

**BOUGAINVILLE LAND BILL 2021**

**Arrangement of Clauses**

<b>PART 1 — PRELIMINARY .....</b>	<b>1</b>
1 Short title .....	1
2 Commencement.....	1
3 Outline of Act .....	1
4 Aims of Act .....	2
5 Interpretation.....	2
6 Exclusion of certain PNG laws .....	6
7 Relationship with other PNG and Bougainville laws .....	7
8 Succession not affected .....	7
<b>PART 2 — INTERESTS IN LAND .....</b>	<b>7</b>
9 Customary land .....	7
10 ABG land.....	8
11 Freehold land .....	8
12 Return of ABG land to customary land .....	9
<b>PART 3 — CUSTOMARY LAND.....</b>	<b>10</b>
<b>Division 1 — Customary land records .....</b>	<b>10</b>
<i>Sub-division 1 — Introduction .....</i>	<i>10</i>
13 Role of customary land courts .....	10
14 Aim of scheme .....	10
15 Record management systems .....	11
<i>Sub-division 2 — Principles.....</i>	<i>11</i>
16 Principles for determination of customary land records .....	11
<i>Sub-division 3 — Content .....</i>	<i>12</i>
17 Clan lineages .....	12
18 Boundaries of customary land .....	12
19 Features of customary land .....	13
20 Customary land practices.....	13
21 Customary land transactions .....	14
<i>Sub-division 4 — Use.....</i>	<i>14</i>
22 Search, inspection and certificates .....	14
23 Evidentiary effect of certificate .....	16
<i>Sub-division 5 — Offence .....</i>	<i>16</i>
24 Offence—interference with customary land records .....	16
<b>Division 2 — Modification of customary land practices .....</b>	<b>16</b>
25 Modification of customary land practices .....	16
<b>Division 3 — Customary land court proceedings .....</b>	<b>17</b>
26 Proceedings for inclusion or modification of customary land record .....	17

27	Proceedings for resolution of land dispute.....	18
28	Customary land (record) order .....	19
29	Customary land (restitution) order .....	20
30	Offence—contravention of customary land (restitution) order .....	21
	<b>Division 4 — Registration affecting customary land.....</b>	<b>21</b>
	<i>Sub-division 1 — Introduction .....</i>	<i>21</i>
31	Creation of registered interest.....	21
32	Amendment or transfer of registered interest .....	21
33	Registration of land as ABG land.....	22
34	Registration agreement.....	22
	<i>Sub-division 2 — Customary land court proceedings.....</i>	<i>24</i>
35	Proceedings for approval for registration .....	24
36	Customary land (registration) order .....	24
	<i>Sub-division 3 — Registration management committees .....</i>	<i>26</i>
37	Registration management committee .....	26
38	Responsibilities of registration management committee.....	26
39	Assistance to registration management committee .....	27
40	Complaint about registration management committee .....	27
41	Monitoring and investigating activities of registration management committee .....	27
42	Action to achieve compliance .....	28
43	Offence—refusal or failure to comply with directions.....	29
	<b>Division 5 — Stop orders.....</b>	<b>29</b>
44	Stop orders.....	29
45	Offence—contravention of stop order.....	31
	<b>PART 4 — CUSTOMARY LAND COURTS .....</b>	<b>31</b>
	<b>Division 1 — Establishment and administration .....</b>	<b>31</b>
46	Establishment of customary land courts.....	31
47	Head of other Bougainville Courts excluded.....	31
48	Appointments to customary land courts .....	31
49	Training.....	32
50	Terms and conditions of office of presiding officer and land mediators .....	32
51	Record of clan lineage of members of court and spouses .....	33
52	Administration of customary land courts .....	34
53	Delegation by presiding officer .....	34
	<b>Division 2 — Jurisdiction .....</b>	<b>34</b>
54	Jurisdiction .....	34
55	Jurisdiction if customary land in areas of 2 or more customary land courts.....	35
	<b>Division 3 — Constitution of court and decision making.....</b>	<b>35</b>
56	Constitution of customary land court for particular proceedings .....	35
57	Substitution of members to continue and complete proceedings .....	36
58	Decision making by customary land court.....	36
59	Preparation of orders.....	37

60	Evidentiary effect of certified orders .....	37
	<b>Division 4 — Procedure.....</b>	<b>38</b>
61	Principles governing proceedings .....	38
62	No legal representation and no costs .....	38
63	Rejection of application .....	38
64	Rectification of defects in application.....	39
65	Notification of application .....	39
66	Schedule of proceedings.....	39
67	Adjournment.....	41
68	Production of information and evidentiary material.....	41
69	Offence—contravention of direction to appear or produce evidentiary material .....	41
70	Offence—contempt in face of customary land court .....	41
	<b>Division 5 — Official records .....</b>	<b>42</b>
71	Official records of customary land court proceedings.....	42
72	Offence—interference with official records.....	42
	<b>Division 6 — Referral and reviews .....</b>	<b>43</b>
73	Referral of disputes relating to registered interests to District Court.....	43
74	Review of decision of customary land court.....	43
	<b>PART 5 — ABG LAND AND LAND LEASED TO ABG .....</b>	<b>44</b>
	<b>Division 1 — Care, control and management .....</b>	<b>44</b>
75	Responsibility for land.....	44
	<b>Division 2 — Use of land .....</b>	<b>45</b>
76	Public purpose .....	45
77	Offence—misuse of ABG land or land leased to ABG .....	45
78	Powers of authorised officers .....	46
79	Offence—contravention of requirement by authorised officer.....	46
	<b>Division 3 — Interests and rights .....</b>	<b>46</b>
80	Grants of interests and rights.....	46
81	Remediation of condition by holder of interest or rights .....	47
82	Offence—contravention of remediation notice.....	48
	<b>Division 4 — Easements over ABG land .....</b>	<b>48</b>
83	Easements over ABG land .....	48
	<b>Division 5 — ABG leases .....</b>	<b>48</b>
84	ABG lease .....	48
85	Registered interests and ABG lease .....	49
86	Process for grant and registration of ABG lease .....	49
87	Purposes.....	50
88	ABG community services lease .....	50
89	Improvements.....	51
90	Subleasing .....	51
91	Limitations.....	51
92	Rent.....	51

93	Penalties for late payment of rent .....	52
94	Information about lessee must be kept up-to-date.....	52
95	Powers of authorised officers .....	52
96	Alteration of boundaries .....	53
97	Amendment of ABG lease.....	53
98	Transfer of ABG lease .....	54
99	Expiry of ABG lease .....	54
100	Surrender of ABG lease.....	54
101	Termination of ABG lease.....	55
102	Resumption of land.....	56
103	Waiver of ABG lease conditions.....	56
<b>Division 6 — ABG licences.....</b>		<b>57</b>
104	ABG licences.....	57
105	Terms and conditions of ABG licence.....	57
106	Dealing with ABG licence .....	57
107	Variation of ABG licence.....	57
108	Surrender of ABG licence.....	58
109	Renewal of ABG licence .....	58
110	Waiver of ABG licence conditions.....	58
111	Cancellation of ABG licence .....	58
<b>Division 7 — Authorised officers .....</b>		<b>58</b>
112	Authorised officers.....	58
113	Offence—failure to return identity card .....	59
114	Offence—obstruction of authorised officer.....	59
115	Offence—pretending to be authorised officer .....	59
<b>Division 8 — Miscellaneous .....</b>		<b>60</b>
116	Removal and disposal of property and fixtures on ABG land or land leased to ABG .....	60
117	Delegation by Minister.....	60
<b>PART 6 — REGISTRATION AND REGISTERED INTERESTS.....</b>		<b>60</b>
<b>Division 1 — Registrar.....</b>		<b>60</b>
118	Registrar .....	60
119	Office of Registrar .....	61
120	Delegation by Registrar .....	61
<b>Division 2 — Registers.....</b>		<b>61</b>
121	Registers.....	61
122	Customary Land Register .....	61
123	ABG Register .....	63
124	ABG Register—ABG land.....	63
125	ABG Register—land leased to ABG .....	64
126	ABG Register—ABG leases .....	64
127	Freehold Land Register .....	65

<b>Division 3 — Priority of interests .....</b>	<b>67</b>
128 Order of registration of instruments.....	67
129 Priority of title .....	67
130 Priority of interests—registered easements .....	68
131 Priority of interests—registered leases.....	68
132 Priority of interests—registered mortgages.....	69
133 Transfers and transmissions do not affect priority .....	69
134 Instrument of modification of priority .....	69
<b>Division 4 — Registered interests .....</b>	<b>70</b>
<i>Sub-division 1 — Application of Division .....</i>	<i>70</i>
135 Application of Division to customary land .....	70
136 Application of Division to ABG land .....	70
<i>Sub-division 2 — Easements.....</i>	<i>70</i>
137 Types of registered easements .....	70
138 Implied registered easement for support of land and structures.....	71
139 Exercise of rights under easement.....	71
140 Instrument of easement or amendment of easement .....	72
141 Extinguishment of easement .....	72
<i>Sub-division 3 — Leases .....</i>	<i>73</i>
142 Application of Sub-division .....	73
143 Requirement for registered lease to be long term .....	73
144 Instrument of lease .....	73
145 Implied lease terms and conditions.....	74
146 Standard lease terms and conditions.....	75
147 Offence—failure to provide standard terms and conditions to lessee .....	76
148 Amendment of lease.....	76
149 Transfer of lease .....	76
150 Surrender of lease.....	77
151 Termination of lease .....	77
<i>Sub-division 4 — Mortgages .....</i>	<i>77</i>
152 Registered mortgage.....	77
153 Limitations relating to customary land .....	78
154 Instrument of mortgage.....	78
155 Offence—failure by mortgagee to verify authority of mortgagor .....	79
156 Offence—failure to retain evidence of verification .....	79
157 Implied mortgage terms and conditions.....	79
158 Amendment of mortgage.....	80
159 Transfer of mortgage.....	80
160 Discharge of registered mortgage.....	81
161 Default notice.....	81
162 Sale by mortgagee.....	81
163 Sale by Registrar.....	82

164	Order for foreclosure .....	83
<b>Division 5 — Other dealings with freehold land .....</b>		<b>83</b>
165	Joint tenancy if not specified .....	83
166	Transfers .....	84
167	Registration of writ of execution.....	84
168	Subdivision and consolidation .....	84
<b>Division 6 — Other matters affecting registration .....</b>		<b>85</b>
<i>Sub-division 1 — Application of Division .....</i>		<i>85</i>
169	Application of Division .....	85
170	No need to go behind title .....	85
<i>Sub-division 2 — Trusts and transmission .....</i>		<i>86</i>
171	How trusts may be registered .....	86
172	Registration of personal representative on death .....	86
173	Transmission on bankruptcy .....	86
174	Power to require public notice before registration.....	86
<i>Sub-division 3 — Powers of attorney and legal capacity .....</i>		<i>87</i>
175	Registration of power of attorney.....	87
176	Person without legal capacity .....	87
<b>Division 7 — Inquiries .....</b>		<b>87</b>
177	Registrar may hold inquiry .....	87
178	Principles to be applied to inquiry .....	88
179	Registrar's power to suspend further registrations pending inquiry .....	88
180	Registrar's powers on inquiry.....	88
181	Offence—contravention of direction to appear or produce evidentiary material ..	88
182	Referral of matter to District Court .....	89
183	Powers of Registrar following inquiry .....	89
184	Offence—failure to produce instrument for registration .....	89
<b>Division 8 — General matters.....</b>		<b>89</b>
185	Applications to Registrar .....	89
186	Instruments for registration .....	90
187	Form of registers .....	90
188	Correction of registers .....	90
189	Search of registers.....	90
190	Evidentiary effect of certified copies of entries and registered instruments .....	91
191	Offence to interfere with register .....	91
<b>PART 7 — OFFICIAL SURVEY PLANS.....</b>		<b>91</b>
192	Authorised surveyors .....	91
193	Survey instructions.....	91
194	Right to enter .....	92
195	Offence—obstruction of authorised surveyor .....	92
196	Offence—interference with survey marks .....	92
197	Offence—certifying plan when not authorised or survey instructions contravened .....	92

198	Offences—holding out as authorised surveyor .....	93
199	Investigation relating to official survey plan .....	93
200	Offence—contravention of direction .....	94
201	Order for rectification of official survey plan .....	94
202	Offence—contravention of order for rectification .....	94
<b>PART 8 — PLANNING PERMISSIONS .....</b>		<b>95</b>
<b>Division 1 — Interpretation .....</b>		<b>95</b>
203	Interpretation .....	95
<b>Division 2 — Planning controls and tree preservation .....</b>		<b>97</b>
204	Offence—unauthorised development .....	97
205	Offence—unauthorised change of use .....	97
206	Offence—unauthorised subdivision or consolidation .....	98
207	Offence—unauthorised lopping or destruction of trees .....	98
<b>Division 3 — Planning control areas .....</b>		<b>98</b>
208	Planning control areas .....	98
<b>Division 4 — Development plans .....</b>		<b>99</b>
209	Development plans .....	99
210	Preparation of drafts and consultation .....	99
211	Making of development plan or amendment .....	100
212	Availability and evidence of development plans .....	100
<b>Division 5 — Planning permissions .....</b>		<b>101</b>
213	Complying development or use exemptions .....	101
214	Application to PAC for planning permission .....	101
215	Advertisement or referral of application and submissions .....	101
216	Conditions of planning permission .....	102
217	Expiry of planning permission .....	102
218	Principles for determination of planning permission .....	102
219	Principles for certain planning permissions .....	103
220	Principles for tree preservation requirements .....	103
221	Notification to applicant of decision .....	104
222	Review of PAC decision .....	104
<b>Division 6 — Planning Assessment Commission .....</b>		<b>105</b>
<i>Sub-division 1 — Establishment .....</i>		<i>105</i>
223	Planning Assessment Commission .....	105
224	Staff—assignment of Public Service officers .....	105
225	Compliance with Public Finance Act .....	105
<i>Sub-division 2 — Membership .....</i>		<i>106</i>
226	PAC members .....	106
227	Deputies of ex officio members .....	106
228	Terms and conditions of appointment .....	107
229	Validity of acts .....	107

<i>Sub-division 3 — Procedures</i> .....	107
230 Procedures of PAC .....	107
231 Meetings .....	108
232 Decisions .....	108
233 Records of meetings and decisions.....	108
234 Execution of documents .....	108
235 Conflict of interest.....	109
<i>Sub-division 4 — Annual report</i> .....	109
236 Annual report.....	109
<b>PART 9 — MISCELLANEOUS</b> .....	<b>110</b>
237 False or misleading information.....	110
238 Power of Secretary to act in place of community government .....	110
239 Delegation by Secretary .....	110
240 Service of applications, notices and other documents.....	110
241 Protection from civil liability .....	111
242 Human rights.....	111
243 Act binds Autonomous Bougainville Government.....	111
244 Regulations.....	112
<b>PART 10 — REPEAL, AMENDMENTS AND TRANSITIONAL PROVISIONS</b> .....	<b>112</b>
<b>Division 1 — Repeal</b> .....	<b>112</b>
245 Repeal of Physical Planning Act .....	112
<b>Division 2 — Consequential amendments of other Acts</b> .....	<b>112</b>
246 Consequential amendments of other Acts .....	112
<b>Division 3 — Transitional provisions</b> .....	<b>112</b>
247 ABG land.....	112
248 Registered leases to ABG—conversion of leases to ABG of customary land .....	113
249 ABG leases—conversion of State leases .....	113
250 ABG licences.....	114
251 Freehold land and interests in freehold land .....	114
252 Development plans .....	114
253 Planning permissions .....	114



A BILL FOR AN ACT  
entitled  
**BOUGAINVILLE LAND ACT 2021**

Being an Act to—

- (a) provide for—
- (i) matters relating to land and interests and rights relating to land; and
  - (ii) the establishment and jurisdiction of customary land courts; and
  - (iii) the appointment of a Registrar and the keeping of registers of land and interests in land; and
  - (iv) matters relating to official survey plans; and
  - (v) the establishment of a Planning Assessment Commission, the making of development plans and the granting of planning permissions; and
- (b) repeal the *Physical Planning Act 2013*; and
- (c) make consequential amendments to *[yet to be completed]*.

MADE by the House of Representatives, to come into operation as set out in Section 2.

**PART 1 — PRELIMINARY**

**1 Short title**

This Act is the *Bougainville Land Act 2021*.

**2 Commencement**

This Act comes into operation in accordance with a notice in the Bougainville Gazette made by the Minister with the advice of the Bougainville Executive Council.

**3 Outline of Act**

This Act is divided into Parts dealing with the following general topics:

- (a) introductory matters (Parts 1 and 2);
- (b) customary land (Parts 3 and 4);
- (c) ABG land, land leased to ABG and ABG leases (Part 5);
- (d) registration and surveying (Parts 6 and 7), including—
- (i) registered interests; and
  - (ii) dealing with freehold land;

- (e) planning permissions (Part 8)
- (f) miscellaneous matters (Part 9).

#### 4 Aims of Act

This Act aims to provide for—

- (a) the development of records about customary land and customary land practices; and
- (b) registration of easements, leases and mortgages over customary land; and
- (c) the performance of obligations under registered interests, and the management of proceeds of registered interests, in customary land; and
- (d) the peaceful resolution of land disputes affecting customary land; and
- (e) registration of ABG land and easements over ABG land; and
- (f) the care, control and management of ABG land and land leased to ABG; and
- (g) the granting and management of ABG leases of ABG land or land leased to ABG; and
- (h) the return of ABG land to customary land; and
- (i) registration of freehold land and easements, leases and mortgages over freehold land; and
- (j) registration of mortgages over registered leases and ABG leases; and
- (k) surveying instructions and official survey plans; and
- (l) planning controls.

#### 5 Interpretation

- (1) In this Act, unless the contrary intention appears—

**ABG** means the Autonomous Bougainville Government;

**ABG community services lease**, see Section 84(3)(a);

**ABG land**, see Section 10;

**ABG lease**, see Section 84;

**ABG licence**, see Section 104;

**authorised surveyor** means—

- (a) a person registered as a surveyor under the *Survey Act* (Chapter 95) of the National Parliament; or
- (b) a person authorised to produce official survey plans under Section 192;

**Chief Secretary** means the person holding or acting in the office of Chief Secretary under the *Bougainville Public Services (Management and Administration) Act 2014*;

**community government** has the meaning assigned by the *Bougainville Community Government Act 2016*;

**community government area** has the meaning assigned by the *Bougainville Community Government Act 2016*;

**contravene** includes fail to comply;

**customary land**, see Section 9;

**customary land court** means a court established under Section 46;

**customary land practices** includes customs and useages of a clan lineage—

- (a) for agreeing and acknowledging a customary land transaction, including a registration agreement; and
- (b) for the use and distribution of consideration for a customary land transaction, including registration proceeds; and
- (c) for the performance of obligations under a customary land transaction, including registration obligations;

**customary land proceedings** means—

- (a) proceedings under Section 26 for the inclusion or modification of a record in the customary land records of a customary land court; or
- (b) proceedings under Section 27 for resolution of a land dispute; or
- (c) proceedings under Section 35 for approval for registration affecting customary land;

**customary land (record) order**, see Section 28;

**customary land (registration) order**, see Section 36;

**customary land (restitution) order**, see Section 29;

**customary land transaction** means a transaction or arrangement affecting customary land, including for the exercise of customary rights by a clan lineage other than the clan lineage to whom the land belongs;

**freehold land**, see Section 11;

**government agency** means—

- (a) a Minister; or
- (b) a Secretary, that is, a Departmental Head of a Department;
- (c) a constitutional or statutory office holder;
- (d) a statutory authority that is a body corporate;
- (e) a community government;
- (f) a person or body corporate declared by the regulations to be a government agency;

**land** includes—

- (a) a building or structure affixed to land; and
- (b) waters and airspace over land; and
- (c) the bed of any body of waters; and
- (d) subsoil and subterranean waters;

**land dispute** means a dispute about customary land or an interest in, or right over, customary land and includes the following:

- (a) a dispute about the clan lineage to whom particular land belongs;
- (b) a dispute about the boundaries between the land of different clan lineages; or
- (c) a dispute about customary land practices; or
- (d) a dispute about compliance with customary land practices; or
- (e) a dispute arising under a customary land transaction, including a registration agreement;

**land leased to ABG** means—

- (a) customary land subject to a registered lease to ABG; or
- (b) freehold land subject to a registered lease to ABG;

**land mediator** means a person holding an appointment as a land mediator under Section 47;

**lot of freehold land**, see Section 126(1);

**Manager of a community government** has the meaning assigned by the *Bougainville Community Government Act 2016*;

**official survey plan** means a plan of the boundaries of land certified by an authorised surveyor on the basis of a survey carried out or supervised by the surveyor in accordance with survey instructions;

**presiding officer** means a person holding or acting in the office of presiding officer of a customary land court under Section 49;

**public purpose**, see Section 76;

**register** means—

- (a) the Customary Land Register kept under Section 122; or
- (b) the ABG Register kept under Section 123; or
- (c) the Freehold Land Register kept under Section 126; or

**registered** means registered under this Act;

**registered interest** means—

- (a) a registered easement; or

(b) a registered lease; or

(c) a registered mortgage; or

**Registrar** means a person holding or acting in the office of Registrar under Section 118;

**registration affecting customary land** means—

(a) registration of an easement, lease or mortgage over customary land; or

(b) registration of customary land as ABG land;

**registration agreement** means an agreement with the clan lineage to whom customary land belongs for registration affecting the customary land;

**registered lease** does not include an ABG lease;

**registration management committee** for an interest in customary land means a committee established under a registration agreement for the registration of the interest;

**registration obligations** means obligations under a registration agreement or registered interest;

**registration proceeds** means—

(a) rent under a registered lease; or

(b) the principal sum under a registered mortgage; or

(c) any other consideration for the registration of instruments as proposed by a registration agreement; or

(d) interest on money referred to in Paragraph (a), (b) or (c).

**remediation notice** means a remediation notice issued by the Secretary under Section 81;

**Secretary** means—

(a) in a reference to a Secretary responsible for a particular subject matter—the Departmental Head of the Department with responsibility for that subject matter; or

(b) in a reference to the Secretary without reference to the Secretary being responsible for a particular subject matter—a person holding or acting in the office of Departmental Head of the Department that is, under the Minister, responsible for the administration of this Act;

**service utility easement**, see Section 137(1)(e);

**stop order** means a stop order made by a customary land court under Section 44;

**survey instructions** means survey instructions issued by the Registrar under Section 193;

**survey mark** means a mark or peg of a kind specified in survey instructions that is placed on or in land by an authorised surveyor for the purposes of defining a boundary of the land;

**transfer**, in relation to a lease or mortgage, includes assign;

**transmission**—

- (a) means the passing of land or an interest in land to another in a manner other than by voluntary transfer; and
- (b) includes the following:
  - (i) transmission to a trustee when the trustees of the trust change;
  - (ii) transmission to a personal representative or beneficiary on death;
  - (ii) transmission to a receiver or liquidator under a law about insolvency, bankruptcy or liquidation;
  - (iii) transmission to a person authorised to sell land or an interest in land under the execution of a writ or warrant of execution following judgement by a court;

**urban community government** has the meaning assigned by the *Bougainville Community Government Act 2016*.

- (2) Notes in this Act do not form part of the Act.
- (3) An example in this Act—
  - (a) forms part of the Act; and
  - (b) is not exhaustive; and
  - (c) may extend, but does not limit, the meaning of the Act or the provision to which it relates.

## 6 Exclusion of certain PNG laws

- (1) The following Acts of the National Parliament do not apply in Bougainville:
  - Land Act 1996*
  - Land Disputes Settlement Act 1975*
  - Land Registration Act 1981*
  - Land Groups Incorporation Act 1974*
- (2) This section has effect in accordance with Section 296(1) of the National Constitution.

