

# **BOUGAINVILLE MINING (TRANSITIONAL ARRANGEMENTS) ACT 2014**

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## AUTONOMOUS REGION OF BOUGAINVILLE

(No 5 of 2014)

### ***BOUGAINVILLE MINING (TRANSITIONAL ARRANGEMENTS) ACT 2014***

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

MADE by the House of Representatives, to come into operation in accordance with a notice in the Bougainville Gazette by the Minister, other than Part 9, which is to come into operation on a later date in accordance with another notice in the Bougainville Gazette by the Minister

## **PART 1 — PRELIMINARY**

### **1 Objectives of this Act**

The objectives of this Act are—

- (a) to meet the requirements of the *Bougainville Peace Agreement* and the *Papua New Guinea Constitution*; the *Organic Law on Peace-Building in Bougainville - Autonomous Bougainville Government and Bougainville Referendum 2002* and the *Bougainville Constitution* in relation to mining and related matters; and
- (b) to provide a legislative framework for the Autonomous Bougainville Government to regulate the exploration and development of mineral resources in Bougainville for all Bougainvilleans in an orderly and environmentally sustainable way so as to minimise land use conflict; and
- (c) to provide for a transition to a situation where a mining law of the Autonomous Bougainville Government deals more fully with the special circumstances of Bougainville; and
- (d) to implement arrangements for the transfer of powers in relation to mining having regard to—
  - (i) the process for the transfer of functions and powers under Section 295 of the *Papua New Guinea Constitution*; and
  - (ii) the 15 steps for the transfer of functions and powers under the January 2008 Agreement; and
  - (iii) the Memorandum of Understanding between the National Government and the Autonomous Bougainville Government signed in Alotau in March 2008; and
  - (iv) the 2012 resolution by the Joint Supervisory Body concerning legislation of the Autonomous Bougainville Government.



## 2 Compliance with constitutional requirements

- (1) In accordance with Section 303 of the *Papua New Guinea Constitution* and Subsection 180(3) of the *Bougainville Constitution*, this Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Papua New Guinea Constitution* (Qualified Rights), namely—
- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Papua New Guinea Constitution*; and
  - (b) the right to freedom of employment conferred by Section 48 of the *Papua New Guinea Constitution*; and
  - (c) the right to privacy conferred by Section 49 of the *Papua New Guinea Constitution*; and
  - (d) the right to freedom of information conferred by Section 51 of the *Papua New Guinea Constitution*,
- is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.
- (2) For the purposes of the PNG *Land Act* 1996, exploration and mining purposes are declared to be public purposes.
- (3) In accordance with Section 64 of the *Organic Law on Peace-Building in Bougainville - Autonomous Bougainville Government and Bougainville Referendum* 2002, the purpose for which this Act permits possession to be compulsorily taken of any property and permits any interest in or right over property to be compulsorily acquired is declared to be a public purpose for the purposes of Subsection 53(1) (Protection from unjust deprivation of property) of the *Papua New Guinea Constitution*.

## 3 Interpretation

- (1) In this Act, unless the contrary intention appears—
- ‘agent’** means a person acting on behalf of the owner or occupier of a mine and includes a person having the care or direction of a mine or any part of a mine or of any works connected with a mine;
- ‘alluvial’** means all unconsolidated rock materials, transported and deposited by stream action or gravitational action, which are capable of being freely excavated without prior ripping or blasting;
- ‘approved landowner organisation’** means an organisation of landowners approved under Section 22;
- ‘approved programme’** means a programme, compliance with which is a condition of an exploration licence;
- ‘approved proposals’**, in relation to a tenement, means proposals, compliance with which is a condition of that tenement;

**‘Autonomous Bougainville Government’** has the same meaning as in the *Interpretation Act 2005*;

**‘Autonomous Region of Bougainville’** has the same meaning as in the *Interpretation Act 2005*;

**‘block’** means a block constituted as provided by Section 181;

**‘Bougainvillean’** has the same meaning as in the *Interpretation Act 2005*;

**‘Bougainville Chief Warden’** means the Bougainville Chief Warden appointed under Section 39;

**‘Bougainville Constitution’** has the same meaning as in the *Interpretation Act 2005*;

**‘Bougainville Executive Council’** has the same meaning as in the *Interpretation Act 2005*;

**‘Bougainville Mineral Resources Forum’** means a mineral resources forum convened under Section 28;

**‘Bougainville Mining Advisory Council’** means the Bougainville Mining Advisory Council established by Section 34;

**‘Bougainville Mining Registrar’** means the Bougainville Mining Registrar appointed under Section 38;

**‘Bougainville Register’** means the Bougainville Register of Tenements established and maintained under Section 142;

**‘Bougainville Warden’** means a Warden appointed under Section 39;

**‘Chairperson’** means the Chairperson of the Bougainville Mining Advisory Council;

**‘customary land’** has the same meaning as in the *Interpretation Act 2005*;

**‘Department’** means the agency of the Administration of the Autonomous Bougainville Government responsible for minerals matters;

**‘Executive Officer’** means the Executive Officer appointed under Section 35;

**‘exploration’** includes any manner or method of prospecting for the purpose of locating and evaluating mineral deposits including bulk sampling, feasibility studies and related laboratory testing;

**‘exploration licence’** means an exploration licence granted under Section 51 or 52;

**‘governing body’**, in relation to an approved landowner organisation, means the group of persons (by whatever name called) who are responsible for the executive decisions of the organisation;

**‘Government land’** means land other than—

- (a) customary land that is not leased by the owners to the State or the Autonomous Bougainville Government; and

- (b) land held by a person other than the State or the Autonomous Bougainville Government for an estate greater than a term of years; and
- (c) land that is the subject of an existing State lease under the PNG *Land Act* 1996,

and includes land reserved, or deemed to have been reserved, from lease under Section 49 of the PNG *Land Act* 1996, whether or not that land has been placed, or is deemed to have been placed, under the control of trustees under Section 50 of that Act;

**‘hearing’** means a hearing conducted under Section 137;

**‘holder’**, in relation to a tenement, means the person whose name appears in the Bougainville Register as the owner of the tenement;

**‘improvements’**, in relation to compensation, includes buildings and crops;

**‘inspector’** means an inspector appointed under the PNG *Mining (Safety) Act* 1977;

**‘land’** includes—

- (a) the surface and any ground beneath the surface of the land; and
- (b) water; and
- (c) the foreshore, being that area between the mean high water springs level of the sea and the mean low water springs level of the sea; and
- (d) the offshore area from the mean low water springs level of the sea to such depth as admits of exploration for or mining of minerals; and
- (e) the bed of any river, stream, estuary, lake or swamp; and
- (f) any interest in land;

**‘landholder’** means—

- (a) a person who is recognised as an owner of customary land; or
- (b) a person who is in occupancy of Government land by virtue of an agreement with the State or the Autonomous Bougainville Government; or
- (c) a person who is the owner or lawful occupant of land other than customary land or Government land;

**‘lease for mining purposes’** means a lease for mining purposes granted under Section 93;

**‘minerals’** has the meaning given by Subsections (2) to (4);

**‘mining’** includes any manner or method used for the purpose of deriving minerals and includes quarrying;

**‘Mining Act’** means the *Mining Act* 1992 of the Independent State of Papua New Guinea;

**‘mining easement’** means a mining easement granted under Section 108;

**‘mining lease’** means a mining lease granted under Section 66;

**‘Minister’** means the member of the Bougainville Executive Council responsible for mineral matters;

**‘offshore area’** means the seabed underlying the areas of sea referred to in Paragraph 1(1)(b) of the *Bougainville Constitution*;

**‘Papua New Guinea Constitution’** means the *Constitution of the Independent State of Papua New Guinea*;

**‘petroleum’** means—

- (a) any naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of 1 or more hydrocarbons (whether in a gaseous, liquid or solid state) and any other substance,

and includes any petroleum as defined in Paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal, shale or any substance that may be extracted from coal, shale or other rock;

**‘PNG Central Banking (Foreign Exchange and Gold) Regulation 2000’** means the *Central Banking (Foreign Exchange and Gold) Regulation 2000* of the Independent State of Papua New Guinea;

**‘PNG Environment Act 2000’** means the *Environment Act 2000* of the Independent State of Papua New Guinea;

**‘PNG Land Act 1996’** means the *Land Act 1996* of the Independent State of Papua New Guinea;

**‘PNG Land Disputes Settlement Act 1975’** means the *Land Disputes Settlement Act 1975* of the Independent State of Papua New Guinea;

**‘PNG Mining (Safety) Act 1977’** means the *Mining (Safety) Act 1977* of the Independent State of Papua New Guinea;

**‘PNG Survey Act 1969’** means the *Survey Act 1969* of the Independent State of Papua New Guinea;

**‘PNG Water Resources Act 1982’** means the *Water Resources Act 1982* of the Independent State of Papua New Guinea;

**‘prescribed’** means prescribed by the regulations made under this Act;

**‘programme’** means a written statement of the work to be done and the expenditure to be incurred on or in connection with an exploration licence;

**‘proposals’** means a written statement of the operations proposed to be undertaken on or in connection with a tenement (other than an exploration licence);

**‘reconnaissance’** means any steps necessary to participate in exploration activities or to make an application for an exploration licence;

**‘reconnaissance area’** means the area subject to registration under Section 45 to carry out reconnaissance;

**‘referendum on independence’** has the same meaning as in the *Interpretation Act 2005*;

**‘regulations’** means the regulations made under this Act;

**‘reserved land’** means land reserved or deemed to have been reserved, under Section 49 of the PNG *Land Act 1996*, whether or not that land has been placed or is deemed to have been placed, under the control of trustees under Section 50 of that Act;

**‘Secretary’** means the Departmental Head of the Department;

**‘small-scale extraction lease’** means a small-scale extraction lease granted under Section 76;

**‘sub-block’** means a sub-block constituted as provided by Section 181;

**‘survey directions’** means survey directions issued under Section 37 of the PNG *Survey Act 1969*;

**‘surveyor’** means a surveyor registered under the PNG *Survey Act 1969*;

**‘tenement’** means—

- (a) an exploration licence; or
- (b) a mining lease; or
- (c) a small-scale extraction lease; or
- (d) a lease for mining purposes; or
- (e) a mining easement,

granted or taken to have been granted under this Act;

**‘this Act’** includes the regulations.

(2) All valuable non-living substances, excluding petroleum, obtained or obtainable from land are minerals, including each of the following—

- (a) geothermal energy;
- (b) coal seam gas;
- (c) clay if it is mined for use for its ceramic properties;
- (d) limestone, silica and silica sand if it is mined for use for its chemical properties;
- (e) marble;

- (f) peat.
- (3) Soil, sand, gravel or rock is not a mineral if it is to be used, or to be supplied for use, as sand, gravel or rock, whether intact or in broken form.
- (4) A reference in this Act to minerals existing on, in or below the surface of any land includes minerals contained in any water lying on the land.
- (5) The term of a tenement is calculated on and from, and includes, the date on which it was granted by the Bougainville Executive Council.
- (6) If more than 1 person is holding a tenement, their obligations in respect of that tenement are joint and several, except if such obligations are by express provision or necessary implication several obligations.
- (7) A tenement granted under this Act is not an interest in land for the purposes of the PNG *Land Act* 1996.

#### **4 Mining without tenements**

- (1) Subject to Subsection (2), the mining of minerals must be undertaken on a tenement.
- (2) A Bougainvillean may carry out the mining of minerals on an area of land that is less than 0.5 hectares and not the subject of a tenement (other than an exploration licence) if—
  - (a) he or she is a landholder of the land; or
  - (b) the landholders of the land have consented to the mining.
- (3) The rights conferred by this section do not affect the right of any person to make application for and be granted a tenement under this Act.
- (4) The Bougainville Executive Council may, under Section 9, reserve land from mining under this section.
- (5) Despite Subsection 3(1) of the PNG *Mining (Safety) Act* 1977, that Act applies to the mining of minerals carried out on any area of land in the Autonomous Region of Bougainville that is not the subject of a tenement and is less than 0.5 hectares.
- (6) For the purposes of the application of the PNG *Mining (Safety) Act* 1977 to the mining of the minerals on any area of land in the Autonomous Region of Bougainville that is not the subject of a tenement and is less than 0.5 hectares—
  - (a) any Bougainvillean carrying out such mining is deemed to be the owner in relation to the mine or works, as the case requires, within the meaning of the PNG *Mining (Safety) Act* 1977 and the Bougainvillean must carry out the mining safely and in accordance with the PNG *Mining (Safety) Act* 1977; and
  - (b) the Minister is deemed to be given the power under Section 5 of the PNG *Mining (Safety) Act* 1977 to appoint inspectors on the advice of the Secretary.

## **PART 2 — KEY PROVISIONS**

### **Division 1 — Limit on mining leases and prioritising opportunities**

#### **5 Limit on number of mining leases**

No more than 2 mining leases granted under this Act for major mining developments are to be in force at any one time.

#### **6 Priorities in relation to opportunities arising from mining development**

So far as practicable, employment, training, business and other opportunities arising from mining development are to be made available to the following persons in descending priority order—

- (a) the landholders of the land the subject of the tenement or tenements concerned;
- (b) the landholders of the land in the vicinity of a mining development;
- (c) other Bougainvilleans.

### **Division 2 — Available land**

#### **7 Land available for exploration and mining**

All land in the Autonomous Region of Bougainville, including all water lying over that land, is available for exploration and mining and the grant of tenements over it.

#### **8 Geological survey**

- (1) The Autonomous Bougainville Government must as soon as practicable undertake or facilitate the undertaking of a geological survey of the whole of Bougainville.
- (2) The results of the geological survey may be used to prioritise areas that are to be made available for competitive tenders for exploration licences under Section 44 or the grant of exploration licences under Section 51 or 52.

#### **9 Reservations**

- (1) Subject to the approval of the House of Representatives, the Bougainville Executive Council may, by notice published in the Bougainville Gazette, reserve from exploration or mining any land specified in the notice, and such reservation is effective on and from the date of publication of the notice.
- (2) In exercising its powers under Subsection (1), the Bougainville Executive Council must have regard to the limit on the number of mining leases under Section 5 and any geological survey undertaken in accordance with Section 8.
- (3) A notice under Subsection (1) must specify the area of land under reservation by reference to a description of the land in latitude and longitude and comprises sub-blocks.

- (4) Subject to Subsection (5), on the coming into effect of a reservation under this section, the Bougainville Mining Registrar must defer dealing as required under Paragraph 132(b) with any registered applications for tenements over the land the subject of the reservation until such time as the reservation is revoked or otherwise expires.
- (5) A reservation under this section has no effect on—
  - (a) any tenement or application for the grant of any tenement registered prior to the date of publication of the notice of reservation; or
  - (b) any application for extension of the term of a tenement to which Paragraph (a) refers; or
  - (c) the right of any person to apply for the grant of a tenement and the requirement that an application be registered under Paragraph 132(a).
- (6) Upon the revocation or expiry of a reservation, the Bougainville Mining Registrar must in accordance with Paragraph 132(b) deal with any application for the grant of a tenement over the land the subject of the reservation that has been registered.
- (7) Subject to the approval of the House of Representatives, the Bougainville Executive Council may, by notice published in the Bougainville Gazette, revoke, in whole or in part, a reservation made under this section or referred to in Subsection (8).
- (8) A reservation of land referred to in Subsection 214(1) has effect on and after the commencements of this Act as if it were a reservation made under Subsection (1) of this section.

## **10 Exploration and mining on reserved land**

- (1) An application for a tenement over land reserved for exclusive use under the PNG *Land Act* 1996 or any other Act may not be granted without the consent of the Minister responsible for that reserved land.
- (2) If consent is obtained under Subsection (1), no further consent is required if the tenement is converted to another tenement.

## **11 Land dispute settlement**

- (1) If a dispute arises as to interests in customary land or the position of boundaries of customary land, the dispute does not affect—
  - (a) the right of a person to make application for and be granted a tenement under this Act; or
  - (b) the validity of a tenement granted under this Act.
- (2) A dispute referred to in Subsection (1) is to be settled as provided for by—
  - (a) the regulations; or



- (b) the PNG *Land Disputes Settlement Act 1975*.

### **Division 3 — Ownership of minerals and customary rights**

#### **12 Minerals cease to be property of State of Papua New Guinea**

All minerals existing on, in or below the surface of land in the Autonomous Region of Bougainville cease to be the property of the State of Papua New Guinea.

#### **13 Customary land - property in minerals**

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

#### **14 Non-customary land - property in minerals**

- (1) All minerals existing on, in or below the surface of any land in the Autonomous Region of Bougainville that is not customary land are the property of the Autonomous Bougainville Government.
- (2) Nothing in Subsection (1) is to be construed as an acquisition of property by the Autonomous Bougainville Government in relation to Section 53 of the *Papua New Guinea Constitution*.

#### **15 Rights provided for by this Act to owners of customary land**

Without limiting the customary rights over minerals of the owners of customary land, the following rights are provided for by this Act—

- (a) to be consulted about the grant of an exploration licence under Section 51 over the land and to withhold consent to any such grant;
- (b) in the case of an application for a mining lease, a lease for mining purposes or a mining easement over the land—
  - (i) to be consulted at a Bougainville Mineral Resources Forum in accordance with Section 28; and
  - (ii) to participate in a mediation (if any) in accordance with Section 30;
- (c) to be consulted about the grant of a small-scale extraction lease under Section 76 over the land and to withhold consent to any such grant;
- (d) to share in any revenue generated by mining development on the land;
- (e) to participate in employment, training, business and other opportunities arising from mining development on the land;
- (f) to receive rent in accordance with Section 175 and compensation for the impact of mining development on the land in accordance with Part 8, being compensation that reflects the nature and extent of such impact.

## **16 Determining customary rights over minerals**

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

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

## **17 Resolving disputes by consensus**

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

### **Division 4 — Exclusive powers of Autonomous Bougainville Government over minerals**

#### **18 Exclusive power of Autonomous Bougainville Government to grant tenements**

- (1) The Autonomous Bougainville Government has exclusive power to grant tenements under this Act because of the multiplicity of landholders' interests mentioned in Subsection (2) that are, or are likely to be, affected directly or indirectly by the grant of a tenement.
- (2) The interests include, but are not limited to, the interests of the landholders of—
  - (a) the land the subject of a tenement; and
  - (b) the land adjacent to the land mentioned in Paragraph (a); and
  - (c) the land that is the subject of, or likely to be the subject of, an application for an associated tenement; and
  - (d) any other land that can reasonably be expected to experience financial, environmental, social, cultural or other impacts should mining commence.

#### **19 Exclusive power of Autonomous Bougainville Government to distribute mining revenues**

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

- (a) legislation imposing taxation on or in relation to minerals or mining developments;
- (b) the outcomes of the Bougainville Mineral Resources Forums;
- (c) the agreements referred to in Part 5;
- (d) the payment of rent under Section 175 and compensation under Part 8 to landholders;
- (e) the payment of royalties to landholders;

- (f) the equity (if any) of the Autonomous Bougainville Government and landholders in mining developments;
- (g) such other prescribed matters.

## **20 Exercise of exclusive powers**

The Autonomous Bougainville Government in exercising its exclusive powers under Section 18 or 19 may take into account the following—

- (a) the Objectives and Directive Principles set out in Part 3 of the *Bougainville Constitution*;
- (b) the customary rights of Bougainvilleans, and the common interests, and desire for unity, of all Bougainvilleans;
- (c) the benefits to all Bougainvilleans of undertaking the exploration and development of minerals in a sustainable way so as to avoid or minimise deleterious environmental, social and cultural impacts;
- (d) the need for the gradual and orderly exploration and development of minerals to build and preserve wealth, and maintain a balance between the needs of present and future generations of Bougainvilleans;
- (e) the promotion of equitable development amongst all parts of Bougainville, including less developed areas and areas without minerals so as to avoid or minimise tensions and conflict likely to be associated with significant inequality;
- (f) the need to broaden the economy in Bougainville so as to provide employment and other opportunities to as many Bougainvilleans as practicable;
- (g) the need to develop the autonomy of the Autonomous Bougainville Government and for the Autonomous Bougainville Government to achieve fiscal self-reliance;
- (h) the need to develop the capacity of the Autonomous Bougainville Government to the point where real choices are available to Bougainvilleans when the referendum on independence is conducted;
- (i) the interests and wishes of approved landowner organisations;
- (j) the outcome of any Bougainville Mineral Resources Forum;
- (k) the outcome of any mediation held under Section 30.

