TRANSITIONAL PROVISIONS

### 363 Repeal

- (1) The Transitional Mining Act is repealed.
- (2) The *Bogenvil Resources Development Corporation (AROB) Ltd. (Kabui Model) Authorization Act 2008* was repealed on 8 September 2014, under Section 211 of the Transitional Mining Act and, to avoid doubt, continues to be repealed.

### 364 Disapplication

- (1) This section has effect in accordance with Section 296(1) of the National Constitution.
- (2) The following Acts of the National Parliament do not apply in Bougainville—
  - (a) the National Mining Act;
  - (b) the *Mineral Resources Authority Act 2005*;
  - (c) the *Mining Development Act* (Chapter 197).
  - (d) the BCA Act;

### 365 Saving of tenements granted under Transitional Mining Act

- (1) A licence or lease for exploration or mining granted under the Transitional Mining Act and in force immediately before the commencement date continues in force as if issued under this Act.
- (2) The holder of a tenement continued in force under this section applies must, within 6 months after the commencement date, submit all programmes and plans required for that tenement type, for approval as required under this Act.
- (3) If a tenement continued in force under this section is taken to be a mining lease under this Act, the holder of that mining lease may, within 90 days after the commencement date, apply for an exemption under Section 125.
- (4) If a tenement to which this section applies is taken to be a large-scale mining lease under this Act, the holder of that mining lease must, within 180 days after the commencement date, comply with Section 138.

### 366 Tenements preceding Transitional Mining Act

A licence or lease for exploration or mining in respect of land in Bougainville and in force immediately before the commencement of the Transitional Mining Act is of no effect.



**367 Former holder of special mining lease**

- (1) This section applies to a special mining lease in respect of land in Bougainville granted, renewed or continued in existence under the National Mining Act or any other law and in force on 1 January 2011.
- (2) The holder of a special mining lease to which this section applies is taken to have been granted an exploration licence over land the subject of the special mining lease under Section 100(1).
- (3) The exploration licence is taken to have been granted on 8 September 2014, and has a term of 2 years.
- (4) The holder of the licence—
  - (a) is entitled to be issued with a licence in the prescribed form; and
  - (b) is, for the term of the licence (and any extension of the term), exempt from the obligation to—
    - (i) have and implement an exploration work programme; and
    - (ii) meet minimum exploration expenditure requirements; and
    - (iii) if the holder applies for an extension of the licence – relinquish any part of the area subject to the licence.
- (5) The holder of a special mining lease to which this section applies remains liable for all environmental, reclamation, rehabilitation, royalty, rent, taxation and compensation obligations and liabilities that applied to the holder during the term of its special mining lease.

**368 Overlapping rights may be permitted in special circumstances**

- (1) This section applies to the exploration licence taken to have been granted under Section 367.
- (2) The holder of the exploration licence may, in writing, and subject to such conditions as it determines, consent to the grant of small-scale mining leases and artisanal mining licences that are located wholly or partly within the area of the exploration licence.
- (3) The consent of the licence holder under Subsection (2) may be given generally or in any particular case or class of case.
- (4) If the holder of the exploration licence has given consent under Subsection (2), an application for the grant of a small-scale mining lease or an artisanal mining licence over an area located wholly or partly within the area of the exploration licence may, subject to any conditions attached to the consent, be registered, assessed and approved, despite the existence of the licence.
- (5) However, if the consent of the licence holder under Subsection (2) is a general consent, the licence holder may lodge an objection under Section 249 to the grant

of a specific lease or licence and withdraw consent for the grant of that lease or licence.

- (6) A small-scale mining lease or artisanal mining licence granted over an area located wholly or partly within the area of the exploration licence terminates 30 days after the grant to the licence holder of a mining lease, quarry lease or lease for mining purposes over the area the subject of the prior lease or licence.
- (7) If a small-scale mining lease or artisanal mining licence is terminated under Subsection (6), the holder of the lease or licence is not entitled to compensation for the termination.

### **369 Transitional arrangements for mining without tenement<sup>60</sup>**

- (1) In this section, **designated date** means the date specified by the Bougainville Executive Council by notice in the Bougainville Gazette (which date must be no earlier than 180 days after the date of publication of the notice) as the date on which the transitional arrangements under this section cease.
- (2) Until the designated date, an individual Bougainvillean may, without being the holder of a community mining licence, artisanal mining licence, quarry lease or channel dredging permit, carry out mining on land in circumstances that would, but for this section, require the person to be the holder of such a licence, lease or permit.
- (3) Unless the person is the sole owner of the land on which mining is being carried out, the person must have obtained the prior written permission for the mining of—
  - (a) the owners of the land; or
  - (b) the customary heads of the clan lineage that owns the land.

### **370 Pending applications under Transitional Mining Act**

An application for a tenement under the Transitional Mining Act that had not been determined immediately before the commencement date is taken to have been refused.

### **371 Certain existing agreements void and of no effect**

An agreement relating to minerals in Bougainville, entered into otherwise than in accordance with the National Mining Act and in force immediately before the commencement date, is of no effect.

### **372 Compensation agreements or determinations**

A compensation agreement or determination made or taken to have been made under Part 8 of the Transitional Mining Act in respect of land situated in Bougainville and in force immediately before the commencement date continues in force as if made or determined under Part 11.

**373 Reservation<sup>61</sup>**

- (1) All land in Bougainville is taken to have been designated as a mining reserve area under Section 66(1).
- (2) Land in respect of which an exploration licence is taken to have been granted under Section 367 does not form part of the mining reserve area taken to have been designated under Subsection (1).