## 7 Relationship with other PNG and Bougainville laws

This Act does not derogate from land or sea being dealt with in accordance with other Bougainville laws or laws of the National Parliament, including land or sea being made subject to—

- (a) a mining tenement under laws relating to mining; or
- (b) a statutory easement under a law relating to utilities; or
- (c) laws relating to roads, forestry, national parks or conservation.

## 8 Succession not affected

Nothing in this Act affects the law of succession.

# PART 2 — INTERESTS IN LAND

## 9 Customary land

- (1) The land that makes up Bougainville is **customary land** of the clan lineages of Bougainvilleans.
- (2) However, while the land is ABG land or freehold land, it cannot be dealt with by a clan lineage as customary land.
- (3) Customary land can, in accordance with customary land practices and customary succession, be transferred to a different clan lineage or divided between different clan lineages.
- (4) Interests in, and rights over, customary land can be created, amended, transferred and transmitted in accordance with customary land practices.
- (5) An interest in customary land can be created by—
  - (a) a registered easement; or
  - (b) a registered lease; or
  - (c) a registered mortgage.
- (6) An amendment, transfer or transmission of a registered interest in customary land must be effected by registration.
- (7) If there is default under a registered mortgage of customary land and the land is sold or foreclosed in accordance with this Act, the land will cease to be dealt with by a clan lineage as customary land because it will become freehold land.
- (8) Since customary land cannot be transferred under this Act other than through sale or foreclosure of a registered mortgage, statutory or judicial powers to sell or order the sale of land are ineffective in relation to customary land except to the extent that the power may relate to a transfer under customary land practices.

*Drafting note: Is Subclause (8) required to protect against a court making an order for sale of customary land to pay a judgement debt? Are there consequential amendments that might need to be made to other Acts? A registered lease or mortgage over customary land could be subject to an order for sale.*

## 10 ABG land

- (1) **ABG land** is land for which ABG is responsible and which cannot be dealt with by a clan lineage as customary land.
- (2) ABG land comprises—
  - (a) that part of Bougainville that lies beyond 3 nautical miles of low water mark; and
  - (b) land that is to be regarded as ABG land on the commencement of this Act under the transitional provisions (see Section 247); and
  - (c) land that is registered as ABG land.
- (3) ABG land does not include customary land or freehold land that is leased to ABG.
- (4) ABG land cannot be transferred to a person (although the land can be transferred from the care, control and management of one government agency to another).
- (5) Since ABG land cannot be transferred under this Act, statutory or judicial powers to sell or order the sale of land are ineffective in relation to ABG land.

*Drafting note: Does (5) go without saying? A registered ABG lease could be subject to an order for sale.*

- (6) An interest in ABG land can only be created by—
  - (a) a registered easement; or
  - (b) a registered ABG lease.
- (7) Land ceases to be ABG land if responsibility for the land is relinquished under Section 12.

## 11 Freehold land

- (1) **Freehold land** is land for which a person other than a clan lineage or ABG is responsible and which cannot be dealt with by a clan lineage as customary land.
- (2) Freehold land comprises—
  - (a) land taken to be included in the Freehold Land Register on the commencement of this Act under the transitional provisions (see Section 250); and
  - (b) land included in the Freehold Land Register under this Act.



- (3) Customary land cannot become freehold land after the commencement of this Act other than by sale or foreclosure in accordance with this Act on default under a registered mortgage of the land.
- (4) ABG land cannot become freehold land after the commencement of this Act.
- (5) An interest in freehold land can only be created by—
  - (a) a registered easement; or
  - (b) a registered lease; or
  - (c) a registered mortgage.
- (6) Land ceases to be freehold land if the land is transferred to ABG (since it then becomes ABG land).
- (7) Freehold land can only be transferred to ABG if each registered lease or registered mortgage over the land is surrendered, terminated, discharged or otherwise extinguished.
- (8) A registered easement over freehold land remains in place on transfer of the land to ABG unless the easement is extinguished.
- (9) Freehold land can be transferred to ABG subject to the condition that ABG is to relinquish responsibility for the land so that the land will be returned to customary land.

## **12 Return of ABG land to customary land**

- (1) ABG land returns to customary land if responsibility for the land is relinquished by ABG.
- (2) If ABG land is subject to an ABG lease that is not to be surrendered or terminated on or before relinquishment of responsibility for the land by ABG—
  - (a) relinquishment must be subject to registration of a lease of the land to ABG; and
  - (b) on registration of the lease, the interest of ABG in the land is assigned to the lessee of the ABG lease.
- (3) To relinquish ABG land, ABG must—
  - (a) publish a notice of intention to relinquish the land in the Bougainville Gazette; and
  - (b) make an application for the inclusion of a customary land record for the land in the records of a customary land court; and
  - (c) after a customary land (record) order has been made for the land, lodge a written notice of relinquishment with the Registrar.

- (4) Responsibility for ABG land is relinquished on—
  - (a) registration of a notice of relinquishment; and
  - (b) if relinquishment is subject to registration or amendment of registration of an easement, lease or ABG lease—registration of the easement or lease.
- (5) A registered easement over land remains in place despite relinquishment of the land unless the easement is extinguished.

## **PART 3 — CUSTOMARY LAND**

### **Division 1 — Customary land records**

#### ***Sub-division 1 — Introduction***

#### **13 Role of customary land courts**

- (1) Each customary land court must—
  - (a) keep customary land records for the area of the court; and
  - (b) make the information in those records available to be searched and inspected; and
  - (c) issue certificates for customary land included in the records.
- (2) Customary land records must be created and modified by a customary land court as customary land (record) orders and customary land (registration) orders are made in proceedings before the court.

#### **14 Aim of scheme**

The aim is—

- (a) to gradually build up and improve records of the following:
  - (i) the different clan lineages with customary land;
  - (ii) the boundaries of the land of the different clan lineages;
  - (iii) the principal features of customary land (in terms of the environment and cultural and historic heritage);
  - (iv) the customary land practices of the different clan lineages, especially for the creation of registered interests in customary land or registration as ABG land;
  - (v) rights to use, access or traverse land that are in force under customary land transactions; and
- (b) to keep records of the following matters connected with registration affecting customary land:
  - (i) registration agreements;

- (ii) registration management committees; and
- (c) to make use of the records for the following purposes:
  - (i) entering into customary land transactions; and
  - (ii) avoiding land disputes; and
  - (iii) supporting the performance of registration obligations and the safeguarding of registration proceeds; and
  - (iv) protecting the environment and preserving cultural and historic heritage; and
  - (v) maintaining public rights of way, access and landing; and
  - (vi) recording knowledge for future generations.

*Note—Under Part 6, the customary land records of the various customary land courts are collated into a central Register of Customary Land. Certain interests in customary land are registered in that central register.*

## **15 Record management systems**

- (1) The Registrar must issue written directions to customary land courts about the performance of functions under this Division.
- (2) Directions issued under Subsection (1) are binding on customary land courts.
- (3) The directions may require customary land courts to use particular electronic or other systems for the performance of the functions.
- (4) Without limiting the directions that may be given, there must be directions designed—
  - (a) to achieve consistency in the expressions used in the records; and
  - (b) to ensure that the records are readily accessible and searchable; and
  - (c) to protect the integrity of the records; and
  - (d) to achieve consistency in how certificates are issued; and
  - (e) to facilitate collating of the records in the Register of Customary Land under Part 6.

### ***Sub-division 2 — Principles***

## **16 Principles for determination of customary land records**

- (1) Customary land records must be based—
  - (a) on the knowledge of chiefs and other traditional leaders to the extent that there is consensus and no evidence to doubt the veracity of the knowledge; and

- (b) otherwise on the balance of probabilities, taking into account information that is reasonably ascertainable.
- (2) It is acknowledged that alienation of land in the past, the longevity or complexity of the clan system or other reasons may give rise to a lack of knowledge or reasonably ascertainable information or to areas of uncertainty or a lack of consensus.
- (3) In such cases, customary land records must be based on principles of what is fair, just and reasonable as between current clan lineages.
- (4) As far as reasonably practicable, the application of those principles for a particular customary land record should be as agreed between the relevant clan lineages.
- (5) The modifications of customary land practices set out in Division 2 apply whether or not they are incorporated or acknowledged in a customary land record.

### ***Sub-division 3 — Content***

#### **17 Clan lineages**

- (1) A customary land record must, in recording a clan lineage to whom customary land belongs, identify the following as at the time the record is made:
  - (a) the families or communities that comprise the clan lineage;
  - (b) the chief and other traditional leaders of the clan lineage;
  - (c) whether the clan lineage is patrilineal or matrilineal.
- (2) A customary land record may, to the extent that it is practicable—
  - (a) identify all the members of a clan lineage at the time the record is made; and
  - (b) include a description of the cultural practices for inclusion in the clan lineage and succession to land; and
  - (c) be linked to ABG records of births, adoptions, marriages and deaths.
- (3) If a customary land record identifies all the members of a clan lineage, the record must be updated before a registration agreement is entered into by the clan lineage.

#### **18 Boundaries of customary land**

- (1) In the longer term, the boundaries of customary land should be determined by official survey plans that form part of customary land records.
- (2) If there is a registered mortgage over customary land, the boundaries of the land must be determined by an official survey plan prepared at the cost of the proposed mortgagee or mortgagor.

- (3) If it is not reasonably practicable for an official survey plan to be prepared at the time of inclusion of a customary land record or while awaiting for an official survey plan to be prepared, the boundaries of customary land may be described in a customary land record by—
  - (a) using plot points obtained from a global positioning system approved by the Registrar; or
  - (b) a description that is as detailed as is reasonably practicable.
- (4) A customary land court may require an official survey plan to be prepared for a customary land record at the cost of the affected clan lineages if the court considers that necessary or desirable in the circumstances.
- (5) The Registrar may institute a program of undertaking official survey plans for inclusion in customary land records according to priorities determined by the Registrar under—
  - (a) public sector funding arrangements; or
  - (b) funding arrangements approved by the Bougainville Executive Council where clan lineages agree to pay or to make a payment towards the costs of official survey plans.

## **19 Features of customary land**

- (1) A customary land record must, in recording the principal features of customary land, include—
  - (a) features of environmental or community significance such as rivers, lakes and mountains; and
  - (b) areas of land or landmarks of significance according to customary practice; and
  - (c) areas of land or landmarks of significance to Bougainvillean archaeology, anthropology or history.
- (2) Records of cultural or historic sites kept by or on behalf of ABG should be taken into account.
- (3) In recording areas of land or landmarks of significance according to customary practice, information should be included as to the need to protect the confidentiality of the record in terms of customary practice or physical vulnerability.

## **20 Customary land practices**

- (1) A customary land record must, in recording customary land practices—
  - (a) identify the eligibility requirements for decision making on customary land transactions by the clan lineage, including any age requirement; and

- (b) identify the chief of any other clan lineage who must, in accordance with the customary land practices of the clan lineage, concur or be consulted in decision making by the clan lineage; and
  - (c) take account of, or acknowledge, the principles in Division 2.
- (2) In recording customary land practices, the focus should be on including sufficient detail to give people confidence that they are complying with customary land practices if they enter into the most common types of customary land transactions in accordance with the specified customary land practices.
- (3) For a clan lineage to enter a registration agreement, there must be a customary land record that specifies the customary land practices that apply to entering into the registration agreement.
- (4) It is recognised that it may not be possible to describe in detail all customary land practices for an area of land at the time a customary land record is made.

## **21 Customary land transactions**

- (1) A customary land record should, in recording rights under customary land transactions—
  - (a) identify public rights of way, access and landing; and
  - (b) customary land agreements with developers; and
  - (c) significant rights that might be the subject of a land dispute.
- (2) Including rights under customary land transactions in a customary land record does not create an interest in land. An interest in customary land can only be created by registration of an interest in the Register of Customary Land.

### ***Sub-division 4 — Use***

## **22 Search, inspection and certificates**

- (1) A person may apply to a customary land court—
  - (a) to search and inspect information in the customary land records of the court; or
  - (b) for a certificate for specified land in the customary land records of the court; or
  - (c) for a certificate for a specified clan lineage with land in the customary land records of the court.
- (2) The regulations may fix fees that may be charged by a customary land court for an application under Subsection (1).

- (3) In making customary land records available for search and inspection, a customary land court must consider the need to protect the confidentiality of information about cultural or historic heritage in terms of customary practice or physical vulnerability.
- (4) A certificate for specified land must—
- (a) identify the customary land to which the certificate relates; and
  - (b) set out information in the customary land records of the court as to—
    - (i) the clan lineage to whom the customary land belongs; and
    - (ii) the customary land practices of the clan lineage relevant to the land; and
    - (iii) any registration agreements affecting the land; and
    - (iv) any registration management committees for interests in the land; and
    - (v) the principal features of the land (to the extent that it is satisfactory for the information to be publicly available); and
  - (c) specify the date on which the certificate is issued; and
  - (d) be certified by the presiding officer of the court to be a true copy of the information in the customary land records of the court as at the date of the certificate.
- (5) A certificate for a specified clan lineage must—
- (a) identify the clan lineage to which the certificate relates; and
  - (b) set out information in the customary land records of the court as to—
    - (i) the customary land belonging to the clan lineage; and
    - (ii) the customary land practices of the clan lineage; and
    - (iii) any registration agreements that bind the clan lineage; and
    - (iv) any registration management committees for interests in customary land of the clan lineage; and
    - (v) the principal features of the land (to the extent that it is satisfactory for the information to be publicly available); and
  - (c) specify the date on which the certificate is issued; and
  - (d) be certified by the presiding officer of the court to be a true copy of the information in the customary land records of the court as at the date of the certificate.
- (6) A certificate may be in electronic form.

**23 Evidentiary effect of certificate**

A certificate apparently certified by the presiding officer of a customary land court as a true copy of information in the customary land records of the court must, in the absence of proof to the contrary, be taken to be a true copy of the information as at the date of the certificate.

***Sub-division 5 — Offence*****24 Offence—interference with customary land records**

A person commits an offence if the person intentionally destroys, defaces or otherwise improperly interferes with customary land records of a customary land court.

*Maximum penalty: [Amount of penalty yet to be determined.]*

**Division 2 — Modification of customary land practices****25 Modification of customary land practices**

The customary land practices of a clan lineage are taken to be modified as necessary to accommodate the following principles:

- (a) processes of negotiation and decision making must be conducted in a fair and equitable manner and without undue pressure; and
- (b) the clan lineage must be informed of the details of the proposed transaction (including the likely short term and long term effects of the transaction) in a manner likely to be understood, as far as practicable, by all members of the clan lineage, including those living with disabilities; and
- (c) men and women and persons of unspecified gender in the clan lineage must be given a reasonable opportunity to participate in the processes and must be accorded the same decision making capacity; and
- (d) if a registration agreement is proposed—
  - (i) the clan lineage must, on request, be provided independent advice about the proposed agreement (including the likely short term and long term effects of the agreement) at the cost of the proponent of the agreement; and
  - (ii) at least 80% of the members of the clan lineage must be in favour of the registration agreement (disregarding members who are too young to participate, or who are otherwise excluded from participating, according to the customary land practices of the clan lineage).



### Division 3 — Customary land court proceedings

#### 26 Proceedings for inclusion or modification of customary land record

- (1) Proceedings for the inclusion or modification of a customary land record in the records of a customary land court may be commenced—
- (a) on application to the court by a member of the clan lineage that is or is proposed to be identified in the record; or
  - (b) on application to the court by ABG for land that it proposes to relinquish and return to customary land; or
  - (c) by the presiding officer of the court acting on the mediator's own initiative or at the direction of the Registrar.

*Example—The Registrar might direct a presiding officer to initiate proceedings because official survey plans have been prepared that warrant the adjustment of boundaries included in the records or a presiding officer may choose to initiate proceedings to otherwise improve the coverage or accuracy of the records.*

- (2) However—
- (a) a customary land court must give priority to the determination of proceedings commenced on application or at the direction of the Registrar; and
  - (b) for the inclusion of a customary land record or a modification that involves the addition of land to a customary land record—the proceedings cannot be commenced unless the customary land court is satisfied that the chief and other traditional leaders of the clan lineage consent to the inclusion of the land in the customary land records.
- (3) An application for modification of a customary land record includes an application for the following:
- (a) to modify the record to take account of a transfer of customary land to a different clan lineage or the division of land between different clan lineages through succession or otherwise;
  - (b) to update the boundaries of the land by defining them by reference to an official survey plan;
  - (c) to update the list of members of a clan lineage;
  - (d) to include more detail on the customary land practices of a clan lineage;
  - (e) to update the membership of a registration management committee;
  - (f) to include more detail on the principal features of the land;
  - (g) to include rights under customary land transactions;
  - (h) to otherwise modify the record in light of new information.

- (4) An application for the inclusion or modification of a customary land record in the records of a customary land court must—
- (a) be made in the form required by the Secretary; and
  - (b) if the land to which the application relates extends into the area of another customary land court—identify the land in that other area; and
  - (c) include details of any proposal for a registration agreement relating to the land; and
  - (d) for the inclusion of a customary land record or a modification involving the addition of customary land to a record—be accompanied by—
    - (i) evidence of the consent of the chief and other traditional leaders of the clan lineage to the inclusion or addition; and
    - (ii) a copy of the results of a search of the registers for entries relating to the land; and
  - (e) comply with any requirements of the regulations; and
  - (f) be accompanied by the fee fixed by the regulations.
- (5) However, no fee may be charged for an application to update the list of members of a clan lineage or the membership of a registration management committee.
- (6) In proceedings for the inclusion or modification of a customary land record, the customary land court may make a customary land (record) order.
- (7) If a customary land court decides not to make an order on an application for the inclusion or modification of a customary land record, the presiding officer of the court must cause the applicant to be informed of—
- (a) the decision; and
  - (b) the right to apply for review of the decision.

## **27 Proceedings for resolution of land dispute**

- (1) Proceedings for resolution of a land dispute over customary land in the area of a customary land court may be commenced on application to the court by any person involved in the dispute.
- (2) However—
- (a) a customary land court does not have jurisdiction to resolve a dispute arising under a registered interest; and
  - (b) the proceedings cannot be commenced unless the customary land court is satisfied that the chief and other traditional leaders of each clan lineage involved in the dispute have been given a reasonable opportunity to resolve the dispute without recourse to the court.

- (3) In resolving a land dispute, chiefs and other traditional leaders may determine that an application is to be made for the inclusion or modification of a customary land record in the records of a customary land court.
- (4) Chiefs and other traditional leaders and customary land courts must, in resolving a land dispute, take account of the principles in Division 2.
- (5) An application for resolution of a land dispute must—
  - (a) be made in the form required by the Secretary; and
  - (b) if the land to which the application relates extends into the area of another customary land court—identify the land in that other area; and
  - (c) specify the steps that have been taken to give the chief and other traditional leaders of each clan lineage involved in the dispute a reasonable opportunity to resolve the dispute without recourse to the court; and
  - (d) comply with any requirements of the regulations; and
  - (e) be accompanied by the fee fixed by the regulations.
- (6) In proceedings for resolution of a land dispute, a customary land court may make either or both of the following orders:
  - (a) a customary land (record) order;
  - (b) a customary land (restitution) order.
- (7) If a customary land court decides not to make an order on an application for resolution of a land dispute, the presiding officer of the court must cause the applicant to be informed of—
  - (a) the decision; and
  - (b) the right to apply for review of the decision.

## **28 Customary land (record) order**

- (1) A **customary land (record) order** must specify the terms of—
  - (a) a customary land record to be included in the customary land records of the court; or
  - (b) a modification of a customary land record in the customary land records of the court.
- (2) In making a customary land (record) order, a customary land court must—
  - (a) apply the principles set out in Section 16; and
  - (b) give chiefs, other traditional leaders and other interested persons a reasonable opportunity to make submissions.

**29 Customary land (restitution) order**

- (1) A **customary land (restitution) order** must—
- (a) specify the action that the customary land court requires to be taken or refrained from being taken for the resolution of a land dispute; and
  - (b) identify the persons bound by the order (which may be by reference to membership of a clan lineage).
- (2) Without limiting the terms of a customary land (restitution) order, a customary land (restitution) order may include terms designed —
- (a) to recognise the terms of, and ensure compliance with customary land practices set out in, a customary land (record) order made in the proceedings; or
  - (b) to remedy or mitigate the consequences of a failure to recognise those terms or comply with those customary land practices; or
  - (c) to prevent further contraventions of a customary land transaction; or
  - (d) to remedy or mitigate the consequences of a failure to comply with a customary land transaction.
- (3) However—
- (a) a customary land (restitution) order cannot include a requirement to remedy or mitigate consequences by the payment of compensation, or the provision of goods or services to a value, exceeding K5,000 or such greater amount as is specified in the regulations; and
  - (b) any such requirement included in a customary land (restitution) order should be commensurate to actual damage or loss suffered and must not be imposed as a punishment.
- (4) Before making a customary land (restitution) order, a customary land court must give persons to be bound by the order a reasonable opportunity to make submissions.
- (5) The presiding officer of a customary land court must cause the persons bound by a customary land (restitution) order to be given a copy of the order.
- (6) If members of a clan lineage are to be bound by a customary land (restitution) order, Subsections (4) and (5) are complied with by communicating with, and providing copies to, chiefs or other traditional leaders as the presiding officer of the customary land court considers appropriate in the circumstances.

**30 Offence—contravention of customary land (restitution) order**

A person commits an offence if the person, without reasonable excuse, contravenes a customary land (restitution) order.

*Maximum penalty: [Amount of penalty yet to be determined.]*

**Division 4 — Registration affecting customary land*****Sub-division 1 — Introduction*****31 Creation of registered interest**

A registered interest in customary land can only be created if—

- (a) there is a customary land record for the land in the records of a customary land court; and
- (b) a registration agreement is agreed and acknowledged by the clan lineage identified in the record according to the customary land practices identified in the record; and
- (c) a registration management committee for the interest has been established in accordance with the registration agreement; and
- (d) there is a customary land (registration) order approving registration of the interest.

*Note—Limitations may apply to the registration of a mortgage over customary land: see Section (3).*

**32 Amendment or transfer of registered interest**

- (1) A registered interest in customary land can be amended or transferred only if—
  - (a) a registration agreement for the amendment or transfer is agreed and acknowledged in the same manner as for registration of the interest; and
  - (b) there is a customary land (registration) order approving the amendment or transfer.
- (2) This section does not apply to—
  - (a) the transmission of a registered interest; or
  - (b) the grant of an ABG lease over customary land leased to ABG; or
  - (c) the transfer of a registered lease of customary land in accordance with the terms of the registered lease.

*Drafting note: Are these exclusions correct?*

**33 Registration of land as ABG land**

- (1) An area of customary land can be registered as ABG land only if—
  - (a) the land is required for a public purpose or to be retained for future use for a public purpose; and
  - (b) there is a customary land record for the land in the customary land records of a customary land court; and
  - (c) a registration agreement is agreed and acknowledged by the clan lineage identified in the record according to the customary land practices identified in the record; and
  - (d) there is a customary land (registration) order approving registration of the land as ABG land.
- (2) The registration of an area of customary land as ABG land may be subject to the registration of an easement or ABG lease.
- (3) Before customary land can be registered as ABG land, any registered lease or mortgage over the customary land must be surrendered, terminated, discharged or otherwise extinguished.
- (4) A registered easement over customary land remains in place despite registration of the land as ABG land unless the easement is extinguished.

**34 Registration agreement**

- (1) The parties to a registration agreement must be—
  - (a) the clan lineage to whom the land belongs; and
  - (b) —
    - (i) for an agreement relating to an easement other than a public right of way or public right of way by foot—a person on whom rights will be conferred by the easement; and
    - (ii) for an agreement relating to a lease other than to ABG—the lessee or proposed lessee; and
    - (iii) for an agreement relating to a mortgage—the mortgagee or proposed mortgagee; and
    - (iv) for an agreement for land to be registered as ABG land or relating to a lease to ABG—the Minister (who can only become a party with the approval of the Bougainville Executive Council).
- (2) A registration agreement for an easement comprised of a public right of way or public right of way by foot may be entered into by the clan lineage to whom the land belongs acting without another party.