## **21 Customary rights do not affect exclusive powers of Autonomous Bougainville Government**

To avoid doubt, customary rights, other than the right to withhold consent to an exploration licence or a small-scale extraction lease, do not in any way affect the exclusive powers of the Autonomous Bougainville Government under Sections 18 and 19.

## **PART 3 — MAJOR MINING DEVELOPMENTS**

### **Division 1 — Approved landowner organisations**

#### **22 Approval of landowner organisations**

- (1) Subject to Subsection (3), the Bougainville Executive Council may from time to time approve 1 or more organisations to represent all or some of the owners of customary land referred to in Subsection (2).
- (2) The owners are owners of customary land—
  - (a) that is the subject of an application for—
    - (i) a mining lease, or a lease for mining purposes or a mining easement related to the mining lease, or is likely to be the subject of such an application; or
    - (ii) an extension of the term of a mining lease, or a lease for mining purposes or a mining easement related to the mining lease; or
    - (iii) any other variation approved by the Bougainville Executive Council to a mining lease, or a lease for mining purposes or a mining easement related to the mining lease; or
  - (b) that is adjacent to any land referred to in Paragraph (a); or
  - (c) that can reasonably be expected to experience financial, environmental, social, cultural or other impacts should an application referred to in Paragraph (a) be granted.
- (3) The Bougainville Executive Council must not approve an organisation to represent 1 or more owners of customary land unless satisfied that—
  - (a) preliminary landowner identification studies have been completed to the satisfaction of the Bougainville Mining Advisory Council; and
  - (b) the results of those studies are accurate and up to date; and
  - (c) the membership and structures of the organisation are such that it would be truly representative of the owners of the customary land; and
  - (d) the organisation would be able to perform satisfactorily the functions of representing the landowners in consultations, negotiations and mediations (if any) for the exploration or development of minerals, including at any Bougainville Mineral Resources Forum; and
  - (e) the constitution of the organisation—
    - (i) is consistent with democratic principles, including the democratic election of the governing body of the organisation in accordance with a timetable specified in the constitution; and
    - (ii) contains governance rules for the organisation consistent with principles of good governance and transparency; and

- (iii) provides for the resolution of disputes internal to the operation of the organisation; and
- (iv) provides for regular performance and financial audits of the organisation; and
- (v) provides for the preparation and submission of an annual report by the organisation to the Minister; and
- (f) there is a balance of skills, expertise and gender among members of the governing body of the organisation; and
- (g) the organisation satisfies any requirements for registration or incorporation prescribed by the regulations or any other Act.

### **23 Approval procedure**

- (1) The Bougainville Executive Council may approve an organisation under Section 22 on its own initiative or on the application of the organisation in the prescribed form.
- (2) In deciding whether or not to approve an organisation, the Bougainville Executive Council must use an open, fair and transparent procedure.
- (3) Without limiting Subsection (2), the Bougainville Executive Council must—
  - (a) obtain advice from the Bougainville Mining Advisory Council; and
  - (b) by public advertisement through radio or a newspaper with a wide circulation in Bougainville, invite comments in relation to an organization; and
  - (c) prepare a report in relation to the organisation and require the Minister to submit the report to the House of Representatives; and
  - (d) comply with any prescribed requirements.
- (4) The Bougainville Executive Council must not make a decision under Section 22 until the House of Representatives has had an opportunity to debate the report referred to in Paragraph (3)(c).
- (5) The Bougainville Executive Council must give a landowner organisation written notice of an approval and publish the notice in the Bougainville Gazette, and the approval takes effect on the date specified in the notice.
- (6) If the Bougainville Executive Council does not approve a landowner organisation, the Council must give the organisation written notice of its decision setting out the reasons for it.

## **24 Revocation of approved landowner organisations**

- (1) The Bougainville Executive Council may revoke the approval of a landowner organisation if satisfied that—
  - (a) the organisation is not satisfactorily performing its function to represent the owners of customary land for which it was approved; or
  - (b) there are serious or repeated irregularities in the financial or governance affairs of the organisation; or
  - (c) there are serious or repeated breaches of the organisation’s constitution, or this Act by the organisation.
- (2) The Bougainville Executive Council must give an approved landowner organisation written notice of any proposed revocation and request the approved landowner organisation to submit, within such reasonable period of time as is specified in the notice, reasons why its approval should not be revoked.
- (3) In deciding whether to revoke the approval of a landowner organisation, the Bougainville Executive Council must take into account any reasons submitted by the approved landowner organisation in response to a notice under Subsection (2).
- (4) The Bougainville Executive Council must give a landowner organisation written notice of a revocation and publish the notice in the Bougainville Gazette, and the revocation takes effect on the date specified in the notice.

## **25 Variation of approval of landowner organisations**

- (1) After consultation with an approved landowner organisation, the Bougainville Executive Council may vary the approval of the landowner organisation.
- (2) Without limiting Subsection (1), a variation may be made—
  - (a) in order to reflect changes to the landowners being represented by the organisation; or
  - (b) in response to the approval of another landowner organisation or the revocation of another approved landowner organisation; or
  - (c) in response to the grant, extension or variation of a tenement.
- (3) The Bougainville Executive Council must give an approved landowner organisation written notice of a variation and publish the notice in the Bougainville Gazette, and the variation takes effect on the date specified in the notice.

## **Division 2 — Social mapping and landowner identification**

### **26 Social mapping and landowner identification**

- (1) An applicant for a mining lease must ensure that full-scale social mapping studies and landowner identification studies are undertaken of—
  - (a) the owners of customary land in the area of the proposed mining lease; and

- (b) the owners of customary land in the area of any proposed lease for mining purposes or mining easement associated with the proposed mining lease; and
  - (c) the owners of customary land adjacent to the land mentioned in Paragraph (a) or (b); and
  - (d) the owners of any other customary land that can reasonably be expected to experience financial, environmental, social, cultural or other impacts should mining commence.
- (2) An applicant—
  - (a) to extend the term of a mining lease, must ensure that the previous full-scale social mapping studies and landowner identification studies are up dated in accordance with the directions of the Minister; and
  - (b) for a variation of a mining lease to include an additional block or blocks in the mining lease, must ensure that full-scale social mapping studies and landowner identification studies of the owners of the customary land on which the additional block or blocks are situated are undertaken.
- (3) An applicant for any other variation of a mining lease must ensure that social mapping studies and landowner identification studies are undertaken as are directed by the Minister.
- (4) An applicant—
  - (a) for a lease for mining purposes or a mining easement associated with a mining lease; or
  - (b) to extend the term of such a tenement; or
  - (c) to otherwise vary such a tenement,must ensure that social mapping studies and landowner identification studies are undertaken as directed by the Minister, unless the Minister is satisfied that the social mapping studies and landowner identification studies for the associated mining lease are adequate.
- (5) The regulations may prescribe the scope and method of a social mapping study or landowner identification study conducted under this section and requirements as to reports of such studies.
- (6) An applicant or a person authorised under Subsection (7) is to provide copies of any social mapping or landowner identification studies undertaken under this section (excluding any information that is confidential to the applicant or to the landowners) to the Secretary as soon as practicable after the studies are completed.
- (7) If an application for a mining lease has not been made, the Bougainville Executive Council may in anticipation of the application being made authorise a person to

undertake full-scale social mapping studies and landowner identification studies of the owners of customary land referred to in Subsection (1).

## **27 Approval for social mapping and landowner identification studies**

- (1) Social mapping studies and landowner identification studies referred to in Section 26 must not be undertaken without the prior approval of the Bougainville Executive Council.
- (2) The Bougainville Executive Council must not approve the undertaking of those social mapping studies and landowner identification studies unless the Council is satisfied that the studies will be undertaken in an objective and independent manner.
- (3) To avoid doubt, nothing in this section prevents the Department from undertaking social mapping studies and landowner identification studies referred to in Section 26 if requested to do so by an applicant for or the holder of a tenement upon payment of a fee agreed to by the parties.

## **Division 3 — Bougainville Mineral Resources Forum and related matters**

### **28 Bougainville Mineral Resources Forum**

- (1) This section applies to an application for the grant of a mining lease.
- (2) Subject to Subsection (3), the Minister must convene a Bougainville Mineral Resources Forum before the Bougainville Executive Council decides whether or not to grant the application.
- (3) The Minister must not convene a Bougainville Mineral Resources Forum until—
  - (a) the Bougainville Executive Council has approved a landowner organisation or organisations in accordance with Section 22; and
  - (b) social mapping and landowner identification studies required under Section 26 have been completed and presented to the Minister; and
  - (c) the applicant has submitted to the Minister, and to the Minister responsible for environmental matters—
    - (i) a socio-economic impact study as part of the environmental plan required under the PNG *Environment Act 2000*; or
    - (ii) such other study as is prescribed by the regulations or required under another Act.
- (4) The purposes of a Bougainville Mineral Resources Forum are to—
  - (a) obtain the views of the approved landowner organisations, the applicant, the Autonomous Bougainville Government, the National Government and other persons who will be, or are likely to be, affected by the grant of the application; and



- (b) share information about the proposed mining development; and
  - (c) obtain the consent to the application for the grant of the mining lease of—
    - (i) the approved landowner organisation or organisations representing the owners of the customary land in respect of which the application has been made; and
    - (ii) any owners of that customary land not represented by an approved landowner organisation; and
    - (iii) any other landholders of land in respect of which the application has been made, not being customary land; and
  - (d) obtain the consent to the application for the grant of the mining lease of—
    - (i) the approved landowner organisation or organisations representing the owners of customary land, being customary land that is adjacent to the land in respect of which the application has been made or that can reasonably be expected to experience financial, environmental, social, cultural or other impacts should the application be granted; and
    - (ii) any owners of that adjacent customary land or other customary land referred to in Subparagraph (i) not represented by an approved landowner organisation; and
    - (iii) any other landholders of non-customary land adjacent to the land in respect of which the application has been made or that can reasonably be expected to experience financial, environmental, social, cultural or other impacts should the application be granted; and
  - (e) achieve agreement on the following matters—
    - (i) the equitable sharing of the revenue and other benefits amongst landholders from the proposed mining development;
    - (ii) the management and governance arrangements for the distribution of such revenue and other benefits;
    - (iii) the arrangements for the monitoring and evaluation of the proposed mining development;
    - (iv) the reporting requirements of the holder of any tenement that is granted or varied;
    - (v) the formation of a co-ordinating committee to oversee the proposed mining development;
    - (vi) the agreements required to give effect to the outcomes of the Forum and the in-principle content of those agreements; and
  - (f) commence negotiations on agreements referred to in Sections 40 and 41.
- (5) The Minister must conduct a Bougainville Mineral Resources Forum in accordance with the procedures approved by the Bougainville Executive Council having regard to the purposes referred to in Subsection (4).

- (6) The Minister must invite the following persons to attend a Bougainville Mineral Resources Forum—
- (a) representatives of the approved landowner organisation or organisations referred to in Subparagraphs (4)(c)(i) and (4)(d)(i); and
  - (b) representatives of the Council of Elders for the area or areas in which the land the subject of the application is situated;
  - (c) representatives of women’s groups;
  - (d) the applicant;
  - (e) persons who will represent the views of the Autonomous Bougainville Government, at least half of whom must be women;
  - (f) the members of the Bougainville Mining Advisory Council;
  - (g) the Bougainville Mining Registrar;
  - (h) the Bougainville Chief Warden and the other Bougainville Wardens;
  - (i) the members of the Bougainville Executive Council;
  - (j) representatives of landholders who are not the owners of customary land, being landholders referred to in Subparagraphs (4)(c)(iii) and (4)(d)(iii);
  - (k) such other persons as the Minister considers appropriate.
- (7) The owners of customary land referred to Subparagraphs (4)(c)(ii) and (4)(d)(ii) may in writing request approval from the Minister for their representatives to attend the Forum.
- (8) If the Minister agrees to a request under Subsection (7), the Minister must determine the number of representatives of the owners who can attend the Forum and the criteria for selecting those representatives.

## **29 Report and recommendation from Bougainville Mineral Resources Forum**

- (1) Within 90 days after the conclusion of a Bougainville Mineral Resources Forum, the Secretary must prepare a report on the outcome of the Forum and submit it to the Bougainville Mining Advisory Council.
- (2) Within 28 days after the receipt of the Secretary’s report, the Bougainville Mining Advisory Council must recommend to the Bougainville Executive Council that—
- (a) the necessary consents have not been obtained and mediation under Section 30 should be considered; or
  - (b) the necessary consents have been obtained and the Bougainville Executive Council can proceed to decide whether or not to grant the application concerned.
- (3) A Council of Elders that attended the Bougainville Mineral Resources Forum may submit a report to the Bougainville Mining Advisory Council within 90 days after the conclusion of the Bougainville Mineral Resources Forum.

### **30 Mediation**

- (1) This section applies to an application for the grant of a mining lease.
- (2) Subject to Subsection (3), the Bougainville Executive Council may refer the application for mediation if—
  - (a) a Bougainville Mineral Resources Forum has been held under Section 28 in respect of the application; and
  - (b) the consents required under Paragraphs 28(4)(c) and (d) were not obtained.
- (3) Before the Bougainville Executive Council refers the application for mediation, the Minister must consult with stakeholders and attempt to obtain the outstanding consent or consents, as the case requires, and may request from the relevant persons a written statement of their concerns that resulted in the decision to withhold any consent.
- (4) The purpose of a mediation is to obtain the outstanding consent or consents, as the case requires, and to resolve any other issues from the Bougainville Mineral Resources Forum that remain in dispute.
- (5) The mediation—
  - (a) must be conducted by—
    - (i) a mediator chosen by agreement of the parties to the mediation; or
    - (ii) if the parties are not able to agree on a mediator, the Bougainville Executive Council must appoint an independent person with suitable training, qualifications and experience; and
  - (b) must be conducted in accordance with the prescribed requirements (if any); and
  - (c) may end at any time by decision of the mediator or by agreement of the parties to the mediation.
- (6) The mediation must include—
  - (a) the Minister and such other members of the Bougainville Executive Council as the Minister nominates; and
  - (b) the applicant; and
  - (c) representatives of the approved landowner organisations and landholders referred to in Paragraphs 28(4)(c) and (d); and
  - (d) such other persons as the person conducting the mediation considers appropriate.
- (7) The person who conducted the mediation must, as soon as practicable after the mediation is conducted or should have been conducted, prepare a report to the parties to the mediation and the Secretary about—
  - (a) whether the mediation was conducted; and

- (b) if the mediation failed – the reasons for the failure; and
  - (c) if the consent to the application was obtained – the terms of the giving of the consent; and
  - (d) if the parties agreed to resolve other issues in dispute relating to the application – the resolution of those other issues, including any action to be taken by the parties.
- (8) The Bougainville Executive Council may refer the application for mediation on its own initiative or at the request of the applicant for the mining lease or an approved landowner organisation.

### **31 Mutually acceptable decision**

- (1) This section applies to an application for the grant of a mining lease if a mediation in respect of the application has been conducted under Section 30, but has not achieved the desired outcomes.
- (2) The Bougainville Executive Council must use its best endeavours to consult with approved landowner organisations, the applicant and other stakeholders, and reach a mutually acceptable decision.
- (3) The consultations must take into account the following—
- (a) whether the go-ahead of the mining development is necessary for the rehabilitation of the Autonomous Region of Bougainville and its people from the destruction, injuries, trauma and dislocation suffered during the Bougainville conflict; and
  - (b) the importance of the mining development to the Autonomous Bougainville Government achieving autonomy and fiscal self-reliance; and
  - (c) the extent to which the application has been dealt with in compliance with the requirements of this Act and standards of international best practice; and
  - (d) how the mining development will be undertaken so as to contribute significantly to the development and environmental needs of present and future generations of the People of Bougainville;
  - (e) the measures that will be taken to prevent or minimise damage and destruction to land, seas, air and water resources arising from the mining development, and to restore any damage caused by the development or a variation to it;
  - (f) the financial and other benefits that will be provided by the mining development to Bougainvilleans.

**32 Sections 28, 29, 30 and 31 apply to applications for certain other tenements**

- (1) Sections 28, 29, 30 and 31 apply to—
- (a) an application for the grant of a lease for mining purposes or a mining easement related to—
    - (i) an application for a mining lease; or
    - (ii) a mining lease; and
  - (b) an application to extend the term of a mining lease, or a lease for mining purposes or a mining easement related to the mining lease; and
  - (c) an application to otherwise vary a mining lease, or a lease for mining purposes or a mining easement related to the mining lease, unless the Bougainville Executive Council decides otherwise,
- as if a reference in those sections to an application were a reference to an application referred to Paragraph (a), (b) or (c), as the case requires.
- (2) To avoid doubt, a Bougainville Mineral Resources Forum may deal with 1 or more related applications, for example, an application for the grant of a mining lease and an application for the grant of a lease for mining purposes associated with that proposed mining lease may be dealt with at the same Bougainville Mineral Resources Forum.

**PART 4 — ADMINISTRATION**

**33 Secretary**

- (1) The functions, powers and duties of the Secretary are as specified in this Act.
- (2) The Secretary may, by instrument in writing, delegate all or any of his or her duties, functions or powers (except this power of delegation) to any officer in the Department or to any person for the time being occupying a designated position in the Department.

**34 Bougainville Mining Advisory Council**

- (1) A Bougainville Mining Advisory Council is established.
- (2) Subject to Subsection (3), the Council consists of—
- (a) the Secretary, who is the Chairperson; and
  - (b) 3 officers of the Department appointed by the Secretary; and
  - (c) 3 persons appointed by the Bougainville Executive Council; and
  - (d) if a matter before the Board relates to land, a representative of the Council of Elders for the area in which that land is situated.
- (3) At least 1 of the members referred to in Paragraphs (2)(b) and (c) must be a woman.

- (4) If it is not possible under Paragraph (2)(b) to appoint a woman from the Department, the Secretary may appoint a woman from another Department.
- (5) If a member of the Council, other than the Chairperson, is for any reason unable to attend a meeting of the Council or otherwise to perform his or her or her functions, the member may in writing appoint a person with the consent of the Secretary to act as the member's alternate for the period of his or her or her inability. A person so appointed is taken to be a member of the Council for the duration of his or her or her appointment.
- (6) If the Chairperson is for any reason unable to attend a meeting of the Council or otherwise perform his or her or her functions, the Chairperson must appoint a member of the Council to act as Chairperson in his or her or her absence.
- (7) In making appointments under Subsection (2) the Bougainville Executive Council or the Secretary, as the case may be, must take into consideration the appointee's qualifications and experience in mining, geology, finance, law or related fields, including the appointee's experience in Bougainville.

### **35 Executive Officer to the Council**

- (1) The Council must appoint an officer of the Department to be Executive Officer to the Council.
- (2) The Executive Officer to the Council is responsible for convening meetings of the Council.

### **36 Meetings of the Council**

- (1) The Council must meet as often as is necessary to carry out its functions and at such times and places as the Chairperson directs.
- (2) At a meeting of the Council—
  - (a) the Chairperson and 3 other members are a quorum; and
  - (b) the Chairperson is to preside; and
  - (c) subject to Subsection (3), all questions arising are to be decided by consensus; and
  - (d) in any question arising that is not decided by consensus, including a motion declaring a consensus has not been reached, each member of the Council including the Chairperson has a deliberative vote, and in the event of an equality of votes on any question the Chairperson also has a casting vote; and
  - (e) the Council is to otherwise determine its own procedures.
- (3) If a question arising at a meeting cannot be decided by consensus, the question is to be decided by a majority vote of the members present at the meeting and eligible to vote. However, before a vote is taken, a motion declaring a consensus

has not been reached must be supported by a majority of the members present and eligible to vote.

- (4) Members of the Council are to be paid sitting allowances for attendance at meetings of the Council, being allowances that are determined by the Bougainville Executive Council having regard to the allowances paid to members of other bodies in Bougainville or elsewhere in Papua New Guinea that have similar levels of responsibilities.

### **37 Functions of the Council**

The functions of the Council are—

- (a) to make recommendations under this Act; and
- (b) to advise the Minister on such matters as the Minister may refer to the Council; and
- (c) such other matters as are specified in this Act.