**374 Officers**

A person holding an office under the Transitional Mining Act immediately before the commencement date is taken to have been appointed to the corresponding office under this Act.

**375 Posting on Department website**

A requirement for the posting of a notice or other matter on the Department website only applies once the Department website is established.

**376 General transitional provision**

- (1) If anything of a kind required or permitted to be done under a provision of this Act was done (or taken to have been done) under a corresponding provision of the Transitional Mining Act and still had effect immediately before the commencement date, the thing continues in effect on and after that date as if—
  - (a) this Act had been in force when it was done; and
  - (b) it had been done under this Act.
- (2) Without limiting Subsection (1), if a provision of the Transitional Mining Act that corresponds to a provision of this Act would, but for its repeal, have applied in relation to anything done or being done or in existence before the commencement date, the corresponding provision of this Act applies (with the necessary changes) in relation to the thing.

**377 Transitional regulations**

- (1) The regulations may make provision (a ***transitional regulation***) about a matter for which—
  - (a) it is necessary to make provision to achieve the transition from the operation of the Transitional Mining Act to this Act; and
  - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a date not earlier than the commencement date.
- (3) However, to the extent a transitional regulation has retrospective operation, it must not operate to the disadvantage of a person (other than the Republic) by detrimentally affecting the person's rights or imposing liabilities on the person.

- (4)** This section expires 12 months after the commencement date.

**Schedule 1****Definitions****Section 5**

In this Act, unless the contrary intention appears, the expression in Column 1 of the Table has the meaning set out in Column 2 of the Table.

<i>Column 1</i>	<i>Column 2</i>
<b><i>Advisory Council</i></b>	The Bougainville Mining Advisory Council established under Section 19(1).
<b><i>agent</i></b>	A person acting on behalf of the owner or occupier, and includes a person having the care or direction of a mine or a part of the mine or of works connected with the mine.
<b><i>alluvial deposits</i></b>	All unconsolidated rock materials, transported and deposited by stream action or gravitational action, which are capable of being freely excavated without prior ripping or blasting.
<b><i>alluvial minerals</i></b>	Minerals found in alluvial deposits.
<b><i>approved exploration work programme</i></b>	An exploration work programme approved by the Advisory Council under Section 99.
<b><i>approved landowner organisation</i></b>	A landowner organisation approved by the Bougainville Executive Council under Section 35.
<b><i>approved plans</i></b>	In relation to— <ul style="list-style-type: none"> <li>(a) a community mining licence – plans that have been approved by a granting authority under Section 74(3); or</li> <li>(b) a tenement – plans that have been approved by the Advisory Council under Section 120(3), 148(4), 160(3), 173(3), 190(3) or 221(3).</li> </ul>
<b><i>artisanal mining licence</i></b>	An artisanal mining licence granted under Section 161.
<b><i>associated person</i></b>	A person associated with another person, and includes— <ul style="list-style-type: none"> <li>(a) if the other person is a corporate body—               <ul style="list-style-type: none"> <li>(i) a director or secretary of the corporate body; or</li> <li>(ii) a corporate body that is related to the other person; or</li> <li>(iii) a director or secretary of such a related corporate body; or</li> </ul> </li> <li>(b) a person in concert with whom the other person is acting or proposes to act in respect of the matter to which the reference relates; or</li> </ul>

<i>Column 1</i>	<i>Column 2</i>
	<p>(c) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or</p> <p>(d) if the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, another act or thing, with a view to becoming associated with a person as mentioned in paragraph (a), (b) or (c), that last-mentioned person,</p> <p>but a person is not an associate of another person by reason only that 1 of those persons furnishes advice to, or acts on behalf of the other person in the due performance of the functions attaching to the first person's professional capacity or to the first person's business relationship with the other person.</p>
<b><i>authorised officer</i></b>	A person appointed to be an authorised officer under Section 330.
<b><i>BCA Act</i></b>	The <i>Mining (Bougainville Copper Agreement) Act</i> (Chapter 196) of the National Parliament.
<b><i>Bougainville</i></b>	The Autonomous Region of Bougainville.
<b><i>Bougainville Chief Warden</i></b>	The person appointed to be Bougainville Chief Warden under Section 27(1)(b).
<b><i>Bougainville Geological Survey</i></b>	The office of the Bougainville Public Service responsible for geological survey matters.
<b><i>Bougainville Register</i></b>	The Bougainville Register of Tenements established under Section 254.
<b><i>Bougainville Warden</i></b>	A person appointed to be a Bougainville Warden under Section 27(1), and includes the Bougainville Chief Warden.
<b><i>Bougainville waters</i></b>	<p>The areas of sea—</p> <p>(a) extending to 3 nautical miles from the low water mark of the areas of land comprising Bougainville described in Section 1(1)(a) of the Bougainville Constitution; and</p> <p>(b) included within an extension of Bougainville's maritime boundaries under Section 1(4) of the Bougainville Constitution.</p>
<b><i>business development assistance plan</i></b>	A business development assistance plan prepared in accordance with Section 123.
<b><i>cadastral block</i></b>	See Section 301.
<b><i>Central Banking (Foreign Exchange and Gold) Regulation</i></b>	The <i>Central Banking (Foreign Exchange and Gold) Regulation</i> , made under the <i>Central Banking Act</i> (Chapter 138) of the National Parliament.