- (3) A registration agreement must—
- (a) be in writing; and
  - (b) specify whether it is an agreement for—
    - (i) registration of an easement, lease or mortgage; or
    - (ii) registration of an amendment or transfer of an easement, lease or mortgage; or
    - (iii) registration of an area of customary land as ABG land; and
  - (c) identify the customary land to which it relates; and
  - (d) identify the clan lineage to whom the land belongs; and
  - (e) be accompanied by a copy of the instruments to be lodged for registration; and
  - (f) specify—
    - (i) the details of all registration obligations; and
    - (ii) the details of all registration proceeds; and
  - (g) for registration of a mortgage—contain a clear warning about the effect of default in obligations under the mortgage; and
  - (h) for registration of an interest—
    - (i) provide for the establishment of a registration management committee for the interest; and
    - (ii) set out a process for substitution of the committee or a committee member; and
    - (iii) describe the arrangements that the committee must follow for—
      - (A) managing the performance of registration obligations (including how amounts required for mortgage repayments are to be raised); and
      - (B) safeguarding and distributing or using registration proceeds; and
      - (C) making decisions related to the interest, including decisions about amendment or transfer of the interest;
    - (iv) specify how the arrangements can be varied; and
  - (i) comply with any other requirements specified in the regulations.
- (4) The regulations may specify circumstances in which a registration management committee is not required to be established for registration affecting customary land.

**Sub-division 2 — Customary land court proceedings****35 Proceedings for approval for registration**

- (1) Proceedings for an approval required under this Division for registration affecting land for which there is a customary land record in the records of a customary land court may be commenced on application to the court.
- (2) An application for an approval for registration must—
  - (a) be made in the form required by the Secretary; and
  - (b) be made by the registration management committee established under the registration agreement; and
  - (c) if the land for which an approval is required extends into the area of another customary land court—identify the land in that other area; and
  - (d) be accompanied by a copy of—
    - (i) the registration agreement; and
    - (ii) each instrument proposed to be lodged for registration; and
    - (iii) the results of a search of the registers for entries relating to the land; and
  - (e) comply with any requirements set out in the regulations; and
  - (f) be accompanied by the fee fixed by the regulations.
- (3) In proceedings for an approval for registration, a customary land court may make a customary land (registration) order.
- (4) If a customary land court decides not to make a customary land (registration) order in proceedings for an approval for registration, the presiding officer of the court—
  - (a) must inform the applicant of—
    - (i) the decision; and
    - (ii) the right to apply for review of the decision; and
  - (b) may give the applicant directions about changes that may lead the court to make a customary land (registration) order.

**36 Customary land (registration) order**

- (1) A **customary land (registration) order** must—
  - (a) identify the registration agreement and the instruments proposed to be lodged for registration to which the order relates; and
  - (b) confirm that there is a customary land record for the land in the customary land records of the court; and



- (c) if an interest in customary land is to be registered—identify the members of the registration management committee for the interest; and
  - (d) approve registration as proposed by the registration agreement.
- (2) Before making a customary land (registration) order, a customary land court must—
  - (a) give chiefs, other traditional leaders and other interested persons a reasonable opportunity to make submissions; and
  - (b) if the order is for a mortgage—endeavour to ensure that the clan lineage understands that the mortgagee may sell or take over the land if the clan lineage fails to fulfil its obligations under the mortgage; and
  - (c) endeavour to ensure that members of the registration management committee understand their obligations.
- (3) In making a decision in proceedings for an approval for registration, a customary land court must consider—
  - (a) whether or not each of the following requirements is met:
    - (i) there is a customary land record for the land in the customary land records of the court;
    - (ii) the registration agreement is agreed and acknowledged by the clan lineage identified in the record according to the customary land practices identified in the record;
    - (iii) the requirements of this Act are met by the registration agreement and each instrument proposed to be lodged for registration;
    - (iv) the members of the registration management committee have been appointed in accordance with the registration agreement; and
  - (b) whether, even if all of the requirements in Paragraph (a) are met—
    - (i) there is reason to suspect that there has been a contravention of the principles in Division 2; or
    - (ii) the terms of the registration agreement are harsh, unjust or unreasonable; or
    - (iii) the terms of any proposed registered interest in land (including as amended or transferred) are unnecessarily restrictive of the exercise of customary rights or are otherwise unsatisfactory; or
    - (iv) there is reason to suspect that the registration management committee will not act in the best interests of the clan lineage or is unlikely to be able to perform its responsibilities; or
    - (v) the arrangements for management of the performance of registration obligations or safeguarding and distributing or using registration proceeds are otherwise inadequate.

**Sub-division 3 — Registration management committees****37 Registration management committee**

- (1) A registration management committee for an interest in customary land must be comprised of 2 men, and 2 women, of the clan lineage to whom the land belongs.
- (2) A person of unspecified gender may assume a gender for the purposes of appointment as a member of a registration management committee.
- (3) A registration management committee or a member of a registration management committee may be substituted in accordance with the process set out in the registration agreement under which the committee is established.
- (4) A decision made by a majority of the members of a registration management committee is a decision of the committee.
- (5) An act or proceeding of a registration management committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (6) A registration management committee may, subject to this Act and the registration agreement under which it is established, determine its own procedures.

**38 Responsibilities of registration management committee**

- (1) A registration management committee for an interest in customary land is bound to act—
  - (a) in the best interests of the clan lineage to whom the land belongs; and
  - (b) in accordance with the registration agreement under which the committee is established.
- (2) A registration management committee has the following responsibilities:
  - (a) to make an application for the customary land (registration) order required for registration of the interest; and
  - (b) if a customary land (registration) order is made—to make an application for registration of the interest; and
  - (c) if the interest is registered and the membership of the committee changes—to apply to the relevant customary land court immediately to update the record of the membership of the committee and include the name and contact details of any new member; and
  - (d) to give and receive notices under the registration agreement, as required for registration of the interest and under the interest; and
  - (e) to manage the performance of registration obligations in accordance with the registration agreement; and

- (f) to receive, safeguard and distribute or use registration proceeds in accordance with the registration agreement; and
- (g) to give consent as lessor or mortgagor or otherwise as required in relation to the registered interest, in accordance with the registration agreement; and
- (h) to keep the registration agreement and the arrangements relating to registration proceeds and registration obligations under review and propose amendments to the clan lineage (as provided for in the agreement) as the committee considers appropriate; and
- (i) to perform any other obligations imposed on the committee by the regulations.

### **39 Assistance to registration management committee**

- (1) If a registration management committee is unsure about how it should act in a particular matter, the committee may seek the assistance of the Registrar or the Secretary.
- (2) The Registrar and Secretary must—
  - (a) endeavour to assist registration management committees to perform their responsibilities; and
  - (b) coordinate the provision of assistance to registration management committees.

### **40 Complaint about registration management committee**

- (1) Any person may make a complaint to the Registrar or the Secretary about the conduct of a registration management committee or a member or former member of a registration management committee.
- (2) The Registrar and Secretary should work cooperatively to ensure that each complaint is investigated and appropriate steps are taken to address any concerns.
- (3) However, a complaint need not be investigated if, in the opinion of the Registrar or Secretary, it is frivolous or vexatious.

### **41 Monitoring and investigating activities of registration management committee**

- (1) The Registrar or Secretary may issue directions under this section, on a complaint or on the Registrar's or Secretary's own initiative, for the purposes of—
  - (a) determining whether there is a registration management committee for a registered interest in customary land; or
  - (b) monitoring or investigating whether a registration management committee is fulfilling its responsibilities and complying with this Act and the regulations; or

- (c) investigating whether a person has acted unlawfully, improperly, negligently or unfairly as a member or former member of a registration management committee.
- (2) The directions that may be issued under this section are as follows:
  - (a) a direction requiring a registration management committee—
    - (i) to give the Registrar or Secretary or a nominated person—
      - (A) a copy of specified records kept by the committee; or
      - (B) specified information relating to the committee or the performance of the responsibilities of the committee; or
    - (ii) to cause financial records and accounts kept by the committee to be audited by an auditor appointed by the Registrar or Secretary and to give the auditor's report to the Registrar or Secretary or a nominated person;
  - (b) a direction requiring a member or former member of a registration management committee—
    - (i) to give the Registrar or Secretary or a nominated person—
      - (A) a copy of specified records kept by the person; or
      - (B) specified information relating to the conduct of the person or the registration management committee; or
    - (ii) to appear before the Registrar or Secretary or a nominated person at a specified time and place to answer questions or provide information or evidentiary material;
  - (c) a direction requiring a registration management committee or member or former member of a registration management committee to refrain from taking specified action (such as distributing or using registration proceeds) until further notice from the Registrar or Secretary.
- (3) Directions may be issued orally or in writing.

#### **42 Action to achieve compliance**

The Registrar or Secretary may do one or more of the following:

- (a) inform a clan lineage of anything determined or found in the exercise of powers under Section 41; and
- (b) assist the clan lineage to use powers provided in a registration agreement—
  - (i) to substitute the registration management committee or a member of the registration management committee; or
  - (ii) to modify the arrangements for the performance of registration obligations or the safeguarding of registration proceeds; and

- (c) after consulting with the chief or other traditional leaders of the clan lineage, direct a registration management committee to take specified action—
  - (i) to fulfil a responsibility of the committee; or
  - (ii) to remedy or mitigate the consequences of a failure to fulfil a responsibility of the committee.

#### 43 Offence—refusal or failure to comply with directions

A person commits an offence if the person, without reasonable excuse, refuses or fails to comply with a direction of the Registrar or Secretary under this Division.

*Maximum penalty: [Amount of penalty yet to be determined.]*

### Division 5 — Stop orders

#### 44 Stop orders

- (1) A customary land court may make a **stop order**—
  - (a) to prevent land being affected in a way that is not easily reversible in circumstances in which there is a land dispute; or
  - (b) to safeguard registration proceeds or other consideration for a customary land transaction; or
  - (c) to safeguard money or other items that are required for the performance of registration obligations or other obligations under a customary land transaction; or
  - (d) to maintain peace in circumstances in which there is a land dispute.
- (2) A stop order must specify—
  - (a) the person or persons to whom it is directed (which may be a registration management committee or the members of a clan lineage); and
  - (b) the action that the person or persons must refrain from taking; and
  - (c) the period for which the stop order will remain in force (which may be until it is revoked or specified proceedings are finally determined (whichever first occurs)).

*Example—A stop order may be directed at stopping construction or logging or the use or distribution of proceeds of a customary land transaction until a land dispute is resolved.*
- (3) A stop order may be directed at an individual, body corporate, registration management committee or clan lineage.
- (4) A stop order may be made by a customary land court—
  - (a) on its own initiative; or

- (b) on application by—
    - (i) an applicant in proceedings before the court; or
    - (ii) a person who satisfies the court that the person has a proper interest in the matter.
- (5) An application for a stop order—
  - (a) must be made in the form required by the Secretary; and
  - (b) must state—
    - (i) the person or persons to whom the applicant proposes a stop order should be directed; and
    - (ii) the action that the applicant proposes the person or persons should refrain from taking; and
    - (iii) the grounds on which the applicant relies for the proposal; and
    - (iv) the facts that, in the applicant's opinion, establish the grounds; and
  - (c) must comply with any requirements of the regulations; and
  - (d) must be accompanied by the fee fixed by the regulations.
- (6) Before making a stop order, the customary land court must, unless satisfied that there are urgent circumstances, ensure that the persons to whom it is directed are given a reasonable opportunity to show cause why an order should not be made.
- (7) The presiding officer of a customary land court must cause the persons bound by a stop order to be given a copy of the order.
- (8) If a stop order is directed at members of a clan lineage, Subsections (6) and (7) are complied with by communicating with, and providing copies to, chiefs or other traditional leaders as the presiding officer of the customary land court considers appropriate in the circumstances.
- (9) A customary land court may, by order, vary or revoke a stop order—
  - (a) on its own initiative; or
  - (b) on the application of a person to whom the order is directed.
- (10) If a customary land court decides not to make, vary or revoke a stop order on an application, the presiding officer of the court must cause the applicant to be informed of—
  - (a) the decision; and
  - (b) the right to apply for review of the decision.

**45 Offence—contravention of stop order**

A person commits an offence if, without reasonable excuse, the person contravenes a stop order.

*Maximum penalty: [Amount of penalty yet to be determined.]*

**PART 4 — CUSTOMARY LAND COURTS****Division 1 — Establishment and administration****46 Establishment of customary land courts**

- (1) A customary land court is established to sit alongside each community government.
- (2) The community government area is the area of the customary land court.
- (3) This section does not apply to an urban community government if there is no customary land in the urban community government area.

**47 Head of other Bougainville Courts excluded**

The Head of other Bougainville Courts (within the meaning of the Bougainville Constitution) is not an *ex officio* member of a customary land court.

**48 Appointments to customary land courts**

- (1) The Bougainville Executive Council must appoint the following to each customary land court following consultation under this section:
  - (a) a presiding officer;
  - (b) a panel of male land xors;
  - (c) a panel of female land mediators.
- (2) The same number of land mediators should be appointed to each panel.
- (3) A presiding officer must be—
  - (a) a lawyer; or
  - (b) a person who has satisfactorily completed a course of training for the role approved under Section 49.
- (4) A land mediator—
  - (a) must be a Bougainvillean who is at least 18 years of age and normally resides in the area of the customary land court; and

- (b) must not be a member of a community government, a member of the House of Representatives or National Parliament, or a candidate in an election of such members.
- (5) The Secretary must consult on proposed appointments to a customary land court—
  - (a) with chiefs, other traditional leaders and the community government to ensure that the proposed appointments are acceptable to the community; and
  - (b) with the Registrar.
- (6) The appointments must be made by notice in the Bougainville Gazette.
- (7) A person of unspecified gender may assume a gender for the purposes of appointment as a land mediator.

#### **49 Training**

- (1) The Secretary—
  - (a) must approve a course of training for the role of presiding officer of a customary land court; and
  - (b) must oversee the provision of the course and the assessment of satisfactory completion of the course; and
  - (c) as resources allow—
    - (i) oversee the development and provision of further training for the professional development of presiding officers; and
    - (ii) oversee the development and provision of training for the professional development of land mediators.
- (2) As far as is practicable—
  - (a) courses of training should be prepared and delivered by Public Service officers or reputable local education providers (initially with the assistance of legal or other advisers); and
  - (b) courses of training should aim to ensure that students gain an in depth knowledge of this Act and how it should be applied in practice; and
  - (c) courses of training for the role of presiding officer should be offered to land mediators and others to create a pool of potential candidates for appointment as presiding officers.

#### **50 Terms and conditions of office of presiding officer and land mediators**

- (1) Subject to this Act, presiding officers and land mediators are appointed on terms and conditions determined by the Bougainville Executive Council.



- (2) The term of office of a presiding officer or land mediator commences when, following appointment, the presiding officer or land mediator makes, before the Manager of the community government, the following declaration of office:

*“I [name of presiding officer or land mediator] promise that I will well and truly serve the people of Bougainville as [the presiding officer/a land mediator] of the customary land court for [name of community government area].”*

- (3) A presiding officer or land mediator is appointed for 5 years or such shorter term as is specified in the notice of appointment.

*Note—Care should be taken to ensure that the terms of office of land mediators on a panel are staggered so that they do not all expire at the same time. Land mediators should share knowledge amongst themselves to ensure continuity in the performance of the functions of the customary land court.*

- (4) At the expiration of a term of appointment, a presiding officer or land mediator is eligible for reappointment.
- (5) A land mediator may resign by written notice to the presiding officer of the customary land court.
- (6) A presiding officer may resign by written notice to the Manager of the community government of the area of the customary land court.
- (7) A land mediator is taken to have resigned if the land mediator—
- (a) ceases to reside in the area of the customary land court; or
  - (b) becomes a candidate in an election of members of a community government, the House of Representatives or the National Parliament.
- (8) The Bougainville Executive Council may, by notice in the Bougainville Gazette made on the recommendation of the Secretary, remove a presiding officer or land mediator from office—
- (a) for contravention of a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.

## **51 Record of clan lineage of members of court and spouses**

- (1) The records of a customary land court must include a written record for each presiding officer and land mediator of the clan lineage of the officer or mediator and the officer’s or mediator’s spouse.
- (2) A presiding officer or land mediator must provide information for the record.
- (3) The record must be made readily accessible to any person with an interest in proceedings before the customary land court.

**52 Administration of customary land courts**

- (1) The presiding officer of a customary land court is responsible for the administration of the court.
- (2) The presiding officer may enter into the following agreements for the administration of the court:
  - (a) an agreement with the Secretary responsible for the Public Service for Public Service officers to assist the presiding officer in the administration of the court;
  - (b) an agreement with the Manager of the community government for staff of the community government to assist the presiding officer in the administration of the court.
- (3) An agreement made by a presiding officer continues in force even if the presiding officer ceases to hold office.
- (4) While a Public Service officer is assisting a presiding officer of a customary land court, lawful directions given to the officer by the presiding officer prevail over directions given to the officer by the Secretary responsible for the Department in which the officer is employed, to the extent of any inconsistency.
- (5) While a community government staff member is assisting a presiding officer of a customary land court, lawful directions given to the staff member by the presiding officer prevail over directions given to the staff member by the Manager of the community government, to the extent of any inconsistency.

**53 Delegation by presiding officer**

- (1) A presiding officer of a customary land court may delegate to a land mediator of the court a function or power under this Act (other than a function or power excluded from delegation by the regulations).
- (2) A function or power delegated by a presiding officer may not be further delegated unless that is expressly allowed by the presiding officer.

*Note—Part II Division 10 of the Interpretation Act 2005 contains provisions relevant to delegations under Bougainville law.*

**Division 2 — Jurisdiction****54 Jurisdiction**

A customary land court has the jurisdiction conferred on it by Part 3.

**55 Jurisdiction if customary land in areas of 2 or more customary land courts**

- (1) If customary land proceedings affect land in the areas of 2 or more customary land courts, the presiding officers of the courts may agree—
  - (a) that the courts will sit together to determine the proceedings; or
  - (b) that one of the courts will determine the proceedings on behalf of all or some of the courts.
- (2) If the customary land proceedings were commenced on application, the applicant must agree to the customary land courts determining the proceedings in the manner proposed by the courts.
- (3) If Subsection (1)(a) applies and the proceedings were commenced on application, the application is taken to have been made to each of the customary land courts.
- (4) If Subsection (1)(b) applies, the jurisdiction of the customary land court determining the proceedings is extended to include the jurisdiction of the other customary land courts.
- (5) If proceedings are determined as referred to in this section, any order made in the proceedings is taken to have been made by each of the customary land courts.

**Division 3 — Constitution of court and decision making****56 Constitution of customary land court for particular proceedings**

- (1) Subject to Subsection (2), a customary land court is to be constituted for particular proceedings of—
  - (a) the presiding officer of the court; and
  - (b) either—
    - (i) 1 male and 1 female land mediator chosen by the presiding officer from the panels of land mediators of the court; or
    - (ii) 2 male and 2 female land mediators chosen by the presiding officer from the panels of land mediators of the court.
- (2) A customary land court is to be constituted of the presiding officer of the court, or a land mediator nominated by the presiding officer, sitting alone for an application for modification of a customary land record to update—
  - (a) members of a clan lineage; or
  - (b) members of a registration management committee; or
  - (c) principal features of customary land.
- (3) A customary land court may, at the same time, be separately constituted for a number of separate proceedings.

- (4) The presiding officer of a customary land court may constitute the court separately for the mediation or community consultation stage and the other stages of proceedings.
- (5) While the matter is up to the presiding officer—
  - (a) the following principles apply to the choice of land mediators to constitute the customary land court for particular proceedings:
    - (i) the land mediators chosen should be members of different clan lineages;
    - (ii) only 2 land mediators should be appointed to constitute the court for the mediation or community consultation stage of proceedings;
    - (iii) unless an applicant objects, the same land mediators should be chosen for proceedings relating to the same or substantially the same land;
    - (iv) if the court is sitting with another customary land court—the courts should choose the same number of land mediators; and
  - (b) the presiding officer may consult chiefs and other traditional leaders and the community government before choosing the land mediators for particular proceedings.

#### **57 Substitution of members to continue and complete proceedings**

- (1) If a presiding officer dies or is for any reason unable to continue to be involved in particular proceedings—
  - (a) the presiding officer may be replaced by a person appointed to act as the presiding officer under Section 39 of the *Interpretation Act* 2005; and
  - (b) the customary land court may continue and complete the proceedings.
- (2) If a land mediator dies or is for any reason unable to continue to be involved in particular proceedings—
  - (a) the presiding officer may choose a replacement land mediator from the same panel of land mediators; and
  - (b) the customary land court may continue and complete the proceedings.

#### **58 Decision making by customary land court**

- (1) Questions of law that arise in proceedings before a customary land court—
  - (a) if the presiding officer of the court is a lawyer—may be decided by the presiding officer or referred by the presiding officer for decision of the District Court; and
  - (b) in any other case—must be referred by the presiding officer for decision of the District Court.

- (2) Questions of process and procedure of the customary land court that arise in proceedings before the court must be decided by the presiding officer.
- (3) Other questions in proceedings before a customary land court must be decided—
  - (a) by majority decision of the land mediators constituting the court; or
  - (b) if there is an equal division of opinion—by the presiding officer or a person appointed by the presiding officer to resolve the matter.
- (4) If customary land courts sit together to determine customary land proceedings, other questions in the proceedings must be decided—
  - (a) by majority decision of the land mediators constituting the courts; or
  - (b) if there is an equal division of opinion between those land mediators—by majority decision of the presiding officers; or
  - (c) if there is an equal division of opinion between the presiding officers—by a person appointed by the presiding officers to resolve the matter; or
  - (d) if the presiding officers cannot agree on the appointment of a person to resolve the matter—by a person appointed by the Secretary to resolve the matter.

## **59 Preparation of orders**

- (1) The presiding officer of a customary land court is responsible for preparing an order of the court according to the decision of the court.
- (2) Before finalising an order, the presiding officer must give each land mediator constituting the court in the proceedings a reasonable opportunity to comment on a draft of the order.
- (3) An order must include a statement about the right to apply for review of the decision to make the order.
- (4) The presiding officer of a customary land court is responsible for causing a copy (certified by the presiding officer) of an order of the court to be given to—
  - (a) an applicant for the order; or
  - (b) if the proceedings are initiated by the presiding officer—to chiefs or other traditional leaders as the presiding officer considers appropriate.

## **60 Evidentiary effect of certified orders**

An order appearing to be certified by the presiding officer of a customary land court as an order of the court must, in the absence of proof to the contrary, be taken to be a true copy of the order of the court.

## Division 4 — Procedure

### 61 Principles governing proceedings

- (1) The following principles govern the conduct of proceedings before a customary land court:
  - (a) the proceedings must be conducted with a minimum of formality;
  - (b) the court is not bound by rules of evidence and may inform itself as it thinks fit.
- (2) A customary land court must endeavour to conduct its proceedings in a manner that—
  - (a) is designed to maintain or restore harmony in relationships between people; and
  - (b) is fair and equitable; and
  - (c) is inclusive of women and people who live with disabilities; and
  - (d) allows adequate time for chiefs, other traditional leaders and other interested persons to contribute to the proceedings; and
  - (e) is otherwise respectful of the customs of communities about how information and evidentiary material is submitted and discussed.

### 62 No legal representation and no costs

- (1) No person may be legally represented when appearing before a customary land court to provide information or evidentiary material or at a community or other meeting held in the course of the proceedings of a customary land court.
- (2) A customary land court cannot award costs to any person in proceedings.

