

*Mining Act 1992*

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

***Mining Act 1992.***

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

## **PART I.—PRELIMINARY.**

### **1. Compliance with constitutional requirements.**

- (1) This Act, to the extent that it regulates or restricts the exercise of a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely:
- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
  - (b) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*;
  - (c) the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organisations or other associations conferred by Section 47;
  - (d) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and
  - (e) the right to reasonable privacy conferred by Section 49 of the *Constitution*; and
  - (f) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution*), taking account of the National Goals and Directive Principles and the Basic Social Obligations, in particular the National Goals and Directive Principles entitled-

- (g) national sovereignty and self-reliance; and
- (h) natural resources and environment,

for the purpose of giving effect to the public interest in public order and public welfare.

- (2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.
- (3) For the purposes of the *Land Act* 1996, exploration and mining purposes are declared to be public purposes.
- (4) For the purposes of Section 53(1) (*Protection from unjust deprivation of property*) of the *Constitution*, the purpose and reason 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 are declared and described to be that:
- (a) such property is required for a public purpose and further for a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind; and
  - (b) the discovery, appraisal, development and exploitation of minerals in Papua New Guinea is in the national interest and the regulation of exploration for minerals and mining in Papua New Guinea is in the national interest.

### **2. Interpretation.**

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

"agent" means a person acting on behalf of the owner or occupier and includes a person having the care or direction of a mine or any part thereof or of any works connected therewith;

"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;

"alluvial mining lease" means an alluvial mining lease granted under Section 71;

"approved programme" means a programme approved by the Council in accordance with this Act;

"approved proposals" means, for a mining lease, alluvial mining lease, lease for mining purposes or mining easement, an outline of the activities to be conducted pursuant to that tenement, and the terms upon which those activities will be conducted (including, in the case of a mining lease, a conceptual mine closure plan), as originally submitted to the Council as part of the application for the grant of that tenement and as subsequently modified in accordance with the terms of this Act;

"associated tenement" means, in respect of a mining lease, any lease for mining purposes or mining easement (whether or not held by the holder of the mining lease) the operations pursuant to which are undertaken in connection with the operations undertaken pursuant to the mining lease;

"Authority" means the Mineral Resources Authority established under the *Mineral Resources Authority Act 2005*;

"block" means a block constituted as provided by Section 234;

"Board" means the Mineral Resources Authority Board established under the *Mineral Resources Authority Act 2005*;

"business day" means a day other than a Saturday, Sunday or public holiday under the *Public Holidays Act 1997*;

"Chief Warden" means the Chief Warden appointed under Section 16;

"conceptual mine closure plan" means a plan outlining at a conceptual level the means for implementing mine closure in respect of a tenement and otherwise including such details required by the regulations;

"consolidated tenement" is defined in Section 199;

"Council" means the Mining Advisory Council established by Section 11;

"cure period" is defined in Subsection 215(2);

"Department of Environment" means the department responsible for environmental matters, including the administration of the *Environment Act 2000*;

"development forum" means a development forum convened under Section 3;

"Director of Environment" means the Director of Environment under the *Environment Act 2000*;

"environmental closure obligations" means those obligations imposed upon the holder of a mining lease under the *Environment Act 2000* (including pursuant to any regulations and environmental policies applying pursuant to that Act) to ensure that upon the cessation of mining and ancillary operations the area of the mining lease and its associated tenements are appropriately rehabilitated;

"excluded shortfall" is defined in Subsection 45(7);

"excused breach" is defined in Subsection 216(1);

"excused event" is defined in Subsection 49(3);

"Executive Officer" means the Executive Officer appointed under Section 12;

"existing tenement" is defined in Subsection 207(9);

"existing tenements" is defined in Section 199;

"expanded area" is defined in Section 159;

"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 36;

"force majeure event" is defined in Subsection 49(4);

"government agency" is defined in Subsection 266(1);

"Government land" means land other than:

- (a) customary land that is not leased by the owners to the State; and
- (b) land held by a person other than the State for an estate greater than a term of years; and
- (c) land which is the subject of an existing State lease under the *Land Act* 1996,

and includes land reserved, or deemed to have been reserved, from lease under Section 49 of the *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;

"granted area" is defined in Subsection 90(2);

"hearing" means a hearing conducted under Section 176;

"holder" means, for a tenement, the person whose name appears in the Register as the owner of that tenement;

"holding company" has the same meaning as "holding company" under the *Companies Act* 1997;

"improvements", in relation to compensation under Section 235, includes buildings, crops and economic trees;

"infrastructure corridor licence" means an infrastructure corridor licence granted under Section 141;

"infrastructure easement" is defined in Subsection 266(1);

