

- Can transfer lease – with consent of Minister

- There will be no lease back arrangements, such as Special Agricultural Business Leases (SABL) in PNG

Licences for specific use

- The State may grant licences for use of small portions of ABG land for various purposes e.g. research, commercial use

- Grant is made by the Minister

- Fees and terms of licence also to be determined by Minister

LAND RECORD

- There will be the following land registers:

- Customary Register
- Freehold Register
- ABG Register – ABG Land and ABG Leases

- A Land Registrar will be accountable for the records

- The records will be searchable by interested persons – for a fee



PLANNING

- The Physical Planning Act 2013 will be repealed

- The new Bill will streamline planning processes to better link with Urban Development plans

- The Bill will establish a Planning Assessment Commission (PAC) to make decisions around planning applications

- An appeal of a decision of the PAC may be made to the District Court

POWERS

- There are some powers which are mandatory “shall” powers, and other powers

which are discretionary “may” powers

- The Minister will have powers to do a number of things under the Act - but some of those powers will require the endorsement of the BEC to be exercised, such as:

- Grant, alteration or termination of ABG Lease
- Grant of easement over ABG Land

- The Minister will be granted powers to make Subordinate legislation such as Rules, and the power to make submission to the BEC to make Regulations under the Act

Feedback

PDF of Bill available on ABG website:

<https://www.abg.gov.pg/government/departments/lands-planning-environment>

Provide written feedback to: ABGLANDBILL@gmail.com

Feedback closes at 5pm BST on 31 January 2022.



Department of Lands, Physical Planning, Environment and Conservation

BOUGAINVILLE LAND BILL



The Bougainville Land Policy was developed over several years by the Department of Lands, through District-level consultations with a broad cross-section of Bougainvilleans providing their thoughts. The Department of Lands have now worked with the Department of Justice & Legal Services to develop a Draft Land Bill.

Key elements of the Bill proposed are outlined in this brochure. The passage of the Bill will make many PNG Acts of parliament in relation to land not applicable. While the system of land regulation being proposed for Bougainville is similar to PNG in some ways, it is very different in others.

ABG now seeks Bougainvilleans feedback on the content of the draft Bill, in order to finalise it for passage through the Bougainville House of Representatives.

Feedback can be provided in writing to the Department of Lands or online – details provided at the back. The opportunity to provide feedback closes on 31 January 2022.

What's the same as PNG

- Torrens title system
- Regulation of alienated land.

What's different from PNG

- Customary Land registration
- Customary land dispute settlement
- Modes of acquisition.

CUSTOMARY LAND

Governing Principle:

All land in Bougainville is Customary Land unless otherwise designated. Customary Land is a communal asset which is intended to be held by the Clan into perpetuity. An estimated 97% of land in Bougainville is Customary Land.

Customary Land Recorded

- Bougainville Land Bill will mean the PNG *Land Act 1996* no longer applies

- The system will therefore be different from PNG's

- Will register customary land on a land register

- Will register clan name, land boundary, land features, customary land practices of clan:

- To record the boundary of the land, it is not necessary for a Clan to use a Cadastral Survey Plan

- In the first instance Clan can use GPS plot points provided by Dept Lands

- Register will be built up over time – to form a more and more complete record of all land in Bougainville

- Customary land can be registered voluntarily

The content of this brochure and the associated Land Bill Consultations are authorised by the Department of Land, Physical Planning, Environment & Conservation and Department of Justice & Legal Services.



- Customary land will also be registered after a land dispute has been settled by the Customary Land Court

Record of interests in customary land

- Once the customary land has been recorded on the Land Register (by the Land Registrar) the Clan can then also record interests in the land

- If there is a registered interest in land to be recorded, a professional survey plan will be required

- The types of interests in land which may be recorded are:

- Easements
- Leases – must be longer than 3 years to be registered on the Land Record
- Mortgages

- In order to register an interest in Customary Land, the clan will need to take a vote which will require majority (51%) agreement to proceed

- Where a clan wishes to use their customary land as security for a bank mortgage, the threshold for a successful clan vote will be higher – e.g. 80%

- This is because there is a high



risk in mortgaging land, that land which was intended to be held into perpetuity by the clan could be forfeited to the Bank and sold where a clan defaults on their mortgage payments

Land Management Committees

- Where a clan registers an interest in the land, generally for a commercial purpose, the Clan must establish a Land Management Committee

- Members of the Committee will be legally bound to act in the best interests of the Clan

- Members may: execute documents, file documents with Dept Lands /Courts, collect rents, deposit rents, invest money etc

- Where a member of the Committee is found to act in a manner which is not in the best interests of the clan,



they can be fined and / or imprisoned

- Strong penalty clauses to ensure compliance with law

How will disputes over Customary Land be settled?

- Passage of the Bougainville Land Bill will mean the PNG Land Disputes Settlement Act no longer applies

- There will be a Customary Land Court in every Community Government area

- Customary authority will be strengthened by requiring Chiefs to have been consulted before applying to court

- Land Mediators will preside over the Customary Land Court (existing Land Mediators to be retained)

- Rules of court will continue to be informal – no lawyers and no cost orders

- Court can make following types of orders:

- Stop order – in interim
- Compensation order – to remedy damage done by a party
- Order about the boundary of land – which will be registered in the Land Record

- A party who is not satisfied with the outcome of the Customary Land Court decision can appeal to the District Court

- Any dispute over a matter which involves formal legal principles or is about a registered interest in land cannot be heard by the Customary Land Court. It will need to be referred to the District Court.

ALIENATED LAND

Governing principle: All land is customary land unless alienated. That is, the concept of terra nullius is done away with. Therefore the PNG idea that all land is State Land unless otherwise designated no longer applies.

Freehold Land

- Any freehold land currently held will continue to be held as freehold land with the same conditions

- There is provision in the Bill for holders of Freehold Land to gift back land or portions of land to the State for Public Purpose use.

ABG Land

- Any State land currently held by State of PNG is intended to be transitioned



to ABG Land

- This is referred to in the Bill as “ABG Land” to save confusion with PNG State Land

- No land can be alienated to be State Land without the full consent of the Customary land owners - Just compensation must be paid.

ABG Leases

- Any current State Lease will continue on the same terms until its expiration

- These are referred to in the Bill as “ABG Leases” to save confusion with PNG State Leases

- Any new lease will be on new terms:

- No longer 99 yr terms – now only 25 yr terms
- Rent payable annually in arrears – penalties for late payment of rent
- Can be renewed at expiration – provided all rents paid
- Can sublease