### 63 Rejection of application

- (1) The presiding officer of a customary land court may reject an application to the court if satisfied that—
  - (a) the application is frivolous or vexatious; or
  - (b) the application does not meet the requirements of this Act and there is no reasonable prospect of rectifying the defects under Section 64.
- (2) If an application is rejected, the presiding officer must cause the applicant to be given a written notice of the rejection.

**64 Rectification of defects in application**

- (1) An applicant must, at the request of the presiding officer of the customary land court to which an application has been made, provide further information or take further action that is, in the opinion of the presiding officer, necessary to enable the application to be determined.
- (2) The presiding officer of a customary land court may, by written notice to an applicant, propose modifications to an application so as to—
  - (a) identify an area of customary land with sufficient specificity to enable the application to be determined; or
  - (b) identify a clan lineage with sufficient specificity to enable the application to be determined; or
  - (c) identify the nature of a land dispute with sufficient specificity to enable the application to be determined; or
  - (d) remedy any other defects in the application.
- (3) If an applicant does not agree to the modifications proposed by the presiding officer within the period allowed in the notice of modifications (or such longer period as the presiding officer allows), the application is taken to be withdrawn.

**65 Notification of application**

- (1) If there is a registered lease, registered ABG lease or registered mortgage over customary land to which an application for a customary land (registration) order relates, the presiding officer of the customary land court must cause each of the lessees or mortgagees to be given written notice of the application.
- (2) If customary land proceedings are commenced on application and the application identifies that it relates to land that extends into the area of another customary land court, the presiding officer of the customary land court to which the application is made must cause a copy of the application to be forwarded to the other customary land court.

*Note—The customary land courts can then consider whether the proceedings should be dealt with under Section 55.*

**66 Schedule of proceedings**

- (1) As soon as reasonably practicable after a customary land court is constituted of land mediators for particular proceedings, the court must meet to determine how it will organise the proceedings.

- (2) The following principles apply to the organisation of proceedings:
- (a) the proceedings must be organised in a manner designed to facilitate the gathering of information and evidentiary material necessary to enable the customary land court to determine the proceedings efficiently and effectively;
  - (b) there must be an initial mediation or community consultation stage;
  - (c) mediation and community consultation should take place on or in the vicinity of the land the subject of the proceedings;
  - (d) the mediation or community consultation stage should be as short as possible and should not, except in unusually complex or sensitive cases, involve more than 3 separate meetings.
- (3) If the proceedings are expected to require more than a further single meeting of the customary land court, a schedule of proceedings must be prepared that sets out—
- (a) the roles to be played by the presiding officer and individual land mediators; and
  - (b) the action that must be taken by the presiding officer and individual land mediators to share information with each other.
- (4) Without limiting the matters that may be included in a schedule, a schedule may include details about the following:
- (a) the holding of mediation or community consultation meetings;
  - (b) searching official records for anything relating to the land;
  - (c) conducting research on a clan lineage or the customary land practices of a clan lineage;
  - (d) determining whether written submissions will be accepted and, if so, how they may be made and the period within which they may be made;
  - (e) advertising the proceedings and calling for information and evidentiary material to be submitted;
  - (f) requiring an official land survey to be undertaken;
  - (g) meetings of the court (which may be held in private or in public).
- (5) If there is a lack of consensus on a schedule, the presiding officer is to decide the schedule.
- (6) A schedule may be modified by the presiding officer as progress is made in the proceedings.



**67 Adjournment**

Any meeting of the customary land court in proceedings (including any community or other meeting held by the court) may be adjourned from time to time and from place to place.

**68 Production of information and evidentiary material**

- (1) The presiding officer of a customary land court may direct a person to do either or both of the following:
  - (a) to appear before the court or a nominated person at a specified time and place to provide information or evidentiary material;
  - (b) to provide evidentiary material to the court or to a nominated person.
- (2) The direction may be oral or written.
- (3) If a person contravenes the direction, the presiding officer may order that—
  - (a) the person be arrested and brought before the customary land court or nominated person; or
  - (b) the evidentiary material be seized and provided to the customary land court or nominated person.

**69 Offence—contravention of direction to appear or produce evidentiary material**

A person commits an offence if the person, without reasonable excuse, refuses to appear or to provide information or evidentiary material as directed by the presiding officer under Section 68.

*Maximum penalty: [Amount of penalty yet to be determined.]*

**70 Offence—contempt in face of customary land court**

A person commits an offence if the person—

- (a) interrupts the proceedings of a customary land court or misbehaves before the court; or
- (b) insults a land mediator of a customary land court who is acting in the exercise of official functions; or
- (c) refuses, in the face of a customary land court, to obey a lawful direction of the court.

*Maximum penalty: [Amount of penalty yet to be determined.]*

## Division 5 — Official records

### 71 Official records of customary land court proceedings

- (1) The official records of a customary land court must include the following for proceedings before the customary land court:
  - (a) a copy of any application relating to the proceedings;
  - (b) if an application is forwarded to another customary land court—a record of the date on which it is forwarded and a copy or note of any response from that court;
  - (c) if an application is rejected by the presiding officer—a copy of the notice of the rejection given to the applicant and a record of the date on which the notice is given;
  - (d) if an application is modified—a copy of the application as modified;
  - (e) a copy of any schedule of proceedings and any modifications of the schedule;
  - (f) the results of any search of the registers, research or surveys conducted;
  - (g) notes of who attends mediation or community consultation meetings including a description of when and where the meeting is held, who is present, how long it lasts and a brief description of the outcome of the meeting;
  - (h) a copy of, or notes about, any advertisement of the proceedings or call for information and evidentiary material;
  - (i) any written information or evidentiary material submitted;
  - (j) notes of any oral information submitted outside of community or other meetings;
  - (k) a copy of each order of the court in the proceedings;
  - (l) a note of the person to whom and the date on which a copy of the order is given as required by this Act.
- (2) The records must be made available for the purposes of a review, or an application for review, of a decision of the customary land court or an appeal from such a review, but, in doing so, reasonable steps must be taken to protect the integrity of the records.

### 72 Offence—interference with official records

A person commits an offence if the person intentionally destroys, defaces or otherwise improperly interferes with the official records of a customary land court.

*Maximum penalty: [Amount of penalty yet to be determined.]*

## Division 6 — Referral and reviews

### 73 Referral of disputes relating to registered interests to District Court

The presiding officer of a customary land court must refer a matter to the District Court to the extent that it involves a dispute relating to a registered interest.

### 74 Review of decision of customary land court

- (1) A person has a right to apply for review of a decision of a customary land court to the District Court as follows:
  - (a) an applicant in proceedings may apply for review of a decision of the customary land court not to make an order in the proceedings;
  - (b) a person aggrieved by a decision of a customary land court to make an order, or by the terms of an order, may apply for review of the decision.
- (2) Subject to this section, an application for review must be lodged with the District Court within 1 month after the making of the decision to which the application relates.
- (3) The presiding officer of a customary land court must, on application by a person who could apply for review of a decision of the court, give the person a written statement of the reasons for the court's decision.
- (4) The time for making an application for review runs from the time when the person receives the written statement of reasons if—
  - (a) a written statement of the reasons for a decision is not given by the presiding officer of a customary land court at the time of making the decision; and
  - (b) the person affected by the decision, within 1 month after receiving written notice of the decision, applies to the customary land court for a written statement of reasons for the decision.
- (5) On a review, the District Court may—
  - (a) in the case of a customary land (restitution) order or stop order—
    - (i) confirm the order; or
    - (ii) revoke the order; or
    - (iii) substitute the order with an order that the District Court considers appropriate; or
  - (b) in the case of a decision not to make a customary land (restitution) order or stop order—
    - (i) confirm the decision; or
    - (ii) make an order that the District Court considers appropriate; or

- (c) in any other case—
  - (i) confirm the decision of the customary land court; or
  - (ii) remit the matter to the customary land court for further consideration, with or without directions.
- (6) A customary land court must consider, but is not bound by, directions of the District Court given under Subsection (5)(c)(ii).

## **PART 5 — ABG LAND AND LAND LEASED TO ABG**

### **Division 1 — Care, control and management**

#### **75 Responsibility for land**

- (1) The Minister is responsible for the care, control and management of ABG land and of land leased to ABG.
- (2) The Minister may, by notice in the Bougainville Gazette made with the approval of the Bougainville Executive Council—
  - (a) place ABG land or land leased to ABG under the care, control and management of a specified government agency; and
  - (b) specify the public purpose for which the land is to be used or retained by ABG.
- (3) Responsibility for the care, control and management of ABG land or land leased to ABG is subject to the following conditions:
  - (a) that the land can only be used by ABG for the public purpose specified in the notice; and
  - (b) that interests and rights can only be granted in relation to the land in accordance with this Part.
- (4) A notice under this section may include other conditions on the care, control and management of the land.
- (5) The Minister may, by subsequent notice in the Bougainville Gazette made with the approval of the Bougainville Executive Council, vary or revoke a notice under Subsection (2).
- (6) The Secretary must lodge with the Registrar a copy of each notice made under this section for inclusion in the ABG register.

*Note—The Minister may delegate to a government agency responsible for the care, control and management of ABG land or land leased to ABG the Minister's powers to grant rights in relation to the land under Section 50.*

**Division 2 — Use of land****76 Public purpose**

- (1) ABG land or land leased to ABG can be—
- (a) used for a public purpose; or
  - (b) retained for future use for a public purpose.
- (2) Each of the following constitutes a public purpose:
- (a) public infrastructure such as any of the following for public or community use:
    - (i) electricity, water, drainage, sewerage and telecommunications infrastructure;
    - (ii) public access routes (including roads, tracks, bridges and pathways);
    - (iii) airports and airstrips;
    - (iv) ports, wharves, jetties, landings and moorings;
    - (v) hospitals and health centres;
    - (vi) cemeteries;
    - (vii) schools;
    - (viii) recreation areas and meeting facilities;
    - (ix) housing;
    - (x) prisons;
  - (b) government offices and facilities for a community government or ABG, including offices and facilities used by a governmental body, constitutional office-holder or a court or other authority established under the Constitution or law of ABG;
  - (c) national parks, conservation areas or other environment protection purposes;
  - (d) cultural or historic heritage protection;
  - (e) anything declared by the regulations or another Act to be a public purpose for the purposes of this Act.

**77 Offence—misuse of ABG land or land leased to ABG**

- (1) A person commits an offence if, without lawful authority or excuse, the person—
- (a) occupies ABG land or land leased to ABG for longer than any period specified in the regulations; or
  - (b) cultivates or keeps animals on ABG land or land leased to ABG; or
  - (c) drives a motor vehicle on ABG land or land leased to ABG other than on an established road or track or in circumstances specified in the regulations; or

- (d) damages or removes fossils or cultural or historic artefacts from ABG land or land leased to ABG; or
- (e) excavates or otherwise damages or interferes with ABG land or land leased to ABG, or anything on ABG land or land leased to ABG; or
- (f) cuts down, lops branches from or otherwise damages any tree or bush (whether alive or dead) on ABG land or land leased to ABG; or
- (g) erects any structure or fixture, or carries out any works, on ABG land or land leased to ABG; or
- (h) deposits litter or abandons property on ABG land or land leased to ABG; or
- (i) closes off or obstructs (whether by fences, gates or any means) a road or track on ABG land or land leased to ABG.

*Maximum penalty: [Amount of penalty yet to be determined.]*

- (2) An easement, lease, licence or consent granted under this Part constitutes lawful authority for the acts to which the easement, lease, licence or consent relates.

## **78 Powers of authorised officers**

An authorised officer may—

- (a) require a person who is on ABG land without lawful authority or excuse to leave the land; or
- (b) require a person reasonably suspected of having committed an offence in relation to ABG land—
  - (i) to state the person's name and address; and
  - (ii) to produce evidence of the person's name and address.

## **79 Offence—contravention of requirement by authorised officer**

A person commits an offence if the person fails to comply with a requirement of an authorised officer under Section 78.

*Maximum penalty: [Amount of penalty yet to be determined.]*

# **Division 3 — Interests and rights**

## **80 Grants of interests and rights**

- (1) The Minister may, subject to this Act—
- (a) grant an easement over ABG land; or
  - (b) grant an ABG lease of ABG land or land leased to ABG; or
  - (c) grant a licence over ABG land or land leased to ABG; or

- (d) grant consent to a person to conduct an activity on ABG land or land leased to ABG (not being an activity that should, in the opinion of the Minister, require an ABG lease or licence).
- (2) However—
  - (a) the Minister cannot grant an easement, licence or consent over land subject to an ABG lease without the consent of the lessee and any registered mortgagee of the lease; but
  - (b) the Minister may dispense with a requirement for consent if, in the opinion of the Minister, consent is being unreasonably withheld in circumstances where the lessee's or mortgagee's interests are not prejudiced by the licence.
- (3) A consent of the Minister to the conduct of an activity—
  - (a) is subject to such conditions as the Minister may specify; and
  - (b) may be revoked by the Minister at any time by subsequent written notice to the person to whom consent is granted.
- (4) A registered easement or ABG lease creates an interest in land, but a licence or consent does not.
- (5) Before altering how ABG land or land leased to ABG is used, any person who has an interest in, or rights in relation to, the land must be consulted.

*Drafting note: Can ABG exclude stamp duty on ABG leases and ABG licences and, if it can, would you want to do that?*

## **81 Remediation of condition by holder of interest or rights**

- (1) If the Secretary is satisfied that a person granted an interest in, or rights in relation to ABG land or land leased to ABG has caused or contributed to a condition associated with the land that requires remediation, the Secretary may issue a notice (a **remediation notice**) to the person.
- (2) Without limiting Subsection (1), a condition associated with the land will be taken to require remediation if the condition—
  - (a) is unsightly or offensive; or
  - (b) presents a risk to—
    - (i) the environment; or
    - (ii) the health or safety of any person; or
    - (iii) any property; or
  - (c) is likely to have the effect of reducing the rental value of the land.
- (3) A remediation notice cannot be issued if the condition is a reasonable consequence of the undertaking of an activity that ABG has specifically authorised or required to be undertaken on the land.

- (4) A remediation notice must—
- (a) be in writing; and
  - (b) describe the land and the condition to which the notice applies; and
  - (c) specify the action to be taken by the person to remediate the condition and the time within which such action must be taken (which must be reasonable).
- (5) A remediation notice may be varied or revoked by the Secretary by subsequent written notice.
- (6) If a person fails to comply with a remediation notice, the Secretary may cause the action required by the notice to be taken and may recover the reasonable costs of the action as a debt from the person to whom the notice is issued.

## **82 Offence—contravention of remediation notice**

A person commits an offence if the person, without reasonable excuse, contravenes a remediation notice.

*Maximum penalty: [Amount of penalty yet to be determined.]*

## **Division 4 — Easements over ABG land**

### **83 Easements over ABG land**

- (1) The Minister may grant an easement over ABG land of a kind set out in Section 137 if the Bougainville Executive Council approves the grant.
- (2) If ABG land is subject to an ABG lease, an easement can only be granted under Subsection (1) with the consent of the lessee.

*Note—The Registrar may dispense with the requirement for consent under Section ?.*

- (3) The Secretary must lodge with the Registrar a copy of an instrument of easement granted under Subsection (1) for registration against the ABG land concerned.

## **Division 5 — ABG leases**

### **84 ABG lease**

- (1) A lease (an **ABG lease**) of ABG land or land leased to ABG can only be granted in accordance with this Division.



- (2) An ABG lease of land leased to ABG must be consistent with the lease to ABG and is of no effect to the extent of any inconsistency.
- (3) An ABG lease can be granted—
  - (a) to a church, faith or other non-government organisation for the purposes of the church, faith or organisation providing infrastructure or services to a community, including religious, education or health services (an **ABG community services lease**); or
  - (b) if the land is in an urban community government area—to any person for residential, recreational, commercial or industrial purposes.
- (4) An ABG lease entitles the lessee, subject to this Act and for the term of the lease, to exclusive occupation and use of the land subject to the lease.

## **85 Registered interests and ABG lease**

- (1) An ABG lease is subject to—
  - (a) any easements lodged for registration before the lease is lodged for registration; and
  - (b) any easements lodged for registration after the lease is lodged for registration if the lessee consents to the easement or the Registrar dispenses with the requirement for the lessee's consent under Section ?.
- (2) A mortgage of an ABG lease may be registered if the mortgagee is approved by the Minister but a sale of the lease on default of obligations under the mortgage is subject to the Minister's approval of the new lessee.
- (3) The Minister must not unreasonably or capriciously refuse or withhold consent.

## **86 Process for grant and registration of ABG lease**

- (1) The regulations may—
  - (a) provide, or specify circumstances in which, an open competitive process is required for the grant of an ABG lease; and
  - (b) specify requirements for such a process or for an application for an ABG lease; and
  - (c) fix fees payable for the grant of an ABG lease.
- (2) If, on the recommendation of the Minister, the Bougainville Executive Council approves the grant of an ABG lease, the Secretary must cause an ABG lease acceptance form to be given to the prospective lessee.
- (3) An ABG lease acceptance form must specify—
  - (a) the land subject to the lease (preferably by reference to an official survey plan); and

- (b) any buildings, structures or fixtures on the land and their general state of repair; and
  - (c) the lessee and the lessee's contact details; and
  - (d) the term of the lease (being a term not shorter than 3 years and not longer than 25 years); and
  - (e) the purposes for which the land may be used; and
  - (f) for an ABG community services lease—the infrastructure or services to be provided by the lessee; and
  - (g) any limitations on the power of the lessee to sublease the whole or a portion of the land; and
  - (h) any other limitations on exclusive occupation and use of the land (including any limitations arising to allow the exercise of customary rights); and
  - (i) the annual rent and how the rent is to be paid; and
  - (j) any fees payable for the grant of the lease under the regulations and how those fees are to be paid; and
  - (k) how the ABG lease may be accepted; and
  - (l) the period (being at least 1 month) within which the Secretary must be informed of the acceptance.
- (4) On acceptance of an ABG lease in accordance with an ABG lease acceptance form, the Secretary must lodge the form with the Registrar for registration of the ABG lease.
- (5) The terms and conditions in a registered ABG lease acceptance form as amended by any instrument of amendment registered under this Act will be taken to comprise the ABG lease.

## **87 Purposes**

It is a condition of an ABG lease that the land must not be used other than for the purposes set out in the lease.

## **88 ABG community services lease**

- (1) It is a condition of an ABG community services lease that—
- (a) the lessee provide the infrastructure or services specified in the lease.
  - (b) the lessee must, on or before 31 March in each year, give the Secretary a written report about the operations of the lessee under the lease in the previous calendar year.
- (2) The Secretary must lodge each annual report received with the Registrar for inclusion of the report in the part of the ABG register for ABG leases.

**89 Improvements**

- (1) It is a condition of an ABG lease that—
- (a) the lessee must maintain improvements on the land in good order and condition; and
  - (b) the lessee may, subject to the lessee obtaining the necessary planning and building permissions (if any), improve the land, including by the construction of buildings, structures and fixtures as appropriate for the purpose for which the land may be used under the lease; and
  - (c) on expiry or surrender of the lease, if the lessee has made improvements to the land for which the lessee has not been compensated (including by a reduction in rent), the lessee may remove the improvements causing as little damage as reasonably possible to the land.
- (2) If ABG wishes to retain the improvements on the expiry or surrender of an ABG lease, it can do so by agreeing to compensate the lessee.

*Drafting note: Is this what is wanted for improvements by lessees?*

**90 Subleasing**

- (1) It is a condition of an ABG lease that the lessee may sublease the land subject to the ABG lease, subject to any limitations specified in the lease.
- (2) A sublease of an ABG lease creates a possessory right and not an interest in land and, if the ABG lease expires or is surrendered or terminated, the sublease ceases to exist.

**91 Limitations**

It is a condition of an ABG lease that the lessee comply with any other limitations on exclusive occupation and use of the land (including any limitations arising to allow the exercise of customary rights) specified in the lease.

**92 Rent**

- (1) It is a condition of an ABG lease that rent is paid annually in arrears.
- (2) The annual rent is to be determined and reviewed as set out in the regulations.

*Drafting note: Is it correct for rent to be annual in arrears? How is rent to be fixed? Does it vary depending on the improvements on the land? Do you want a “Valuer-General” or the Secretary or a Board to fix rents for ABG leases say at least every 5 or 10 years? Is it possible to talk about current market rent (or less if special circumstances exist) disregarding value of work carried out by lessee or improvements that do not belong to ABG. Should we leave this to regulations as drafted? But what if those regulations do not get made?*

- (3) The Minister may, with the approval of the Bougainville Executive Council, reduce the annual rent payable under a particular ABG lease for a particular year if satisfied that—
  - (a) some factor exists affecting the profitability of the lessee that has arisen since the last determination of the annual rent for the lease; or
  - (b) the lessee has carried out work on the land at the request or with the consent of ABG for which the lessee has not been recompensed.
- (4) The regulations may fix a common date for the payment of rent under ABG leases, or ABG leases of a particular class, in each year.
- (5) Consequently, rent may be payable for a period of greater or less than 1 year and, if that is the case, the annual rent must be adjusted on a pro rata basis according to the number of months in the period.

### **93 Penalties for late payment of rent**

- (1) The Minister may, by notice in the Bougainville Gazette made with the approval of the Bougainville Executive Council, fix a scale of penalties that must be paid by lessees for late payment of rent under the lease.
- (2) The Minister may, by subsequent notice in the Bougainville Gazette made with the approval of the Bougainville Executive Council, vary or revoke a notice under Subsection (1).
- (3) This section does not derogate from the power to terminate an ABG lease for contravention of a lease condition.

### **94 Information about lessee must be kept up-to-date**

- (1) It is a condition of an ABG lease that the lessee must keep the Secretary informed of the following:
  - (a) if the lessee is a body corporate—changes in directors of the body corporate or persons who have a controlling interest in the body corporate;
  - (b) changes in the contact details of the lessee.
- (2) The Secretary must lodge a notice containing updated information with the Registrar for inclusion of the information in the part of the ABG Register for ABG leases.

### **95 Powers of authorised officers**

- (1) It is a condition of an ABG lease that a lessee provide reasonable assistance to an authorised officer for the exercise of powers under this section.
- (2) An authorised officer may—
  - (a) enter and inspect land subject to an ABG lease at any reasonable time; and

- (b) while there—
    - (i) enter and inspect anything in or on the land; and
    - (ii) take photographs or make audio or visual recordings; and
    - (iii) require a person to answer questions relevant to the administration of the ABG lease.
- (3) An authorised officer cannot exercise powers under Subsection (2) unless reasonable notice has been given to the lessee, orally or in writing.
- (4) However, no such notice need be given in the following circumstances:
  - (a) if it is not practicable to do so; or
  - (b) if the authorised officer believes on reasonable grounds that an offence against this Act has been, is being or is about to be committed on the land, or that a contravention of a condition of the ABG lease has occurred, is occurring or is about to occur.
- (5) In the exercise of powers under this section, an authorised officer may be assisted by such persons as the authorised officer considers necessary in the circumstances.
- (6) A person is not obliged to provide information as required under this section if to do so might tend to incriminate the person or make the person liable to a penalty.

## **96 Alteration of boundaries**

- (1) If the Minister is satisfied that the boundary of land subject to an ABG lease does not reflect the land actually occupied by the lessee, the Minister may, by written notice to the lessee, alter the boundary accordingly.
- (2) The Minister must consult with the lessee and obtain the approval of the Bougainville Executive Council before issuing a notice under Subsection (1).
- (3) The Minister may, in a notice under Subsection (1), vary the rent payable under the lease to take into account the increase or reduction in value of the lease that results from the alteration of the boundary.
- (4) The Secretary must lodge a copy of a notice under Subsection (1) with the Registrar for registration as an instrument of amendment of the ABG lease.