<i>Column 1</i>	<i>Column 2</i>
<b>Chair</b>	The Chair of the Advisory Council.
<b>channel dredging permit</b>	A channel dredging permit granted under Section 222.
<b>coastal area of benefit</b>	An area on the coast landward from an offshore area included in a tenement, where the residing population has customary sea use over all or part of that offshore area.
<b>commencement date</b>	The date this Act comes into force.
<b>community development agreement</b>	An agreement between the holder of a large-scale mining lease and a qualified community entered into under Section 138.
<b>community engagement plan</b>	A community engagement plan prepared in accordance with Section 297.
<b>community mining licence</b>	A community mining licence granted under Section 75.
<b>community mining licence reserve area</b>	A community mining licence reserve area established under Section 56.
<b>community mining licence reserve area management plan</b>	A management plan for a community mining licence reserve area approved by the Advisory Council under Section 55.
<b>Companies Act</b>	The <i>Companies Act</i> 1997 of the National Parliament.
<b>compensation agreement</b>	A compensation agreement entered into— <ul style="list-style-type: none"> <li>(a) for a large-scale mining lease, or a lease for mining purposes or mining easement associated with a large-scale mining lease – under Section 306; or</li> <li>(b) for a reconnaissance licence, a small-scale mining lease, a lease for mining purposes or mining easement associated with a small-scale mining lease, a quarry lease, an artisanal mining licence or a channel dredging permit – under Section 307.</li> </ul>
<b>Council of Elders</b>	<i>[Repealed]</i> <sup>62</sup>
<b>customary sea use</b>	The use by Bougainvilleans of an offshore area, which area they are entitled by custom to use, in a manner that is substantially in accordance with customary traditions.
<b>customary sea users</b>	Those Bougainvilleans who have customary sea use of all or part of a tenement area that includes an offshore area.
<b>Department</b>	The Department of the Bougainville Public Service responsible for mining and minerals.
<b>Department website</b>	The official website of the Department on the internet.
<b>employment and training plan</b>	An employment and training plan prepared in accordance with Section 121.

<i>Column 1</i>	<i>Column 2</i>
<b><i>Environment Act</i></b>	The <i>Environment Act</i> 2000 of the National Parliament.
<b><i>exploration</i></b>	Taking action to determine the existence, quality and quantity of minerals on, in or under land, by 1 or more of the following methods— <ul style="list-style-type: none"> <li>(a) prospecting;</li> <li>(b) using an instrument, machinery or technique appropriate to determine the existence, quality or quantity of minerals;</li> <li>(c) extracting or removing material from land for sampling and testing, to determine its mineral bearing capacity or its properties as an indication of mineralisation;</li> <li>(d) carrying out prefeasibility or feasibility studies.</li> </ul>
<b><i>exploration licence</i></b>	An exploration licence granted under Section 100.
<b><i>exploration licence land access and compensation agreement</i></b>	An exploration licence land access and compensation agreement entered into under Section 105.
<b><i>exploration work programme</i></b>	A written statement of the work to be done and the expenditure to be incurred on or in connection with an exploration licence.
<b><i>feasibility study</i></b>	A feasibility study submitted with an application for the grant of a large-scale mining lease under Section 119.
<b><i>fit and proper person</i></b>	For a tenement, see Section 237.
<b><i>geological survey reserve area</i></b>	A geological survey reserve area designated under Section 47(1).
<b><i>gold dealer's licence</i></b>	A gold dealer's licence granted under Section 314.
<b><i>goods and services procurement plan</i></b>	A goods and services procurement plan prepared in accordance with Section 122.
<b><i>governing body</i></b>	In relation to a landowner organisation, the group of persons (by whatever name called) responsible for the executive decisions of the organisation.
<b><i>Government land</i></b>	Land other than— <ul style="list-style-type: none"> <li>(a) customary land that is not leased by the owners to the State or the Autonomous Bougainville Government; and</li> <li>(b) land held by a person other than the State or the Autonomous Bougainville Government for an estate greater than a term of years; and</li> <li>(c) land which is the subject of an existing State lease under the Land Act,</li> </ul> and includes reserved land.



<i>Column 1</i>	<i>Column 2</i>
<b>health and education royalty</b>	The health and education royalty payable under Section 291.
<b>hearing</b>	A Bougainville Warden's hearing conducted under Section 250.
<b>holder</b>	Of a tenement – the person whose name appears in the Bougainville Register as the holder of the tenement.
<b>land</b>	Includes— <ul style="list-style-type: none"> <li>(a) the surface and all the ground beneath the surface of the land; and</li> <li>(b) water; and</li> <li>(c) the foreshore, being that area between the high-water mark and the low-water mark at ordinary spring tides; and</li> <li>(d) the offshore area; and</li> <li>(e) the bed of a river, stream, estuary, lake or swamp; and</li> <li>(f) an interest in land.</li> </ul>
<b>Land Act</b>	The <i>Land Act</i> 1996 of the National Parliament.
<b>landowner</b>	A person who is— <ul style="list-style-type: none"> <li>(a) a member of a Bougainvillean clan lineage that owns customary land; or</li> <li>(b) an owner of customary land; or</li> <li>(c) in occupancy of Government land by virtue of an agreement with the State or the Autonomous Bougainville Government; or</li> <li>(d) the owner or lawful occupant of land other than customary land or Government land.</li> </ul>
<b>landowner identification study</b>	A landowner identification study prepared in accordance with Section 323.
<b>landowner organisation trust fund account</b>	A trust fund account established by an approved landowner organisation in accordance with Section 36.
<b>landowner permission</b>	Permission obtained in accordance with Section 32.
<b>landowners' royalty</b>	The landowners' royalty payable under Section 291.
<b>large-scale mining lease</b>	A large-scale mining lease granted under Section 126.
<b>large-scale mining project</b>	A mining project undertaken under a large-scale mining lease.
<b>lease for mining purposes</b>	A lease for mining purposes granted under Section 174.