"inspector" means an inspector appointed under the *Mining (Safety) Act* 1977;

"land" includes:

- (a) the surface and any ground beneath the surface of the land; and
- (b) water; and
- (c) the offshore area and the seabed of the offshore area; and
- (d) the bed of any river, stream, estuary, lake or swamp; and
- (e) any interest in land;

"landholder" means:

- (a) a person who is recognized 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
- (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 97;

"liquidator" has the same meaning as "liquidator" under Section 254 of the *Companies Act 1997*;

"Managing Director" means the Managing Director referred to in Section 10;

"memorandum of agreement" means an agreement of the type described in Section 31;

"mine closure obligations" means those obligations imposed upon the holder of a mining lease under this Act to ensure that upon the cessation of mining and ancillary operations:

- (a) all infrastructure, plant and equipment used in connection with the mining project for that mining lease are safely decommissioned and removed from the area of the mining lease and its associated tenements (or where such infrastructure, plant or equipment is to be transferred to the State, a Provincial Government or a Local-Level Government, it is transferred in a good and safe operating condition); and
- (b) the area the subject of the mining project for that mining lease is made safe;

"mine closure plan" means a document designed to ensure:

- (a) the orderly and effective implementation of the obligations of the holder of a mining lease under these regulations and the *Environment Act 2000* in relation to the closure of a mining project for that mining lease; and
- (b) that adequate funds are available to implement those obligations;

"mine closure trust fund" means a fund into which a portion of the revenue derived from a mining lease is deposited so as to provide security for the performance of:

- (a) the mine closure obligations of the holder of that mining lease under these regulations; and
- (b) the environmental closure obligations of that holder under the *Environment Act 2000*;

"minerals" means all valuable non-living substances excluding petroleum obtained or obtainable from land;

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

"mining development contract" means an agreement between the State and the holder of a tenement referred to in Subsection 27(1);

"mining easement" means a mining easement granted under Section 117;

"mining lease" means a mining lease granted under Section 56;

"mining project" means, in respect of a mining lease and any associated tenements of that mining lease, the project represented by the mining and associated operations undertaken pursuant to those tenements;

"national newspaper" means a newspaper circulating generally throughout the cities of Papua New Guinea and includes any newspaper prescribed by the regulations as a "national newspaper";

"non-mechanized mining" means mining by the use of hand tools and equipment but not by pumps nor machinery driven by electric, diesel, petrol or gas-powered motors;

"offshore area" means any waters, below which waters is located the sea bed (as determined based on the low tide mark), which form part of the area of Papua New Guinea under the *Constitution* or over which waters the State of Papua New Guinea otherwise exercises sovereignty;

"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 one 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;

"prescribed application fee", in relation to an application under this Act, means the fee for the application determined under Section 227;

"primary tenement" is defined in Subsection 90(1);

"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) and includes, in the case of a mining lease, a conceptual mine closure plan;

"receiver" has the same meaning as "receiver" under the *Companies Act 1997*;

"Register" means the Register of Tenements established and maintained under Section 181;

"Registrar" means the Registrar of Tenements appointed under Section 15;

"related company" has the same meaning as "related company" under the *Companies Act 1997*;

"remedial period" means, for a mining lease, the period during which the holder of the mining lease is required to remedy defects identified in the implementation of the mine closure obligations and the environmental closure obligations of the holder;

"remedied breach" is defined in Subsection 49(6);

"repealed Acts" means the Acts repealed by Section 280;

"reserved land" means land reserved, or deemed to have been reserved, under Section 49 of the *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;

"river bed" means any ground lying between the banks of any stream of water, whether perennial or intermittent, flowing in a natural channel;

"socio-economic development plan" means a plan setting out the mechanisms for the management of the social and economic impact of the undertaking of a mining project;

"sub-block" means a sub-block constituted as provided by Section 234;

"survey directions" means survey directions issued under Section 37 of the *Survey Act 1969*;

"surveyor" means a surveyor registered under the *Survey Act 1969*;

"tenement" means:

- (a) an exploration licence; or
- (b) a mining lease; or
- (c) an alluvial mining lease; or
- (d) a lease for mining purposes; or
- (e) a mining easement; or

(f) an infrastructure corridor licence,  
granted or deemed to have been granted under this Act;

"this Act" includes the regulations;

"tribute agreement" means an agreement made by the holder of a mining lease with any other person whereby that person may work that mining lease on terms providing that the holder shall receive from that person a portion or percentage of the minerals won or the proceeds of their sale; and

"Warden" means a Warden appointed under Section 16.