## **97 Amendment of ABG lease**

- (1) An ABG lease can be amended (in a manner that remains consistent with this Act) by written agreement between the Minister and the lessee.
- (2) A written agreement under Subsection (1) is subject to the approval of the Bougainville Executive Council.

- (3) If the Bougainville Executive Council approves a written agreement under Subsection (1), the Secretary must lodge the agreement with the Registrar for registration as an instrument of amendment of the ABG lease.

## **98 Transfer of ABG lease**

- (1) The interest of a lessee of an ABG lease can be transferred, but only with the written consent of the Minister and of any registered mortgagee of the lease.

*Note—The Registrar may dispense with the requirement for consent of the mortgagee under Section ?.*

- (2) The Minister must not unreasonably or capriciously refuse or withhold consent.
- (3) If an agreement is entered into under which the parties agree to transfer an ABG lease, the agreement expires 12 months after its execution unless the consent of the Minister to the transfer has been obtained.
- (4) If the interest of a lessee of an ABG lease is transferred with the written consent of the Minister—
- (a) accrued and accruing liabilities to ABG pass to the transferee; and
  - (b) liabilities that had accrued before the date of the transfer may be enforced against the transferor (who will be regarded as jointly and severally liable with the transferee).
- (5) It is a condition of an ABG lease that the lessee must lodge with the Registrar for registration against the lease an instrument of transfer within 1 month after the Minister has given the required consent.
- (6) The Secretary must lodge with the Registrar the written consent of the Minister given under this section for registration as an instrument of transfer of the ABG lease.

## **99 Expiry of ABG lease**

An ABG lease expires at the end of the term of the lease.

*Drafting note: Is this satisfactory? A new lease can be granted to the same lessee but there is no provision for renewal.*

## **100 Surrender of ABG lease**

- (1) An ABG lease can be wholly or partly surrendered, but only with the written consent of the Minister.
- (2) The Minister cannot consent to the surrender of an ABG lease unless—
- (a) every registered mortgage of the lease is discharged; or
  - (b) every registered mortgagee of the lease consents in writing to the surrender.

*Note—The Registrar may dispense with the requirement for consent of the mortgagee under Section 7.*

- (3) On surrender of an ABG lease, no liabilities that have accrued or accrue in connection with the lease may be enforced against ABG.
- (4) The Secretary must lodge a written consent of the Minister to the surrender of an ABG lease given under this section with the Registrar for registration as an instrument of surrender of the ABG lease.

#### **101 Termination of ABG lease**

- (1) The Minister may, with the approval of the Bougainville Executive Council, terminate an ABG lease on the grounds that—
  - (a) a lease condition has been contravened; or
  - (b) the lessee has ceased to occupy the land; or
  - (c) the lease was obtained through provision of false or misleading information.
- (2) Before an ABG lease is terminated, the Minister must make a reasonable endeavour to give written notice of the intention to terminate the lease to—
  - (a) the lessee; and
  - (b) persons with a registered interest in the lease.
- (3) The notice of intention to terminate must—
  - (a) specify the grounds for termination; and
  - (b) specify the facts that, in the Minister's opinion, establish the grounds; and
  - (c) invite submissions to be made within a period specified in the notice.
- (4) If the notice is given on the grounds that the lessee has ceased to occupy the land, notice need not be given if the lessee has advised the Minister of that fact.
- (5) The Minister must consider any submissions made within a period allowed in the notice.
- (6) An ABG lease must not be terminated for contravention of a lease condition unless the Minister is satisfied that—
  - (a) the lessee has been allowed a reasonable opportunity to make good the contravention but has failed to do so; or
  - (b) the termination is necessary in order to prevent or arrest serious damage to, or deterioration of, the land.
- (7) On termination of an ABG lease, no liabilities that have accrued or accrue in connection with the lease may be enforced against ABG.

- (8) The Secretary must lodge a written notice of termination of an ABG lease given under this section with the Registrar for registration as an instrument of termination of the lease.

## **102 Resumption of land**

- (1) The Minister may, by notice in the Bougainville Gazette made with the approval of the Bougainville Executive Council, resume the whole or part of the land subject to an ABG lease.
- (2) A resumption takes effect on a date specified in the notice.
- (3) The date must be at least 6 months after the date of the notice.
- (4) A resumption has the following effect:
- (a) if the whole of the land subject to the ABG lease is resumed—the ABG lease is terminated;
  - (b) if part only of the land subject to the ABG lease is resumed—the ABG lease is taken to be amended by the excision of the land resumed.
- (5) The lessee and the holder of a registered mortgage in the lease are entitled to compensation for a resumption.
- (6) The amount of compensation is to be determined by agreement between the Minister and the lessee or mortgagee, or in default of agreement, by the District Court.
- (7) On resumption of land subject to an ABG lease, no liabilities that have accrued or accrue in connection with the lease of the land may be enforced against ABG.
- (8) The Secretary must lodge a written notice of resumption of land subject to an ABG lease given under this section with the Registrar for registration as an instrument of amendment or termination of the lease.

## **103 Waiver of ABG lease conditions**

The Minister may, if satisfied that it would be reasonable in the circumstances—

- (a) waive a contravention of an ABG lease condition unconditionally or subject to conditions; or
- (b) waive, reduce or remit an instalment of rent under an ABG lease or a penalty for late payment or allow an instalment of rent to be paid at a later date or in instalments.



## Division 6 — ABG licences

### 104 ABG licences

- (1) The Minister may grant a licence (an **ABG licence**) to use or occupy ABG land or land leased to ABG if satisfied that the grant of the licence—
  - (a) would not detract from any existing purpose for which the land is used; and
  - (b) would not prevent the land from being used for a public purpose for which it is intended to be used in the future; and
  - (c) would not be improper or undesirable.
- (2) While an ABG licence is in force in relation to ABG land or land leased to ABG, the ABG must not act in a way that will substantially detract from the licensee's occupation or use of the land.

*Note—If the land is subject to an ABG lease, a licence cannot be granted without the consent of the lessee and any mortgagee of a registered mortgage of the lease unless the requirement for consent is dispensed with: see Section 80(2).*

### 105 Terms and conditions of ABG licence

- (1) The terms and conditions of an ABG licence (including once-off or periodic licence fees) are, subject to this Act, to be determined by the Minister.
- (2) An ABG licence cannot be granted or renewed for a term exceeding 10 years.
- (3) The regulations may—
  - (a) fix a date for the payment of licence fees under ABG licences generally or under ABG licences of a specified class (and that date prevails over any date fixed in the licence); or
  - (b) impose limitations on once-off or periodic licence fees.

### 106 Dealing with ABG licence

- (1) An ABG licence cannot be transferred or otherwise dealt with except with the consent of the Minister.
- (2) If an ABG licence is transferred with the consent of the Minister—
  - (a) accrued and accruing liabilities to ABG pass to the transferee; and
  - (b) liabilities that had accrued before the date of the transfer may be enforced against the transferor (who will be regarded as jointly and severally liable with the transferee).

### 107 Variation of ABG licence

An ABG licence (including periodic licence fees) can be varied by the Minister at any time by written notice to the licensee.

**108 Surrender of ABG licence**

- (1) A licensee can surrender an ABG licence by written notice to the Minister.
- (2) However, if there are outstanding licence fees or an outstanding remediation notice, the surrender is not effective unless the Minister consents to the surrender.
- (3) A licensee who surrenders an ABG licence is not entitled to repayment of any licence fees.

**109 Renewal of ABG licence**

- (1) The Minister may renew an ABG licence in accordance with the terms and conditions of the licence.
- (2) The Minister may do so even if—
  - (a) the application for renewal is late and the licence has expired; or
  - (b) no application is made and the licence has expired but the licensee continues to exercise rights under the licence as if it were still in force.
- (3) In such a case, the renewed ABG licence has effect from the end of the term for which it was previously granted or renewed.

**110 Waiver of ABG licence conditions**

The Minister may, if satisfied that it would be reasonable in the circumstances—

- (a) waive a contravention of an ABG licence condition unconditionally or subject to conditions; or
- (b) waive, reduce or remit an ABG licence fee or allow a licence fee to be paid at a later date or in instalments.

**111 Cancellation of ABG licence**

- (1) The Minister may cancel an ABG licence—
  - (a) if a condition of the licence has been contravened—by written notice to the licensee; or
  - (b) in any other case—by not less than 1 month's written notice to the licensee.
- (2) Subject to the regulations, no compensation is payable by ABG for cancellation of an ABG licence.

**Division 7 — Authorised officers****112 Authorised officers**

- (1) The Secretary may appoint a Public Service officer to be an authorised officer.
- (2) Each authorised officer must be issued with an identity card.

- (3) The identity card must show a recent photograph of the authorised officer.
- (4) An authorised officer exercising a power under this Part must produce the officer's identity card for inspection if asked to do so by the person in relation to whom the power is being exercised.

### **113 Offence—failure to return identity card**

A person commits an offence if—

- (a) the person ceases to be an authorised officer; and
- (b) the person does not return the person's identity card to the Secretary within 21 days after the cessation.

*Maximum penalty:* K2000.

### **114 Offence—obstruction of authorised officer**

- (1) A person commits an offence if—

- (a) the person—
  - (i) hinders or obstructs an authorised officer, or a person assisting an authorised officer; or
  - (ii) uses abusive, threatening or insulting language to an authorised officer or a person assisting an authorised officer; or
  - (iii) when required by an authorised officer under this Part to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; and
- (b) the person knows the authorised officer is exercising powers under this Act or that the person is assisting an authorised officer exercising such powers.

*Maximum penalty:* K10,000 or 3 months' imprisonment.

- (2) However, a person cannot be prosecuted for refusing or failing to answer a question on the grounds that to do so might tend to incriminate the person or make the person liable to a penalty.

### **115 Offence—pretending to be authorised officer**

A person commits an offence if—

- (a) the person represents, by words or conduct, that the person or another person is an authorised officer; and
- (b) the person knows the representation is false.

*Maximum penalty:* K10,000 or 3 months' imprisonment.

## Division 8 — Miscellaneous

### 116 Removal and disposal of property and fixtures on ABG land or land leased to ABG

- (1) If personal property is abandoned on ABG land or land leased to ABG, the Secretary may cause the property to be removed and disposed of.
- (2) The Secretary may cause a building, structure or fixture erected on ABG land or land leased to ABG to be removed and disposed of if—
  - (a) the building, structure or fixture was erected without lawful authority or excuse; or
  - (b) the building, structure or fixture has been abandoned when an ABG lease, licence or consent has expired or been surrendered, terminated or cancelled.
- (3) If the personal property or building, structure or fixture belonged to a person who occupied the land prior to it being abandoned, the Secretary may recover the cost of removal and disposal as a debt owed by that person.

### 117 Delegation by Minister

- (1) The Minister may delegate to a government agency a function or power under this Part other than—
  - (a) a function or power that can only be performed or exercised with the approval of the Bougainville Executive Council; or
  - (b) a function or power excluded from delegation by the regulations.
- (2) A function or power delegated by the Minister may not be further delegated unless that is expressly allowed by the Minister.

*Note—Part II Division 10 of the Interpretation Act 2005 contains provisions relevant to delegations under Bougainville law.*

## PART 6 — REGISTRATION AND REGISTERED INTERESTS

### Division 1 — Registrar

#### 118 Registrar

- (1) The office of Registrar is established as a senior office for the purposes of Section 102(3) of the Bougainville Constitution.
- (2) The Registrar must be appointed by the Senior Appointments Committee in accordance with the *Bougainville Senior Appointments Act 2014*.
- (3) The procedures regarding the following are as set out in the *Bougainville Senior Appointments Act 2014*:
  - (a) the taking of disciplinary action against the Registrar;

- (b) interdiction or removal from office of the Registrar.

### **119 Office of Registrar**

- (1) The Secretary must assign Public Service officers to assist the Registrar in the performance of functions under this Act.
- (2) Before Public Service officers are assigned to assist the Registrar, the Chief Secretary and the Secretary responsible for the Public Service must be consulted.
- (3) While a Public Service officer is assisting the Registrar, lawful directions given to the officer by the Registrar prevail over directions given to the officer by the Secretary, to the extent of any inconsistency.

### **120 Delegation by Registrar**

- (1) The Registrar may delegate to a Public Service officer a function or power under this Act (other than a function or power excluded from delegation by the regulations).
- (2) A function or power delegated by the Registrar may not be further delegated unless that is expressly allowed by the Registrar.

*Note—Part II Division 10 of the Interpretation Act 2005 contains provisions relevant to delegations under Bougainville law.*

## **Division 2 — Registers**

### **121 Registers**

- (1) The Registrar must keep the following registers:
  - (a) Customary Land Register;
  - (b) ABG Register (comprised of separate parts for ABG land, land leased to ABG and ABG leases);
  - (c) Freehold Land Register.
- (2) This Division is not exclusive of the particulars to be included in the registers.

### **122 Customary Land Register**

- (1) The Registrar must enter into arrangements with the customary land courts—
  - (a) for the transfer of data from their customary land records to the Registrar; and
  - (b) for the Registrar to be given a copy of each order of a customary land court.
- (2) The Customary Land Register must include—
  - (a) data from the customary land records collated into a central register; and

- (b) a file of customary land court orders.
- (3) The Registrar is responsible for determining what information from the customary land records of customary land courts will be collated into the central register and how it will be presented.
- (4) The Registrar must communicate with the customary land courts as necessary to deal with any apparent errors in or issues with the data.
- (5) The Customary Land Register must include the following particulars:
  - (a) for each registered easement, registered lease or registered mortgage over customary land—
    - (i) a copy of the registration agreement required for registration of the interest or an amendment or transfer of the interest, and a record of the customary land (registration) order under which registration is approved; and
    - (ii) a record of the names and contact details of the members of the registration management committee for the interest and details of any changes in the membership of the committee (including the date of the change); and
    - (iii) a copy of the instrument comprising the interest; and
    - (iv) a record of the date on which the instrument is lodged for registration; and
    - (v) if the interest is amended, transferred or transmitted—a copy of the instrument of amendment, transfer or transmission and a record of the date on which the instrument is lodged for registration; and
    - (vi) if the interest is surrendered, terminated, discharged or otherwise extinguished—a copy of the instrument of surrender, termination, discharge or extinguishment and a record of the date on which the instrument is lodged for registration;
  - (b) for each registered mortgage of a registered lease over customary land—
    - (i) a copy of the instrument comprising the mortgage; and
    - (ii) a record of the date on which the instrument is lodged for registration; and
    - (iii) if the mortgage is amended, transferred or transmitted—a copy of the instrument of amendment, transfer or transmission and a record of the date on which the instrument is lodged for registration; and
    - (iv) if the mortgage is discharged or otherwise extinguished—a copy of the instrument of discharge or extinguishment and a record of the date on which the instrument is lodged for registration;

- (c) if ABG land has been relinquished by ABG—
  - (i) a copy of the notice of the relinquishment; and
  - (ii) a record of the date on which it is lodged; and
  - (iii) a record or plan of the area of land to which the notice relates;
- (d) if an ABG lease is granted over customary land leased to the ABG—a reference to the ABG lease in the ABG Register (whether or not the lease has since expired or been surrendered or terminated);
- (e) if customary land is sold or foreclosed under this Act on default of obligations under a registered mortgage—a reference to the entry in the Freehold Land Register for the land.

### 123 ABG Register

The ABG Register is comprised of 3 separate parts for the following:

- (a) ABG land;
- (b) land leased to ABG;
- (c) ABG leases.

### 124 ABG Register—ABG land

The part of the ABG Register for ABG land must include the following:

- (a) for land that is ABG land under the transitional provisions (see Section 247)—
  - (i) a record or plan of the area of land; and
  - (ii) a record of the grounds on which the land is ABG land; and
  - (iii) a copy of the documents relied on to establish those grounds;
- (b) for land that is registered as ABG land after the commencement of this Act—
  - (i) a record or plan of the area of land; and
  - (ii) a copy of the registration agreement required for registration of the land as ABG land; and
  - (iii) a record of the customary land (registration) order under which registration is approved;
- (c) a record of the government agency responsible for the care, control and management of the land determined under Section 75;
- (d) for each registered easement over ABG land—
  - (i) a copy of the instrument comprising the easement; and
  - (ii) a record of the date on which the easement is lodged for registration; and

- (iii) if the easement is amended—a copy of the instrument of amendment and a record of the date on which the instrument is lodged for registration; and
- (iv) if the easement is extinguished—a copy of the instrument of extinguishment and a record of the date on which the instrument is lodged for registration;
- (e) if an ABG lease has been granted over the land—a reference to the ABG lease in the part of the ABG Register for ABG leases (whether or not the lease has since expired or been surrendered or terminated);
- (f) if a notice of relinquishment of responsibility for the ABG land is registered—a reference to the copy of the notice in the Customary Land Register.

#### **125 ABG Register—land leased to ABG**

The part of the ABG Register for land leased to ABG must include the following:

- (a) for land that is land leased to ABG under the transitional provisions (see Section 247)—
  - (i) a record or plan of the area of land; and
  - (ii) a record of the grounds on which the land is leased to ABG; and
  - (iii) a copy of the documents relied on to establish those grounds;
- (b) for land that is leased to ABG after the commencement of this Act—
  - (i) a record or plan of the area of land; and
  - (ii) if the land is customary land—a reference to the registered lease in the Customary Land Register; and
  - (iii) if the land is freehold land—a reference to the registered lease in the Freehold Land Register;
- (c) a record of the government agency responsible for the care, control and management of the land determined under Section 75;
- (d) if an ABG lease has been granted over the land—a reference to the ABG lease in the part of the ABG Register for ABG leases (whether or not the lease has since expired or been surrendered or terminated).

#### **126 ABG Register—ABG leases**

The part of the ABG Register for ABG leases must include the following:

- (a) for a lease that is an ABG lease under the transitional provisions (see Section 248)—
  - (i) a record of the grounds on which the lease is an ABG lease; and
  - (ii) a copy of the lease;



- (b) for an ABG lease granted after the commencement of this Act—
  - (i) a copy of the lease acceptance form lodged for registration; and
  - (ii) a record of the date the ABG lease was accepted by the lessee;
  - (iii) a record of updated lessee contact details provided to the Registrar;
- (c) a reference to the record of the land in the part of the ABG register for ABG land or to the registered lease to ABG in the Customary Land Register or Freehold Land Register;
- (d) for each community services lease—a copy of each annual report of the lessee provided to the Registrar;
- (e) if the lease is amended, transferred or transmitted—
  - (i) a copy of the instrument of amendment, transfer or transmission; and
  - (ii) a record of the date on which the notice is lodged for registration;
- (f) for each registered mortgage of an ABG lease—
  - (i) a copy of the instrument comprising the mortgage; and
  - (ii) a record of the date on which the instrument is lodged for registration; and
  - (iii) if the mortgage is amended, transferred or transmitted—a copy of the instrument of amendment, transfer or transmission and a record of the date on which the instrument is lodged for registration; and
  - (iv) if the mortgage is discharged or otherwise extinguished—a copy of the instrument of discharge or extinguishment and a record of the date on which the instrument is lodged for registration;
- (g) if the lease is surrendered or terminated—
  - (i) a copy of the instrument of surrender or termination; and
  - (ii) a record of the date on which the instrument is lodged for registration.

## 127 Freehold Land Register

- (1) The Freehold Land Register must include—
  - (a) for land that is freehold land under the transitional provisions (see Section 250)—
    - (i) a record or plan of the area of land (the **lot**); and
    - (ii) a record of the grounds on which the lot is freehold land; and
    - (iii) a copy of the documents relied on to establish those grounds; and
  - (b) for land that becomes freehold land after the commencement of this Act—an official survey plan of the area of land (the **lot**).

- (2) If lots are subdivided or consolidated under this or any other Act, the Freehold Land Register must include an official survey plan of the area of each lot after the subdivision or consolidation.
- (3) The Freehold Land Register must include the following for each lot:
  - (a) the name and contact details of the registered owner or owners of the lot;
  - (b) if there is more than 1 registered owner—
    - (i) whether the owners are joint tenants or tenants in common; and
    - (ii) if the owners are tenants in common—the shares in which the owners hold the land;
  - (c) if any owner is under 18 years of age or a person under a legal disability—a statement of that fact.
- (4) The Freehold Land Register must include the following particulars for each lot:
  - (a) for each registered easement, registered lease or registered mortgage over a lot—
    - (i) a copy of the instrument comprising the interest; and
    - (ii) a record of the date on which the instrument is lodged for registration; and
    - (iii) if the interest is amended, transferred or transmitted—a copy of the instrument of amendment, transfer or transmission and a record of the date on which the instrument is lodged for registration; and
    - (iv) if the interest is surrendered, terminated, discharged or otherwise extinguished—a copy of the instrument of surrender, termination, discharge or extinguishment and a record of the date on which the instrument is lodged for registration;
  - (b) for each registered mortgage of a registered lease over a lot—
    - (i) a copy of the instrument comprising the mortgage; and
    - (ii) a record of the date on which the instrument is lodged for registration; and
    - (iii) if the mortgage is amended, transferred or transmitted—a copy of the instrument of amendment, transfer or transmission and a record of the date on which the instrument is lodged for registration; and
    - (iv) if the mortgage is discharged or otherwise extinguished—a copy of the instrument of discharge or extinguishment and a record of the date on which the instrument is lodged for registration; and
  - (c) if an ABG lease has been granted over a lot leased to the ABG—a reference to the ABG lease in the part of the ABG Register for ABG leases (whether or not the lease has since expired or been surrendered or terminated); and

- (d) for each transfer of a lot—
  - (i) a copy of the instrument of transfer; and
  - (ii) a record of the date on which the instrument is lodged for registration.

### Division 3 — Priority of interests

*Drafting note: This Division and the following Divisions should be scrutinised by property law experts. The topic is difficult, there were no detailed instructions on many of these matters and the PNG law is somewhat confusing.*

*In particular, the exceptions to indefeasibility of title can be approached in various ways and I am not sure what is required.*

*I am not a property law expert and it is very likely that there are gaps and errors and things that are not workable. Limiting the scope of the provisions for simplicity, as I have attempted to do, may not be feasible.*

#### 128 Order of registration of instruments

Instruments relating to a lot or area of land lodged for registration must be registered in the order in which they are lodged with the Registrar.

#### 129 Priority of title

- (1) A registered proprietor holds title subject only to registered interests and outstanding statutory charges if the registered proprietor acquires title in good faith from the immediately preceding registered proprietor of the title.

*Drafting note: I think there is a question whether an existing tenancy that is not a registered lease should bind the good faith registered proprietor.*

- (2) If a person has become a registered proprietor through fraud or error or a transaction that is voidable in equity, the transaction by which the person became registered proprietor may be declared void by an appropriate court and the title of the registered proprietor defeated.

*Drafting note: Then there is the question of what happens if a person acquires title in good faith from a person who is pretending to be the registered proprietor – is it only if it is a purchase for value and without notice of the voidable transaction that the person holds title subject only to registered interests and statutory charges? Instructions would be appreciated.*

- (3) In this section—

**registered proprietor** means a person who is registered as the owner of a lot, the lessee of a lease (including an ABG lease) or the mortgagee of a mortgage;

**statutory charge** means a charge on land for unpaid rates, taxes or other amounts imposed by a Bougainville law or a law of the National Parliament.

### 130 Priority of interests—registered easements

- (1) If there is a conflict between easements or easements as amended, the easement for which an instrument of easement or amendment of easement was lodged for registration first in time prevails.

*Note—Consequently, when an easement is proposed, consideration should be given to ensuring that other easements that are already registered are respected or amended as necessary to ensure that they can coexist.*

- (2) All registered easements survive sale or foreclosure by a mortgagee under this Act, regardless of the order in which the interests were lodged for registration.