### **38 Bougainville Mining Registrar**

- (1) The Bougainville Mining Registrar is an officer of the Department appointed by the Secretary by notice in the Bougainville Gazette.
- (2) The functions, powers and duties of the Bougainville Mining Registrar are as specified in this Act.
- (3) The Bougainville Mining Registrar may, by instrument in writing, delegate all or any of his or her duties, functions or powers (except this power of delegation) to any officer of the Department or to any person occupying a designated position in the Department.
- (4) If any document is required to be lodged for registration under this Act, the document must be lodged with the Registrar, unless otherwise expressly provided.
- (5) Subject to Sections 129 and 144, and unless otherwise expressly provided, any time period provided for under this Act in relation to a tenement is to be calculated by reference to the date and time of registration of the tenement so far as it may be relevant, and not the date and time of lodgement of the application for registration.

### **39 Bougainville Wardens**

- (1) The Secretary must appoint for the purpose of this Act—
  - (a) an officer of the Department to be Bougainville Chief Warden; and
  - (b) such other number of officers as he or she considers necessary to be Bougainville Wardens.
- (2) The functions, powers and duties of a Bougainville Warden are as specified in this Act.

- (3) The Bougainville Chief Warden must undertake—
  - (a) the duties of a Bougainville Warden; and
  - (b) such additional functions as are specifically allocated to the Bougainville Chief Warden under this Act or as the Secretary may refer to him or her.
- (4) The Bougainville Chief Warden may, by instrument in writing, delegate all or any of his or her duties, functions or powers (except this power of delegation) to a Bougainville Warden.

## **PART 5 — EXPLORATION AND MINING DEVELOPMENT AGREEMENTS**

### **40 Autonomous Bougainville Government agreements**

- (1) The Autonomous Bougainville Government may enter into such agreements as it considers necessary for the purposes of the exploration or development of minerals.
- (2) An agreement must not be inconsistent with this Act and must not be entered into without the prior approval of the Bougainville Executive Council.
- (3) In entering into an agreement, the Autonomous Bougainville Government must have regard to the following if relevant to the agreement—
  - (a) the outcome of any Bougainville Mineral Resources Forum;
  - (b) the outcome of any mediation;
  - (c) the matters required to be taken into account in exercising the exclusive powers of the Autonomous Bougainville Government under Section 20.

### **41 Approved landowner organisation agreements**

- (1) Subject to this Act, an approved landowner organisation may enter into such agreements as it considers necessary for the purposes of the exploration or development of minerals.
- (2) An agreement—
  - (a) must not be inconsistent with this Act, and
  - (b) must not be entered into without the prior approval of the governing body of the approved landowner organisation; and
  - (c) must be entered into in accordance with the requirements of the constitution of the approved landowner organisation.
- (3) In entering into an agreement, the approved landowner organisation must have regard to the following if relevant to the agreement—
  - (a) the outcome of any Bougainville Mineral Resources Forum;
  - (b) the outcome of any mediation;



- (c) the decisions (if any) made by the Bougainville Executive Council and the Minister that are relevant to the agreement.

#### **42 Register of agreements**

- (1) The Secretary must establish and maintain a Register of agreements entered into in relation to the exploration or development of minerals.
- (2) Subject to Subsection (3), the Register must contain for each agreement—
  - (a) the name of the parties to the agreement; and
  - (b) the area of land to which the agreement relates; and
  - (c) the date of commencement of the agreement; and
  - (d) a brief description of the subject matter of the agreement; and
  - (e) such other information as the Secretary determines.
- (3) The Secretary must not enter information in the Register that is commercial-in-confidence information or other information of a confidential nature to 1 of the parties to the agreement.
- (4) The Register is to be received by all courts as prima facie evidence of all matters required or authorised by or under this Act to be entered in the Register.
- (5) The Secretary is to determine the form of the Register and must keep it up to date.
- (6) The Register must be available for inspection by the public during usual government business hours.

#### **43 Content of agreements**

- (1) Without limiting Section 40 or 41, an agreement may contain provisions relating to all or any of the following—
  - (a) the monitoring and evaluation of—
    - (i) the implementation of the agreement; and
    - (ii) the compliance by the parties with their obligations under the agreement,by reference to international performance standards;
  - (b) the review of the agreement by an independent person or body, and the period of review, for example, every 5 years, and the publication of the results of those reviews;
  - (c) the reporting obligations of the parties to the agreement and the publication of those reports;
  - (d) the settlement of disputes arising out of or relating to the agreement, including provisions relating to the settlement of disputes by mediation or arbitration;

- (e) the acquisition by a party to the agreement either directly or indirectly of an interest in a mining development;
  - (f) the agreement of the parties to the grant of a tenement;
  - (g) any other matter that the parties to the agreement may consider necessary.
- (2) To the extent of any conflict between the provisions of an agreement entered into under Section 40 or 41, and the provisions of this Act, the provisions of this Act prevail.

## **PART 6 — TENEMENTS**

### **Division 1 — Exploration licences**

#### ***Subdivision A — Tenders***

#### **44 Competitive tender process for exploration licences**

- (1) This section applies in relation to exploration licences, despite any other provision of this Division.
- (2) The Bougainville Executive Council may approve a competitive tender process to allocate exploration licences for a particular block or blocks.
- (3) A competitive tender process may involve all or any of the following—
  - (a) a general invitation to persons to tender for the grant of exploration licences in respect of a block or blocks;
  - (b) a particular period during which a person may submit a tender;
  - (c) entry fees for prospective tenderers;
  - (d) reserve prices of exploration licences;
  - (e) methods for resolving which of 2 or more equal tenders is to be successful;
  - (f) deposits payable by successful tenderers.

#### ***Subdivision B — Reconnaissance***

#### **45 Registration to carry out reconnaissance**

- (1) If the Secretary is satisfied of the matters in Subsection (2), the Secretary may, on the application of a person, register the applicant to carry out reconnaissance in an area of the Autonomous Region of Bougainville.
- (2) The Secretary must be satisfied that—
  - (a) the applicant has adequate financial resources and the technical competence and experience to carry out effective reconnaissance; and
  - (b) the proposed reconnaissance programme is adequate; and

- (c) the area in respect of which the application is made is not subject to an application for a mining lease or a mining lease.
- (3) The application must be in the prescribed form and include the following information—
  - (a) in the case of an application—
    - (i) by an individual, the applicant's full name, address and nationality; or
    - (ii) by a partnership or other association of persons, the full names and addresses and nationalities of all partners or of all such persons; or
    - (iii) by a corporate body, the registered name and address of such body;
  - (b) a description of the area in respect of which the application is made, together with a plan of the area that is of such accuracy and scale as to be acceptable to the Secretary;
  - (c) a proposed reconnaissance programme, with details of the equipment expected to be used in connection with the programme and the names of the persons in charge of the programme;
  - (d) the period within which the reconnaissance programme is expected to be completed; and
  - (e) a description of the activities proposed to be undertaken under the reconnaissance programme and an estimate of the costs involved, including any proposed payments to landholders; and
  - (f) such additional information as the Secretary may require.
- (4) Registration is valid for a period of 1 year from the date of registration and may be renewed for an additional year upon application made to the Secretary in the prescribed form.
- (5) This section does not apply to an owner of customary land or a landowner controlled entity referred to in Section 52 who intends to carry out reconnaissance on the land concerned.

#### **46 Effect of registration**

- (1) Subject to the consent of the landholders, a person registered under Section 45—
  - (a) may enter any land in the reconnaissance area and carry out reconnaissance; and
  - (b) may remove minerals from the reconnaissance area for the purposes of assay, identification or analysis in accordance with such conditions as the Secretary may determine.
- (2) The registration of a person in respect of an area under Section 45 does not carry with it any right for that person to be granted an exploration licence or other tenement in respect of that area.

- (3) To avoid doubt, any minerals removed from the reconnaissance area remain the property of—
  - (a) if the minerals have been removed from customary land, the owners of the customary land; or
  - (b) if the minerals have been removed from land that is not customary land, the Autonomous Bougainville Government.

#### **47 Register**

- (1) The Bougainville Mining Registrar must establish and maintain a Register for the purposes of Section 45.
- (2) The Register must contain the following information—
  - (a) the name, address and nationality of each registered applicant;
  - (b) the area covered by the registration together with a plan of the area;
  - (c) a brief description of the reconnaissance programme to be undertaken and the names of the individuals to be in charge of the programme;
  - (d) the date of registration;
  - (e) such other information as the Bougainville Mining Registrar determines.
- (3) The Register is to be received by all courts as prima facie evidence of all matters required or authorised by or under this Act to be entered in the Register.
- (4) The Bougainville Mining Registrar is to determine the form of the Register and must keep the Register up to date.
- (5) The Register must be available for inspection by the public during normal business hours.

#### **48 Offences relating to reconnaissance**

- (1) A person must not carry out reconnaissance in any area of the Autonomous Region of Bougainville unless the person is registered under Section 45.
- (2) If a person contravenes Subsection (1), the person commits an offence and is liable on conviction to a penalty—
  - (a) in the case of an individual, to a fine not exceeding K5000; or
  - (b) in any other case, to a fine not exceeding K25,000.
- (3) A person registered under Section 45 in respect of an area must not carry out reconnaissance in the area unless the person has given at least 1 month's written notice to the Secretary.
- (4) If a person contravenes Subsection (3), the person commits an offence and is liable on conviction to a penalty—
  - (a) in the case of an individual, to a fine not exceeding K1000; or

(b) in any other case, to a fine not exceeding K5000.

(5) If a person removes any mineral from a reconnaissance area in contravention of Paragraph 46(1)(b), the person commits an offence and is liable on conviction to a penalty—

(a) in the case of an individual, to a fine not exceeding K2000; or

(b) in any other case, to a fine not exceeding K10,000.

#### **49 Landholder duties in relation to reconnaissance**

The landholders of land must ensure as far as practicable that any person carrying out reconnaissance on all or part of the land is registered under Section 45.

#### ***Subdivision C — General provisions relating to exploration licences***

#### **50 Consultation for exploration licences**

(1) This section applies to an application for an exploration licence.

(2) Before the Bougainville Executive Council decides whether or not to grant the application, the Minister must consult with—

(a) in the case of customary land the subject of the application, the owners of the customary land, including any approved landowner organisation or organisations in existence representing those owners; and

(b) in the case of land the subject of the application that is not customary land, the landholders of that other land.

(3) Despite Subsection (2), the Minister is not required to consult with an applicant if the applicant is a landholder of the land the subject of the application.

#### **51 Grant of exploration licence generally**

(1) The Bougainville Executive Council must not grant an exploration licence to an applicant unless—

(a) the owners of the customary land in respect of which the application has been made have consented to the grant of the exploration licence to the applicant; and

(b) if 1 or more approved landowner organisations exist for all or some of those owners of the customary land, the approved landowner organisation or organisations, as the case requires, have consented to the grant of the exploration licence to the applicant; and

(c) if there are other landholders of the land in respect of which the application has been made who are not owners of customary land, those other landholders have consented to the grant of the exploration licence to the applicant.

- (2) If the consent referred to in Subsection (1) has been given, the Bougainville Executive Council in deciding whether or not to grant an application for an exploration licence must have regard to the following—
  - (a) the Bougainville Warden’s report referred to in Section 138;
  - (b) the recommendation of the Bougainville Mining Advisory Council under Section 139;
  - (c) such other matters as the Bougainville Executive Council considers relevant.
- (3) An exploration licence must be in the prescribed form, including the consent of the owners of the customary land, the approved landowner organisation or organisations and other landholders referred to in Subsection (1).
- (4) An exploration licence is subject to the condition that the holder of the exploration licence complies with the approved programme, and to such other conditions as the Bougainville Executive Council determines.
- (5) This section does not apply to the grant of an exploration licence to a landowner controlled entity under Section 52.

## **52 Grant of exploration licence to landowner controlled entity**

- (1) The Bougainville Executive Council must not grant an exploration licence in respect of an area of land that consists in whole or in part of customary land to the owners of the customary land unless—
  - (a) if 1 or more approved landowner organisations exist for all or some of those owners of the customary land, the approved landowner organisation or organisations, as the case requires, have approved the establishment of a landowner controlled entity for the purposes of the grant of an exploration licence; and
  - (b) the approved landowner organisation or organisations referred to in Paragraph (a) have established the landowner controlled entity; and
  - (c) the Bougainville Executive Council is satisfied that the landowner controlled entity is representative of the owners of the customary land; and
  - (d) the landowner controlled entity complies with any other prescribed criteria; and
  - (e) if there are other landholders of the land in respect of which the application for the exploration licence has been made who are not owners of customary land, those other landholders have consented to the establishment of the landowner controlled entity or the grant of the exploration licence.
- (2) If a landowner controlled entity wishes to be granted an exploration licence by way of an arrangement set out in Subsection (3), then, in addition to the requirements

referred to in Subsection (1), the Bougainville Executive Council must be satisfied that—

- (a) those persons involved in the arrangement possess the technical and financial capacity to undertake an exploration programme; and
  - (b) the landowner controlled entity will not be exposed to any excessive financial risk.
- (3) Each of the following is a possible arrangement—
  - (a) the exploration licence is granted to the landowner controlled entity jointly with 1 or more other persons, whether or not in partnership; or
  - (b) the exploration licence is granted to a body corporate formed by the landowner controlled entity and 1 or more persons for the purpose of the grant of the exploration licence to carry out exploration jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate; or
  - (c) a joint venture of another kind involving the landowner controlled entity and 1 or more other persons.
- (4) If the Bougainville Executive Council is satisfied of the matters in Subsection (1) and (2), if applicable, the Council in deciding whether or not to grant an application for an exploration licence must have regard to the following—
  - (a) the Bougainville Warden’s report referred to in Section 138;
  - (b) the recommendation of the Bougainville Mining Advisory Council under Section 139;
  - (c) such other matters as the Bougainville Executive Council considers relevant.
- (5) An exploration licence must be in the prescribed form.
- (6) An exploration licence is subject to the condition that the holder of the exploration licence complies with the approved programme, and to such other conditions as the Bougainville Executive Council determines.

### **53 Two year limit on grants of exploration licences if consent refused**

If the Bougainville Executive Council does not grant an exploration licence over a particular area of land because a consent referred to in Subsection 51(1) was not given, the Council must not grant another exploration licence over that area of land for at least 2 years after—

- (a) if the consent of 1 landholder or 1 approved landowner organisation was not given, that date; or
- (b) if the consent of more than 1 landholder or approved landowner organisation was not given, the latest date on which one of the consents was not given.

#### **54 Term of exploration licence**

An exploration licence may be granted for a term not exceeding 2 years, which may be extended under Section 61.

#### **55 Area of exploration licence and relinquishment of portions**

- (1) The area of land in respect of which an exploration licence may be granted must—
  - (a) not exceed 100 sub-blocks; and
  - (b) must consist of 1 area comprising—
    - (i) 1 sub-block; or
    - (ii) more than 1 sub-block, each of which must share a common side with at least 1 other such sub-block.
- (2) Subject to Subsections (3) to (5), the requirements in relation to the relinquishment of portions of an exploration licence are set out below—
  - (a) at the time of application for any extension of the term of the exploration licence, the holder of the exploration licence must relinquish a portion or portions comprising in aggregate not less than  $\frac{1}{4}$  of the area held at the commencement of that term; and
  - (b) after each relinquishment, the area of land that remains subject to the exploration licence is to consist of not more than 3 discrete areas, each of which comprises 1 sub-block or more than 1 sub-block, each of which has a common side with at least 1 other such sub-block.
- (3) If, as a result of the requirements of Subsection (2), the area of an exploration licence has been reduced to not more than 25 sub-blocks, the holder of the exploration licence is not required to make any further relinquishments under Subsection (2).
- (4) If, as a result of the requirements of Subsection (2), the area of an exploration licence has been reduced to not more than 40 sub-blocks, the holder of the exploration licence may in writing apply to the Secretary to waive or vary those requirements.
- (5) If, upon application under Subsection (4), the Secretary is satisfied, after receiving advice from the Bougainville Mining Advisory Council, that special circumstances exist that, in the Secretary's opinion, justify retention of more than 25 sub-blocks, the Secretary may waive or vary the requirements of Subsection (2), but the total area permitted to be held after such a waiver or variation must not exceed 40 sub-blocks.
- (6) The relinquishment takes effect on the date on which the exploration licence would have expired but for the lodgement of an application for an extension of the term.



## **56 Rights conferred by exploration licence**

- (1) An exploration licence authorises the holder, in accordance with any conditions to which it may be subject, to—
  - (a) enter and occupy the land that comprises the exploration licence for the purpose of carrying out exploration for minerals on the land; and
  - (b) subject to Section 202, extract, remove and dispose of such quantity of rock, earth, soil or minerals as may be permitted by the approved programme; and
  - (c) take and divert water situated on or flowing through such land and use it for any purpose necessary for exploration activities, subject to and in accordance with the provisions of the PNG *Water Resources Act 1982*; and
  - (d) do all other things necessary or expedient for the undertaking of exploration on the land.
- (2) The holder of an exploration licence is entitled to the exclusive occupancy for exploration purposes of the land in respect of which the exploration licence was granted.

## **57 Application for grant or extension of exploration licence**

An application for the grant or extension of the term of an exploration licence must be—

- (a) in the prescribed form and have attached—
  - (i) a schedule as prescribed describing the boundary of the required tenement area in latitude and longitude; and
  - (ii) a sketch map showing the boundary of the area with respect to latitude and longitude; and
- (b) accompanied by—
  - (i) a programme in the prescribed form; and
  - (ii) a statement giving particulars of the technical and financial resources available to the applicant; and
- (c) lodged in triplicate with the Bougainville Mining Registrar together with the prescribed application fee; and
- (d) lodged in accordance with the procedures specified in Division 2 of Part 7.

## **58 Expenditure requirements**

- (1) The minimum expenditure required to be spent annually in connection with an approved programme is as prescribed.
- (2) For the purposes of this section, acceptable expenditures are those directly connected with the acquisition and interpretation of exploration data from the area of the exploration licence, including related laboratory and feasibility work.

- (3) Without limiting Subsection (2), acceptable expenditures for the purposes of this section do not include expenditures in respect of the purchase of—
- (a) a tenement; or
  - (b) land or buildings.

**59 Approved programme**

- (1) In assessing an application under Section 57 and any variation under Section 60, the Bougainville Mining Advisory Council must consider whether the programme submitted by the applicant meets the prescribed minimum expenditure requirements and—
- (a) whether the programme—
    - (i) in the case of an application under Section 57, provides for the acquisition and interpretation of exploration data from the area of the exploration licence, or the conduct of related laboratory or feasibility work; and
    - (ii) in the case of an application under Section 60, provides for a substantial increase in relation to the matters referred to in Subparagraph (i); and
  - (b) whether the applicant has the technical and financial resources available to effectively carry out the programme.
- (2) After assessing an application, the Bougainville Mining Advisory Council may request the applicant to provide further information and amend the application or programme.
- (3) If the Bougainville Mining Advisory Council considers that the applicant has satisfied the requirements of Subsection (1) and any request under Subsection (2), the Council must recommend approval of the programme.
- (4) If the programme does not meet the prescribed minimum expenditure requirements, but the Bougainville Mining Advisory Council considers that the applicant has otherwise satisfied the requirements of Subsection (1) and any request under Subsection (2), the Council may recommend approval of the programme.
- (5) The Bougainville Mining Advisory Council must approve the programme if an applicant has located a mineral deposit and the Bougainville Mining Advisory Council is reasonably satisfied that—
- (a) the applicant has progressed exploration as far as is practicable at the time and therefore cannot comply with the requirements of Subsection (1); and

- (b) the applicant cannot reasonably mine the deposit at that time for one of the following reasons—
  - (i) the deposit is not capable of being developed at current market prices, utilising proven technology or with financing on commercial terms that are reflective of current market conditions for other mining projects;
  - (ii) the deposit is required to sustain future operations of an existing or proposed mining operation at another location;
  - (iii) difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable.
- (6) A programme approved under Subsection (5) may include—
  - (a) the maintenance of public relations with landholders of the land the subject of the application; and
  - (b) the maintenance of airstrips, buildings and services established in the course of exploration on the land the subject of the application; and
  - (c) a review of the feasibility of commencing mining operations.