<i>Column 1</i>	<i>Column 2</i>
<b><i>mine</i></b>	<p>When used as a noun – includes—</p> <ul style="list-style-type: none"> <li>(a) a site where exploration is carried out; or</li> <li>(b) a site where extraction of material for the purpose of recovering minerals is carried out; or</li> <li>(c) an offshore area where exploration or mine development is carried out utilising a mining vessel or mining support vessel; or</li> <li>(d) a site where operations associated with the decommissioning, abandonment or rehabilitation of a site referred to in paragraph (a), (b) or (c) are carried out; or</li> <li>(e) a site referred to in paragraph (a), (b) or (c)— <ul style="list-style-type: none"> <li>(i) during a time when mining operations are suspended; or</li> <li>(ii) at which a building, structure, pit, shaft, drive, level, incline, decline, excavation or work that is intended to be part of a mine is in the course of construction.</li> </ul> </li> </ul>
<b><i>mine development</i></b>	The on-site work undertaken to prepare a tenement area for mining or processing operations, including the construction and commissioning of necessary infrastructure and related facilities (for example: delineation drilling; road grading; stripping; site preparation and construction of facilities for mineral treatment, milling, processing, production and refining; and installation of transport, communication and electrical infrastructure).
<b><i>mine products</i></b>	Minerals, ores containing minerals, or concentrated ores of minerals extracted from or produced by a mine.
<b><i>mine site plan</i></b>	A mine site plan prepared in accordance with Section 205.
<b><i>miner</i></b>	The person who, as the holder of a community mining licence, mining lease, quarry lease or artisanal mining licence, conducts the business of developing the mine or quarry and extracting the minerals for sale as stipulated in the licence or lease.
<b><i>Mineral Resources Forum</i></b>	A Mineral Resources Forum convened under Section 140.

<i>Column 1</i>	<i>Column 2</i>
<b><i>minerals</i></b>	The following categories of natural resources, which may be extracted from land or water— <ul style="list-style-type: none"> <li>(a) metalliferous minerals;</li> <li>(b) non-metalliferous minerals, including quarry minerals;</li> <li>(c) energy minerals, such as coal, coal seam gas, peat, shale gas, shale oil, and uranium, but not petroleum as defined in the <i>Oil and Gas Act 1998</i> of the National Parliament;</li> <li>(d) geothermal fluids and energy.</li> </ul>
<b><i>mining</i></b>	A process or activity undertaken for the purpose of extracting or obtaining minerals, including quarrying, and such other related activities incidental to the purposes of a mine.
<b><i>mining development agreement</i></b>	A mining development agreement entered into under Section 42.
<b><i>mining easement</i></b>	A mining easement granted under Section 191.
<b><i>mining lease</i></b>	A mining lease granted under Section 126.
<b><i>mining project</i></b>	A project undertaken for mining purposes authorised under this Act, including— <ul style="list-style-type: none"> <li>(a) mine development; and</li> <li>(b) the operation of facilities for the recovery, production, transportation and sale of minerals; and</li> <li>(c) the subsequent decommissioning, rehabilitation, monitoring and closure of a mine.</li> </ul>
<b><i>Mining Registrar</i></b>	The person appointed to be the Bougainville Mining Registrar of Tenements under Section 26.
<b><i>Mining (Safety) Act</i></b>	The <i>Mining (Safety) Act</i> (Chapter 195A) of the National Parliament.
<b><i>mining support vessel</i></b>	A waterborne vessel or craft, of any size and type, used to support mining in an offshore area, and includes (without regard to the method of or lack of propulsion)— <ul style="list-style-type: none"> <li>(a) displacement and non-displacement craft; and</li> <li>(b) a hydro-foil boat; and</li> <li>(c) an air-cushion vehicle; and</li> <li>(d) a submersible; and</li> <li>(e) a fixed or floating platform; and</li> <li>(f) a vessel or craft used to transfer materials, personnel or mine products between a mining vessel and the shore or another vessel.</li> </ul>

<i>Column 1</i>	<i>Column 2</i>
<b><i>mining vessel</i></b>	A waterborne vessel or craft, of any size and type, used to undertake mining, including exploration and production in an offshore area, and includes (without regard to the method of or lack of propulsion)— <ul style="list-style-type: none"> <li>(a) displacement and non-displacement craft; and</li> <li>(b) a hydro-foil boat; and</li> <li>(c) an air-cushion vehicle; and</li> <li>(d) a submersible; and</li> <li>(e) a fixed or floating platform.</li> </ul>
<b><i>Minister</i></b>	The Minister responsible for mining and mineral resources.
<b><i>National Mining Act</i></b>	The <i>Mining Act</i> 1992 of the National Parliament.
<b><i>non-mechanised mining</i></b>	Mining by the use of hand tools and equipment, which may include the use of pumps with a hose diameter smaller than 75 mm and such pumps' associated machinery, but which does not include the use of any other machinery driven by electric, diesel, petrol or gas-powered motors.
<b><i>offshore area</i></b>	An area of Bougainville waters, including the underlying seabed.
<b><i>ownership interest</i></b>	An interest that is— <ul style="list-style-type: none"> <li>(a) an undivided beneficial interest in all project property and the project value chain, including— <ul style="list-style-type: none"> <li>(i) the ownership of and the right and benefit to receive in kind and to dispose of all minerals recovered or produced in a mining project; and</li> <li>(ii) all other rights and benefits accruing after or arising out of the project agreements or a tenement included in the project property; or</li> </ul> </li> <li>(b) where all project property is owned by a corporate entity with no other assets or liabilities other than those related to the mining project – a legal and beneficial interest in the issued voting share capital of that entity.</li> </ul>
<b><i>prefeasibility study</i></b>	A prefeasibility study submitted with an application for the grant of a small-scale mining lease under Section 119.
<b><i>prescribed</i></b>	Prescribed by the regulations.
<b><i>processor</i></b>	A person who engages in smelting or refining of mine products.
<b><i>production levy</i></b>	The production levy payable under Section 291.
<b><i>project-affected persons</i></b>	Persons who are likely, either as individuals or as a group, to be affected significantly by a large-scale mining project.