- (2) The term of a tenement shall be calculated on and from, and shall include, the date on which it was granted by the Head of State or the Minister.
- (3) For the purposes of this Act, "associated persons" means a person associated with another person in one of the following manners:
- (a) if the other person is a corporation:
    - (i) a director or secretary of the corporation; or
    - (ii) a corporation that is related to the other person; or
    - (iii) a director or secretary of such a related corporation; or
  - (b) a person in concert with whom the other person is acting or proposes to act in respect of the matter to which the reference relates; or
  - (c) a person with whom the other person is, or proposes to become, associated, whether formally or informally, in any other way in respect of the matter to which the reference relates; or
  - (d) if the other person has entered into, or proposes to enter into, a transaction, or has done, or proposes to do, any other act or thing, with a view to becoming associated with a person as mentioned in Paragraph (a), (b) or (c), that last-mentioned person,
- but a person shall not be taken to be an associate of another person by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in the proper performance of the functions attaching to his professional capacity or to his business relationship with the other person.
- (4) In a case where there is more than one person holding a tenement, their obligations in respect of that tenement shall be deemed to be joint and several, except where such obligations are by express provision or necessary implication several obligations.
- (5) It is hereby declared that a tenement granted under this Act is not an interest in land for the purposes of the *Land Act 1996*.
- (6) Nothing in this Act limits the operation of the *Mineral Resources Authority Act 2005* (including, without limitation, Sections 30, 47 and 51 of that Act).
- (7) A reference to affected communities, in relation to a tenement, means:
- (a) those natural persons who reside within the area (or, as applicable, proposed area) of the tenement; and
  - (b) those natural persons who reside in proximity to the area (or, as applicable, proposed area) of the tenement such that the grant of the tenement, or the operations carried on pursuant to that tenement, will impact upon the lifestyles, living conditions, welfare or income of such persons.

### **3. Consultation.**

- (1) A development forum shall (except as otherwise provided in this Act and the regulations) be convened by the Minister before the grant of any mining lease to consider the views of those persons whom the Minister believes will be affected by the grant of that mining lease and shall be conducted by the Minister according to such procedures as will afford a fair hearing to all participants.
- (2) The Minister shall invite to a development forum such persons as he or she considers will fairly represent the views of:
  - (a) the applicant for the mining lease; and
  - (b) the landholders of the land the subject of the application for the mining lease and other tenements to which the applicant's proposals relate; and
  - (c) the National Government (including representatives of the Authority and the Department of Environment); and
  - (d) the Provincial Government or Provincial Governments, if any, in whose province or provinces the land the subject of the application for the mining lease is situated; and
  - (e) the Local Level Governments, if any, within the areas of whose jurisdiction the land the subject of the application for the mining lease is situated; and
  - (f) affected communities (including women) for the mining lease and other tenements to which the applicant's proposals relate; and
  - (g) such other persons or bodies prescribed by the regulations.
- (3) The Minister may also, where the Minister considers this appropriate, invite to a development forum recognised non-government organizations whose objectives include the protection of affected communities or other similar social or environmental objectives and which organizations are representative of the views of the people of Papua New Guinea.
- (4) The regulations may prescribe categories of mining lease in respect of which, unless the Council determines otherwise, due to the small scale of the mining leases, a development forum is not required to be held.

### **4. Land dispute settlement.**

- (1) Where a dispute arises as to interests in customary land or the position of boundaries of customary land such dispute shall not affect:
  - (a) the right of a person to make application for and be granted a tenement or other right or permit under this Act; or
  - (b) the validity of a tenement, right or permit granted under this Act.
- (2) A dispute referred to in Subsection (1) shall be settled as provided for by the *Land Disputes Settlement Act 1975*.

## **PART II.—APPLICATION.**

### **5. Minerals the property of the State.**

- (1) Notwithstanding anything contained in any other law or in any grant, instrument of title or other document, all minerals existing on, in or below the surface of any land in Papua New Guinea, including any minerals contained in any water lying on any land in Papua New Guinea, are the property of the State.
- (2) Nothing in Subsection (1) shall be construed as an additional acquisition of property in relation to Section 53 of the *Constitution* beyond that which prevailed under the repealed Acts and all previous Acts.



## **6. Land available for exploration and mining.**

Subject to this Act, all land in the State, including all water lying over that land, is available for exploration and mining and the grant of tenements over it.

## **7. Reservation by the Minister.**

- (1) Where the Minister considers it to be in the best interests of the State, the Minister may, by notice published in the National Gazette, reserve from exploration or mining or non-mechanized mining as provided for in Section 9 any land specified in the notice, and such reservation shall be effective on and from the date of publication of the notice.
- (2) A notice under Subsection (1) shall specify the area of land under reservation by reference to a description of the land in latitude and longitude and shall comprise sub-blocks.
- (3) Subject to Subsection (4), on the coming into effect of a reservation under this Section 7, the Registrar shall defer dealing as required under Subsection 171(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.
- (4) A reservation under this Section 7 shall have 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 Subsection 171(a).
- (5) Upon the revocation or expiry of a reservation, any application for the grant of a tenement over the land the subject of the reservation that has been registered shall be dealt with by the Registrar in accordance with Subsection 171(b).