## **60 Variation of approved programme**

- (1) The holder of an exploration licence may at any time apply to the Minister in writing for a variation of the approved programme.
- (2) An application must specify 1 or more of the following bases on which a variation is sought—
  - (a) events beyond the reasonable control of the holder of the exploration licence prevent the holder from carrying out the approved programme;
  - (b) the holder of the exploration licence wishes to conduct exploration in a manner different from that originally proposed;
  - (c) the holder of the exploration licence is unable to establish a mining operation for one or more of the reasons referred to in Subsection 59(5),and must be accompanied by a revised programme in the prescribed form.
- (3) Subject to the consent of the owners of the customary land, the approved landowner organisation or organisations and other landholders referred to in Subsection 51(1), as the case requires, the Minister may, on the recommendation of the Bougainville Mining Advisory Council—
  - (a) approve the variation requested, which must be in the prescribed form and—
    - (i) must be substituted for the previously approved programme; and
    - (ii) may include such further conditions as the Secretary considers necessary; or

(b) refuse the variation.

(4) Before making a decision under Subsection (3), the Minister may require the applicant to provide further information or to amend the revised programme.

#### **61 Extension of term of exploration licence**

(1) Subject to Subsection (2), the term of an exploration licence may be extended twice.

(2) The Bougainville Executive Council may give approval for the Minister to extend the term of an exploration licence for a third or subsequent time if the Bougainville Executive Council is satisfied that—

(a) exceptional circumstances exist in relation to the exploration licence; or

(b) the applicant has demonstrated there is a reasonable likelihood that an exploitable mineral deposit will be delineated during the proposed period of the extension.

(3) Subject to Subsection (4), the Minister may, on the application of the holder of an exploration licence, extend the term of the exploration licence for periods each of up to 2 years, if the Minister, having regard to the advice of the Bougainville Mining Advisory Council, is satisfied that the holder of the exploration licence has—

(a) complied with the conditions of the exploration licence during the previous term of the exploration licence; and

(b) paid compensation as required by this Act; and

(c) submitted a programme for the proposed extended term that the Bougainville Mining Advisory Council has recommended for approval.

(4) The Minister must not grant an extension of an exploration licence to an applicant unless—

(a) the owners of the customary land, the approved landowner organisation or organisations and other landholders referred to in Subsection 51(1), as the case requires, have consented to the extension; and

(b) the Minister is satisfied that it is in the best interests of the development of the Autonomous Region of Bougainville to extend the term of an exploration licence.

(5) If the Minister extends the term of an exploration licence, the Minister may vary the conditions of the exploration licence or include such new conditions as the Minister considers necessary, subject to the consent of the owners of the customary land, the approved landowner organisation or organisations and other landholders referred to in Subsection 51(1), as the case requires.

(6) In considering whether the holder of an exploration licence has paid compensation as required by this Act, the Minister is to have regard to the advice of the Bougainville Chief Warden.

**62 Effects of application for and grant of a mining lease over exploration licence and vice versa**

- (1) An application for a mining lease by the holder of an exploration licence over the land or part of the land the subject of the exploration licence does not affect the rights and obligations of the holder of the exploration licence until such time as the application is determined except in so far as any conditions of an approved programme have been varied under Section 60.
- (2) If an application for a mining lease has been made, the term of the exploration licence over the land the subject of the application continue until the application has been determined.
- (3) The effect of the grant of a mining lease over land or part of land over which there is an existing exploration licence is to excise from the exploration licence the natural surface of that land and the land lying beneath it, at which time all rights under the exploration licence cease to have effect with respect to the excised land.
- (4) On the surrender, cancellation or expiry of a mining lease, the mining lease ceases to have effect and—
  - (a) any land excised from an exploration licence under Subsection (3) reverts to that exploration licence; or
  - (b) if another tenement has been granted to surround or partially surround the land the subject of the mining lease, that part of the land that would otherwise have reasonably been included in the other tenement but for the existence of the mining lease must be amalgamated with the land the subject of that other tenement.

**63 Restrictions on applications for certain tenements over land surrendered or relinquished from an exploration licence**

If—

- (a) an exploration licence expires, or is surrendered or cancelled; or
- (b) any part of land within the land the subject of an exploration licence is surrendered or relinquished,

an application for an exploration licence over the same land is not to be made by any person within a period of 30 days after the date on which the land ceases to be the subject of the exploration licence as provided for under Subsection 55(6), or Section 169 or 173.

**64 No dealing with an exploration licence during first 2 years**

- (1) If—
  - (a) a person's only legal or equitable interest in a tenement is held directly or indirectly in an exploration licence; and

- (b) the exploration licence is in its first term of 2 years (or if there is more than 1 exploration licence, which are all in their first term of 2 years),

the person must not validly create, transfer or otherwise dispose of such interests either directly or indirectly, except as provided for in Subsection (2) or (3).

- (2) The creation, transfer or other disposal of a legal or equitable interest in the shares of a corporation directly or indirectly holding an exploration licence is deemed to be a contravention of Subsection (1) if more than 25% of the issued shares of that corporation are so affected within the first 2 years of the term of the exploration licence, unless—
  - (a) the holder is a corporation that is listed on a public stock exchange anywhere in the world; or
  - (b) the creation, transfer or other disposal of a legal or equitable interest in the shares of a corporation holding an exploration licence arises in the course of those shares being listed on a stock exchange.
- (3) Subsection (1) does not apply if the creation, transfer or other disposal of a legal or equitable interest in or affecting an exploration licence arises in the due administration of the estate or affairs of a holder—
  - (a) who is dead; or
  - (b) who is a person who is insolvent or bankrupt; or
  - (c) who is otherwise incapacitated at law; or
  - (d) that is in the course of being wound up (not being a voluntary winding up).

## **65 Reporting requirements in respect of an exploration licence**

- (1) The holder of an exploration licence must lodge with the Secretary the following reports in duplicate covering the following periods—
  - (a) in respect of every period of 6 months calculated from the date of grant, on expiry, on cancellation and on making an application to surrender the exploration licence – a report in the prescribed form summarising all works undertaken on or in connection with the exploration licence since lodging the previous report;
  - (b) in respect of every period of 6 months calculated from the date of grant, on expiry, on cancellation and on making an application to surrender the exploration licence – a report in the prescribed form summarising all acceptable expenditure incurred under Subsection 58(2) on or in connection with the exploration licence since lodging the previous report;
  - (c) in respect of every period of 1 year calculated from the date of grant of the exploration licence – a report giving full details of all work undertaken on or in connection with the exploration licence so as to convey accurately and comprehensively the aims of the works, the procedures adopted and the conclusions reached, and containing all data that may be of relevance to the

geology and mineral resources of the Autonomous Bougainville Government;

- (d) in respect of the period up to the date of relinquishment or surrender of the whole or any portion of an exploration licence or on expiry or cancellation of the exploration licence – a report that summarises all work undertaken on or in connection with the whole or (as applicable) that portion of the relevant exploration licence since the date of grant, and that also meets the requirements of Paragraph (c) in relation to the period since the last report was filed.
- (2) A report under—
    - (a) Paragraph (1)(a) or (b) must be lodged within 30 days after the end of the reporting period; and
    - (b) Paragraph (1)(c) or (d) must be lodged within 90 days after the end of the reporting period.
  - (3) A report under Paragraph (1)(a) or (b) must not be made available to any person outside the Department nor must its content be revealed except to the extent necessary for the Secretary—
    - (a) to publish statistical information concerning the geology and mineral resources of the Autonomous Bougainville Government; or
    - (b) to give advice to the Bougainville Executive Council on a confidential basis.
  - (4) Subject to Subsection (5), except with the consent of the holder of an exploration licence, until the exploration licence has expired or been cancelled or surrendered, a report lodged under Paragraph (1)(c) must not be made available to any person outside the Department nor must its content be revealed except to the extent necessary for the Secretary—
    - (a) to publish statistical information concerning the geology and mineral resources of the Autonomous Bougainville Government; or
    - (b) to give advice to the Bougainville Executive Council on a confidential basis.
  - (5) If an exploration licence has been converted to a mining lease, a report lodged under Paragraph (1)(c) is taken to be a report lodged under Paragraph 74(1)(b).
  - (6) A report lodged under Paragraph (1)(d) is to be made available for perusal and copying by any person.

## **Division 2 — Mining leases**

### **66 Grant of a mining lease**

- (1) Subject to Subsection (2), the Bougainville Executive Council may under this section grant a mining lease to the holder of an exploration licence.

- (2) The Bougainville Executive Council must not grant a mining lease to the holder unless agreement has been reached on the grant of the mining lease—
  - (a) at the Bougainville Mineral Resources Forum under Section 28; or
  - (b) following a mediation under Section 30; or
  - (c) in accordance with a mutually acceptable decision reached under Section 31.
- (3) The Bougainville Executive Council in granting an application for a mining lease must have regard to the recommendation of the Bougainville Mining Advisory Council under Section 29.
- (4) A mining lease—
  - (a) must be in the prescribed form; and
  - (b) is subject to the condition that the holder complies with the approved proposals; and
  - (c) may include such other conditions as the Bougainville Executive Council determines.

#### **67 Term of mining lease**

- (1) Subject to Subsection (2), a mining lease may be granted for a term not exceeding 20 years, which may be extended under Section 73.
- (2) The Bougainville Executive Council may grant a mining lease for a term not exceeding 40 years if the Council is satisfied that such a term is necessary in order to attract investment for the proposed mining development.

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

The area of land in respect of which a mining lease is granted—

- (a) must not be more than 60 km<sup>2</sup>; and
- (b) must be in a rectangular or polygonal shape.

#### **69 Rights conferred by a mining lease**

- (1) A mining lease authorises the holder, in accordance with the PNG *Mining (Safety) Act 1977* and any conditions to which the mining lease is subject, to—
  - (a) enter and occupy the land over which the mining lease was granted for the purpose of mining the minerals on the land and carry on such operations and undertake such works as may be necessary or expedient for that purpose; and
  - (b) construct a treatment plant on the land and treat any mineral derived from mining operations, whether on the land or elsewhere, and construct any other facilities required for treatment including waste dumps and tailings dams; and



- (c) take and remove rock, earth, soil and minerals from the land, with or without treatment; and
  - (d) take and divert water situated on or flowing through the land and use it for any purpose necessary for his or her mining or treatment operations subject to and in accordance with the PNG *Water Resources Act 1982*; and
  - (e) do all other things necessary or expedient for the undertaking of mining or treatment operations on the land.
- (2) The holder of a mining lease—
- (a) is entitled to the exclusive occupancy for mining and mining purposes of the land in respect of which the mining lease was granted; and
  - (b) owns all minerals lawfully mined from that land.

## **70 Application for a mining lease**

An application for the grant of a mining lease—

- (a) must be in the prescribed form and must have attached either—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the required tenement area in latitude and longitude, and a sketch map showing the boundary of the area and such other natural features as must enable the area to be correctly located; or
  - (ii) a survey as required under Section 126; and
- (b) must be accompanied by—
  - (i) the applicant's proposals; and
  - (ii) a statutory declaration that the area of land over which the application is made has been marked out in accordance with Section 125; and
  - (iii) a statement giving the particulars of the technical and financial resources available to the applicant; and
- (c) must be lodged in triplicate with the Bougainville Mining Registrar and with the prescribed application fee; and
- (d) must be accompanied by a bank feasibility study.

## **71 Approved proposals for a mining lease**

- (1) In assessing an application for a mining lease, the Bougainville Mining Advisory Council must consider the outcome of the Bougainville Mineral Resources Forum held in respect of the application and in preparing its recommendation under Subsection 29(2) whether—
- (a) the proposals submitted by the applicant—
    - (i) provide for the development of the mineral deposits situated on the land in accordance with international best mining industry practice; and

- (ii) provide adequately for the protection of the environment; and
  - (b) the area and term applied for are appropriate for the proposed operations; and
  - (c) the consents required have been obtained.
- (2) In assessing an application, the Bougainville Mining Advisory Council may request the applicant—
  - (a) to provide further information and proposals; or
  - (b) to amend the application or proposals.

## **72 Variation of approved proposals**

- (1) The holder of a mining lease may at any time apply to the Minister for a variation of the approved proposals.
- (2) An application must be in writing and specify the grounds on which a variation is sought, which may include, but are not limited to the following—
  - (a) events beyond the reasonable control of the holder of the mining lease prevent the holder from carrying out the approved proposals;
  - (b) the holder of the mining lease wishes to develop the mine or conduct mining operations or conduct operations ancillary to mining in a manner different from that originally proposed;
  - (c) the holder wishes to reduce or suspend production because—
    - (i) at the time economic or marketing conditions are such that the mining operation is not viable; or
    - (ii) difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is, or subject it to conditions that are, for the time being impracticable.
- (3) Unless the Bougainville Executive Council decides, on the recommendation of the Bougainville Mining Advisory Council, that a Bougainville Mineral Resources Forum must be held to consider the application for the variation, the Minister may determine the application in accordance with Subsection (4).
- (4) Before determining the application, the Minister must consult with the applicant and the approved landowner organisation or organisations, and any other landholders, referred to in Section 51(1).
- (5) Following consultations referred to in Subsection (4), the Minister may, on the recommendation of the Bougainville Mining Advisory Council—
  - (a) approve the variation requested, which must be in the prescribed form and—
    - (i) must be substituted for the previously approved programme; and

- (ii) may include such further conditions as the Secretary considers necessary; or
  - (b) refuse the variation.
- (6) Before making a determination under Subsection (5), the Minister may require the applicant to provide further information or to amend the revised programme.
- (7) To avoid doubt, a Bougainville Warden's hearing is not required for the application.

### **73 Extension of term of mining lease**

- (1) The holder of a mining lease may at any time apply to the Minister in the prescribed form to extend the term of the mining lease.
- (2) The Bougainville Executive Council must convene a Bougainville Mineral Resources Forum to determine the application.

### **74 Reporting requirements in respect of a mining lease**

- (1) The holder of a mining lease must lodge with the Secretary the following reports within the prescribed times covering the following periods—
- (a) in respect of each calendar month from the date of grant of the lease – a report in the prescribed form detailing the production of minerals, if any, including particulars of quantity and value of ore mined or treated and quantity and value of minerals recovered;
  - (b) in respect of each period of 1 year calculated from the date of grant of the lease – a report giving full details of all work undertaken on or in connection with the lease including particulars of production of minerals, development work, exploration and all other information which may reasonably be thought to be of relevance to the geology and mineral resources of the Autonomous Region of Bougainville;
  - (c) in respect of the period up to the date of surrender of the whole or any portion of the mining lease, or expiry or cancellation of the lease – a report which summarises all work undertaken on and all production from—
    - (i) in the case of the surrender of a portion of the mining lease – that portion; and
    - (ii) otherwise – from the whole of the mining lease,  
since the date of grant and which also meets the requirements of Paragraph (b) in relation to the period since the last report was lodged under that paragraph.
- (2) A report—
- (a) under Paragraph (1)(a) – must be lodged within 30 days; and
  - (b) under Paragraph (1)(b) – must be lodged within 90 days,  
after the end of the reporting period.

- (3) A report lodged under Paragraph (1)(a) must not be made available to any person outside the Department nor must its content be revealed except to the extent necessary for the Secretary to publish statistical information concerning the geology and mineral resources of the Autonomous Region of Bougainville or to give advice to the Bougainville Executive Council on a confidential basis.
- (4) Except with the consent of the holder of a mining lease, until the mining lease has expired or been surrendered or cancelled, a report lodged under Paragraph (1)(b) must not be made available to any person outside the Department, nor must its content be revealed except to the extent necessary for the Secretary to publish statistical information concerning the geology and mineral resources of the Autonomous Region of Bougainville or to give advice to the Bougainville Executive Council, other Departments or other prescribed organisation on a confidential basis.
- (5) A report lodged under Paragraph (1)(c) must be made available for perusal and copying by any person.

### **Division 3 — Small-scale extraction leases**

#### ***Subdivision A — General***

#### **75 Consultation for small-scale extraction leases**

- (1) This section applies to an application for a small-scale extraction lease.
- (2) Before the Bougainville Executive Council decides whether or not to grant the application, the Minister must consult with—
  - (a) in the case of customary land the subject of the application, the owners of the customary land, including any approved landowner organisation or organisations in existence representing those owners; and
  - (b) in the case of land the subject of the application that is not customary land, the landholders of that other land.
- (3) Despite Subsection (2), the Minister is not required to consult with an applicant if the applicant is a landholder of the land the subject of the application.

#### **76 Grant of a small-scale extraction lease**

- (1) The Bougainville Executive Council may grant a small-scale extraction lease in accordance with this section.
- (2) The Bougainville Executive Council must not grant a small-scale extraction lease unless the Council is satisfied that—
  - (a) the applicant is a Bougainvillean or a group of Bougainvilleans; and

- (b) the applicant—
    - (i) is a landholder of the land in respect of which the application for the small-scale extraction lease has been made; or
    - (ii) has obtained the consent of all of the landholders of the land to the grant of the application and provided written proof of such consent; and
  - (c) subject to Subsection (3), the land is not the subject of an existing tenement.
- (3) A small-scale extraction lease may be granted over land if the land is subject to—
  - (a) an exploration licence, as provided for in Section 87; or
  - (b) a mining easement, as provided for in Section 118.
- (4) If the Bougainville Executive Council is satisfied of the matters referred to in Subsection (1) and Subsection (3) (if applicable), the Council in deciding whether or not to grant an application for a small-scale extraction must have regard to the following—
  - (a) the Bougainville Warden’s report referred to in Section 138;
  - (b) the recommendation of the Bougainville Mining Advisory Council under Section 139;
  - (c) such other matters as the Bougainville Executive Council considers relevant.
- (5) A small-scale extraction lease—
  - (a) must be in the prescribed form including the consent of the landholders; and
  - (b) is subject to the condition that the holder of the small-scale extraction lease must comply with the approved proposals; and
  - (c) may include such other conditions as the Bougainville Executive Council determines.
- (6) The regulations may prescribe requirements in relation to the protection of the holders of small-scale extraction leases.
- (7) Despite Paragraphs (2)(a) and (b), the mining under a small-scale extraction lease may be carried on—
  - (a) jointly by the holder of the lease with one or more other persons who are not Bougainvilleans, whether or not in partnership; or
  - (b) by a body corporate formed by the holder of the lease and one or more persons who are not Bougainvilleans for the purpose of enabling those persons to carry on that activity jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate; or

- (c) by a joint venture of another kind involving the holder of the lease and other persons who are not Bougainvilleans,

if the Secretary is satisfied that any person who is not a Bougainvillean is a fit and proper person and any agreement governing the joint operations is fair and reasonable.

## **77 Term of small-scale extraction lease**

A small-scale extraction lease may be granted for a term not exceeding 5 years, which may be extended under Section 83.

## **78 Area and shape of small-scale extraction lease**

- (1) Subject to Subsection (2), the area of land in respect of which a small-scale extraction lease may be granted must be—
  - (a) not less than 0.5 ha or such other area as is prescribed and not more than 5 ha or such other area as is prescribed; and
  - (b) in a rectangular or polygonal shape.
- (2) A small-scale extraction lease may only be granted to a depth that is consistent with the safe conduct of the mining development described in the approved proposals and the depth must be specified on the lease document.

## **79 Rights conferred by small-scale extraction lease**

- (1) A small-scale extraction lease authorises the holder, in accordance with the PNG *Mining (Safety) Act 1977* and conditions to which it is subject, to—
  - (a) enter and occupy the land for the purpose of mining minerals only located on that land and carry on such operations and undertake such works as may be necessary or expedient for that purpose and, where applicable, for the purpose of treating alluvial minerals; and
  - (b) take and remove rock, earth, soil and minerals from that land, with or without treatment; and
  - (c) take and divert water situated on or flowing through such land and use it for any purpose necessary for mining or treatment activities subject to and in accordance with the PNG *Water Resources Act 1982*; and
  - (d) do all things necessary or expedient for the undertaking of mining or treatment operations on that land.
- (2) The holder of a small-scale extraction lease—
  - (a) is entitled, for mining purposes, to the exclusive occupancy of the land in respect of which the mining lease was granted; and
  - (b) owns all minerals lawfully mined from that land.

## **80 Application for small-scale extraction lease**

An application for the grant of a small-scale extraction lease—

- (a) must be in the prescribed form and must have attached either—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the required tenement area in latitude and longitude, and a sketch map showing the boundary of the area and such other natural features as will allow the area to be correctly located; or
  - (ii) a survey as required under Section 126; and
- (b) must be accompanied by—
  - (i) the applicant's proposals; and
  - (ii) a statutory declaration that the area of land over which the application is made has been marked out in accordance with Section 125; and
  - (iii) a statutory declaration to the effect that the applicant is a landholder of the land the subject of the application, or that the landholders of the land have consented to the application and such other information as is prescribed; and
- (c) must be lodged in triplicate with the Bougainville Mining Registrar and with the prescribed application fee; and
- (d) must be lodged in accordance with the procedures specified in Division 2 of Part 7.