*Note—Consent of a mortgagee to an easement or an amendment of an easement registered after the mortgage is required unless the Registrar dispenses with the requirement for consent.*

### 131 Priority of interests—registered leases

- (1) There can only be one registered lease over an area of land in force at any one time.
- (2) An instrument of lease or amendment of lease that is lodged for registration later in time is invalid to the extent that it purports to be a lease of land that is already subject to a lease for which an instrument of lease or amendment of lease has already been lodged.
- (3) A registered lease is subject to all registered easements, whether they are registered before or after the lease.

*Note—Consent of the lessee to an easement or amendment of an easement registered after the lease is required unless the Registrar dispenses with the requirement for consent.*

- (4) A registered lease is extinguished on sale or foreclosure by a mortgagee of a registered mortgage over the land (rather than the lease) unless—
  - (a) the instrument of lease or amendment of lease was lodged for registration before the mortgage was lodged for registration; or
  - (b) an instrument of modification of priority that has been lodged for registration provides that the lease or the lease as amended has priority over the mortgage.
- (5) A registered mortgage has priority over a registered lease if the lease will be extinguished on sale or foreclosure by the mortgagee.

**132 Priority of interests—registered mortgages**

- (1) Registered mortgages have priority in the order in which instruments of mortgage or amendment of mortgage are lodged for registration unless an instrument of modification of priority has been lodged for registration that provides otherwise (in which case the order provided in the instrument prevails).
- (2) All registered mortgages are extinguished on sale or foreclosure by a mortgagee of any order of priority, but a sale or foreclosure may not be completed unless the mortgagee with the mortgage of the highest priority—
  - (a) receives the amount the mortgagee is owed and any costs or expenses incurred by that mortgagee relating to the sale or foreclosure; or
  - (b) consents to the extinguishment of the mortgage.
- (3) Subsections (1) and (2) apply as between a number of mortgages over land or a number of mortgages over a lease (but not as between mortgages of the different interests).
- (4) If a registered lease survives a sale or foreclosure of a registered mortgage over the land, any registered mortgage over the lease also survives.
- (5) If a registered lease is extinguished on a sale or foreclosure of a registered mortgage over the land, any registered mortgage over the lease is also extinguished.

**133 Transfers and transmissions do not affect priority**

A transfer or transmission of land or an interest in land (other than through sale or foreclosure on default under a mortgage) does not affect the priority of an interest in the land.

**134 Instrument of modification of priority**

- (1) An instrument of modification of priority for registration must—
  - (a) be in the form approved by the Registrar; and
  - (b) be accompanied by evidence of the consent of the holder of each registered interest affected by the modification; and
  - (c) be lodged with the Registrar.
- (2) On the instrument being registered, registered interests have priority in the order specified in the instrument.
- (3) If there is a registered mortgage intervening between any 2 mortgages whose priority an instrument under this section purports to vary, the Registrar must not register the instrument unless the mortgagee of the intervening mortgage has consented to the instrument.

## Division 4 — Registered interests

### Sub-division 1 — Application of Division

#### 135 Application of Division to customary land

For an easement, lease or mortgage over customary land, this Division does not derogate from Part 3 Division 4.

#### 136 Application of Division to ABG land

For an easement over ABG land, this Division does not derogate from Part 5 Division 4.

### Sub-division 2 — Easements

#### 137 Types of registered easements

- (1) A registered easement may be comprised of any of the following:
- (a) a **public right of way**—a right for any member of the public to pass over a road or track identified in the easement (including with vehicles or equipment suitable for the road or track);
  - (b) a **private right of way**—a right to pass over a road or track identified in the easement (including with vehicles or equipment suitable for the road or track) granted to any of the following and their employees, agents, tenants and visitors:
    - (i) a specified Bougainvillean clan lineage;
    - (ii) the registered owner of specified freehold land;
    - (iii) a person with a right to occupy specified land;
  - (c) a **public right of way on foot**—a right for any member of the public to pass over a pathway identified in the easement on foot;
  - (d) a **private right of way on foot**—a right to pass over a pathway identified in the easement on foot granted to any of the following and their employees, agents, tenants and visitors:
    - (i) a specified Bougainvillean clan lineage;
    - (ii) the registered owner of specified freehold land;
    - (iii) a person with a right to occupy specified land;
  - (e) a **service utility easement**—a right for a utility provider of a service specified in the easement (being a service for water, sewerage, drainage, electricity or telecommunications) and the provider's employees and agents at any reasonable time—
    - (i) to enter the land (including with vehicles or equipment); and

- (ii) to do what is reasonably necessary in, on or over the area of land identified in the easement to install, inspect, alter, repair, maintain or replace infrastructure for those services;
- (f) a **support easement**—a right for a person and the person’s employees and agents—
  - (i) to enter the land (including with vehicles or equipment); and
  - (ii) to do what is reasonably necessary in or on the area of land identified in the easement to construct, inspect, alter, repair, maintain or replace an embankment, wall or other structure to support specified adjoining land or a building, structure or fixture on the specified adjoining land.
- (2) Land subject to a service utility easement may be limited wholly or partly in height or depth or both.

*Drafting note: Consideration needs to be given to whether this cut down set of easements is satisfactory.*

### **138 Implied registered easement for support of land and structures**

- (1) All land is subject to the obligation that nothing is to be done on the land that will withdraw support from other land or from a building, structure or fixture on other land.
- (2) The obligation under Subsection (1) may be enforced as if it were a registered support easement.

### **139 Exercise of rights under easement**

- (1) A person is entitled to exercise the rights specified in Section 137 only if the easement is registered.
- (2) Rights under a registered easement must be exercised—
  - (a) in a way that is reasonable and appropriate to the purpose for which the registered easement is granted; and
  - (b) in accordance with any conditions specified in the registered easement.
- (3) A person must not hinder or obstruct a person exercising rights under a registered easement.
- (4) A person must not do anything, or cause anything to be done, to land subject to an easement that would prevent, or unreasonably inhibit, rights under the easement being exercised.

*Drafting note: Do we need to say anything about enforcement of an easement in a court or is that adequately covered under the general jurisdiction of courts?*

**140 Instrument of easement or amendment of easement**

- (1) An instrument of easement, or amendment of an easement, for registration must—
- (a) be in the form approved by the Registrar; and
  - (b) identify the land subject to the easement; and
  - (c) identify the type of easement by reference to the short description of the type set out in Section 137; and
  - (d) include the details required to be specified according to the type of easement under Section 137; and
  - (e) be executed by the following:
    - (i) for an easement over customary land—the registration management committee for the easement;
    - (ii) for an easement over ABG land—the Minister;
    - (iii) for an easement over freehold land—the registered owner of the land; and
  - (f) except for a public right of way or public right of way on foot, be accompanied by evidence of the acceptance of the easement by or on behalf of the person who may exercise rights under the easement; and
  - (g) except if the Registrar dispenses with the requirement for consent, be accompanied by evidence of the consent of—
    - (i) each registered mortgagee of the land subject to the easement; and
    - (ii) each registered lessee of the land subject to the easement; and
  - (h) be lodged with the Registrar.
- (2) The Registrar may require the description of the land subject to the easement to be shown on an official survey plan lodged with the Registrar.

**141 Extinguishment of easement**

- (1) A registered easement may be extinguished by registration of an instrument of extinguishment.
- (2) An instrument of extinguishment of a registered easement must—
- (a) be in the form approved by the Registrar; and
  - (b) identify the easement to be extinguished; and
  - (c) be executed by the following:
    - (i) for an easement over customary land—the registration management committee for the easement;
    - (ii) for an easement over ABG land—the Minister;



- (iii) for an easement over freehold land—the registered owner of the land; and
- (d) except if the Registrar dispenses with the requirement for consent, be accompanied by evidence of consent as follows:
  - (i) for a public right of way or a public right of way on foot—the consent of the Minister given on the recommendation of the Bougainville Executive Council;
  - (ii) for any other easement—the consent of the persons who can currently exercise rights under the easement; and
- (e) be lodged with the Registrar.

### ***Sub-division 3 — Leases***

#### **142 Application of Sub-division**

- (1) This Sub-division does not apply to an ABG lease.
- (2) This Sub-division does not limit the terms that may be included in a registered lease but the terms of a registered lease are of no effect to the extent of any inconsistency with this Sub-division.

#### **143 Requirement for registered lease to be long term**

- (1) Only a long term lease can be registered.
- (2) A long term lease is—
  - (a) a lease for a term longer than 3 years; or
  - (b) a lease that is subject to a right of renewal such that the aggregate of all terms may be longer than 3 years.
- (3) The term of a lease is the period beginning when the lessee is first entitled to possession under the lease and ending when the lessee is last entitled to possession, even if the lease consists of 2 or more discontinuous periods.

*Note—Rights to occupy or use land under a tenancy, licence or sublease can be for a shorter term but do not amount to an interest in land.*

#### **144 Instrument of lease**

- (1) An instrument of lease for registration must—
  - (a) be in the form approved by the Registrar; and
  - (b) identify the lot or area of land leased; and
  - (c) include the name and contact details of the lessee; and
  - (d) specify to whom and how notices may be given to the lessee and the lessor; and

- (e) include a statement of—
    - (i) the rent and any other consideration payable by the lessee; and
    - (ii) how and when the amount of rent or other consideration can be varied; and
  - (f) specify the date of expiry of the lease; and
  - (g) include a statement of the terms implied under Section 145; and
  - (h) be executed by the lessor and the lessee; and
  - (i) be lodged with the Registrar.
- (2) The Registrar may require the description of the leased land to be shown on an official survey plan lodged with the Registrar.

#### **145 Implied lease terms and conditions**

- (1) The following terms are implied in every registered lease:
- (a) the lessee will pay rent as specified in the lease; and
  - (b) the lessee will pay all rates and taxes payable on the land during the term of the lease (if any); and
- Drafting note: Is (b) suitable?*
- (c) the lessee will keep the land, and buildings and structures on the land, in good and tenable repair (reasonable wear and tear excepted); and
  - (d) the lessor may, including by the lessor's employees or agents, at any reasonable time and with reasonable notice to the lessee, enter the land and inspect its state of repair; and
  - (e) the lessor may give a lessee a default notice and may terminate the lease in accordance with this section.
- (2) A lessor may give a lessee a written default notice—
- (a) specifying grounds on which it is alleged that there has been a contravention of the lease conditions (including non-payment of rent); and
  - (b) specifying facts that, in the lessor's opinion, establish the grounds; and
  - (c) requiring the lessee to take specified action to remedy or mitigate the consequences of the contravention within a period specified in the notice (being at least 3 months).
- (3) If a registered lease is subject to a registered mortgage, the lessor must give the mortgagor a copy of any default notice given to the lessee.

- (4) A lessor may terminate a registered lease if—
  - (a) the lessor has given the lessee a written default notice and the action specified in the notice has not been taken in the period (of at least 3 months) specified in the notice; or
  - (b) the lessee has ceased to occupy the land.
- (5) Before a registered lease is terminated, the lessor must give written notice of the intention to terminate the lease to—
  - (a) the lessee; and
  - (b) each mortgagee of a registered mortgage that has priority over the lease.
- (6) The Registrar may dispense with the requirement to give notice if satisfied that reasonable steps to give the notice have been taken but without success.
- (7) The notice of intention to terminate must—
  - (a) specify the grounds for termination; and
  - (b) specify the facts that, in the lessor's opinion, establish the grounds; and
  - (c) invite submissions to be made within a period specified in the notice.
- (8) If the notice is given on the grounds that the lessee has ceased to occupy the land, notice need not be given to the lessee if the lessee has advised the lessor of that fact.
- (9) The lessor must consider any submissions made within a period allowed in the notice.
- (10) A registered lease cannot be terminated if the action specified in a default notice is taken.

#### **146 Standard lease terms and conditions**

- (1) A person may deposit with the Registrar a document (in the form approved by the Registrar) containing terms and conditions for incorporation as standard terms and conditions in leases.
- (2) A lease may provide that standard terms and conditions, as contained in a document deposited with the Registrar under Subsection (1), are—
  - (a) incorporated in the lease; or
  - (b) incorporated in the lease subject to exclusions or modifications specified in the lease.
- (3) In such a case, the lease has effect as if the standard terms and conditions, subject to any exclusions or modifications specified in the lease, were contained in the lease.

*Drafting note: It is envisaged that, for leases over customary land that are leases to ABG or equate to community services leases, standard terms and conditions should be deposited by ABG or with the assistance of ABG.*

#### **147 Offence—failure to provide standard terms and conditions to lessee**

- (1) A lessor commits an offence if—
  - (a) the lease incorporates standard terms and conditions; and
  - (b) the lessor does not, before execution of the lease by the lessee, provide the lessee with a copy of the standard terms and conditions.

*Maximum penalty: [Amount of penalty yet to be determined.]*

- (2) Non-compliance with Subsection (1) does not affect the validity of the lease.

#### **148 Amendment of lease**

- (1) Subject to the terms of the lease, a registered lease can be amended by registering an instrument of amendment of the lease.
- (2) The instrument of amendment of a registered lease must—
  - (a) be in the form approved by the Registrar; and
  - (b) be executed by the lessee and lessor; and
  - (c) be lodged with the Registrar.
- (3) If the amendment is for the renewal or extension of the lease, the instrument of amendment must be lodged for registration no later than 2 months after the day on which the lease would, but for the renewal or extension, have expired.

#### **149 Transfer of lease**

- (1) Subject to the terms of the lease, a registered lease can be transferred by registering an instrument of transfer of the lease.
- (2) The instrument of transfer must—
  - (a) be in the form approved by the Registrar; and
  - (b) be executed by the lessee and transferee; and
  - (c) except if the Registrar dispenses with the requirement for consent, be accompanied by evidence of the consent of—
    - (i) the lessor; and
    - (ii) any registered mortgagee of a mortgage that has priority over the lease; and
  - (d) be lodged with the Registrar.

**150 Surrender of lease**

- (1) Subject to the terms of the lease, a registered lease may be surrendered by registering an instrument of surrender of the lease.
- (2) The instrument of surrender must—
  - (a) be in the form approved by the Registrar; and
  - (b) be executed by the lessee; and
  - (c) if there is outstanding rent—be accompanied by evidence of the consent of the lessor; and
  - (d) except if the Registrar dispenses with the requirement for consent, be accompanied by evidence of the consent of any registered mortgagee of a mortgage that has priority over the lease; and
  - (e) be lodged with the Registrar.

**151 Termination of lease**

- (1) If a registered lease is terminated under Section 145 or in accordance with its terms, an instrument of termination must be registered.
- (2) The instrument of termination must—
  - (a) be in the form approved by the Registrar; and
  - (b) be accompanied by evidence of the grounds of termination; and
  - (c) be executed by the lessor; and
  - (d) be lodged with the Registrar.

***Sub-division 4 — Mortgages*****152 Registered mortgage**

- (1) The following can be made subject to a registered mortgage:
  - (a) customary land;
  - (b) freehold land;
  - (c) a registered lease;
  - (d) an ABG lease.
- (2) ABG land cannot be made subject to a registered mortgage.
- (3) A registered mortgage acts as a charge on the land or lease in favour of the mortgagee for the debt or liability secured by the mortgage.

- (4) A Bougainville law or a law of the National Parliament may impose a charge on land for unpaid rates, taxes or other amounts, but, otherwise, there is no other form of interest under which land or an interest in land can be charged with, or made security for, a debt or liability.

*Drafting note: Is subclause (4) the required approach?*

### **153 Limitations relating to customary land**

- (1) A mortgage over customary land or a registered lease over customary land can only be registered if—
- (a) there is an official survey plan of the area of land subject to the mortgage; and
  - (b) the mortgage meets the requirements of the regulations.
- (2) Without limitation, the regulations may—
- (a) limit the persons who may be mortgagees under a mortgage of customary land or a registered lease over customary land; and
  - (b) limit the amount of the debt secured by a mortgage of customary land or a registered lease over customary land; and
  - (c) limit the purposes for which customary land or a registered lease over customary land may be mortgaged.

### **154 Instrument of mortgage**

An instrument of mortgage for registration must—

- (a) be in the form approved by the Registrar; and
- (b) identify the land or lease subject to the mortgage, including by reference to its entry in a register and by official survey plan; and
- (c) specify—
  - (i) the debt or liability secured by the mortgage; and
  - (ii) the rate of interest; and
  - (iii) the manner in which the principal sum and interest are to be repaid; and
  - (iv) the period of default (being at least 1 month) after which a default notice may be given to the mortgagor by the mortgagee; and
  - (v) how notices can be given under this Act to the mortgagee or the mortgagor; and
  - (vi) any limitations on the amendment or transfer of the mortgage; and
- (d) be accompanied by a copy of any other document on which it relies; and

- (e) clearly explain the consequences of default in the performance of obligations under the mortgage; and
- (f) be executed by the mortgagor and the mortgagee; and
- (g) be lodged with the Registrar.

#### **155 Offence—failure by mortgagee to verify authority of mortgagor**

- (1) A person commits an offence if—
- (a) the person enters into a mortgage or transfer of a mortgage intending to be registered as mortgagee or enters into an amendment of a mortgage as mortgagee; and
  - (b) the person has not first verified the authority of the intended mortgagor to enter into, transfer or amend the mortgage.

*Maximum penalty: [Amount of penalty yet to be determined.]*

- (2) If the Registrar has issued requirements for verifying authority, a person will not be taken to have verified authority as required by Subsection (1) unless those requirements have been met.
- (3) This section does not apply to a mortgage of customary land (although it does apply to a mortgage of a registered lease of customary land).

#### **156 Offence—failure to retain evidence of verification**

A person commits an offence if the person fails, while the person remains a mortgagee, to retain a copy of a document used for the purpose of fulfilling an obligation under Section 155(1).

*Maximum penalty: [Amount of penalty yet to be determined.]*

#### **157 Implied mortgage terms and conditions**

- (1) A registered mortgage constitutes an agreement—
- (a) to repay to the mortgagee the principal sum stated in the mortgage; and
  - (b) to pay to the mortgagee repayments of the principal sum and interest on the principal sum at a specified rate and in the manner provided in the mortgage; and
  - (c) if the mortgage expressly provides that specified buildings, structures or fixtures on the land must be kept in good repair, to keep those buildings, structures or fixtures in good repair; and
  - (d) if the mortgage expressly provides that action must be taken or refrained from being taken for the purposes for which the principal sum is provided, and plans, specifications or instruments governing the matter are lodged with the registered mortgage, to take or to refrain from taking that action; and

- (e) if the mortgage expressly provides for the mortgagee to be permitted to inspect the land, to permit the reasonable exercise of that power.
- (2) A registered mortgage is subject to any limitations as to amendment or transfer imposed in the instrument of mortgage.
- (3) Any other terms included in a registered mortgage are of no effect.

*Drafting note: Is Subclause (3) considered appropriate? It is primarily designed to protect customary land but perhaps it can be used for simplification across the board.*

#### **158 Amendment of mortgage**

- (1) Subject to the terms of the mortgage, a registered mortgage can be amended by registering an instrument of amendment of the mortgage.
- (2) An instrument of amendment cannot add or remove a party to the mortgage.
- (3) The instrument of amendment must—
  - (a) be in the form approved by the Registrar; and
  - (b) be executed by the mortgagee and mortgagor; and
  - (c) be lodged with the Registrar.

#### **159 Transfer of mortgage**

- (1) Subject to the terms of the mortgage, a registered mortgage can be transferred by registering an instrument of transfer of the mortgage.
- (2) The instrument of transfer must—
  - (a) be in the form approved by the Registrar; and
  - (b) be executed by the mortgagee and transferee; and
  - (c) except if the Registrar dispenses with the requirement for consent, be accompanied by evidence of the consent of the mortgagor; and
  - (d) be lodged with the Registrar.
- (3) If there is more than 1 mortgage of land or a lease and a mortgagee pays to another mortgagee all money due under the other mortgage, the mortgagee is entitled to the transfer of the mortgage in respect of which the money is paid.
- (4) In such a case, the instrument of transfer need only be executed by the mortgagee who makes the payment and no consent is required.

*Drafting note: Are (3) and (4) considered satisfactory?*



**160 Discharge of registered mortgage**

- (1) If all the money due on a registered mortgage is paid, the mortgage is taken to be discharged.
- (2) An instrument of discharge of a mortgage for registration must—
  - (a) be in the form approved by the Registrar; and
  - (b) —
    - (i) be executed by the mortgagor and mortgagee; or
    - (ii) be executed by the mortgagor and be accompanied by evidence of the payment of all money due to the mortgagee; and
  - (c) be lodged with the Registrar.

**161 Default notice**

- (1) If there is a contravention of the terms of a mortgage by the mortgagor and the default continues for the period specified in the mortgage (being at least 1 month), the mortgagee may give a default notice to the mortgagor.
- (2) A default notice must—
  - (a) be in writing; and
  - (b) specify the default and the facts relied on to establish the default; and
  - (c) require the default to be rectified as soon as possible and, in any event, within a period (of at least 3 months) specified in the notice; and
  - (d) inform the mortgagor that sale or foreclosure of the land or lease may be effected if the default continues.
- (3) A default notice may be given to a mortgagor in the manner specified in the mortgage.

**162 Sale by mortgagee**

- (1) If a default identified in a default notice under Section 161 is not rectified within the period specified in the default, the mortgagee may lodge with the Registrar a notice of intention to sell (in the form approved by the Registrar).
- (2) Once the notice is registered, the mortgagee has all the powers necessary to effect the sale (whether by public auction or private contract).
- (3) The mortgagee is not to sell the land or lease under this section unless—
  - (a) its sale will realise an amount equal to or more than—
    - (i) the amount of money owing to the mortgagee of the registered mortgage with the highest order of priority; and
    - (ii) the expenses of the sale; or

- (b) the mortgagee of the registered mortgage with the highest order of priority consents to the sale.
- (4) The mortgagee has a duty to take reasonable care to ensure that the sale is at market value.
- (5) Although contravention of the duty is not a ground of invalidity of the sale, a person who suffers loss or damage because of the contravention has a remedy in damages against the mortgagee.
- (6) The purchaser is not required to inquire into the fact of any default or default notice.
- (7) The purchase money from a sale by a mortgagee must be applied as follows:
  - (a) first—in payment of the expenses incurred in the sale;
  - (b) second—in payment of the amounts due to the mortgagee under the mortgage with the highest order of priority;
  - (c) third—in payment of any debts or liabilities secured by mortgages of a lower priority, if any, in order of priority;
  - (d) fourth—in payment of any surplus to the mortgagor.
- (8) If the land was customary land before the sale, the Registrar must, in registering the transfer, include the land in the Freehold Land Register.

### **163 Sale by Registrar**

- (1) A mortgagee may apply to the Registrar to offer the mortgaged land or lease for sale if—
  - (a) the mortgagee has, within the preceding 2 years, exercised the mortgagee's power of sale and offered the land or lease for sale; and
  - (b) the amount of the highest offer was less than the amount of money owing to the mortgagee of the mortgage with the highest order of priority and the expenses of exercising the power of sale; and
  - (c) the mortgagor has defaulted in paying the principal sum or interest and the default has continued for at least 6 months; and
  - (d) written notice of the mortgagee's intention to apply for an order for foreclosure has been given to the mortgagor and each person who has a registered interest in the land or lease.
- (2) On receiving an application under Subsection (1), the Registrar must offer the land for sale by advertising it locally, regionally and internationally for a period of at least 1 month.
- (3) Any advertisement must specify the date after which the mortgagee may apply to the District Court for an order for foreclosure if the land or lease does not sell.

- (4) The Registrar is not to sell the land or lease under this section unless its sale will realise an amount equal to or more than—
  - (a) the amount of money owing to the mortgagee of the mortgage with the highest order of priority or that mortgagee consents to the sale; and
  - (b) the expenses of the sale.
- (5) Section 162(4) to (8) apply to a sale by the Registrar as if it were a sale by the mortgagee.