<i>Column 1</i>	<i>Column 2</i>
<b><i>project property</i></b>	<p>In relation to a mining project, all present and future property, of whatever kind, acquired or created or held for use by or on behalf of a developer or the participants in a joint venture for the development of the mining project or in connection with the development of the mining project including—</p> <ul style="list-style-type: none"> <li>(a) all mined minerals or other commodities to which the project agreements or the tenements granted in relation to the mining project apply; and</li> <li>(b) the facilities, tools, machinery, equipment, data and information established or acquired by or on behalf of the developer or joint venture participants for the purpose of conducting the mining project operations.</li> </ul>
<b><i>proposed plans</i></b>	A written statement of the operations proposed to be undertaken on or in connection with a community mining licence or tenement (other than an exploration licence).
<b><i>public official</i></b>	<p>A person who is—</p> <ul style="list-style-type: none"> <li>(a) the Minister, or other member of the Bougainville Executive Council; or</li> <li>(b) the Secretary; or</li> <li>(c) a member of the Advisory Council; or</li> <li>(d) the Executive Officer to the Advisory Council; or</li> <li>(e) the Mining Registrar; or</li> <li>(f) a Bougainville Warden; or</li> <li>(g) an officer of— <ul style="list-style-type: none"> <li>(i) the Department; or</li> <li>(ii) the Bougainville Geological Survey.</li> </ul> </li> </ul>
<b><i>qualified community</i></b>	<p>A community—</p> <ul style="list-style-type: none"> <li>(a) of at least 500 persons who, by tradition or by circumstances, constitute a social community that usually resides within— <ul style="list-style-type: none"> <li>(i) the area of a large-scale mining lease area and any associated lease for mining purposes; or</li> <li>(ii) 15 kilometres of a boundary defining the area of a large-scale mining lease; or</li> <li>(iii) an area identified in an environmental impact assessment prepared under the Environment Act as one that will be significantly affected by a large-scale mining project; or</li> </ul> </li> <li>(b) that is a village or township that will house more than 10% of the workers employed or contracted by a large-scale mining lease holder.</li> </ul>

<i>Column 1</i>	<i>Column 2</i>
<b><i>quarry lease</i></b>	A quarry lease granted under Section 149.
<b><i>quarry minerals</i></b>	Mineral substances of common occurrence, such as rock, stone, sand, marl, gravel, clay, limestone and fill, used as building materials or for the construction of roads, dams and earthworks, but not including minerals extracted from a community mining licence or tenement area that will be used exclusively for construction purposes within that licence or tenement area.
<b><i>reconnaissance</i></b>	Operations and works to carry out a search for minerals by geophysical, geochemical and photo-geological surveys or other remote sensing techniques and surface geology in connection with the search, but does not include drilling or excavation.
<b><i>reconnaissance licence</i></b>	A reconnaissance licence granted under Section 87.
<b><i>regional development royalty</i></b>	The regional development royalty payable under Section 291.
<b><i>register</i></b>	When used as a verb – to register in the Bougainville Register.
<b><i>rehabilitation and closure plan</i></b>	A rehabilitation and closure plan under Section 231.
<b><i>reserved land</i></b>	Land reserved, or taken to have been reserved, under Section 49 of the Land Act, whether or not that land has been placed or is taken to have been placed, under the control of trustees under Section 50 of that Act, and includes such other land which has been reserved under this Act or other Bougainville law.
<b><i>resettlement management plan</i></b>	A resettlement management plan under Section 124.
<b><i>seabed protection area</i></b>	An area of the seabed in an offshore area that has been reserved as a seabed protection area under Section 68.
<b><i>Secretary</i></b>	The Departmental Head of the Department of the Bougainville Public Service responsible for mining and mineral resources.
<b><i>small-scale mining lease</i></b>	A small-scale mining lease granted under Section 126.
<b><i>social mapping study</i></b>	A social mapping study under Section 324.
<b><i>State</i></b>	The Independent State of Papua New Guinea.
<b><i>Survey Act</i></b>	The <i>Survey Act</i> (Chapter 95) of the National Parliament.
<b><i>survey directions</i></b>	Survey directions issued under the Survey Act.
<b><i>surveyor</i></b>	A surveyor registered under the Survey Act.

<i>Column 1</i>	<i>Column 2</i>
<b>tenement</b>	Any of the following, granted (or taken to have been granted) under this Act— <ul style="list-style-type: none"> <li>(a) a reconnaissance licence;</li> <li>(b) an exploration licence;</li> <li>(c) a mining lease;</li> <li>(d) a quarry lease;</li> <li>(e) an artisanal mining licence;</li> <li>(f) a lease for mining purpose;</li> <li>(g) a mining easement;</li> <li>(h) a channel dredging permit.</li> </ul>
<b>Transitional Mining Act</b>	The <i>Bougainville Mining (Transitional Arrangements) Act</i> 2014.
<b>tribute agreement</b>	An agreement made by the holder of a community mining licence, artisanal mining licence or small-scale mining lease with another person, whereby that person (the <b>tributee</b> ), may work the licence or lease area to mine minerals on terms, providing that the holder must receive from the tributee a portion or percentage of the minerals won or the proceeds of their sale.
<b>Village Assembly</b>	<i>[Repealed]</i> <sup>63</sup>
<b>Water Resources Act</b>	The <i>Water Resources Act</i> 1982 of the National Parliament.