## **81 Approved proposals for a small-scale extraction lease**

In assessing an application for the grant of a small-scale extraction lease, the Bougainville Mining Advisory Council must consider whether the proposals and any mining agreement submitted by the applicant under Section 84 are appropriate and may request the applicant to provide further information or amend the application, the proposals or the mining agreement.

## **82 Variation of approved proposals**

- (1) The holder of a small-scale extraction lease may at any time apply to the Minister in writing for a variation of the approved proposals.
- (2) An application must specify the basis on which the variation is sought.
- (3) Subject to the consent of the landholders of the land, the Minister, after considering a recommendation of the Bougainville Mining Advisory Council—
  - (a) may approve in the prescribed form the variation requested, which variation—
    - (i) must be substituted for the previously approved proposals; and

- (ii) may include such other conditions as the Minister considers necessary;  
or
- (b) may refuse the variation.
- (4) Before making a decision under Subsection (3), the Minister may require the applicant to provide further information or to amend the revised proposals.
- (5) If the applicant for the variation is the only landholder of the land the subject of the small-scale extraction lease, his or her consent is not required to the variation.

### **83 Extension of term of small-scale extraction lease**

- (1) Subject to the consent of the landholders of the land the subject of a small-scale extraction lease, the Minister may, on the application by the holder and after considering a recommendation from the Bougainville Mining Advisory Council, extend the term of a small-scale extraction lease for such period or periods each not exceeding 5 years as the Minister determines.
- (2) However, if the applicant to extend the term of the small-scale extraction lease is the only landholder of the land, his or her consent is not required to the variation.
- (3) An application for the extension of the term of a small-scale extraction lease—
  - (a) must be in the prescribed form; and
  - (b) must be lodged in triplicate with the Bougainville Mining Registrar and with the prescribed application fee; and
  - (c) must be lodged in accordance with the procedures specified in Division 2 of Part 7.

### **84 Reporting requirements for a small-scale extraction lease**

- (1) The holder of a small-scale extraction lease must, in respect of each month during which any alluvial or other mineral is produced or obtained from the land, record the quantity and value of the minerals recovered in a form that may be produced for inspection by an officer of the Department.
- (2) The holder of a small-scale extraction lease must lodge annually with the Secretary the records under Subsection (1).

### **85 No transfer or other dealings in a small-scale extraction lease**

- (1) A legal or equitable interest in or affecting a small-scale extraction lease may be validly created, transferred or otherwise disposed of, whether directly or indirectly, only if—
  - (a) the dealing arises in the due administration of the estate or affairs of the holder of the small-scale extraction lease who—
    - (i) is dead; or
    - (ii) is a person who is insolvent or bankrupt; or



- (iii) is otherwise incapacitated at law; and
  - (b) the prior written consent to the dealing is given by the Secretary or an officer of the Department acting with the authority of the Secretary.
- (2) Nothing in Subsection (1) prevents, or affects the validity of, any agreement made in contemplation of a dealing to which that subsection applies if the agreement expressly provides that the consent required by that subsection is to be obtained as a condition of the agreement.
- (3) The Secretary may consent to the dealing only if—
  - (a) the transferee or person in whose favour the interest is to be created will be the sole landholder of the land the subject of the small-scale extraction lease; or
  - (b) the landholders of the land the subject of the small-scale extraction lease have consented to the transferee or person in whose favour the interest is to be created.

#### **86 No consolidation of a small-scale extraction lease**

Despite Section 159, a small-scale extraction lease may not be consolidated with any other small-scale extraction lease.

#### ***Subdivision B — Application over existing tenements***

#### **87 Small-scale extraction lease may be granted over land the subject of an existing exploration licence and vice versa**

- (1) A small-scale extraction lease may be granted over land or part of land over which there is an existing exploration licence after consultation with the Secretary and if the Minister is satisfied that the small-scale extraction lease will not unduly interfere with the activities of the exploration licence.
- (2) A person may make application in accordance with this Act for an exploration licence over land that is the subject of a small-scale extraction lease and may be granted an exploration licence over such portion of the land as is below the depth to which the small-scale extraction lease was granted.

#### **88 Effect of small-scale extraction lease on exploration licence and vice versa**

- (1) The effect of the grant of a small-scale extraction lease over land or part of land over which there is an existing exploration licence is to excise from the exploration licence the natural surface of that land and such portion of that land lying beneath it to the depth to which the small-scale extraction lease was granted.
- (2) If a small-scale extraction lease has been granted over an exploration licence or vice versa the exploration licence has full force and effect below the depth to which the small-scale extraction lease was granted.

- (3) After consultation between the holders of the respective tenements, the holder of an exploration licence may enter on and occupy the land over which there is a small-scale extraction lease for the purpose of—
  - (a) carrying out exploration; and
  - (b) if the holder of an exploration licence converts the tenement to a mining lease, mining the land below the depth to which the small-scale extraction lease was granted, but not so as to unreasonably interfere with the operations of the holder of the small-scale extraction lease.
- (4) On the surrender, cancellation or expiry of a small-scale extraction lease, the small-scale extraction lease ceases to have effect and—
  - (a) any land excised from an exploration licence under Subsection (1) reverts to that exploration licence; or
  - (b) if another tenement has been granted over all or part of the land the subject of the small-scale extraction lease, that part of the land that would otherwise have reasonably been included in the other tenement but for the existence of the small-scale extraction lease is to be amalgamated with the land the subject of that other tenement.

**89 Bougainville Mining Registrar to notify holder of exploration licence of application for small-scale extraction lease**

If an application for the grant or extension of the term of a small-scale extraction lease is registered in respect of land that is the subject of an exploration licence, the Bougainville Mining Registrar must immediately notify the holder of the exploration licence of the application and supply the holder with a copy of the application and the proposals.

**90 Holder of exploration licence may object to application for a small-scale extraction lease, etc.**

- (1) The holder of an exploration licence may, within 30 days after receiving notification under Section 89 of an application, lodge an objection to the application in the prescribed form with the Bougainville Mining Registrar.
- (2) On receipt of an objection, the Bougainville Mining Registrar must forward it to the Bougainville Mining Advisory Council.
- (3) The Bougainville Mining Advisory Council must recommend to the Bougainville Executive Council that it refuse or defer any application for the grant of a small-scale extraction lease if mining on the land the subject of the application will be of material detriment to—
  - (a) the exploration programme of the holder of the exploration licence; or
  - (b) any mining operation or operation ancillary to mining proposed to be established by that holder.

**91 Objector to be given notice of meeting of council to consider application**

The Bougainville Mining Registrar must give to the holder of an exploration licence, who lodges an objection under Subsection 90(1) to an application, notification of the date and place of the meeting of the Bougainville Mining Advisory Council at which the application is to be considered and the holder of the exploration licence may attend for the purpose of supporting the objection.

**92 Holder of exploration licence may elect to negotiate on the mining of minerals**

- (1) The holder of an exploration licence may, within 30 days of receiving notice under Section 89, in the case of an application for the grant of a small-scale extraction lease, lodge with the Bougainville Mining Registrar a notice in the prescribed form and duly endorsed by the applicant that the applicant and the exploration licence holder wish to negotiate on the mining of the alluvial and any other minerals the subject of the application for the small-scale extraction lease.
- (2) On receipt of a notice under Subsection (1), the Bougainville Mining Registrar must advise the Bougainville Mining Advisory Council, and the Council must defer consideration of the application for a period of 6 months from the date the notice was registered by the Bougainville Mining Registrar.
- (3) Within the period of 6 months under Subsection (2), the applicant and the holder of the exploration licence may submit to the Bougainville Mining Registrar any agreement relating to the proposed mining of the alluvial and any other minerals the subject of the application for the small-scale extraction lease and such other matters as have been agreed.
- (4) On the expiration of the period of 6 months under Subsection (2) or on receipt by the Bougainville Mining Registrar of an agreement, whichever happens first, the Bougainville Mining Advisory Council must deal with the application taking into consideration any agreement submitted to the Bougainville Mining Registrar under Subsection (3).
- (5) No other agreement for the mining of alluvial and any other minerals the subject of the application for the small-scale extraction lease is valid until the procedures specified in this section have been complied with.

**Division 4 — Lease for mining purposes**

***Subdivision A — General***

**93 Grant of a lease for mining purposes**

- (1) Subject to Subsection (2), the Bougainville Executive Council may grant a lease for mining purposes on the application of any person.

- (2) The Bougainville Executive Council must not grant a lease for mining purposes to the applicant unless agreement has been reached on the grant of the lease for mining purposes—
  - (a) at the Bougainville Mineral Resources Forum under Section 28; or
  - (b) following a mediation under Section 30; or
  - (c) in accordance with a mutually acceptable decision reached under Section 31.
- (3) The Bougainville Executive Council in granting an application for a lease for mining purposes must have regard to the recommendation of the Bougainville Mining Advisory Council under Section 29.
- (4) The land is not the subject of an existing tenement, other than an exploration licence as provided for in Section 51 or a mining easement as provided for in Section 118.
- (5) A lease for mining purposes—
  - (a) must be in the prescribed form; and
  - (b) must specify the purpose or purposes for which it was granted; and
  - (c) is subject to the condition that the holder of the lease for mining purposes complies with the approved proposals; and
  - (d) may include such other conditions as the Bougainville Executive Council determines.

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

- (1) The term of a lease for mining purposes—
  - (a) is identical to the term of the mining lease in relation to which the lease for mining purposes is granted; or
  - (b) if there is no related lease, for a term not exceeding 20 years.
- (2) The term of a lease for mining purposes may be extended under Section 101.

#### **95 Area and shape of a lease for mining purposes**

- (1) The area of land in respect of which a lease for mining purposes may be granted must be—
  - (a) an area consistent with the purposes for which it is granted; and
  - (b) in a rectangular or polygonal shape.
- (2) A lease for mining purposes must be granted to a depth consistent with the purposes for which it is granted.

## 96 Purposes for which a lease for mining purposes may be granted

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

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

## 97 Rights conferred by a lease for mining purposes

(1) A lease for mining purposes authorises the holder, in accordance with the PNG *Mining (Safety) Act 1977* and any conditions to which it may be subject, to—

- (a) enter and occupy the land over which it was granted; and
- (b) develop the land and undertake such works as may be necessary or expedient; and
- (c) take and divert water situated on or flowing through the land and use it in accordance with the PNG *Water Resources Act 1982*; and
- (d) do all other things necessary or expedient to achieve the purposes for which the lease for mining purposes was granted.

(2) The holder of a lease for mining purposes is entitled, for the purposes for which the lease for mining purposes was granted, to the exclusive occupancy of the land over which the lease for mining purposes was granted.

## 98 Application for a lease for mining purposes

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

- (a) must be in the prescribed form and must have attached either—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the required tenement area in latitude and longitude and a sketch map showing the boundary of the area and such other natural features as will allow the area to be correctly located; or
  - (ii) a survey as required under Section 126; and

- (b) must be accompanied by—
  - (i) the applicant’s proposals; and
  - (ii) a statutory declaration that the area of land over which the application is made has been marked out in accordance with Section 125; and
- (c) must be lodged in triplicate with the Bougainville Mining Registrar and the prescribed application fee.

## **99 Approved proposals for a lease for mining purposes**

In assessing an application for the grant of a lease for mining purposes, the Bougainville Mining Advisory Council must consider whether the proposals submitted by the applicant are appropriate and may request the applicant to provide further information or to amend the application or the proposals submitted by the applicant.

## **100 Variation of approved proposals**

- (1) The holder of a lease for mining purposes may at any time apply to the Minister in writing for a variation of the approved proposals.
- (2) An application must specify the basis on which the variation is sought.
- (3) Unless the Bougainville Executive Council decides, on the recommendation of the Bougainville Mining Advisory Council, that a Bougainville Mineral Resources Forum must be held to consider the application for the variation, the Minister may determine the application in accordance with Subsection (4).
- (4) Before determining the application, the Minister must consult with the applicant and the approved landowner organisation or organisations, and any other landholders, referred to in Section 51(1).
- (5) Following consultations referred to in Subsection (4), the Minister may, on the recommendation of the Bougainville Mining Advisory Council—
  - (a) approve the variation requested, which must be in the prescribed form and—
    - (i) must be substituted for the previously approved programme; and
    - (ii) may include such further conditions as the Secretary considers necessary; or
  - (b) refuse the variation.
- (6) Before making a determination under Subsection (5), the Minister may require the applicant to provide further information or to amend the revised programme.
- (7) To avoid doubt, a Bougainville Warden’s hearing is not required for the application.

**101 Extension of term of lease for mining purposes**

- (1) The holder of a lease for mining purposes may at any time apply to the Minister in the prescribed form to extend the term of the lease.
- (2) The Bougainville Executive Council must convene a Bougainville Mineral Resources Forum to determine the application.

**102 Reporting requirements for a lease for mining purposes**

The holder of a lease for mining purposes must lodge with the Secretary such reports as the Secretary may from time to time require.

***Subdivision B — Application over existing tenements***

**103 Lease for mining purposes may be granted over land the subject of an existing exploration licence and vice versa**

- (1) A lease for mining purposes may be granted over the land or part of the land over which there is an existing exploration licence.
- (2) A person may make application under Division 2 of Part 7 for an exploration licence over land that is the subject of a lease for mining purposes and may be granted such exploration licence over such portion of the land as is below the depth to which the lease for mining purposes was granted.

**104 Effect of a lease for mining purposes on an exploration licence and vice versa**

- (1) The effect of the grant of a lease for mining purposes over land or part of land over which there is an exploration licence is to excise from the exploration licence the natural surface of that land and such portion of the land lying beneath it to the depth to which the lease for mining purposes was granted.
- (2) If a lease for mining purposes has been granted over an exploration licence or vice versa, the exploration licence has full force and effect below the depth to which the lease for mining purposes was granted.
- (3) After consultation between the holders of the respective tenements, the holder of an exploration licence may enter on and occupy the land over which there is a lease for mining purposes for the purpose of—
  - (a) exploring the land below the depth to which the lease for mining purposes was granted; and
  - (b) mining that land below that depth if the holder of an exploration licence converts the tenement to a mining lease or special mining lease,but must not unreasonably interfere with the operations of the holder of the lease for mining purposes.

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

**105 Bougainville Mining Registrar to notify holder of exploration licence of application for lease for mining purposes in certain circumstances**

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

**106 Holder of exploration licence may object to application for a lease for mining purposes, etc.**

- (1) The holder of an exploration licence, may, within 30 days after receiving notification under Section 105 of an application, lodge a written objection to the application in the prescribed form with the Bougainville Mining Registrar.
- (2) On receipt of any objection, the Bougainville Mining Registrar must forward it to the Bougainville Mining Advisory Council.
- (3) The Bougainville Mining Advisory Council must recommend to the Bougainville Executive Council that it refuse or defer any application for the grant of a lease for mining purposes if operations on the land the subject of the application will be of material detriment to—
  - (a) the exploration programme of the holder of the exploration licence; or
  - (b) any mining operations or operations ancillary to mining proposed to be established by that holder.

**107 Objector to be given notice of meeting of Council to consider application**

The Bougainville Mining Registrar must give to the holder of an exploration licence, who lodges an objection under Section 106(1) to an application, notification of the date and place of the meeting of the Bougainville Mining Advisory Council at which the application is to be considered and the holder of the exploration licence may attend for the purpose of supporting the objection.



## **Division 5 — Mining easement**

### ***Subdivision A — General***

#### **108 Grant of a mining easement**

- (1) Subject to Subsection (2), the Bougainville Executive Council may grant a mining easement on the application of any person.
- (2) The Bougainville Executive Council must not grant a mining easement to the applicant unless agreement has been reached on the grant of the mining easement—
  - (a) at the Bougainville Mineral Resources Forum under Section 28; or
  - (b) following a mediation under Section 30; or
  - (c) in accordance with a mutually acceptable decision reached under Section 31.
- (3) The Bougainville Executive Council in granting an application for a mining easement must have regard to the recommendation of the Bougainville Mining Advisory Council under Section 29.
- (4) A mining easement—
  - (a) must be in the prescribed form; and
  - (b) must specify the purposes for which it is granted; and
  - (c) is subject to the condition that the holder of the mining easement complies with the approved proposals; and
  - (d) may include such other conditions as the Bougainville Executive Council determines.

#### **109 Term of mining easement**

The term of a mining easement must be identical to the term of the tenement in relation to which the mining easement was granted and the term of a mining easement may be extended under Section 116.

#### **110 Area of a mining easement**

The area of land over which a mining easement may be granted must be sufficient for the purpose or purposes for which it was granted and must be in a rectangular or polygonal shape.

#### **111 Purposes for which a mining easement may be granted**

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

- (a) a road;

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

### **112 Rights conferred by mining easement**

- (1) A mining easement authorises the holder, in accordance with the PNG *Mining (Safety) Act 1977* and any conditions to which the mining easement may be subject, to—
  - (a) enter and occupy the land over which it was granted; and
  - (b) develop the land and undertake such works as may be necessary or expedient; and
  - (c) take and divert water situated on or flowing through the land and use it in accordance with the PNG *Water Resources Act 1982*; and
  - (d) do all other things necessary or expedient to achieve the purposes for which the mining easement was granted.
- (2) The holder of a mining easement is entitled for the purposes for which the mining easement was granted to exclusive occupancy of the land over which the mining easement was granted.

### **113 Application for a mining easement**

An application for the grant of a mining easement—

- (a) be in the prescribed form and must have attached either—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the required tenement area in latitude and longitude, and a sketch map showing the boundary of the area and such other natural features as will allow the area to be correctly located; or
  - (ii) a survey as required under Section 126; and
- (b) must be accompanied by—
  - (i) the applicant's proposals; and
  - (ii) a statutory declaration that the area of land over which the application is made has been marked out in accordance with Section 125; and

- (c) must be lodged in triplicate with the Bougainville Mining Registrar and with the prescribed application fee.

#### **114 Approved proposals for a mining easement**

In assessing an application for the grant of a mining easement, the Bougainville Mining Advisory Council must consider whether the proposals submitted by the applicant are appropriate, and may request the applicant to provide further information or to amend the application or the proposals.

#### **115 Variation of approved proposals**

- (1) The holder of a mining easement may at any time apply to the Minister in writing for a variation of the approved proposals.
- (2) An application under Subsection (1) must specify the basis on which the variation is sought.
- (3) Unless the Bougainville Executive Council decides, on the recommendation of the Bougainville Mining Advisory Council, that a Bougainville Mineral Resources Forum must be held to consider the application for the variation, the Minister may determine the application in accordance with Subsection (4).
- (4) Before determining the application, the Minister must consult with the applicant and the approved landowner organisation or organisations, and any other landholders referred to in Section 51(1).
- (5) Following consultations referred to in Subsection (4), the Minister may, on the recommendation of the Bougainville Mining Advisory Council—
  - (a) approve the variation requested, which must be in the prescribed form and—
    - (i) must be substituted for the previously approved programme; and
    - (ii) may include such further conditions as the Secretary considers necessary; or
  - (b) refuse the variation.
- (6) Before making a determination under Subsection (5), the Minister may require the applicant to provide further information or to amend the revised programme.
- (7) To avoid doubt, a Bougainville Warden’s hearing is not required for the application.

#### **116 Extension of term of mining easement**

- (1) The holder of a mining easement may at any time apply to the Minister in the prescribed form to extend the term of the mining easement.
- (2) The Bougainville Executive Council must convene a Bougainville Mineral Resources Forum to determine the application.

## **117 Reporting requirements for a mining easement**

The holder of a mining easement must lodge with the Secretary such reports as the Secretary may from time to time require.

### ***Subdivision B — Application over existing tenement***

## **118 Mining easement may be granted over land the subject of an existing tenement and vice versa**

- (1) A mining easement may be granted over the land or part of the land over which there is an existing tenement after consultation with the Secretary and if the Minister is satisfied that the mining easement will not unduly interfere with the activities of the existing tenement.
- (2) Another tenement may be applied for over land over which there is a mining easement and may be granted over all or such portion of such land as the Bougainville Executive Council considers will not be of material detriment to the operations of the holder of the mining easement.
- (3) In this Subdivision, ‘**primary tenement**’ means the tenement over which a mining easement may be granted under this section.