#### **164 Order for foreclosure**

- (1) A mortgagee of a registered mortgage of the highest order of priority may apply to the District Court for an order for foreclosure if—
  - (a) the land or lease has been offered for sale under Sections 162 and 163 but has not been sold; and
  - (b) the date specified in the Registrar's notice under Section 163 has passed; and
  - (c) the amounts owing to the mortgagee remain outstanding.
- (2) Before making an order for foreclosure, the District Court must be satisfied that this Division has been complied with.
- (3) When the District Court makes an order for foreclosure, it may make such other orders as it considers just in relation to any other interests in the land or lease and the payment of expenses incurred by the mortgagee in exercising the right of foreclosure.
- (4) If an order for foreclosure is made, the mortgagee may apply to the Registrar for registration of the order as if it were an instrument of transfer to the mortgagee.
- (5) If the land was customary land before foreclosure, the Registrar must, in registering the transfer, include the land in the Freehold Land Register.

*Drafting note: For mortgages in existence before commencement, should PNG law be kept for sale and foreclosure?*

*Should the power of foreclosure be available to a registered mortgagee in a case where the owner/holder is bankrupt and there is transmission of the owner/holders rights?*

*I am not sure whether the above is how you would want mortgages to work. It is included for consideration.*

### **Division 5 — Other dealings with freehold land**

#### **165 Joint tenancy if not specified**

If the Freehold Land Register does not record whether registered owners of a lot are joint tenants or tenants in common, the owners will be taken to be joint tenants.

*Drafting note: Is this a suitable approach? Or should it be tenants in common in equal shares?*

## **166 Transfers**

- (1) A lot of freehold land may be transferred by registration of an instrument of transfer.
- (2) A part of a lot of freehold land cannot be transferred, although lots can be consolidated and subdivided subject to this Act.
- (3) An instrument of transfer of a lot must—
  - (a) be in the form approved by the Registrar; and
  - (b) identify the lot to be transferred; and
  - (c) be executed by the transferor and the transferee.
- (4) A transfer of a lot may be subject to the registration of an easement, lease or mortgage.

## **167 Registration of writ of execution**

- (1) The Registrar may, on application, register against a lot a writ or warrant of execution after judgement in a court if the writ or warrant is lodged with the Registrar within the period within which it can be executed.
- (2) The registration ceases to be of any effect if—
  - (a) the writ or warrant expires; or
  - (b) the writ or warrant is satisfied or discharged.
- (3) The Registrar may, on application, record that the registration has ceased to be of any effect if the applicant satisfies the Registrar of that fact.
- (4) If a lot is sold under a registered writ of execution, the person executing the writ may execute an instrument of transfer to the purchaser.

*Drafting note: Is this required? It assumes that writs or warrants of execution can only be issued against a lot and not against a lease. That may not be correct.*

## **168 Subdivision and consolidation**

- (1) A lot of freehold land may be subdivided into separate lots and lots of freehold land may be consolidated into a single lot by registration of an instrument of subdivision or consolidation.
- (2) An instrument of subdivision or consolidation must—
  - (a) be in the form approved by the Registrar; and

- (b) if the land is in a planning control area—be accompanied by a copy of the relevant planning permission.
- (3) The regulations may—
- (a) limit the minimum or maximum size of a lot; or
- (b) otherwise control the subdivision or consolidation of lots.

*Drafting note: This approach is limited to freehold land – customary land owners and ABG can alter how they divide up or consolidate land to lease it or manage it as they see fit. Freehold land owners cannot because it affects transfers. It is a very cut down approach and is likely to require more detail.*

## **Division 6 — Other matters affecting registration**

### ***Sub-division 1 — Application of Division***

#### **169 Application of Division**

This Division applies to—

- (a) a registered interest in customary land;
- (b) an ABG lease;
- (c) a registered mortgage of an ABG lease;
- (d) freehold land;
- (e) a registered interest in freehold land.

#### **170 No need to go behind title**

A person who acquires title from a person registered under this Division is not required to enquire into the circumstances of that title.

*For example:*

- *a person who acquires title from a trustee need not enquire into the validity of the appointment of the trustee or the exercise of powers as trustee;*
- *a person who acquires title from a personal representative need not enquire into the validity of the appointment or the administration of the estate by the personal representative;*
- *a person who acquires title from a receiver need not enquire into the validity of the appointment or the exercise of the receiver's powers;*
- *a person who acquires title from an attorney under a power of attorney need not enquire into the validity or use of the power of attorney.*

*Drafting note: Is this a satisfactory approach?*

**Sub-division 2 — Trusts and transmission****171 How trusts may be registered**

- (1) A person may be registered, as the owner of a lot of freehold land or as a lessee or mortgagee, in the capacity of trustee if—
  - (a) an instrument of transfer identifies the transferee as a trustee; or
  - (b) the person applies to the Registrar to register the person as a trustee; or
  - (c) there is a court order for the person to be registered as a trustee.
- (2) All persons registered as trustees must execute any instrument of transfer or other dealing with the lot or interest held in trust unless a court orders otherwise.
- (3) Subsection (2) does not apply to an instrument effecting the valid removal or appointment of a trustee or the registration of the removal or appointment.

**172 Registration of personal representative on death**

- (1) If a person registered as the owner of a lot or the holder of a registered interest dies, the personal representative of the person may apply to the Registrar to be registered as such.
- (2) The person claiming to be personal representative must satisfy the Registrar of the person's death and the lawful status of the person as personal representative.
- (3) If 2 or more persons are personal representatives of a deceased person, each of them must be registered as such and must concur in every instrument relating to the lot or registered interest.
- (4) If an application is approved, it is to be regarded for the purposes of registration as an instrument of transmission.

**173 Transmission on bankruptcy**

The Registrar may, on application, register a transmission of ownership of a lot or holding of a registered interest under a law about bankruptcy, insolvency or liquidation.

**174 Power to require public notice before registration**

- (1) Before taking action under this Division on an application, the Registrar may, by written notice, require an applicant to give public notice of the application.
- (2) The notice may specify—
  - (a) what is to be included in the public notice; and
  - (b) how many times the public notice is to be published; and
  - (c) how and when the public notice is to be published.

- (3) The person must satisfy the Registrar that the public notice has been given as required.

***Sub-division 3 — Powers of attorney and legal capacity***

**175 Registration of power of attorney**

- (1) The Registrar may, on application by the registered owner of a lot or the holder of a registered interest, register the following if the instrument appears to have been properly executed according to law:
- (a) a power of attorney; or
  - (b) an instrument of revocation of a registered power of attorney.
- (2) If an instrument of revocation is registered, the power of attorney ceases to be registered.
- (3) The Registrar may register an instrument executed under a registered power of attorney without being satisfied that the power of attorney has not been revoked.

**176 Person without legal capacity**

A person who is responsible by law for the management and care of the interests of a person who has not attained 18 years of age or does not have legal capacity to manage the person's own affairs may act for the person under this Act as if a power of attorney had been executed.

*Note—The person with responsibility by law may be the person's guardian or the administrator of the person's estate.*

**Division 7 — Inquiries**

**177 Registrar may hold inquiry**

The Registrar may hold an inquiry under this Division—

- (a) to decide whether a register should be corrected; or
- (b) to decide whether a person should be required to produce an instrument for the purposes of registering a dealing; or
- (c) to consider whether a person has fraudulently or wrongfully obtained or procured an instrument affecting land in a register; or
- (d) to consider whether a person has fraudulently or wrongfully procured a particular in a register or instrument affecting land; or
- (e) in other circumstances specified in the regulations.

**178 Principles to be applied to inquiry**

The following principles govern the conduct of an inquiry by the Registrar:

- (a) the inquiry must be conducted with a minimum of formality;
- (b) the Registrar is not bound by rules of evidence and may inform himself or herself as the Registrar thinks fit;
- (c) the Registrar may disregard a defect, error or insufficiency in an instrument under this Act if satisfied that the defect, error or insufficiency does not adversely affect the interests of any person.

**179 Registrar's power to suspend further registrations pending inquiry**

- (1) If the Registrar is satisfied, on the Registrar's own initiative or on application, that no further instruments should be registered in relation to land or a registered lease pending an inquiry, the Registrar may register a caveat against the land or lease to that effect.
- (2) A copy of any registered caveat must be given to each person who has an interest in the land or lease.
- (3) The registration of the caveat must be removed as soon as the Registrar is satisfied that it is no longer required.

**180 Registrar's powers on inquiry**

- (1) In conducting an inquiry, the Registrar may direct a person to do either or both of the following:
  - (a) to appear before the Registrar or a nominated person at a specified time and place to provide information or evidentiary material;
  - (b) to provide evidentiary material to the Registrar or to a nominated person.
- (2) The direction may be oral or written.
- (3) If a person fails to appear, the inquiry may continue in the absence of the person.
- (4) The Registrar may adjourn an inquiry.
- (5) The Registrar may permit or refuse to permit a person (including a legal practitioner) to represent someone at the inquiry.

**181 Offence—contravention of direction to appear or produce evidentiary material**

- (1) A person commits an offence if the person, without reasonable excuse, refuses to appear or to provide information or evidentiary material as directed by the Registrar under Section 180.

*Maximum penalty: [Amount of penalty yet to be determined.]*



- (2) A person is not obliged to provide information if to do so might tend to incriminate the person or make the person liable to a penalty.

### **182 Referral of matter to District Court**

- (1) The Registrar may, at any time during an inquiry, refer to the District Court a question affecting registration or the order in which instruments should be taken to have been lodged for registration.
- (2) On a referral, the District Court may give the Registrar such directions as it considers appropriate.
- (3) The Registrar is bound by the directions of the District Court (subject to the decision of any appeal court).

### **183 Powers of Registrar following inquiry**

The Registrar may at the end of an inquiry do any of the following:

- (a) correct a register;
- (b) order that an instrument be produced for registration within a specified period;
- (c) refer any findings of fraudulent or wrongful actions to the Commissioner of Police;
- (d) publish reasons for any decision made.

### **184 Offence—failure to produce instrument for registration**

A person commits an offence if, without reasonable excuse, the person fails to produce an instrument for registration as ordered by the Registrar under Section 182(b).

*Maximum penalty: [Amount of penalty yet to be determined.]*

## **Division 8 — General matters**

### **185 Applications to Registrar**

- (1) An application or notice required to be given to the Registrar (including an application for registration of an instrument) must—
- (a) comply with the requirements of the regulations; and
  - (b) be accompanied by the fee fixed by the regulations.
- (2) An applicant must provide the Registrar with any additional information or evidence required by the Registrar for the purposes of determining the application.

**186 Instruments for registration**

An instrument lodged for registration under this Act must comply with the requirements of the regulations.

**187 Form of registers**

- (1) The Registrar is responsible for the form in which a register is kept.
- (2) A register may be kept in an electronic form.
- (3) A register may contain additional information as the Registrar considers appropriate.

**188 Correction of registers**

- (1) The Registrar may correct an error in a register or in an instrument lodged for registration without notice to any person if satisfied the correction will not prejudice the rights of a person.
- (2) An error includes an error by omission.
- (3) The correction may be by way of addition, omission or substitution.
- (4) The correction must be undertaken in a manner that ensures that—
  - (a) the fact that there has been a correction is obvious; and
  - (b) the following can be determined:
    - (i) the content before the correction;
    - (ii) the reason for the correction;
    - (iii) the nature of the correction;
    - (iv) the date of the correction;
    - (v) the name and office of the person who personally authorised the correction.

**189 Search of registers**

- (1) A register must be kept in a manner that can be easily searched to find out all current or historical information in the registers relating to a specified area of land or a specified clan lineage.
- (2) The Registrar must ensure that there is a system in place for providing—
  - (a) reasonable access to the information in the registers and to electronic or other copies of the registered instruments; and
  - (b) a copy of the results of a search of the registers that can be used for the purposes of an application under this Act; and

- (c) a copy of an entry in a register or registered instrument certified by the Registrar to be a true copy of the entry or instrument.
- (3) Access may be provided by any means that the Registrar considers appropriate, taking into account the need to protect the integrity of the registers.
- (4) A fee fixed by the regulations may be charged for—
  - (a) providing a person access to the registers; or
  - (b) a copy of search results; or
  - (c) a certified copy of an entry in a register or a registered instrument.

#### **190 Evidentiary effect of certified copies of entries and registered instruments**

A document that appears to be a certified copy of an entry in a register or a registered instrument, certified by the Registrar to be a true copy, must, in the absence of proof to the contrary, be taken to be a true copy of the entry or registered instrument.

#### **191 Offence to interfere with register**

A person commits an offence if the person intentionally destroys, defaces or otherwise improperly interferes with a register.

*Maximum penalty: [Amount of penalty yet to be determined.]*

### **PART 7 — OFFICIAL SURVEY PLANS**

#### **192 Authorised surveyors**

- (1) The Registrar may, by notice in the Bougainville Gazette, authorise a person with suitable qualifications in surveying to certify official survey plans.
- (2) The Registrar may, by subsequent notice in the Bougainville Gazette, revoke an authorisation under Subsection (1).

#### **193 Survey instructions**

- (1) The Registrar may issue survey instructions that must be complied with by authorised surveyors in carrying out surveys for official survey plans, keeping records of such surveys and certifying official survey plans.
- (2) Without limiting the survey instructions that may be issued, survey instructions may—
  - (a) regulate the manner in which surveys for official survey plans are carried out; and
  - (b) provide for tolerances in relation to the accuracy of surveys for official survey plans; and

- (c) regulate the standard of equipment to be used in surveys for official survey plans; and
  - (d) regulate the form, establishment, custody, maintenance, removal or reinstatement of survey marks used in surveys for official survey plans; and
  - (e) regulate the records that must be kept of surveys for official survey plans; and
  - (f) regulate the form or certification of official survey plans.
- (3) Survey instructions may—
- (a) vary in their operation according to time, place or circumstance; and
  - (b) confer discretionary powers on the Registrar.

#### **194 Right to enter**

An authorised surveyor, or a person authorised in writing by an authorised surveyor, may—

- (a) at any reasonable time, enter land for the purposes of carrying out work in connection with a survey for an official survey plan; and
- (b) take such action as is necessary to enable the survey to be carried out effectively (including excavating or breaking the surface of land to the extent necessary to uncover or place a survey mark).

#### **195 Offence—obstruction of authorised surveyor**

A person commits an offence if the person, without reasonable excuse, hinders or obstructs an authorised surveyor carrying out a survey for an official survey plan.

*Maximum penalty: [Amount of penalty yet to be determined.]*

#### **196 Offence—interference with survey marks**

- (1) A person commits an offence if the person, without the approval of the Registrar or other reasonable excuse, interferes with a survey mark.

*Maximum penalty: [Amount of penalty yet to be determined.]*

- (2) If a person has contravened Subsection (1) and the survey mark has been reinstated by an authorised surveyor, the cost of that reinstatement may be recovered as a debt by the person who caused the survey mark to be reinstated from the person who contravened Subsection (1).

#### **197 Offence—certifying plan when not authorised or survey instructions contravened**

A person commits an offence if—

- (a) the person certifies an official survey plan; and

- (b) the person—
  - (i) is not an authorised surveyor; or
  - (ii) did not carry out or supervise the carrying out of the survey for the plan; or
  - (iii) knows that the survey instructions have not been complied with in relation to the survey for the plan, the survey records or the plan.

*Maximum penalty: [Amount of penalty yet to be determined.]*

## **198 Offences—holding out as authorised surveyor**

- (1) A person commits an offence if—
  - (a) the person—
    - (i) holds himself or herself out as being authorised to certify an official survey plan; or
    - (ii) permits another to hold him or her out as being authorised to certify an official survey plan; and
  - (b) the person is not an authorised surveyor.

*Maximum penalty: [Amount of penalty yet to be determined.]*

- (2) A person commits an offence if—
  - (a) the person holds out another as being an authorised surveyor or authorised to certify an official survey plan; and
  - (b) the person knows, or ought reasonably to know, that the other is not an authorised surveyor.

*Maximum penalty: [Amount of penalty yet to be determined.]*

## **199 Investigation relating to official survey plan**

- (1) The Registrar may, on the Registrar's own initiative or on receipt of a complaint, authorise a suitable person to conduct an investigation in order to determine whether—
  - (a) there is a defect in a survey carried out for an official survey plan, the records of such a survey or an official survey plan; or
  - (b) there has been a contravention of the survey instructions.
- (2) The Registrar or a person authorised to conduct an investigation may do one or more of the following:
  - (a) direct a person who is in a position to do so to—
    - (i) provide the name and address of any person involved in carrying out a survey for or certifying an official survey plan; or
    - (ii) provide other information relevant to the investigation;

- (b) direct a person who has possession of records or equipment relevant to the investigation to produce the records or equipment for inspection (including for records kept by an electronic process, to produce the records in a readily understandable written form);
- (c) inspect the records or equipment, make copies of the records or their contents or test the equipment and, if reasonable necessary, for those purposes, seize and retain the records or equipment.

## **200 Offence—contravention of direction**

A person commits an offence if, without reasonable excuse, the person contravenes a direction given to the person under Section 199.

*Maximum penalty: [Amount of penalty yet to be determined.]*

## **201 Order for rectification of official survey plan**

- (1) If, after an investigation has been conducted under Section 194, the Registrar is satisfied that there is a defect in a survey carried out for an official survey plan, in the records kept of the survey or in the form or certification of an official survey plan, the Registrar may order the authorised surveyor responsible for the defect to do any one or more of the following:
  - (a) to carry out additional work in connection with the survey within a specified period;
  - (b) to amend a record or plan prepared in connection with the survey within a specified period;
  - (c) to prepare a further record or plan in connection with the survey within a specified period;
  - (d) to submit a certified official survey plan following rectification of the defect within a specified period.
- (2) Before imposing a requirement under Subsection (1), the Registrar must allow the authorised surveyor a reasonable opportunity to make representations orally or in writing.
- (3) If an authorised surveyor refuses or fails to comply with a requirement under Subsection (1), the Registrar may cause work to be carried out as necessary to rectify the defect and may recover the costs of that work as a debt owed by the authorised surveyor.

## **202 Offence—contravention of order for rectification**

An authorised surveyor commits an offence if, without reasonable excuse, the authorised surveyor contravenes an order made by the Registrar under Section 0.

*Maximum penalty: [Amount of penalty yet to be determined.]*

## PART 8 — PLANNING PERMISSIONS

### Division 1 — Interpretation

#### 203 Interpretation

(1) In this Part, unless the contrary intention appears—

**building or structure** includes—

- (a) a temporary building or structure; and
- (b) a vehicle, trailer, caravan, vessel or pontoon that is permanently moored or affixed to land; and
- (c) an advertising hoarding; and
- (d) a fence that is more than 2 metres above the natural surface of the land; and
- (e) a sea wall, levee bank or other structure for the protection of land that is more than 2 metres above the natural surface of the land; and
- (f) other infrastructure on land for taking or draining water, managing sewerage, supplying electricity or for telecommunications;

**change of use**, See Subsection (2);

**complying development** means development in a zone in a planning control area that—

- (a) is for an activity that is a preferred activity for the zone under the Development Plan for the area; and
- (b) meets the following design standards as specified in the Development Plan for the area:
  - (i) minimum land size (if applicable);
  - (ii) land coverage and open space requirements;
  - (iii) building setbacks;
  - (iv) car parking and access standards;
  - (v) waste collection requirements;
  - (vi) toilet connection requirements;

**complying use** means a use of land in a zone in a planning control area that is for an activity that is a preferred activity for the zone under the Development Plan for the area;

**consolidation of land** means—

- (a) for customary land—the consolidation of areas of land that have been subject to separate registered leases or rights of occupation under customary land transactions; or

- (b) for ABG land or land leased to ABG—the consolidation of areas of land that have been subject to ABG leases or ABG licences; or
- (c) for freehold land—the consolidation of lots; or

**development—**

- (a) means any of the following:
  - (i) building or erecting a building or structure on land;
  - (ii) enlarging or extending a building or structure on land;
  - (iii) demolishing a building or structure on land;
  - (iv) placing, moving or relocating a building or structure on land;
  - (v) excavating, or filling land (including a river or sea bed) with, a volume of material that exceeds 9m<sup>2</sup>, other than excavating or filling that is incidental to—
    - agriculture or horticulture; or
    - mining authorised under a Bougainville law; or
    - the repair or maintenance of an existing road, track or underground service;
- (b) includes anything declared to be development by the regulations; and
- (c) does not include anything declared to be excluded from the definition of development by the regulations;

*Drafting note – 9m<sup>2</sup> is suggested for consideration. It is hard to work out a sensible limitation.*

*if a building authorisation was linked with the planning authorisation (as is common), then this concept would include:*

- *underpinning a building or structure on land;*
- *repairing or altering the structure of a building or structure on land;*
- *demolishing part of the structure of a building or structure, on land.*

**PAC** means the Planning Assessment Commission (see Section 223);

**planning control area** means an area that is a planning control area under Section 208;

**planning permission** means a planning permission issued by PAC under Section 216;

**subdivision of land** means—

- (a) for customary land—the subdivision of areas of land that have been subject to separate registered leases or rights of occupation under customary land transactions; or



- (b) for ABG land or land leased to ABG—the subdivision of areas of land that have been subject to ABG leases or ABG licences; or
  - (c) for freehold land—the subdivision of lots.
- (2) The following principles apply to determining whether there has been a change of use of land:
  - (a) there is a change of use of land if a person starts to use land for a particular purpose;
  - (b) Paragraph (a) applies—
    - (i) whether or not the land is already being used for a different particular purpose; and
    - (ii) whether or not the land is to continue to be used for that different particular purpose;
  - (c) however—
    - (i) there is no change of use of land if the land was previously used for the same purpose within the previous 2 years; and
    - (ii) the use of land for a particular purpose is to be disregarded if the extent of the use is trifling or insignificant.

*Drafting note: 2 years is suggested for consideration. 6 months seems a bit short.*

## **Division 2 — Planning controls and tree preservation**

### **204 Offence—unauthorised development**

A person commits an offence if—

- (a) the person undertakes development, or causes development to be undertaken, in a planning control area; and
- (b) the development is undertaken other than in accordance with a planning permission.

*Maximum penalty: [Amount of penalty yet to be determined.]*

- (2) Subsection (1) does not apply to a complying development in an area in which a planning permission is not required for a complying development.

*Note—See Section 213.*

### **205 Offence—unauthorised change of use**

- (1) A person commits an offence if—

- (a) the person changes the use of land, or causes the use of land to be changed, in a planning control area; and

- (b) the change of use occurs other than in accordance with a planning permission.

*Maximum penalty: [Amount of penalty yet to be determined.]*

- (2) Subsection (1) does not apply if the new use is a complying use in an area in which a planning permission is not required for a change of use to a complying use.

*Note—See Section 192.*

## **206 Offence—unauthorised subdivision or consolidation**

A person commits an offence if—

- (a) the person subdivides or consolidates land in a planning control area; and
- (b) the subdivision or consolidation occurs other than in accordance with a planning permission.

*Maximum penalty: [Amount of penalty yet to be determined.]*

## **207 Offence—unauthorised lopping or destruction of trees**

A person commits an offence if—

- (a) the person cuts down, tops, lops or destroys trees on land in a planning control area; and
- (b) the trees are identified as being required to be preserved under the Development Plan for the area; and
- (c) the action occurs other than in accordance with a planning permission.

*Maximum penalty: [Amount of penalty yet to be determined.]*

## **Division 3 — Planning control areas**

### **208 Planning control areas**

- (1) Each urban community government area is a planning control area.
- (2) The Bougainville Executive Council may, by notice in the Bougainville Gazette made on the recommendation of the Minister, establish other planning control areas.
- (3) The boundaries of a planning control area established under Subsection (2) must be clearly defined in the notice.
- (4) The Bougainville Executive Council may, by further notice in the Bougainville Gazette made on the recommendation of the Minister, vary or revoke a notice under Subsection (2).