*Note for Schedule 1*

Common words and expressions, such as **Autonomous Bougainville Government**, **Autonomous Region of Bougainville**, **Bougainville Constitution**, **Bougainville Executive Council**, **Bougainvillean**, **customary land**, **National Constitution** and **person**, are defined in the Interpretation Act 2005.

## Notes

- <sup>1</sup> The *Bougainville Mining Act 2015* (No 3 of 2015) commenced on 1 April 2015. This unofficial consolidation has been prepared by David Lambourne, Legal Issues Adviser to the Bougainville Government. This version should not be relied upon as an authoritative statement of the law; for that, reliance should only be placed on the original Acts as passed by the House of Representatives. This consolidation is current to 31 December 2016, and incorporates amendments made by the following Acts—
- \* *Bougainville Mining (Amendment) Act 2015* (No 5 of 2015), which commenced on 6 October 2015;
  - \* *Bougainville Community Government Act 2016* (No 1 of 2016), which commenced on 9 June 2016;
  - \* *Bougainville Mining (Amendment) Act 2016* (No 2 of 2016), which is taken to have commenced on 1 April 2015.
- <sup>2</sup> Section 20(1) was amended by Item 1.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2015*, with effect from 6 October 2015. The amendment omitted Paragraph (c) and substituted new Paragraphs (c), (ca) and (cb). Paragraph (c) previously read:
- (c) 3 officers of the Bougainville Public Service, appointed by the Bougainville Executive Council, of whom at least 1 must be a woman; and
- <sup>3</sup> Section 20(1)(f) was amended by Item 1.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015, substituting “if a matter before the Advisory Council relates to an area of land —” for “if a matter before the Board relates to an area of land,”.
- <sup>4</sup> Section 20(1)(f) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “each community government of a community government area” for “Council of Elders for the area”.
- <sup>5</sup> Section 20(3) was amended by Item 1.2 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2015*, with effect from 6 October 2015. The amendment omitted “or (1)(c), the Bougainville Executive Council or” from this point.
- <sup>6</sup> Section 20(5) was amended by Item 1.3 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2015*, with effect from 6 October 2015. The amendment replaced Paragraph (c), which previously read:
- (c) for a member under Subsection 1(c) – if the person ceases to be an officer of the Bougainville Public Service.
- <sup>7</sup> Sections 20A, 20B, 20C and 20D were inserted by Item 2.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2015*, with effect from 6 October 2015.
- <sup>8</sup> Section 24(2)(a)(ii) was amended by Item 3.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2015*, with effect from 6 October 2015, substituting “6” for “3”.



- <sup>9</sup> Section 34(3)(a) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government of a community government area” for “Council of Elders with jurisdiction over the area”.
- <sup>10</sup> Section 46(3)(a)(ii) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “each community government of a community government area in which the proposed geological survey reserve area is located” for “each Council of Elders with jurisdiction over the area of the proposed geological survey reserve area”.
- <sup>11</sup> Section 49(6) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community governments” for “Councils of Elders”.
- <sup>12</sup> Section 54(1) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders”, and substituting “community government area” for “jurisdiction”.
- <sup>13</sup> Section 55(1)(a) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “proposed management plan of the community government” for “Council of Elders’ proposed management plan”.
- <sup>14</sup> Section 55(1)(b) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders”.
- <sup>15</sup> Section 56(2) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders”.
- <sup>16</sup> Section 56(3)(a) was amended by Item 2.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015, inserting “, unless the establishment of a community mining licence reserve area is expressly authorised by the notice designating the reservation”.
- <sup>17</sup> Section 56(5) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government area” for “Council of Elders”.
- <sup>18</sup> Section 57(2) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government in whose community government area the reserve area is located” for “Council of Elders with jurisdiction over the area”.
- <sup>19</sup> Section 59(3) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders”.

- <sup>20</sup> The section heading for Section 60 was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “granting authorities and potential applicants” for “Councils of Elders and Village Assemblies”.
- <sup>21</sup> Section 60(1) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, replacing Paragraph (a) and repealing Paragraph (b). Paragraphs (a) and (b) previously read:
- (a) if a Council of Elders has proposed the establishment of a community mining licence reserve area – members of that Council of Elders and any officer of the Council or other person nominated by the Council; and
  - (b) if a Council of Elders proposes to delegate authority to issue community mining licences to a Village Assembly under Section 71(2) – members of that Village Assembly and any officer of the Village Assembly or other person nominated by the Village Assembly; and
- <sup>22</sup> Section 61(1) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government of a community government area in which the reserve area is located” for “Council of Elders with jurisdiction over the area”.
- <sup>23</sup> Section 61(7) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders”.
- <sup>24</sup> The section heading for Section 62 was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “Community government” for “Council of Elders”.
- <sup>25</sup> Section 62(1) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “the community government of the community government area in which the reserve area is located” for “the Council of Elders with jurisdiction over the area”.
- <sup>26</sup> Section 62(1)(e) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “the wards of the community government area, the steering committees of which” for “Village Assemblies that”.
- <sup>27</sup> Section 62(2) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders” on 2 occurrences.
- <sup>28</sup> Section 63(a) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government or delegate of a community government” for “Council of Elders or Village Assembly”.
- <sup>29</sup> Section 64(1) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders”.