## **119 Duty of BEC in granting mining easement over land over which there is an existing tenement**

- (1) If the Bougainville Executive Council intends to grant a mining easement over land over which there is a primary tenement, the Council must, wherever practicable, grant the mining easement so that it can properly be used and enjoyed without the need to excise from the land over which the primary tenement was granted the land over which the mining easement is granted.
- (2) If—
  - (a) a mining easement is granted over land over which there is a primary tenement; and
  - (b) the Bougainville Executive Council is not able to grant the mining easement in accordance with Subsection (1),

the Bougainville Executive Council must, after considering a recommendation of the Bougainville Mining Advisory Council, excise from the land over which the primary tenement was granted such portion to such depth as is reasonably necessary for the proper use and enjoyment of the mining easement.

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

- (1) A primary tenement continues in full force and effect subject only to any excision made under Section 119.

- (2) The holder of a primary tenement (whether or not there has been an excision under Section 119) may enter on and occupy the surface of the land over which there is a mining easement for the purpose of exercising the rights conferred by that primary tenement, but must not unreasonably interfere with the operations of the holder of the mining easement.
- (3) On the surrender, cancellation or expiry of a mining easement, the mining easement ceases to have effect and—
  - (a) any land excised from a primary tenement under Section 119 must revert to that primary tenement; or
  - (b) if another tenement has been granted over all or part of the land the subject of the mining easement that part of the land that would otherwise have reasonably been included in the other tenement but for the existence of the mining easement must be amalgamated with the land the subject of that other tenement.

**121 Bougainville Mining Registrar to notify holder of tenement of application for mining easement in certain circumstances**

If—

- (a) an application for the grant or extension of the term of a mining easement is registered in respect of land; and
- (b) the land is the subject of another tenement; and
- (c) the applicant is not the holder of that other tenement;

the Bougainville Mining Registrar must immediately notify the holder of that other tenement of the application and supply that holder with a copy of the application and the proposals.

**122 Holder of tenement may object to application for a mining easement, etc.**

- (1) The holder of another tenement may, within 30 days of receiving notification under Section 121 of an application, lodge a written objection to the application in the prescribed form with the Bougainville Mining Registrar.
- (2) On receipt of any objection under Subsection (1), the Bougainville Mining Registrar must forward it to the Bougainville Mining Advisory Council.
- (3) The Bougainville Mining Advisory Council must recommend to the Bougainville Executive Council that it refuse or defer any application for the grant of a mining easement if operations on the land the subject of the application will be of material detriment to the operations of the holder of the other tenement.

**123 Objector to be given notice of meeting of Council to consider application**

The Bougainville Mining Registrar must give to the holder of another tenement, who lodges an objection under Section 122 to an application, notification of the date and

place of the meeting of the Bougainville Mining Advisory Council at which the application is to be considered and the holder may attend for the purpose of supporting the objection.

## **PART 7 — PROVISIONS GENERALLY APPLICABLE TO TENEMENTS**

### **Division 1 — Application of provisions**

#### **124 Application of provisions**

- (1) Sections 125 and 126 apply to all applications for tenements, other than an application for an exploration licence.
- (2) Sections 127 to 141 do not apply to—
  - (a) an application for a mining lease, and a lease for mining purposes or a mining easement related to the mining lease;
  - (b) an application to extend the term of a mining lease, a lease for mining purposes or a mining easement related to the mining lease.
- (3) Sections 127 to 141 apply to all other applications for tenements.

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

#### **125 Marking out of a tenement**

- (1) An applicant for the grant of a tenement must, before making the application—
  - (a) mark out each corner of the land over which the tenement is sought by erecting a distinctively coloured hardwood, metal or concrete post standing at least 1.2m above the surface or such survey marks as are permitted under the survey directions; and
  - (b) either—
    - (i) clear lines along the boundaries of the land or place distinctively coloured hardwood, metal or concrete markers at sufficiently close spacing to indicate clearly the boundaries of the land; or
    - (ii) to the satisfaction of the Secretary, comply substantially with the requirements of Paragraph (a) and Subparagraph (b)(i) to the extent that the land has been sufficiently identified to be located in the field.
- (2) Until such time as the application for the grant of the tenement has been determined, the applicant must maintain the posts and markers or cleared lines established in accordance with Subsection (1).
- (3) The holder of a tenement must maintain posts and markers or cleared lines established in accordance with Subsection (1) during the term of the tenement.

- (4) The Secretary may, at any time, grant to a person not otherwise authorised under this Act the right in the prescribed form to enter land for the purposes of marking out, and maintaining posts or markers or cleared lines as required under this section.
- (5) A person carrying out any work as required or authorised by this section must not interfere unreasonably with the activities undertaken on the land over which the tenement is sought.

## **126 Survey**

- (1) Prior to the grant of a tenement the boundary of the land the subject of an application must be surveyed as provided for in Subsection (3).
- (2) The Secretary may, at any time, grant to a person not otherwise authorised under this Act the right in the prescribed form to enter land for the purposes of surveying a tenement as required under this section.
- (3) A survey of the land the subject of an application must—
  - (a) be made by a registered surveyor or under the direction of a registered surveyor; and
  - (b) be at the cost of the applicant; and
  - (c) conform to any class of survey permitted under the survey directions; and
  - (d) include a schedule in the prescribed form describing the corners of the boundary of the land in latitude and longitude.
- (4) A copy of the survey must be lodged with the Bougainville Mining Registrar at the time of lodgement of an application under this Division.
- (5) If a survey is lodged under Subsection (4), the Bougainville Mining Registrar must immediately register the survey and—
  - (a) if the survey confirms that all the land the subject of the application is available for the purposes for which the application was made, cause a copy of the survey schedule to be published in the Bougainville Gazette; or
  - (b) if only part of the land is available—
    - (i) prepare a schedule of the land that is available for the tenement in the prescribed form in substitution of the schedule submitted with the survey; and
    - (ii) cause a copy of the revised schedule to be published in the Bougainville Gazette; and
    - (iii) send a copy of the revised schedule to the applicant.
- (6) If the applicant fails to lodge a survey under this section or the survey reveals that none of the land the subject of the application is available for the purposes for which the application was made, the application must be refused.

- (7) If there is a dispute as to the location of a boundary of a tenement, the Bougainville Mining Registrar must arrange for the disputed boundary to be surveyed and the costs must be met by the party or parties claiming a location of the boundary different from that surveyed.
- (8) If the Bougainville Mining Registrar considers that any party may default on the payment for a survey under Subsection (7), the Bougainville Mining Registrar may, prior to arranging the survey, require each party to lodge a bond sufficient to cover the cost of the survey.
- (9) A person carrying out a survey under this section must not interfere unreasonably with the activities undertaken on the land the subject of the survey.

#### **127 Lodging of applications for grant and extension**

- (1) An application for the grant of a tenement must be lodged with the Bougainville Mining Registrar by the applicant or the applicant's agent in person, or by mail, facsimile or email.
- (2) An application for an extension of the term of a tenement must be lodged with the Bougainville Mining Registrar by the applicant or the applicant's agent in person, or by mail, facsimile or email.

#### **128 Time of lodgement of application for extension**

If an applicant lodges an application for an extension of the term of a tenement less than 90 days prior to the date of expiry of the tenement, the applicant must pay a late fee equal and additional to the fee prescribed for the application.

#### **129 Priority of applications**

- (1) Subject to this section and Section 130, if two or more applications are made for the grant of a tenement over the same land or any part of the same land, the applicant who first lodges an application with the Bougainville Mining Registrar has the right in priority over every other applicant to have his or her application considered and determined.
- (2) Subject to Subsection (3), if the Bougainville Mining Registrar is satisfied that two or more applicants for the grant of a tenement over the same land or any part of the same land were present in his or her office at the same time for the purpose of lodging applications for that tenement, then despite the order in which the Bougainville Mining Registrar receives the applications, priority must be determined by ballot conducted by the Bougainville Mining Registrar in the presence of the applicants.
- (3) The procedure specified in Subsection (2) is only applicable in respect of applications that meet the requirements of Section 130.
- (4) The applicant not accorded priority under a ballot under Subsection (2), or if there are more than 1 such applicant, each of the respective applicants in the order of



priority determined by the ballot, has the right in priority over every person (other than an applicant who has priority over him or her by virtue of the ballot) to have his or her application considered and determined—

- (a) if the prior application for the grant of a tenement is refused; or
  - (b) over any land not included within the tenement granted as a result of the prior application.
- (5) If applications to which Subsection (1) applies are made by persons associated with each other as prescribed by the regulations, only 1 such application may be submitted for ballot under Subsection (2) and if, on request by the Bougainville Mining Registrar, those persons do not select 1 application, the Bougainville Mining Registrar must select the application that he or she first receives.
- (6) If, subsequent to a ballot under Subsection (2), the Bougainville Mining Registrar ascertains that the successful applicant was an associated person of a person whose application was also considered in the ballot, the Bougainville Mining Registrar must—
- (a) refuse that application; or
  - (b) if a tenement has already been granted, cancel the grant.

### **130 Preliminary examination of applications for grant or extension**

The Bougainville Mining Registrar must, at the time of the lodging of an application for the grant or extension of the term of a tenement, verify to his or her reasonable satisfaction the following matters—

- (a) a substantial portion of the land over which the application is made is available for the grant of that type of tenement to the applicant under this Act;
- (b) the application is in the prescribed form and has been completed by inclusion of all the required particulars;
- (c) the application form has been lodged in triplicate and signed by or on behalf of the applicant;
- (d) the documents required under this Act to accompany an application for the grant or extension of the term of that class of tenement in relation to which the application is made have been lodged;
- (e) the application fee and any late fee have been included.

**131 Duties of Bougainville Mining Registrar if preliminary examination shows that requirements have not been met**

If, following a preliminary examination of the matters referred to in Section 130, the Bougainville Mining Registrar is not satisfied that all such matters have been verified, the Bougainville Mining Registrar must—

- (a) not accept nor register the application; and
- (b) immediately return all documents to the applicant or the applicant's agent.

**132 Duties of Bougainville Mining Registrar if preliminary examination shows that requirements have been met**

If, following a preliminary examination of the matters referred to in Section 130, the Bougainville Mining Registrar is satisfied that all such matters have been verified, the Bougainville Mining Registrar must—

- (a) immediately—
  - (i) accept and register the application; and
  - (ii) note the registered number on the application form; and
  - (iii) note the date and time when the application was accepted and registered; and
  - (iv) sign the application form; and
  - (v) give 1 copy of the application form back to the applicant; and
- (b) subject to Subsection 9(4), as soon as possible—
  - (i) give 1 copy of the application form each to such officers of the Department as the Secretary has determined will be responsible for the administration and technical assessment of applications; and
  - (ii) report in writing to the Bougainville Mining Advisory Council.

**133 Reports on application to Council**

Each of the officers to whom the Bougainville Mining Registrar has given a copy of the application under Subparagraph 132(b)(i) must, as soon as practicable, give a report on the application to the Bougainville Mining Advisory Council.

**134 Time for objections and hearings**

- (1) An application for the grant or extension of the term of a tenement must be heard by a Bougainville Warden.
- (2) Within 7 days of the acceptance and registration of an application under Paragraph 132(a), the Bougainville Mining Registrar must—
  - (a) confer with the Bougainville Chief Warden; and

- (b) fix a date, being not less than 30 days after the date on which the application was registered, as the date before which objections to the application may be made; and
- (c) fix dates and places for the hearing, such dates being no earlier than 7 days and no later than 14 days after the date fixed for objections under Paragraph (b); and
- (d) endorse the dates for objections and hearings, and the places for hearings on the application; and
- (e) given written notice of the dates and places to the applicant; and
- (f) given written notice of the dates and places to the landholders of the land the subject of the application; and
- (g) given written notice of the dates and places to the landholders of the land adjacent to the land the subject of the application; and
- (h) given written notice of the dates and places to the landholders of any other land that the Bougainville Mining Registrar is satisfied can reasonably be expected to experience financial, environmental, social, cultural or other impacts should exploration or mining commence, and
- (i) if an approved landowner organisation or organisations exist representing all or some of the owners of any land referred to in Paragraph (f), (g) or (h) that is customary land, given written notice of the dates and places to the organisation or organisations.

### **135 Notice of applications**

The Bougainville Mining Registrar must, as soon as practicable after his or her compliance with Subsection 134(2)—

- (a) send a copy of the application to the Council of Elders that represent the area or areas in which the land in relation to which the application is made is situated; and
- (b) cause a copy of the application to be published in the Bougainville Gazette; and
- (c) send or deliver to each District Office nearest to the area or areas in relation to which the application is made a copy of the application; and
- (d) advertise a copy of the application in a newspaper published in and circulating throughout the Autonomous Region of Bougainville; and
- (e) keep a copy of the application continuously posted at the headquarters of the Department, until the application is determined; and
- (f) if in the opinion of Bougainville Mining Registrar the application will encroach on another tenement, a copy of the application to the holder of that tenement.

### **136 Objections**

- (1) Any person may object to the grant or extension of the term of a tenement by lodging with the Bougainville Mining Registrar a written objection before the date fixed by the Bougainville Mining Registrar under Paragraph 134(2)(b).
- (2) On receipt of an objection, the Bougainville Mining Registrar—
  - (a) must give a copy of the objection to the applicant and the Executive Officer of the Bougainville Mining Advisory Council; and
  - (b) keep a copy of the objection continuously posted at the headquarters of the Department, until the application in respect of which the objection was lodged is determined.

### **137 Conduct of Warden's hearing**

- (1) The Bougainville Warden must—
  - (a) attend at the places and on the dates fixed by the Bougainville Mining Registrar under Subsection 134(2); and
  - (b) conduct a hearing in accordance with the procedures specified in Subsection (2) and such other procedures as will afford a fair hearing to—
    - (i) the applicant; and
    - (ii) the landholders of the land referred to in Paragraphs 134(2)(f), (g) and (h) present at the hearing; and
    - (iii) the representatives of approved landowner organisations (if any) referred to in Paragraph 134(2)(i) present at the hearing; and
    - (iv) such other persons present at the hearing as the Bougainville Warden considers will be affected by the applicant's programme or proposals.
- (2) The Bougainville Warden must—
  - (a) be satisfied as to the identity of the representatives of approved landowner organisations; and
  - (b) be satisfied as to the identity of the other persons present at the hearing and that those other persons are persons affected by the applicant's programme or proposals; and
  - (c) allow the applicant to explain his or her programme for exploration or his or her proposals for conducting operations ancillary to mining or mining on the land the subject of the application; and
  - (d) record and assess the views of the landholders of the land referred to in Paragraphs 134(2)(f), (g) and (h), and the approved landowner organisations (if any) referred to in Paragraph 134(2)(i), including whether the consent of the landholders or the approved landowner organisations, as the case requires, has been granted to the application, and

- (e) record and assess the views of such other persons whom the Bougainville Warden considers to be affected by the applicant's programme or proposals.
- (3) The Bougainville Warden may adjourn the hearing from time to time and from place to place on such conditions as to costs or otherwise as he or she thinks fit.

### **138 Bougainville Warden to submit report on hearing to the Council**

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

### **139 Bougainville Mining Advisory Council recommendation**

- (1) The Bougainville Mining Advisory Council must consider each application for the grant or extension of the term of a tenement and for this purpose must review and consider the reports submitted under—
  - (a) Subparagraph 132(b)(ii); and
  - (b) Section 133; and
  - (c) Section 138,and any report submitted by a Council of Elders advised of the application.
- (2) The Bougainville Mining Advisory Council must also consider—
  - (a) any objections received under Section 136 and, in the case of an application for the grant or extension of the term of a small-scale extraction lease, received under Subsection 90(1); or
  - (b) in the case of an application for the grant or extension of the term of an exploration licence – the programme submitted under Section 57; or
  - (c) in the case of an application for the grant of a small-scale extraction lease – the proposals submitted under Section 80.
- (3) Unless otherwise provided for in this Act, the Bougainville Mining Advisory Council may, after the consideration required under Subsections (1) and (2)—
  - (a) recommend the grant or extension of the term of the tenement; or
  - (b) recommend the refusal of the application; or
  - (c) defer further consideration of the application and request the applicant to amend the application or to provide further information or revised programmes or proposals within a reasonable time specified by the Council.
- (4) If the Bougainville Mining Advisory Council defers consideration under Paragraph (3)(c), the Executive Officer of the Council must give to the applicant written notice of the requirement of the Council for further information or for a revision of the applicant's programmes or proposals and of the time specified by the Council within which such further information or revised programme or proposals are to be provided.

- (5) If an applicant fails to provide further information or a revised programme or proposals required under this section within the specified time, the Bougainville Mining Advisory Council may recommend refusal of the application.

**140 Duties of the Bougainville Mining Registrar upon grant and extension of the term of a tenement**

- (1) As soon as practicable after the Bougainville Executive Council makes a decision whether to grant a tenement or an extension of the term of a tenement, the Bougainville Mining Registrar must—
- (a) advise the applicant of the decision; and
  - (b) advise the landholders of the land referred to in Paragraphs 134(2)(f), (g) and (h), and the representatives of approved landowner organisations (if any) referred to in Paragraph 134(2)(i), of the decision; and
  - (c) if applicable, require the applicant to submit the prescribed rent within 30 days; and
  - (d) in the case of the grant of a tenement, require the applicant to lodge within 30 days the prescribed security, if any; and
  - (e) cause a notice of the grant or extension of the term of a tenement to be published in the Bougainville Gazette.
- (2) If the applicant fails to comply with Paragraph (1)(c) or (d), the Bougainville Executive Council may cancel the grant or extension of the term of the tenement by written notice to the applicant.
- (3) If the applicant complies with Paragraphs (1)(c) and (d), the Bougainville Mining Registrar must issue to the applicant a title document to the tenement in the prescribed form.

**141 Date of extension of term**

- (1) If, prior to the expiry of a tenement, the holder has applied for an extension of the term of the tenement under this Division, the tenement continues in force over that portion of the land covered by the application until the determination of the application.
- (2) The further period for which the term of a tenement is extended is taken to have commenced on the day following the date on which the tenement would, but for the provisions of Subsection (1), have expired.

**Division 3 — Registration and dealings**

**142 Bougainville Register of Tenements**

- (1) The Bougainville Mining Registrar must establish and maintain a Bougainville Register, to be known as the Bougainville Register of Tenements.

- (2) The Bougainville Register must contain details of all registered applications for tenements and all details of their subsequent grant or refusal and of such other particulars as may be prescribed in relation to those tenements.
- (3) The Bougainville Register is to be received by all courts as prima facie evidence of all matters required or authorised by this Act to be entered in the Bougainville Register.

#### **143 Registration**

- (1) All instruments requiring registration must be lodged with the Bougainville Mining Registrar in the manner specified in this Act or prescribed and must be accompanied by the prescribed fee.
- (2) Subject to this Division, the time and date of lodgement with the Bougainville Mining Registrar is taken to be the time and date at which registration was effected.

#### **144 Provisional registration**

- (1) Subject to Subsection (2), if the Bougainville Mining Registrar is of the opinion that a document lodged for registration is erroneous or defective, he or she must reject the lodgement.
- (2) If the Bougainville Mining Registrar is of the opinion that the error or defect can be corrected, he or she must—
  - (a) cause the time and date of lodgement and particulars of the instrument to be entered in the Bougainville Register and place the word “provisional” next to the entry; and
  - (b) by written notice to the person who lodged the instrument, direct that person to ensure that the error or defect is corrected before a date specified in the notice.
- (3) If a direction under Paragraph (2)(b)—
  - (a) is complied with on or before the date specified in the notice – the instrument is taken to have been registered at the time and date at which the instrument was originally lodged and the Bougainville Mining Registrar must delete the word “provisional” from the Bougainville Register; and
  - (b) is not complied with on or before the date specified in the notice – the Bougainville Mining Registrar must delete the entry from the Bougainville Register entirely.
- (4) This section does not apply to the preliminary examination of an application as provided for under Section 130.

#### **145 Interest in tenement to be created in writing**

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

#### **146 Dealing in tenements**

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

#### **147 Transfer of a tenement to be approved and registered**

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

#### **148 Instruments, other than transfers, to be approved and registered**

- (1) This section applies to—
  - (a) an instrument by which a legal or equitable interest in an existing or future tenement is or may be created, assigned, or otherwise dealt with, whether directly or indirectly, which is not an instrument of transfer to which Section 147 applies; and
  - (b) a tribute agreement.