## Division 4 — Development plans

### 209 Development plans

- (1) There is to be a development plan for each planning control area.
- (2) A development plan must specify zones in the planning control area and, for each zone, specify the requirements for a complying development or use of land in the zone.

*Note—See the definitions of **complying development** and **complying use** in Section 203.*

- (3) Without limiting the requirements that may be specified in a development plan, all or specified classes of development or land use may be prohibited in a specified zone.
- (4) There may be land in a planning control area that remains unzoned.
- (5) A development plan may identify trees on land in the planning control area that are required to be preserved.

### 210 Preparation of drafts and consultation

- (1) PAC must prepare a draft development plan for each planning control area.
- (2) If the boundaries of a planning control area are altered, PAC must prepare a draft development plan to be substituted for the development plan for the area.
- (3) PAC may prepare a draft amendment of a development plan or a draft development plan to be substituted for a development plan as it considers appropriate.
- (4) PAC must consult on a draft prepared under this section as follows:
  - (a) PAC must hold a public meeting in the area to which the development plan relates to provide information about the draft and to receive submissions on the draft; and
  - (b) PAC must consult with—
    - (i) the Minister; and
    - (ii) the Secretary of each Department that is, in the opinion of PAC, likely to have a particular interest in the matter; and
    - (iii) each statutory body that is, in the opinion of PAC, likely to have a particular interest in the matter.
- (5) PAC may provide information about a draft and invite submissions by other means that it considers most likely to reach interested persons, including through use of radio, the Internet and newspapers.

- (6) An advertisement of a public meeting and any invitation to make submissions on a draft must specify—
  - (a) how a copy of the draft can be obtained or inspected; and
  - (b) how submissions on the draft may be made to PAC; and
  - (c) how a person can receive assistance to make submissions, including assistance to reduce oral submissions to writing; and
  - (d) the date by which submissions must be made.
- (7) A draft prepared under this section must be kept readily available to interested persons in the area to which the draft relates for the period during which submissions may be made.
- (8) After considering all matters raised as a result of consultation, PAC may—
  - (a) decide to approve the draft without modification; or
  - (b) modify the draft and decide to approved the draft as modified; or
  - (c) decide not to proceed with the draft.

## **211 Making of development plan or amendment**

- (1) A draft approved by PAC becomes a development plan or an amendment of a development plan on publication of a notice of the approval in the Bougainville Gazette.
- (2) The notice of approval must—
  - (a) identify any development plan that is to be substituted or amended; and
  - (b) identify the development plan or amendment that is to come into operation or be accompanied by a copy of that development plan or amendment; and
  - (c) fix a day on which the development plan or amendment will come into operation and any substituted development plan will be revoked.

*Drafting note: Should Parliament be able to disallow a development plan or amendment?*

## **212 Availability and evidence of development plans**

- (1) Copies of each development plan, and of any document referred to in a development plan, must be kept available for inspection and purchase by the public during ordinary office hours at an office determined by PAC.

*Drafting note: Is purchase appropriate?*

- (2) PAC may make a development plan available on the Internet or by other means as PAC considers appropriate.

- (3) In any legal proceedings, evidence of the contents of a development plan or of a document referred to in a development plan may be given by production of a document certified by the Secretary as a true copy of the development plan or document.
- (4) An apparently genuine document purporting to be a certificate of the Secretary will be accepted as such a certificate in the absence of proof to the contrary.

## **Division 5 — Planning permissions**

### **213 Complying development or use exemptions**

- (1) PAC may, by notice in the Bougainville Gazette, declare that a planning control area or part of a planning control area is an area in which a planning permission is not required for—
  - (a) a complying development; or
  - (b) a change of use to a complying use.
- (2) PAC may, by further notice in the Bougainville Gazette vary or revoke a notice under Subsection (1).

### **214 Application to PAC for planning permission**

- (1) An application for a planning permission—
  - (a) must be made to PAC; and
  - (b) must be in the form required by PAC; and
  - (c) must comply with any requirements of the regulations; and
  - (d) must be accompanied by the fee fixed by the regulations.
- (2) An applicant for a planning permission must provide PAC with any information required by the chief executive officer of PAC in connection with determination of the application.
- (3) If the chief executive officer of PAC so requires, the information must be verified by statutory declaration.

### **215 Advertisement or referral of application and submissions**

- (1) The chief executive officer of PAC may—
  - (a) take action, or direct an applicant to take action, to advertise the details of an application for a planning permission and invite submissions on the application; or
  - (b) refer an application for a planning permission to a public authority or provider of utility services and invite submissions on the application.

- (2) An advertisement of an application for a planning permission must specify—
  - (a) how a copy of the application can be obtained or inspected; and
  - (b) how submissions on the application may be made to PAC; and
  - (c) how a person can receive assistance to make submissions, including assistance to reduce oral submissions to writing; and
  - (d) the date by which submissions must be made.
- (3) The chief executive officer of PAC may, in the officer's discretion, hold a community meeting on or in the vicinity of the land to which an application relates to provide an opportunity for the applicant to explain the proposal and community members to make submissions on the proposal.
- (4) The chief executive officer of PAC must inform PAC of submissions made under this section.
- (5) PAC must consider the submissions in making its decision on the application.

#### **216 Conditions of planning permission**

- (1) A planning permission is subject to any conditions specified by PAC in the permission.
- (2) The conditions of a planning permission may be varied by PAC on application.
- (3) The provisions of this Act applying to an application for planning permission apply with any necessary modifications to an application for variation of a condition of a planning permission.

#### **217 Expiry of planning permission**

- (1) A planning permission expires after 5 years if, within that time, the development has not commenced or the change of use or authorised activity has not occurred.
- (2) The regulations may specify requirements that must be met for a development to be regarded as having commenced.
- (3) The expiry of a planning permission may be postponed by PAC on application.
- (4) The provisions of this Act applying to an application for planning permission apply with any necessary modifications to an application for postponement of expiry of a planning permission.

#### **218 Principles for determination of planning permission**

In deciding whether to give planning permission, PAC must apply the requirements and principles set out in the relevant Development Plan.

**219 Principles for certain planning permissions**

- (1) This section applies to the following decisions of PAC:
- (a) whether to give planning permission for a non-complying development;
  - (b) whether to give planning permission for a change to a non-complying use;
  - (c) whether to give planning permission for a subdivision or consolidation of land;
  - (d) the conditions to which a planning permission should be made subject.
- (2) In making a decision to which this section applies, PAC must take into account the following:
- (a) the effect of the development or use on the environment and how the risk of environmental harm could be minimised;
  - (b) the effect of the development or use on traffic in the area and the capacity of road and public transport systems;
  - (c) the effect of the development or use on the amenity of the area, including in terms of the character, location, bulk, scale, size, height and density of the development and in terms of landscaping (in particular compared to developments on adjoining land);
  - (d) the requirements of the development or use in terms of water, sewerage, drainage, electricity and telecommunications and the capacity of utility services in the area;
  - (e) whether adequate provision is proposed to be made for means of entrance to and exit from the land, loading and unloading and manoeuvring and parking of vehicles, as appropriate to the development or use;
  - (f) the social, cultural and economic aspects of the development or use;
  - (g) risks to the development or use from flooding, tidal inundation, subsidence, slip, bushfire, earthquake or volcanic eruption.

**220 Principles for tree preservation requirements**

In making a decision on an application for a planning permission to act contrary to tree preservation requirements specified in a Development Plan and in making a decision about the conditions of such a permission, PAC must consider the following:

- (a) the condition of the trees;
- (b) the nature of the proposal;
- (c) the purpose for seeking permission;
- (d) the extent to which a requirement to plant other trees may be appropriate.

**221 Notification to applicant of decision**

- (1) If PAC decides not to give planning permission, PAC must cause the applicant for the permission to be informed of—
  - (a) the decision; and
  - (b) the right to apply for review of the decision.
- (2) If PAC decides to give planning permission, PAC must cause the applicant—
  - (a) to be given a copy of the permission; and
  - (b) if the permission is subject to conditions—to be informed of the right to apply for review of the conditions.

**222 Review of PAC decision**

- (1) An applicant for planning permission has a right to apply to the District Court for review of a decision of PAC not to give planning permission or to give planning permission subject to conditions.
- (2) Subject to this section, an application for review must be lodged with the District Court within 1 month after the making of the decision to which the application relates.
- (3) PAC must, on application by a person who could apply for review of a decision of PAC, give the person a written statement of the reasons for the court's decision.
- (4) The time for making an application for review runs from the time when the person receives the written statement of reasons if—
  - (a) a written statement of the reasons for a decision is not given by PAC at the time of making the decision; and
  - (b) the applicant, within 1 month after receiving written notice of the decision, applies to PAC for a written statement of reasons for the decision.
- (5) On a review, the District Court may—
  - (a) confirm the decision of PAC; or
  - (b) substitute the decision of PAC with a decision that the District Court considers appropriate; or
  - (c) remit the matter to PAC for further consideration, with or without directions.
- (6) PAC must consider, but is not bound by, directions of the District Court given under Subsection (5)(c).



## Division 6 — Planning Assessment Commission

### Sub-division 1 — Establishment

#### 223 Planning Assessment Commission

- (1) The *Planning Assessment Commission* (**PAC**) is established.
- (2) PAC—
  - (a) is a body corporate; and
  - (b) has perpetual succession; and
  - (c) is capable of suing and being sued in its corporate name; and
  - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
  - (e) has the functions and powers assigned or conferred by this Act.
- (3) PAC is an instrumentality of the Autonomous Bougainville Government and holds its property on behalf of the Autonomous Bougainville Government.

#### 224 Staff—assignment of Public Service officers

- (1) Public Service officers must be assigned to assist PAC in the performance of its functions by the Secretary.
- (2) Before Public Service officers are assigned to assist PAC, the Chief Secretary and the Secretary responsible for the Public Service must be consulted.
- (3) An appointed PAC member has no direct authority over a Public Service officer assisting PAC with respect to the way in which the officer performs official functions or powers.
- (4) One of the Public Service officers assigned to assist PAC must be designated by the Secretary as the chief executive officer of PAC.

#### 225 Compliance with Public Finance Act

- (1) For the Bougainville Public Finance (Management and Administration) Act 2014—
  - (a) PAC is a statutory body; and
  - (b) PAC members comprise the controlling body of the statutory body; and
  - (c) the person designated by the Secretary as the chief executive officer of PAC is the chief executive officer of the statutory body; and
  - (d) money appropriated for the purposes of PAC is public money.
- (2) PAC may not borrow or invest money except in accordance with the *Bougainville Public Finance (Management and Administration) Act 2014*.

**Sub-division 2 — Membership****226 PAC members**

- (1) PAC consists of 8 members as follows:
  - (a) the Chief Secretary;
  - (b) the Secretary;
  - (c) the Secretary for public works;
  - (d) appointed members as follows:
    - (i) 1 with qualifications, knowledge, and experience in economics, commerce or finance (for example in the private business sector);
    - (ii) 1 with qualifications, knowledge, and experience in planning, urban design, architecture, building or construction (for example a professional engineer, architect, surveyor, valuer, town planner or lawyer);
    - (iii) 1 who is knowledgeable about needs of sporting bodies and groups that should be taken into account in planning decisions;
    - (iv) 1 who is knowledgeable about needs of churches and faiths that should be taken into account in planning decisions;
    - (v) 1 who is knowledgeable about needs of women that should be taken into account in planning decisions.
- (2) There should be at least 3 female and 3 male members.
- (3) The appointed PAC members are to be appointed by the Bougainville Executive Council by notice in the Bougainville Gazette.
- (4) Before the office of an appointed PAC member is filled—
  - (a) a public invitation for written applications for appointment to the office (setting out the selection criteria) must be made; and
  - (b) the applications received within the time allowed in the invitation must be assessed against the selection criteria on the basis of merit.
- (5) When a PAC member is appointed, the notice of appointment in the Bougainville Gazette must include a statement of the selection criteria and a summary of the basis on which the member was selected for appointment.

**227 Deputies of ex officio members**

- (1) The Chief Secretary, the Secretary and the Secretary for public works may each appoint a Public Service officer to be a deputy.

- (2) A deputy is—
- (a) to act in the office of the member in the absence of the member from official duties; and
  - (b) to perform other functions assigned to the deputy by the member (including attending meetings of PAC in the place of the member).
- (3) A deputy has all the functions and powers of the member but must act in accordance with the directions of the member.

*Drafting note: This idea might be useful in the BACTA Bill.*

## **228 Terms and conditions of appointment**

- (1) Subject to this Act, appointed PAC members are appointed on terms and conditions determined by the Bougainville Executive Council.
- (2) The term of office of an appointed PAC member commences when, following appointment, the member makes, before the Minister, the following declaration of office:
- “I [name of member] promise that I will well and truly serve the people of Bougainville as a member of the Planning Assessment Commission.”*
- (3) An appointed PAC member is appointed for 3 years or such shorter term as is specified in the notice of appointment.
- (4) At the expiration of a term of appointment, an appointed PAC member is eligible for reappointment.
- (5) An appointed PAC member may resign by written notice to the Chief Secretary.
- (6) The Bougainville Executive Council may, by notice in the Bougainville Gazette, remove an appointed PAC member from office—
- (a) for contravention of a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.

## **229 Validity of acts**

An act or proceeding of PAC is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### ***Sub-division 3 — Procedures***

## **230 Procedures of PAC**

Subject to this Act, PAC may determine its own procedures.

**231 Meetings**

- (1) The Chief Secretary is to preside at a meeting of PAC.
- (2) If the Chief Secretary is absent from a meeting, the Secretary is to preside and, if the Secretary is absent from the meeting, a member of DAC chosen by those present is to preside.
- (3) A conference by telephone or other electronic means between the members of PAC is a meeting of PAC at which the participating members are present if—
  - (a) notice of the conference is given to all members in the manner determined by PAC for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (4) A quorum of PAC consists of 5 members.
- (5) No business may be transacted at a meeting unless a quorum is present.

**232 Decisions**

- (1) A decision carried by a majority of the votes cast by the members present at a meeting of PAC is a decision of PAC.
- (2) Each member present at a meeting of PAC has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (3) A proposed resolution of PAC becomes a valid decision of PAC despite the fact that it is not voted on at a meeting of PAC if—
  - (a) notice of the proposed resolution is given to all PAC members in accordance with procedures determined by PAC; and
  - (b) at least 5 of the members express concurrence in the proposed resolution by e-mail or other written communication setting out the terms of the resolution.

**233 Records of meetings and decisions**

PAC must keep accurate records of its meetings and of each of its decisions.

**234 Execution of documents**

- (1) A document is duly executed by PAC if the document is signed on behalf of PAC by—
  - (a) the Chief Secretary, the Secretary or the Secretary for public works; and
  - (b) an appointed PAC member.

- (2) If a document appears to be signed as required by Subsection (1), it must be taken, in the absence of proof to the contrary, to have been duly executed by PAC.

### **235 Conflict of interest**

- (1) This section applies if a PAC member—
- (a) has a direct or indirect financial interest in a matter being considered, or about to be considered, by PAC; or
  - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about a matter being considered, or about to be considered, by PAC.
- (2) The member—
- (a) must disclose the nature of the interest and how it relates to the matter to the other members; and
  - (b) must not take part in any deliberation or decision about the matter; and
  - (c) must be disregarded for the purpose of constituting a quorum for the deliberation or decision.
- (3) The member need not disclose an interest if—
- (a) the interest is an interest shared in common with the public generally or a substantial section of the public; or
  - (b) the interest is of a kind exempted from the requirement for disclosure by the regulations.
- (4) The disclosure must be noted in the records of PAC meetings and decisions.
- (5) A failure by the member to disclose an interest in a matter does not, on its own, invalidate a decision of PAC about the matter.

### ***Sub-division 4 — Annual report***

### **236 Annual report**

- (1) PAC must, before 31 March in each year, prepare and give to the Minister a report on the performance of its functions during the previous calendar year.
- (2) The Minister must ensure that a copy of the report is tabled in the House of Representatives within 12 sitting days after it is received.

## PART 9 — MISCELLANEOUS

### 237 False or misleading information

A person commits an offence if the person makes a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or records kept, under this Act.

*Maximum penalty:*

- (a) if the person made a statement knowing that it was false or misleading—K10,000 and 12 months' imprisonment; or
- (b) in any other case—K2000.

### 238 Power of Secretary to act in place of community government

If a community government is unable or unwilling to perform a function under this Act, the Secretary may perform the function.

### 239 Delegation by Secretary

- (1) The Secretary may delegate to a Public Service officer a function or power under this Act (other than a function or power excluded from delegation by the regulations).
- (2) A function or power delegated by the Secretary may not be further delegated unless that is expressly allowed by the Secretary.

*Note—Part II Division 10 of the Interpretation Act 2005 contains provisions relevant to delegations under Bougainville law.*

### 240 Service of applications, notices and other documents

- (1) An application, notice or other document required or authorised to be served or given to a customary land court, the Registrar or PAC under this Act or another Bougainville law may be served or given—
  - (a) by leaving it at, or posting it to, the principal office of the customary land court, Registrar or PAC; or
  - (b) by a means (such as email) indicated by the customary land court, Registrar or PAC as being an available means of service (in which case, the application, notice or other document is to be taken to be served or given when it would be received by that means in usual circumstances); or
  - (c) by leaving it with a person who has authority to accept documents on behalf of the customary land court, Registrar or PAC.
- (2) An order or other document required or authorised to be served on or given to a person by or on behalf of a customary land court, the Registrar or PAC under this Act or another Bougainville law may be served or given—
  - (a) personally; or

- (b) by leaving it with a person apparently over the age of 16 years at, or posting it to, the last residential or business address of the person known to the court, Registrar or PAC (including, in the case of a body corporate, the registered address of the body corporate); or
- (c) by a means (such as email) indicated by the person as being an available means of service (in which case, the order or other document is to be taken to be served or given when it would be received by that means in usual circumstances); or
- (d) by any means provided for service of the order or document by another Bougainville law.

#### **241 Protection from civil liability**

- (1) This section applies to—
  - (a) a presiding officer of a customary land court; and
  - (b) a land mediator; and
  - (c) the Registrar; and
  - (d) a member of PAC.
- (2) Subject to this section, no civil liability attaches to a person to whom this section applies for an act or omission in the exercise or purported exercise of official functions or powers.
- (3) An action that would, but for Subsection (2), lie against a person lies instead against the Autonomous Bougainville Government.
- (4) This section does not prejudice rights of action of the Autonomous Bougainville Government in respect of an act or omission of a person not in good faith.

#### **242 Human rights**

For Section 180(3) of the Bougainville Constitution, in the opinion of the House of Representatives—

- (a) this is a law restricting human rights in a manner that is reasonably justifiable for the purpose in a democratic society that has a proper regard for the rights and dignity of mankind; and
- (b) the human rights that are restricted are *[yet to be completed- protection from unjust deprivation of property?]*; and
- (c) the restriction is necessary *[yet to be completed]*, as referred to in Section 180(2) *[yet to be completed]* of the Bougainville Constitution.

#### **243 Act binds Autonomous Bougainville Government**

This Act binds the Autonomous Bougainville Government.

**244 Regulations**

- (1) The Bougainville Executive Council may make such regulations as are contemplated by, or as are necessary or expedient for, this Act.
- (2) The regulations may make provisions of a saving or transitional nature consequent on the making of this Act or an Act that amends this Act.
- (3) A provision of regulations made under Subsection (2) may, if the regulations so provide, take effect from the date of certification of the Act concerned under Section 66 of the Bougainville Constitution or a later date.
- (4) To the extent that a provision takes effect under Subsection (3) from a date earlier than the date of notification of the regulations in the Bougainville Gazette under Section 68 of the *Interpretation Act* 2005, the provision does not operate to the disadvantage of a person by decreasing the person's rights or imposing liabilities on the person.

**PART 10 — REPEAL, AMENDMENTS AND TRANSITIONAL PROVISIONS****Division 1 — Repeal****245 Repeal of Physical Planning Act**

The *Bougainville Physical Planning Act* 2013 is repealed.

**Division 2 — Consequential amendments of other Acts****246 Consequential amendments of other Acts**

The Acts specified in the table below are amended in the manner indicated.

<i>Provision amended</i>	<i>How amended</i>
[Act title]	
Section [number]	[Amendment instruction – no fullstop]
[yet to be completed]	

**Division 3 — Transitional provisions****247 ABG land**

- (1) On the commencement of this Act, the following land making up Bougainville becomes ABG land:
  - (a) freehold land registered under the *Land Registration Act* 1981 of the National Parliament in the name of any of the following:



- (i) ABG or the Independent State of Papua New Guinea;
  - (ii) an authority established under the Constitution, or written law, of Bougainville or the Independent State of Papua New Guinea;
  - (iii) a Minister or other representative of ABG or the Independent State of Papua New Guinea;
- (b) land that is subject to a lease that becomes an ABG lease under Section 248.
- (2) ABG land is subject to any easements registered against the land under the *Land Registration Act* 1981 of the National Parliament immediately before the commencement of this Act.

*Drafting note: How might these easements be translated into the types allowed?*

*What happens if there is a registered lease over land referred to in para (a)?*

#### **248 Registered leases to ABG—conversion of leases to ABG of customary land**

On the commencement of this Act, a lease to ABG lease of customary land identified by notice in the Bougainville Gazette published by ? is taken to be registered.

*Drafting note: Might something like this work?*

#### **249 ABG leases—conversion of State leases**

- (1) On the commencement of this Act, a State lease over land making up Bougainville that is registered in the Register of State leases under the *Land Registration Act* 1981 of the National Parliament and in force immediately before that commencement becomes an ABG lease.

*Note—Plantations and mission land fall into this category.*

- (2) A reference in such a lease to the following is to be read as a reference to ABG:
- (a) ABG or the Independent State of Papua New Guinea;
  - (b) an authority established under the Constitution, or written law, of Bougainville or the Independent State of Papua New Guinea;
  - (c) a Minister or other representative of ABG or the Independent State of Papua New Guinea.
- (3) Subject to Subsection (4), the terms and conditions of a lease that becomes an ABG lease under this section remain in force until expiry of the lease, even if they are inconsistent with this Act.
- (4) A lease that becomes an ABG lease under this section can be dealt with as if it had been granted under this Act.

**250 ABG licences**

- (1) On the commencement of this Act, a settler tenancy on ABG land or land leased to ABG in an urban community government area that is in force immediately before that commencement becomes an ABG licence to occupy the land of the tenancy.
- (2) A settler tenancy is ?
- (3) A settler tenancy that becomes an ABG licence under this section can be dealt with as if it had been granted under this Act on terms determined by the Minister by notice in the Bougainville Gazette made on the recommendation of the Bougainville Executive Council.

*Drafting note: Perhaps something like this could be used for the legal and illegal settlements. Then they can be dealt with as a licence.*

**251 Freehold land and interests in freehold land**

On the commencement of this Act—

- (a) freehold land registered under the *Land Registration Act* 1981 of the National Parliament becomes freehold land under this Act; and
- (b) interests in that freehold land registered under that Act become easements, leases and mortgages as follows:

*Drafting note: What kind of interests are there and can we turn them into easements, leases and mortgages under this Act?*

**252 Development plans**

- (1) This section applies to the development plans for Arawa and Buin prepared under the *Bougainville Physical Planning Act* 2014.
- (2) PAC may alter the development plans to achieve consistency with this Act.
- (3) The requirements of Part 9 for consultation on draft development plans do not apply to the first approval of the development plans under this Act.
- (4) However, before publishing a notice of approval of a development plan for Arawa or Buin under Section 211, PAC must ensure that there has been a reasonable opportunity for public comment on the plan by people resident in the town.

**253 Planning permissions**

*Drafting note: Do we need to provide for continuity of permissions granted?*

*Are there existing members of the Board that should automatically continue as members of PAC?*

DRAFT