- <sup>30</sup> Section 65(1) was amended by Item 3.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015, inserting “or restricted”.
- <sup>31</sup> Section 65(2)(a)(ii) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government of a community government area in which the proposed mining reserve area is located” for “Council of Elders with jurisdiction over the area of the proposed mining reserve area”.
- <sup>32</sup> Section 66(3) was replaced by Item 4.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015. Subsection (3) previously read:
- (3) A notice under Subsection (1) must specify the area of land under reservation, by reference to a description of the land in latitude and longitude, which must have the shape of—
    - (a) 1 cadastral block; or
    - (b) more than 1 cadastral block, each of which must share a common side with at least 1 other cadastral block.
- <sup>33</sup> Section 66(5) was amended by Item 4.2 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015, substituting “Unless the grant of a tenement of that class is authorised under Subsection (3)(b), the” for “The”.
- <sup>34</sup> Section 66(6) was replaced by Item 4.3 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015. Subsection (6) previously read:
- (6) The Bougainville Executive Council may, by notice in the Bougainville Gazette, revoke, in whole or in part, a reservation made under this section.
- <sup>35</sup> Section 66(7)(a) was amended by Item 4.4 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015, inserting “or variation”.
- <sup>36</sup> Section 66(7)(b) was amended by Item 4.5 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015, inserting “or variation”.
- <sup>37</sup> Section 66(8) was replaced by Item 4.6 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015. Subsection (8) previously read:
- (8) Notice of a partial revocation of a reservation under Subsection (6) must specify the area of land remaining under reservation, by reference to a description of the land in latitude and longitude, which must have the shape of—
    - (a) 1 cadastral block; or
    - (b) more than 1 cadastral block, each of which must share a common side with at least 1 other cadastral block.
- <sup>38</sup> Section 70(a) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government or delegate of a community government with power under Section 71 to grant” for “Council of Elders or Village Assembly with power under Section 71 to grant and revoke”.

- <sup>39</sup> Section 71(1) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government of the community government area in which an approved community mining licence reserve area is located” for “Council of Elders with jurisdiction over an approved community mining licence reserve area”.
- <sup>40</sup> Section 71(2) was replaced by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016. Section 71(2) previously read:
- (2) A Council of Elders may, by notice in writing, delegate its power to grant, suspend and revoke community mining licences to a Village Assembly within its area, but only if training has been given by the Department in respect of that Village Assembly under Section 60(1)(b).
- <sup>41</sup> Section 71(4) was repealed by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016. Section 71(4) previously read:
- (4) To avoid doubt, a Village Assembly to which power to grant and revoke community mining licences has been delegated has no authority to grant a licence over land—
    - (a) located outside its area; or
    - (b) located partly inside its area and partly outside its area.
- <sup>42</sup> Section 73(1)(a)(i) was replaced by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016. Section 73(1)(a)(i) previously read:
- (i) the Council of Elders with jurisdiction over the community mining licence reserve area; or
- <sup>43</sup> Section 73(2)(b) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government of the community government area in which the community mining licence reserve area is located” for “Council of Elders with jurisdiction over the community mining licence reserve area”.
- <sup>44</sup> Section 98(1)(a) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government of a community government area in which the area of the proposed exploration licence is located” for “Council of Elders with jurisdiction over the area of the proposed exploration licence”.
- <sup>45</sup> Section 98(1)(b) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders”.
- <sup>46</sup> Section 98(2) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community governments” for “Councils of Elders”.
- <sup>47</sup> Section 107 was amended by Item 5.2 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015. The amendment omitted

Subsections (3) and (4) and substituted new Subsections (3), (4) and (5). Subsections (3) and (4) previously read:

- (3) In this section, ***acceptable expenditures*** are those directly connected with the acquisition and interpretation of exploration data from the area of the exploration licence, including related laboratory and prefeasibility and feasibility work and such other activities as are prescribed, but do not include expenditure in respect of the purchase of—
  - (a) a tenement; or
  - (b) land or buildings.
- (4) If the holder of an exploration licence fails to pay a retention fee the licence holder is required to pay under Subsection (2), the Secretary must initiate the procedure under Section 284 for cancellation of the exploration licence.

<sup>48</sup> Section 107(2) was amended by Item 5.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015, substituting “acceptable exploration expenditure” for “acceptable expenditures”.

<sup>49</sup> Section 140(7)(c) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government of a community government area in which land the subject of the application is located” for “Council of Elders with jurisdiction over the area of land the subject of the application”.

<sup>50</sup> Section 141(3) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders”.

<sup>51</sup> Section 207(5) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government or delegate of the community government” for “Council of Elders or Village Assembly”.

<sup>52</sup> Section 247(a) was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government of a community government area in which land the subject of the application is located” for “Council of Elders with jurisdiction over the area the subject of the application”.

<sup>53</sup> Section 248 was amended by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016, substituting “community government” for “Council of Elders” on 3 occurrences.

<sup>54</sup> Subsections (8), (9) and (10) of Section 261 were replaced by Item 4.2 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2015*, with effect from 6 October 2015. Subsections (8), (9) and (10) previously read:

- (8) The parties to an instrument approved under this section may jointly apply in the prescribed form to the Secretary to deregister an instrument previously registered under this section.
- (9) When the Secretary approves an application under Subsection (7), the Mining Registrar must deregister the instrument.