- (2) No—
- (a) legal or equitable interest is created, assigned or otherwise dealt with by an instrument, either directly or indirectly; and
  - (b) tribute agreement is valid,
- unless and until the instrument or tribute agreement has been approved by the Bougainville Executive Council under Paragraph (4)(a) and registered under Subsection (5).
- (3) An application for approval of the instrument or tribute agreement must be submitted, together with the instrument or agreement, to the Bougainville Mining Registrar, who must submit the application to the Bougainville Mining Advisory Council for its consideration.
- (4) After considering the recommendation of the Bougainville Mining Advisory Council, the Bougainville Executive Council may—
- (a) approve or refuse to approve an application under Subsection (3); and
  - (b) in the case of an approval, impose such conditions on the approval as the Bougainville Executive Council considers necessary in the circumstances.
- (5) If the Bougainville Executive Council approves an application under Paragraph (4)(a), the Bougainville Mining Registrar must register the instrument.
- (6) In this section—
- ‘tribute agreement’** means an agreement made by the holder of a special mining lease, mining lease or small-scale extraction lease with any other person whereby that person may work that special mining lease, mining lease or small-scale extraction lease on terms that the holder is to receive from that person a portion or percentage of the minerals won or the proceeds of their sale.

#### **149 Effect of registration**

- (1) Except in the case of fraud, the registered holder of a tenement has priority over any other person in respect of that tenement subject only to—
- (a) an encumbrance or other interest that is notified on the Bougainville Register; and
  - (b) conditions contained in the grant of the tenement or imposed in respect of the tenement by or under this Act.
- (2) Except in the case of fraud—
- (a) no informality or irregularity in the application for or in the proceedings previous to the grant or an extension of the term of a tenement affects the title of the registered holder of the tenement; and

- (b) a person dealing with a registered holder of a tenement—
  - (i) does not need to inquire into the circumstances under which the registered holder or any previous registered holder became registered; and
  - (ii) is not affected by notice of any unregistered interest and the knowledge that any such unregistered interest is in existence is not of itself to be imputed as fraud.
- (3) A grant of a leasehold estate in land does not affect in any way any existing tenement acquired or continued in existence under this Act.

### **150 Approval not to give an instrument any effect outside this Division**

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

### **151 Rights, etc., conferred by this Act only exercisable by holder, etc.**

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

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

### **152 Devolution**

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

### **153 Rectification of the Bougainville Register**

- (1) If the Bougainville Mining Registrar or another person discovers that there has been—
  - (a) an omission of an entry from the Bougainville Register or the rejection of an instrument presented for registration; or
  - (b) an entry made in the Bougainville Register without sufficient cause; or
  - (c) an entry wrongly existing in the Bougainville Register; or

- (d) an error or defect in an entry in the Bougainville Register, the Bougainville Mining Registrar or that other person may make an application to the Secretary for rectification of the Bougainville Register.
- (2) On receipt of an application, the Secretary may—
- (a) make an investigation into the matter; and
- (b) direct the Bougainville Mining Registrar to rectify the Bougainville Register in any matter that the Secretary considers requires rectification.
- (3) A person may appeal to the National Court against a direction or decision, or to seek a decision by the Secretary under Subsection (2), and the National Court may make such order as it considers necessary to settle the matter.
- (4) The Bougainville Mining Registrar must give effect to an order made by the National Court.

#### **154 Effect of mortgage**

- (1) A mortgage has effect as a security only for the sum of money or the discharge of the liability intended to be secured by it and does not take effect as an assignment.
- (2) A mortgagor is entitled to redeem the property the subject of the mortgage at any time before its sale by the mortgagee on tender of the money or discharge of the liability secured by the mortgage.
- (3) Subject to Subsections (1) and (2), a mortgage may contain such covenants and powers as are agreed between the parties.

### **Division 4 — Caveats**

#### **155 Lodging of caveats**

- (1) A person claiming an interest in a tenement may lodge with the Bougainville Mining Registrar a caveat forbidding the registration of a transfer or other instrument affecting the tenement or interest.
- (2) A caveat must—
- (a) be in the prescribed form; and
- (b) give an address within Bougainville for the service of notices and proceedings in relation to the caveat; and
- (c) otherwise contain the prescribed particulars; and
- (d) be accompanied by the prescribed fee.

#### **156 Duties of Bougainville Mining Registrar on lodging of a caveat**

On the lodging of a caveat, the Bougainville Mining Registrar must—

- (a) enter a memorandum of the caveat in the Bougainville Register; and

- (b) send by registered post to the holder of the tenement affected by the caveat, notice that the caveat has been lodged.

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

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

## **Division 5 — Consolidation**

### **158 Application of this Division**

This Division applies to the consolidation of existing tenements of the same type (in this Division referred to as '**the existing tenements**') into one or more tenements of that type (in this Division referred to as '**the consolidated tenement**').

### **159 Grant of a consolidated tenement**

- (1) The Bougainville Executive Council may, on the application by the holder of two or more adjoining tenements of the same type and after considering a recommendation from the Bougainville Mining Advisory Council, grant to the applicant one or more consolidated tenements of that type.
- (2) A consolidated tenement—
  - (a) must be in the prescribed form; and
  - (b) subject to Subsection (4), must contain such conditions as were attached to the existing tenements; and
  - (c) may contain such other conditions as the Bougainville Executive Council may determine.
- (3) The Bougainville Executive Council may grant a consolidated tenement under Subsection (1) without a Warden's hearing.
- (4) If the conditions attached to existing tenements were not the same, the Bougainville Executive Council must, on the advice of the Bougainville Mining

Advisory Council, determine the conditions attaching to the consolidated tenement.

### **160 Term of a consolidated tenement**

The term of a consolidated tenement is either—

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

### **161 Area of a consolidated tenement**

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

### **162 Effect of consolidation**

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

### **163 Application for consolidation**

An application for the grant of a consolidated tenement—

- (a) must be in the prescribed form and must have attached a schedule in the prescribed form describing the corners of the boundary of the area to be consolidated in latitude and longitude, and a sketch map showing the boundary of the area and such other natural features as will allow the area to be correctly located; and
- (b) must be accompanied by—
  - (i) in the case of a consolidation of exploration licences – the applicant’s programme for the consolidated exploration licence or licences; or

- (ii) in the case of a consolidation of any other type of tenements – the applicant’s proposals for the consolidated tenement or tenements; and
- (c) must be lodged in triplicate with the prescribed application fee; and
- (d) must be lodged in accordance with the procedures specified in Division 2 of Part 7.

#### **164 Provisions relating to tenements to apply to consolidated tenements**

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

### **Division 6 — Surrender**

#### **165 Holder may surrender tenement**

Subject to this Act, the holder of a tenement may apply to the Bougainville Mining Registrar in the prescribed form to surrender the tenement in whole or in part.

#### **166 Application for partial surrender**

An application for partial surrender must have attached—

- (a) in the case of an exploration licence—
  - (i) a schedule in the prescribed form describing the corners of the boundary of the area of land to be retained in latitude and longitude and complying with the requirements of Section 55; and
  - (ii) a sketch map showing the boundary of the area of land to be retained with respect to latitude and longitude; and
- (b) in the case of any other tenement—
  - (i) a survey of the area of land to be retained as required under Section 126; and
  - (ii) a statutory declaration that the area of land to be retained has been marked out in accordance with Section 125.

#### **167 Duties of Bougainville Mining Registrar, etc., on surrender**

- (1) As soon as practicable after an application for surrender has been lodged under Section 165, the Bougainville Mining Registrar must determine whether the holder has complied with any conditions of the tenement that relate to the cessation of exploration and mining operations, restoration of the land and surrender.
- (2) If Bougainville Mining Registrar is satisfied that the holder of the tenement has complied with the conditions of the tenement under Subsection (1), the Bougainville Mining Registrar must—
  - (a) register the surrender in the Bougainville Register; and

- (b) certify the registration of surrender on the application as prescribed; and
  - (c) in the case of a partial surrender, endorse the surrender on the title document as prescribed; and
  - (d) cause a notice of the registered surrender to be published in the Bougainville Gazette; and
  - (e) keep a copy of the registered surrender continuously posted at the headquarters of the Department for a period of 30 days; and
  - (f) send a copy of the registered surrender to the applicant.
- (3) In the case of the surrender of the whole of a tenement and on the completion of the requirements of Subsection (2), the Bougainville Mining Registrar must, after deducting from the security—
- (a) any fee, rent, royalty, compensation, penalty or other money or any other account that is payable on or before the date of surrender; and
  - (b) any costs incurred by the Department in ensuring that any other liabilities are met,
- remit the balance, if any, to the former holder of the tenement.
- (4) If Bougainville Mining Registrar is satisfied that the holder of the tenement has not complied with all or any of the conditions of the tenement under Subsection (1), the Bougainville Mining Registrar must notify the holder in writing accordingly and not take any action under Subsection (2) until the outstanding conditions are complied with.

#### **168 Liabilities of holder on surrender**

If the holder of a tenement surrenders it, the liability of the holder—

- (a) to pay rent, fee, royalty, penalty or other money or any other account, that is payable; or
- (b) to perform any obligation required to be performed; or
- (c) for any act done or default made,

on or before the date of surrender, is not affected.

#### **169 Rights of holder on surrender**

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

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

### **170 Cancellation of a tenement**

- (1) If the holder of a tenement breaches—
  - (a) a provision of this Act; or
  - (b) a condition on which the tenement was granted,the Secretary may, by written notice, require the holder of the tenement, within the time specified in the notice, to show cause why the tenement should not be cancelled.
- (2) If the holder of a tenement on whom a notice has been served fails, in the opinion of the Bougainville Executive Council after receiving a recommendation from the Bougainville Mining Advisory Council, to show cause in accordance with the notice, the Bougainville Executive Council may cancel the tenement.

### **171 Duties of Bougainville Mining Registrar, etc., on cancellation**

- (1) The Bougainville Mining Registrar must, immediately after the Bougainville Executive Council has cancelled a tenement under Subsection 170(2)—
  - (a) register the cancellation in the Bougainville Register; and
  - (b) cause notice of the registration of the cancellation in the prescribed form to be published in the Bougainville Gazette; and
  - (c) keep a copy of the notice of the registration of the cancellation to be continuously posted at the headquarters of the Department for a period of 30 days; and
  - (d) send a copy of the registered cancellation to the former holder of the tenement.
- (2) On the completion of the requirements of Subsection (1), the Bougainville Mining Registrar must, after deducting from the security—
  - (a) any fee, rent, royalty, compensation, penalty or other money or any other account that is payable on or before the date of cancellation; and
  - (b) any costs incurred by the Department in ensuring that any other liabilities are met,remit the balance, if any, to the former holder of the tenement.

### **172 Duties of Bougainville Mining Registrar, etc., on expiry**

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



- (2) After registering the expiry, the Bougainville Mining Registrar must, after deducting from the security—
- (a) any fee, rent, royalty, compensation, penalty or other money or any other account, that is payable on or before the date of expiry; and
  - (b) any costs incurred by the Department in ensuring that any other liabilities are met,
- remit the balance, if any, to the former holder of the tenement.

### **173 Rights and liabilities of the holder upon cancellation or expiry**

On the cancellation or expiry of a tenement—

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

## **Division 8 — Fees, rents and royalties**

### **174 Fees**

The regulations may prescribe fees in respect of any matter for the purposes of this Act.

### **175 Rents**

In respect of each tenement the prescribed rent must be paid annually in advance from the date of grant, except as provided for in Paragraph 140(1)(c).

### **176 Royalties**

Royalties for mine products must be paid in accordance with the regulations.

### **177 Fees, rent, etc., not refundable**

The fees and rents payable under this Division are not refundable.

## **Division 9 — General provisions**

### **178 Security**

- (1) A person to whom a tenement has been granted must, within 30 days after being notified of the grant by the Bougainville Mining Registrar, lodge with the Bougainville Mining Registrar a security for compliance with the person's obligations under this Act.
- (2) Failure to lodge the security constitutes a breach of a provision of this Act for the purpose of Paragraph 170(1)(a).
- (3) The security—
  - (a) must be the prescribed sum; and

- (b) may, subject to the approval of the Secretary, be—
  - (i) by bank guarantee; or
  - (ii) by insurance company bond; or
  - (iii) by cash deposit; or
  - (iv) partly by cash deposit and partly by such other method as the Secretary allows; or
  - (v) by such other method as the Secretary allows.
- (4) The Secretary may discharge, wholly or in part, a security lodged under this section—
  - (a) on the expiry, surrender or cancellation of a tenement; and
  - (b) on the application in writing by the person who was the tenement holder accompanied by evidence satisfactory to the Secretary showing cause why a security should be discharged.

#### **179 Conflicting boundary descriptions**

If, in the case of the boundaries of an exploration licence, there is a conflict between the boundaries—

- (a) as shown on the sketch plan; and
  - (b) plotted by reference to latitude and longitude descriptions,
- the boundaries plotted by reference to latitude and longitude prevail and are taken to be the boundaries.
- (2) If, in the case of the boundaries of an application for a tenement other than an exploration licence, there is a conflict between—
    - (a) the boundaries described in the schedule; and
    - (b) the boundaries as shown on the sketch plan; and
    - (c) the boundaries marked out on the ground,the boundaries marked out on the ground prevail until survey, and, after survey, the boundaries established by the survey prevail.

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

- (1) This section does not apply to a mining lease.
- (2) In this section—
  - ‘**mining plant**’ means any building, plant, machinery, equipment, tools or other property of any kind, whether or not affixed to land;
  - ‘**prescribed period**’ means a period of 3 months or such longer period as the Secretary may determine after a tenement expires, is surrendered or is cancelled, or any land the subject of the tenement is relinquished.

- (3) When a tenement expires, is surrendered, cancelled, or any land the subject of the tenement is relinquished, the person who was the holder of the tenement immediately prior to such expiry, surrender, cancellation or relinquishment may, within the prescribed period, remove from the land relating to the tenement any mining plant.
- (4) If mining plant is not removed in accordance with Subsection (3), the Secretary may arrange for the mining plant to be sold by public auction or public tender and removed, and the proceeds of such sale are to be retained by the Autonomous Bougainville Government.
- (5) If, at the time a tenement expires, is surrendered, cancelled or any land the subject of the tenement is relinquished, the holder of the tenement immediately prior to such expiry, surrender, cancellation or relinquishment—
  - (a) leaves upon the land any tailings, other materials or mined ore; and
  - (b) does not, within the prescribed period, either remove or complete treatment of the tailings, other materials or mined ore,such tailings, other materials and mined ore, at the expiration of the prescribed period, become the property of the Autonomous Bougainville Government.
- (6) Nothing in this section affects a valid agreement made by the former holder of a tenement with the landholder of any land to which the tenement relates in respect of mining plant left on such land after the prescribed period, and this section is to be construed subject to such an agreement.
- (7) Despite the preceding provisions of this section, no timber or other material used and applied in the construction or support of any shaft, drive, gallery, adit, terrace, race, dam or other mining work is to be removed without the consent in writing of an inspector.

### **181 Graticulation of earth's surface and constitution of blocks and sub-blocks**

- (1) For the purposes of this Act, the surface of the Earth is taken to be divided into graticular sections—
  - (a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of 5 minutes, or a multiple of 5 minutes, of longitude; and
  - (b) by the equator and by parallels of latitude that are at a distance from the equator of 5 minutes or a multiple of 5 minutes, of latitude,each of which is bound—
  - (c) by portions of 2 of those meridians that are at a distance from each other of 5 minutes of longitude; and
  - (d) by portions of 2 of those parallels that are at a distance from each other of 5 minutes of latitude.

- (2) All or so much of each particular section referred to in Subsection (1) that is contained in the area of the Autonomous Region of Bougainville, including the offshore area, constitutes a block.
- (3) Each block must be comprised of 25 sub-blocks, each of which must be bounded by—
  - (a) portions of 2 meridians of longitude that are at a distance from each other of 1 minute of longitude; and
  - (b) portions of 2 parallels of latitude that are at a distance from each other of 1 minute of latitude.
- (4) All or so much of each graticular section referred to in Subsection (3) that is contained in the area of the Autonomous Region of Bougainville, including the offshore area, constitutes a sub-block.

## **PART 8 — COMPENSATION TO LANDHOLDERS**

### **182 Principles of compensation**

- (1) The holder of a tenement is liable to pay compensation, in respect of the holder's entry or occupation of land the subject of the tenement for the purposes of exploration or mining or operations ancillary to mining, to the landholders of the land for all loss or damage suffered or foreseen to be suffered by them from the exploration or mining or ancillary operations.
- (2) The compensation to which landholders are entitled includes but is not limited to compensation for—
  - (a) the destruction of the land; and
  - (b) the deprivation of the possession or use of the natural surface of the land; and
  - (c) any damage to the natural surface of the land; and
  - (d) the severance of land or any part thereof from other land held by the landholder; and
  - (e) any loss or restriction of a right of way, easement or other right; and
  - (f) the loss of, or damage to, improvements; and
  - (g) in the case of land under cultivation, any loss of earnings; and
  - (h) the disruption of agricultural activities on the land; and
  - (i) any social disruption.
- (3) In determining the amount of any compensation for any of the circumstances referred to in Subsection (2), regard must be had to the following—
  - (a) whether or not the circumstance is permanent;

- (b) if a circumstance is not permanent, the actual or anticipated period of time of the circumstance;
  - (c) whether or not a person has access to other land;
  - (d) if a person has access to other land, the costs of relocating to that land;
  - (e) the effect of a circumstance not only on the present generation of people but also on future generations of people;
  - (f) the need to review levels of compensation at regular intervals.
- (4) If applicable, compensation must be determined with reference to prescribed values.
- (5) Without limiting Subsection (2), if any land or improvements, adjoining or in the vicinity of the land the subject of a tenement, is or are injured or depreciated in value by the exploration or mining of the tenement, the landholders of that land are entitled to compensation for all loss or damage sustained and the amount of such compensation must be determined as provided in this Part.

### **183 No entry until compensation agreed or determined**

The holder of a tenement must not enter onto or occupy any land, the subject of a tenement, for the purpose of exploration or mining, until compensation has in accordance with—

- (a) Section 184 been agreed in the case of a mining lease, a lease for mining purposes or a mining easement; or
- (b) Section 185 or 186 been agreed or determined in the case of an exploration licence or a small-scale extraction lease.

### **184 Compensation for mining leases, leases for mining purposes and mining easements**

- (1) This section applies to a mining lease, a lease for mining purposes or a mining easement.
- (2) The amount of compensation payable by the holder of a tenement to the landholders in respect of the land the subject of the tenement is to be determined at a Bougainville Mineral Resources Forum by agreement of—
- (a) the holder; and
  - (b) the approved landowner organisation or organisations representing the owners of the customary land the subject of the tenement; and
  - (c) any owners of the customary land the subject of the tenement not represented by an approved landowner organisation; and
  - (d) the landholders of any other land the subject of the tenement that is not customary land.

- (3) Any agreements entered into following a Bougainville Mineral Resources Forum, must be submitted to the Bougainville Mining Registrar who must register the agreements.
- (4) Nothing in this Act prevents a mining warden from dealing with issues and disputes concerning compensation arising from any agreement if requested by the parties to the agreement.

**185 Compensation agreements for exploration licences and small-scale extraction leases**

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

**186 Determination of compensation by the Bougainville Warden for exploration licences and small-scale extraction leases**

- (1) If—
  - (a) the holder of an exploration licence or a small-scale extraction lease; and

(b) the landholders claiming an entitlement to compensation, including the claimants to disputed land,

are unable to agree on the amount of compensation to be paid, the holder or the landholders may, by notice to the Bougainville Chief Warden, request a Bougainville Warden to determine the amount payable.

- (2) On receipt of a notice, the Bougainville Chief Warden must—
  - (a) fix a place or places and date or dates for conducting a determination of the amount of compensation to be paid; and
  - (b) notify the holder of the tenement and the claimant of the place or places and date or dates fixed; and
  - (c) at that place and on that date conduct a determination of the amount of compensation to be paid.
- (3) In conducting a determination, the Bougainville Warden must allow the holder of the tenement and the claimant to present their evidence and arguments to the Bougainville Warden in such manner as he or she thinks fit, but must at all times have regard for the principles of natural justice.
- (4) The Bougainville Warden must—
  - (a) make a determination on the basis of the evidence presented to the Bougainville Warden and the argument submitted to him or her and in accordance with the principle of compensation specified in Section 182; and
  - (b) record his or her decision in writing; and
  - (c) give a copy of his or her decision to the holder of the tenement and the claimant.
- (5) If the Bougainville Warden considers it impracticable or inexpedient to assess the amount of compensation to be paid in full satisfaction of the loss or damage, the Bougainville Warden may make a determination as to the compensation payable in respect of a part of the total claim for compensation and defer his or her assessment of the total claim until a later hearing.
- (6) A determination in part under Subsection (5) must meet the requirements of Section 183.
- (7) To avoid doubt, this section does not apply to a mining lease, a lease for mining purposes or a mining easement.

### **187 Appeal from a Bougainville Warden's determination**

If—

- (a) the holder of a tenement is aggrieved by a determination of the Bougainville Warden under Paragraph 185(4)(a) as to the amount of compensation that he or she is obliged to pay; or

- (b) a landholder claiming an entitlement to compensation is aggrieved by such a determination as to the amount of compensation to which he or she is entitled,

the holder or the landholder may appeal to the National Court.

### **188 Compensation to be binding**

- (1) This section applies to the provisions of—
  - (a) a compensation agreement duly registered under Section 184 or 185; or
  - (b) a Bougainville Warden’s determination under Section 186.
- (2) Subject to appeal under Section 187, the provisions of the compensation agreement or Bougainville Warden’s determination are—
  - (a) a condition of the tenement to which it relates, the breach of which may be grounds for the cancellation of the tenement; and
  - (b) binding as a contract on both the holder of the tenement and the landholders concerned.

### **189 Compensation in the case of a land dispute**

- (1) If a dispute, as defined in the PNG *Land Disputes Settlement Act 1975* concerning the land the subject of an exploration licence or a small-scale extraction lease makes agreement on compensation impracticable, the amount of compensation to be paid by the holder of the tenement must be determined as provided for in Section 186.
- (2) The amount of compensation determined is payable into a statutory trust established for that purpose to be held in trust until the land dispute has been resolved.
- (3) After the land dispute is resolved, the compensation must be paid from the trust account as determined by the Bougainville Warden or in accordance with a compensation agreement, as the case may be.

## **PART 9 — SPECIAL PROVISIONS IN RELATION TO GOLD**

### **190 Application of PNG Gold Regulation**

- (1) Except for Sections 194 and 195, nothing in this Part affects the application of the PNG *Central Banking (Foreign Exchange and Gold) Regulation 2000* to the buying, selling or other dealings in gold in Bougainville.
- (2) Nothing in this Part affects the application of the PNG *Central Banking (Foreign Exchange and Gold) Regulation 2000* to the export of gold from Papua New Guinea.



### **191 Gold dealer's licence**

- (1) The Minister may issue a gold dealer's licence for Bougainville to—
  - (a) any licensed bank in Bougainville; or
  - (b) any person who—
    - (i) is over 21 years of age; and
    - (ii) is a Bougainvillean; and
    - (iii) is a fit and proper person to hold such a licence and who, in the opinion of the Bougainville Mining Advisory Council appears to understand the provisions of this Act, to such an extent so as to enable him to carry out the obligations imposed under this Act; and
    - (iv) has not been convicted for an offence under this Act or an offence involving dishonesty or fraud.
- (2) A gold dealer's licence is valid for 1 year from the date of issue and may be renewed on payment of the prescribed fee.
- (3) A gold dealer's licence is not transferable.
- (4) Despite Subsections (1) and (2), the Minister may grant a gold dealer's licence to a government agency on such terms and conditions as the Minister determines.
- (5) A gold dealer's licence may at any time be cancelled by the Minister on the licensee being convicted of any offence that, in the opinion of the Minister, renders the licensee unfit to hold the licence.

### **192 Application for gold dealer's licence**

An application for a gold dealer's licence is to be made to the Secretary in the prescribed form and be accompanied by the prescribed application fee.

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

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

- (a) the number and date of issue; and
- (b) the name of the gold dealer and the address of his or her place of business; and
- (c) the period for which it is granted; and
- (d) the terms and conditions upon which it is granted.

### **194 Rights of licensed gold dealer to purchase certain gold**

- (1) Despite Section 26 of the PNG *Central Banking (Foreign Exchange and Gold) Regulation* 2000, the holder of a gold dealer's licence has the right to purchase gold from the holder of a small-scale extraction lease or a person referred to in Subsection 4(2) of this Act.

- (2) However, the holder of a gold dealer's licence must sell gold only in accordance with Section 25 of the PNG *Central Banking (Foreign Exchange and Gold) Regulation 2000*.

### **195 Sale of gold by holder of small-scale extraction lease**

Despite Section 25 of the PNG *Central Banking (Foreign Exchange and Gold) Regulation 2000*, the holder of a small-scale extraction lease or a person referred to in Subsection 4(2) of this Act may sell gold to the holder of a gold dealer's licence.

### **196 Obligations of licensed gold dealer**

- (1) A holder of a gold dealer's licence must issue numbered receipts for all gold purchased in such form as may be prescribed.
- (2) The holder of a gold dealer's licence must at all times keep at his or her registered place of business in Bougainville the gold dealer's licence and must produce the licence upon request by the Secretary or any officer of the Department authorised by the Secretary.
- (3) The holder of a gold dealer's licence must record each purchase of gold by the holder in a register in the prescribed form, in which must be recorded—
- (a) the receipt number and date of purchase; and
  - (b) the name and address of the seller and the registration number of the seller's small-scale extraction lease; and
  - (c) the weight of the gold purchased; and
  - (d) the purchase price paid to the seller.
- (4) Each purchase of gold recorded in a gold dealer's register must be signed by dealer or his or her representative who makes the purchase and by the seller.
- (5) Any person who makes a false entry or otherwise contravenes this section is guilty of an offence and be liable on conviction to a fine not exceeding K10,000 or to a term of imprisonment not exceeding 1 year or to both such fine and imprisonment.

### **197 Records and information on gold dealing**

- (1) The Secretary must keep a register of gold dealers, in which the following is to be recorded—
- (a) the number of each licence;
  - (b) the name, and address of the place of business of, each dealer; and
  - (c) such other particulars as the Bougainville Mining Advisory Council may require.

- (2) A gold dealer must, not later than the 11th day of each calendar month, submit to the Director copies of all entries made in the register pursuant to Section 188 relating to all purchases of gold in the previous calendar month.
- (3) The Director must keep confidential the specific information submitted by dealers pursuant to Subsection (2) but—
  - (a) may release to the public general statistical information relating to gold production; or
  - (b) may disclose information for the purposes of the PNG *Central Banking (Foreign Exchange and Gold) Regulation 2000*.

### **198 Exceptions**

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

### **199 Penalty for certain unlawful gold dealings**

- (1) If any person purchases gold from the holder of a small-scale extraction lease and the person is not the holder of a gold dealer's licence, the person is guilty of an offence and is liable on conviction to a fine not exceeding K20,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.
- (2) If a person who is the holder of a small-scale extraction lease sells gold to a person who is not the holder of a gold dealer's licence, the person is guilty of an offence and is liable on conviction to a fine not exceeding K20,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.
- (3) It is a defence to a prosecution under Subsection (1) or (2) if the person is authorised to purchase the gold under the PNG *Central Banking (Foreign Exchange and Gold) Regulation 2000*.
- (4) If any person sells or buys gold and the buying or selling of the gold is otherwise contrary to the provisions of this Part and the PNG *Central Banking (Foreign Exchange and Gold) Regulation 2000*, the person is guilty of an offence and is liable on conviction to a fine not exceeding K20,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

### **200 Application of PNG Mining (Safety) Act 1977 to certain gold facilities**

To avoid doubt the PNG *Mining (Safety) Act 1977* applies in relation to the operation of facilities in Bougainville used to assay or refine gold.

## PART 10 — MISCELLANEOUS

### 201 Information

- (1) The Secretary may require any person whom the Secretary reasonably believes to be in possession of information concerning the geology and mineral resources of the Autonomous Bougainville Government, including geotechnical or hydrogeological information, to provide to the Secretary details or copies of that information.
- (2) The Minister or Secretary may, by notice in writing, require any person to produce, or make available for inspection, any document or information in the possession or under the control of that person relating to—
  - (a) an instrument, or transaction pertaining to that instrument, lodged for approval or approved under Part 7; and
  - (b) any document relating to mining and exploration activities within the Autonomous Region of Bougainville.
- (3) If a person, required under this section to provide information or make available for inspection any document or information—
  - (a) refuses or fails to do so; or
  - (b) provides or makes available information or a document that is false or misleading,
  - (c) the person is guilty of an offence.

*Penalty:* A fine not exceeding K50,000.

### 202 Preservation of cores

- (1) The holder of a tenement must preserve all cores and drilling samples, except such amounts as may be required for assaying and testing and, at such time as the holder no longer requires them, or upon the expiry, surrender or cancellation of the tenement, must advise the Secretary.
- (2) On receiving an advice under Subsection (1), the Secretary may request that the cores and drilling samples (or such of them as are required) be provided to the Department and the holder of the tenement must comply with such a request at his or her own cost.
- (3) The obligation of the holder of a tenement under Subsection (1) ceases 3 months after the tenement expires, is surrendered or is cancelled.

### 203 Confidentiality

- (1) Information disclosed under this Act to the Bougainville Executive Council, the Minister, an officer of the Department or a member of the Bougainville Mining Advisory Council must not be disclosed to any person who is not an officer or

employee of the Department without the prior written approval of the person who provided that information, except—

- (a) to the extent that disclosure is authorised or required under this Act or any other law; or
  - (b) to the extent the person providing the information authorised its disclosure at the time of providing the information; or
  - (c) to the extent necessary for the Secretary to publish statistical information concerning the geology and mineral resources of the Autonomous Region of Bougainville; or
  - (d) to the extent necessary for the Secretary to give advice to the Bougainville Executive Council, other Departments and such other agencies as are prescribed on a confidential basis.
- (2) An officer of the Department or member of the Bougainville Mining Advisory Council who uses, for the purpose of his or her personal gain, any information disclosed under this Act that comes to his or her knowledge in the course of, or by reason of his or her employment as an officer of the Department or his or her membership of the Bougainville Mining Advisory Council, is guilty of an offence.

*Penalty:* A fine not exceeding K50,000 or imprisonment for a term not exceeding four years, or both.

#### **204 Right to enter land**

- (1) The Secretary may, at any time, grant to an officer of the Department or a person employed by the Autonomous Bougainville Government, the right to enter any land for the purpose of carrying out geological, geotechnical or any other investigations.
- (2) A right to enter land must be in the prescribed form.

#### **205 Police to assist Bougainville Wardens, etc.**

All members of the Bougainville Police Force must, when required by a Bougainville Warden or any officer of the Department, act in aid of the Bougainville Warden or such officer in the exercise and discharge by the Bougainville Warden or such officer of his or her powers, functions and duties under this Act.

#### **206 Offences**

- (1) A person must not carry on exploration or mining on any land unless the person is duly authorised under this Act.
- (2) The Secretary may request a person whom the Secretary suspects is carrying on unauthorised exploration or mining to provide any information required to enable the Secretary to establish whether unauthorised exploration or mining is taking place.

- (3) If the Secretary determines that a person is carrying on unauthorised exploration or mining, the Secretary may—
- (a) orally or in writing direct that person to cease the exploration or mining; and
  - (b) take whatever action is reasonably necessary to remove that person from the land on which the unauthorised exploration or mining is taking place.
- (4) A person who—
- (a) carries on exploration or mining on any land without being duly authorised under this Act; or
  - (b) refuses to provide any information that the person has been requested to provide relating to his or her entitlement to explore or mine; or
  - (c) refuses to comply with a direction under Paragraph (3)(a); or
  - (d) assaults, hinders, obstructs or resists a Bougainville Warden or other officer carrying out his or her duties as authorised by this Act; or
  - (e) when lawfully evicted or removed from land if unauthorised exploration or mining was taking place, re-enters or takes possession of such land; or
  - (f) takes or removes from the tenement of another person any mineral without the authority of that person; or
  - (g) gives false or misleading information to the Secretary or to an officer of the Department; or
  - (h) obstructs execution of any right conferred under this Act,
- is guilty of an offence.

*Penalty:* A fine not exceeding K50,000 or imprisonment for a term not exceeding four years, or both such fine and imprisonment.

- (5) If a person is convicted of an offence under this section, the Court may if relevant, in addition to imposing a penalty it determines, order the offender to rehabilitate the land to the satisfaction of the Secretary within a specified time.
- (6) If a person fails to carry out an order made under Subsection (5), the Court must require the offender to pay the costs of rehabilitation of the land and such a sum is a debt to the State and may be recovered in any court of competent jurisdiction.

## **207 General penalty, etc.**

- (1) A person who acts in contravention of or fails to comply in any respect with a provision of this Act is guilty of an offence against this Act.
- (2) A person who commits an offence against this Act for which no penalty is provided elsewhere in this Act is liable to a penalty of a fine not exceeding K15,000 or to imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment.

- (3) If a body corporate is convicted of an offence against this Act, every director and every other officer of the body corporate concerned in the management of the body corporate is guilty of the offence if it is proved that the act or omission that constituted the offence took place with his or her authority, permission or consent.

## **208 Immunity of Minister and officials**

No liability attaches to the Minister or any other member of the Bougainville Executive Council, a Bougainville Warden or any other officer of the Department, a member of the Bougainville Mining Advisory Council, or a member of the Bougainville Police Service in the exercise of a power, or in the discharge or purported discharge of a duty under this Act.

## **209 Regulations**

- (1) The Bougainville Executive Council may make regulations not inconsistent with this Act, prescribing all matters that are required or permitted, or that are necessary or convenient, for carrying out or giving effect to this Act, and in particular for prescribing—
- (a) the powers, functions and duties of the Secretary, the Bougainville Mining Advisory Council, the Bougainville Wardens, the Bougainville Mining Registrar and of any other officer; and
  - (b) the amount of and payment of fees under this Act and the manner in which they are to be paid; and
  - (c) forms for the purposes of this Act and the manner in which any of these forms is to be executed; and
  - (d) the manner in which land is to be marked out for the purpose of making an application for a tenement; and
  - (e) the rent payable in respect of any tenement or class of tenements; and
  - (f) the times at which rent must be paid under this Act and the manner in which it is to be paid; and
  - (g) the manner in which, and the terms and conditions subject to which, tenements may be surrendered; and
  - (h) the conditions subject to which a tenement or any class of tenements must be held, and the terms on which variations of such tenements may be applied for, and granted; and
  - (i) the persons or class of persons on whom copies of applications for tenements or any other associated documents are to be served; and
  - (j) provisions for the compilation of exploration and mining statistics and for that purpose provisions requiring the holder of a tenement to supply the Secretary with such particulars as may be prescribed; and
  - (k) provisions for the furnishing of returns and records for the purposes and by the persons specified; and

- (l) any matter relating to the surveying of tenements; and
  - (m) any matter relating to the registration of tenements and documents affecting tenements, and the keeping of the Bougainville Register including inspection of the Bougainville Register by the public; and
  - (n) provisions for information to be supplied to the Secretary by the holder of a tenement in respect of boring for water or other operations, or for water obtained while boring for other purposes; and
  - (o) provisions for the protection of land upon which mining operations are conducted and the rehabilitation of land disturbed by the mining operations; and
  - (p) the mode of assigning, transferring, sub-letting, encumbering or otherwise dealing with tenements, the enforcement or discharge of any encumbrance over a tenement, the rights and obligations of an encumbrancer and an encumbrancee or of an assignee, transferee or sub-lessee, and the order of priority of two or more encumbrances; and
  - (q) the practice and procedure of Warden's hearings; and
  - (r) the practice and procedure of a Bougainville Mineral Resources Forum; and
  - (s) the practice and procedure of a mediation under Section 30; and
  - (t) the conduct of a competitive tender process under Section 44; and
  - (u) any other matter to effect the proper administration of this Act.
- (2) The regulations may prescribe a fine not exceeding K2000 for an offence by an individual or K10,000 by a body corporate against a regulation.
- (3) A regulation may require any matter or thing to be verified by statutory declaration.

## **PART 11 — APPLICATION, SAVING AND TRANSITIONAL PROVISIONS**

### **210 Application**

- (1) This section has effect in accordance with Subsection 296(1) of the *PNG Constitution*.
- (2) On the commencement of this Act, the *Mining Act 1992* and the *Mineral Resources Authority Act 2005* cease to apply in the Autonomous Region of Bougainville.
- (3) On the commencement of this Act, the *Mining (Bougainville Copper Agreement) Act* (Chapter 196) ceases to apply in the Autonomous Region of Bougainville.

### **211 Repeal**

The *Bogenvil Resources Development Corporation (AROB) Ltd. (Kabui Model) Authorization Act 2008* is repealed.



## **212 Special mining leases**

- (1) This section applies to a special mining lease granted, renewed or continued in existence under the *Mining Act* 1992 or any other law in respect of land situated in the Autonomous Region of Bougainville and in force immediately before the commencement of this Act.
- (2) On and after the commencement of this Act—
  - (a) the special mining lease ceases to be in force; and
  - (b) the company that was the holder of the special mining lease immediately before the commencement of this Act becomes by force of this section the holder of an exploration licence within the meaning of this Act in respect of the area to which the special mining lease applied.
- (3) The company referred to in Subsection (2) may apply under Section 70 for the grant of one or more mining leases.
- (4) To avoid doubt, Section 66 applies to the grant of a mining lease.

## **213 Transitionals – compensation**

- (1) This section applies to a compensation agreement or a determination made under Part VII of the *Mining Act* 1992 in respect of land situated in the Autonomous Region of Bougainville that was in force immediately before the commencement of this Act.
- (2) On and after the commencement of this Act, the compensation agreement or determination has effect as if it were a compensation agreement or determinations made under Part 8 of this Act.

## **214 Transitionals – reservations**

- (1) This section applies to a reservation of land if—
  - (a) the reservation relates to land in the Autonomous Region of Bougainville; and
  - (b) the reservation—
    - (i) was made under Section 7 of the *Mining Act* 1992; or
    - (ii) was mentioned in Section 173(4) of the *Mining Act* 1992; or
    - (iii) was recorded in the TPNG Government Gazette No 22 dated 22 April 1971; and
  - (c) the reservation was in force immediately before the commencement of this Act.
- (2) On and after the commencement of this Act, the reservation has effect in accordance with Subsection 9(8) of this Act.

**215 Transitionals – mining without tenements**

- (1) This section applies to an individual who immediately before the commencement of this Act was carrying out the non-mechanised mining within the meaning of the *Mining Act 1992* of alluvial minerals without a tenement in accordance with Section 9 of that Act.
- (2) The individual may, on and after the commencement of this Act, continue to carry out the non-mechanised mining of alluvial minerals without a tenement, despite Section 4 of this Act.

**216 Disposal of applications pending under the Mining Act**

- (1) If, on the commencement of this Act, an application for a tenement (other than an alluvial mining lease) under the *Mining Act 1992* in respect of land situated in the Autonomous Region of Bougainville is pending, the application has effect, on and after that commencement, as if it were an application for the corresponding tenement under this Act and must be dealt with under this Act.
- (2) If, on the commencement of this Act, an application for an alluvial mining lease under the *Mining Act 1992* in respect of land situated in the Autonomous Region of Bougainville is pending, the application has effect, on and after that commencement, as if it were an application for a small-scale extraction lease under this Act and must be dealt with under this Act.

**217 Certain existing agreements void and of no effect**

- (1) This section applies to any agreement that was in force immediately before the commencement of this Act relating to minerals in the Autonomous Region of Bougainville, being an agreement that was entered into otherwise than in accordance with the provisions of the *Mining Act 1992*.
- (2) The agreement is void and of no effect.

**218 Regulations under the Mining Act**

- (1) The section applies to the regulations made under the *Mining Act 1992* that were in force immediately before the commencement of this Act.
- (2) The regulations continue in force as if made under this Act, subject to such modifications as may be necessary to bring the regulations into conformity with the provisions and requirements of this Act.

I certify that the above is fair copy of a Bill for an Act entitled *Bougainville Mining (Transitional Arrangements) Act 2014*, passed by the House of Representatives on 8 August 2014 and now presented to the Speaker for his certificate under Section 66(1) of the *Bougainville Constitution*.

Dated 8 August 2014

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**Edwin Kenehata**  
Acting Clerk of the  
House of Representatives

I, Andrew Miriki, Speaker of the House of Representatives, under Section 66(1) of the *Bougainville Constitution*, certify that the *Bougainville Mining (Transitional Arrangements) Act 2014* was made by the House of Representatives on 8 August 2014.

Dated 8 August 2014

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**Honourable Andrew Miriki**  
Speaker of the House of  
Representatives