(10) If the Mining Registrar receives a court order to deregister an instrument approved under this section, the Mining Registrar must deregister the instrument.

- <sup>55</sup> Section 261(4) was amended by Item 4.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2015*, with effect from 6 October 2015, substituting “a tribute agreement or instrument to which this section applies must be submitted in the prescribed form, together with the document for which approval is sought,” for “an instrument to which this section applies must be submitted in the prescribed form, together with the instrument,”.
- <sup>56</sup> Section 280(a)(ii) was amended by Item 5.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2015*, with effect from 6 October 2015, substituting “, such other natural features and the location of principal villages as will allow the area to be correctly located” for “with respect to latitude and longitude”.
- <sup>57</sup> Section 292(1)(c) was amended by Item 6.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2015*, with effect from 6 October 2015, inserting “, health and education royalty”.
- <sup>58</sup> Section 297 was replaced by Item 6.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015. Section 297 previously read:

**297 Community engagement plans**

- (1) The holder of an exploration licence, mining lease, quarry lease or lease for mining purposes must develop a community engagement plan, for the purpose of guiding the holder’s interactions with the community across the entire life cycle of the activities under the licence or lease.
- (2) A community engagement plan must be developed in collaboration with community governments, traditional leaders, women, communities, organisations and marginalised groups in the area in proximity to the tenement.
- (3) A community engagement plan must—
  - (a) identify all communities likely to be affected by activities under the licence or lease; and
  - (b) include strategies, in relation to activities under the licence or lease, for—
    - (i) identifying community attitudes and expectations; and
    - (ii) providing information to the community; and
    - (iii) receiving feedback from the community; and
    - (iv) analysing community feedback and considering community concerns or expectations; and
  - (c) include a mechanism for registering, documenting and responding to complaints and other communications from members of the community in relation to activities under the licence or lease; and
  - (d) include such other content as is prescribed.
- (4) If a tenement holder holds more than 1 tenement in a localised area, the holder may seek approval for a single community engagement plan that makes provision for community engagement in relation to all of the holder’s tenements in that area.
- (5) A community engagement plan must be submitted to the Mining Registrar for approval at such time, in such format and on payment of such fee as is prescribed.

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- (6) The Mining Registrar must—
- (a) if a community engagement plan substantially complies with Subsection (3) – approve the plan; or
  - (b) otherwise – refuse to approve the plan.
- (7) The holder of a mining lease, quarry lease or lease for mining purposes must not commence mine development on the area of the holder’s tenement until a community engagement plan has been approved by the Mining Registrar.
- (8) It is a condition of the grant of an exploration licence, mining lease, quarry lease or lease for mining purposes that the holder of the licence or lease must—
- (a) have an approved community engagement plan; and
  - (b) implement the approved community engagement plan.
- (9) The holder of an exploration licence, mining lease, quarry lease or lease for mining purposes must submit an annual community engagement plan report in such form and manner as are prescribed.
- (10) The holder of an exploration licence, mining lease, quarry lease or lease for mining purposes must periodically, as is prescribed, update its community engagement plan.
- (11) An approved community engagement plan must be made available to the public at the office of the Mining Registrar.
- (12) The Secretary may, in the prescribed form, authorise a person not otherwise authorised under this Act to enter land for the purposes of developing or executing a community engagement plan.
- <sup>59</sup> Section 324(1) was amended by Item 76.1 of Schedule 1 to the Bougainville Mining (Amendment) Act 2016, with effect from 1 April 2015, substituting “social mapping study” for “landowner identification study”.
- <sup>60</sup> Section 369 was replaced by Item 8.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015. Section 369 previously read:
- 369 Transitional arrangements for mining without tenement**
- An individual Bougainvillean who, immediately before the commencement date, was, under Section 4(2) of the Transitional Mining Act, carrying out mining on land not subject to a tenement—
- (a) may apply, within 18 months after the commencement date, on a priority basis, for an artisanal mining licence, small-scale mining lease or community mining licence over that land; and
  - (b) may continue mining on that land without a tenement or community mining licence until the earlier of the following—
    - (i) 18 months have passed since the commencement date;
    - (ii) the Bougainville Executive Council, by notice in the Bougainville Gazette, orders an end all mining to which this section applies.

- <sup>61</sup> Section 373 was replaced by Item 9.1 of Schedule 1 to the *Bougainville Mining (Amendment) Act 2016*, with effect from 1 April 2015. Section 373 previously read:

**373 Reservations**

- (1) This section applies to a reservation of land if—
- (a) the reservation relates to land in Bougainville; and
  - (b) the reservation was—
    - (i) made under Section 7 of the National Mining Act; or
    - (ii) mentioned in Section 173(4) of the National Mining Act; or
    - (iii) recorded in the Territory of Papua and New Guinea Government Gazette No 22, dated 22 April 1971; or
    - (iv) made under Section 6 or 214 of the Transitional Mining Act; and
  - (c) the reservation was in force immediately before the commencement date.
- (2) The area under a reservation to which this section applies is taken to have been designated as a mining reserve area under Section 66(1).

- <sup>62</sup> The definition of ‘Council of Elders’ was repealed by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016. The definition previously read: “**Council of Elders** – A Council of Elders established under the *Bougainville Council of Elders Act 1996*.”

- <sup>63</sup> The definition of ‘Village Assembly’ was repealed by Section 90 of the *Bougainville Community Government Act 2016*, with effect from 9 June 2016. The definition previously read: “**Village Assembly** – A Village Assembly established under the *Bougainville Council of Elders Act 1996*.”