## **8. Exploration and mining on reserved land.**

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

## **9. Alluvial mining.**

- (1) Except as provided in Subsection (2), the mining of alluvial minerals shall be undertaken on a tenement and shall be subject to the provisions of Part V.
- (2) Any natural person who is a citizen may carry out non-mechanized mining of alluvial minerals on land owned by that natural person, provided that the land is not the subject of a tenement (other than an exploration licence or an infrastructure corridor licence).
- (3) The right conferred by Subsection (2) shall not affect the right of any person to make application for and be granted a tenement under this Act.
- (4) The Minister may, under Section 7, reserve land from mining under Subsection (2).
- (5) A natural person who wishes to carry out non-mechanized mining of alluvial minerals pursuant to Subsection (2) shall apply to the Managing Director for a permit to carry out such non-mechanized mining.
- (6) Upon receipt of an application under Subsection (5), the Managing Director shall, provided the applicant meets the criteria in Subsection (2), issue a permit to the applicant.
- (7) A permit issued under Subsection (6) has a term of 5 years.

- (8) Upon the expiration of the current term of a permit, the holder of that permit may apply to the Managing Director for a renewal of that permit for a further term of 5 years.
- (9) A permit issued under this Section 9 shall, subject to the applicant making the required application to the Managing Director, be renewed an unlimited number of times, provided the applicant satisfies the criteria in Subsection (2) at the time of each renewal application.
- (10) A person who carries out non-mechanised mining of alluvial minerals pursuant to Subsection (2) shall ensure that such mining is carried out safely and in accordance with applicable mining safety legislation.

### **PART III.—ADMINISTRATION.**

#### ***Division 1.—Managing Director.***

##### **10. Managing Director.**

- (1) There shall be a Managing Director for the purposes of this Act who shall be the person appointed under Section 23 of the *Mineral Resources Act 2005*.
- (2) The functions, powers and duties of the Managing Director are as specified in this Act and the *Mineral Resources Act 2005*.

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

##### **11. Mining Advisory Council.**

- (1) A Mining Advisory Council is hereby established.
- (2) Subject to Subsection (3), the Council shall consist of:
  - (a) the Managing Director, *ex officio*, who shall be the Chairman; and
  - (b) the Director of the Department of Environment and Conservation, *ex officio*, or his or her nominee appointed in writing; and
  - (c) the nominee (appointed in writing) of the Departmental Head of the Department responsible for treasury matters, who shall occupy a position in the National Public Service of a level no lower than Assistant Secretary and shall not be a member or alternate member of the Board of the Authority, *ex officio*; and
  - (d) the head of the Department responsible for provincial affairs matters, *ex officio*, or his or her nominee appointed by him or her in writing; and
  - (e) three employees of the Authority holding management positions, appointed in writing by the Managing Director; and
  - (f) the nominee (appointed in writing) of the Departmental Head of the Department responsible for mineral policy matters who shall occupy a position in the National Public Service of a level no lower than Assistant Secretary and shall not be a member or alternate member of the Board, *ex officio*; and
  - (g) one person appointed in writing by the Minister.
- (3) Where a member of the Council, other than the Managing Director, is for any reason unable to attend a meeting of the Council or otherwise to perform his or her functions, he or she may in writing appoint a person with the consent of the Managing Director to act as his or her alternate for the period of his or her inability and a person so appointed shall be deemed a member of the Council for the duration of his or her appointment.

- (4) Where the Managing Director is for any reason unable to attend a meeting of the Council or otherwise perform his or her functions, he or she shall appoint a member of the Council to act as Managing Director in his or her absence.
- (5) In making appointments under Subsection (2) the appointor shall take into consideration the appointee's qualifications and experience in mining, geology, finance, law or related fields.

**12. Executive Officer to the Council.**

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

**13. Meetings of the Council.**

- (1) The Council shall meet as often as is necessary to carry out its functions and at such times and places as the Managing Director directs.
- (2) At a meeting of the Council:
  - (a) the Managing Director and five other members are a quorum; and
  - (b) the Managing Director shall preside; and
  - (c) all questions arising shall be decided by a majority of votes; and
  - (d) each member of the Council including the Managing Director shall have a deliberative vote, and in the event of an equality of votes on any question the Managing Director shall also have a casting vote; and
  - (e) subject to this Act, the Council shall otherwise determine its own procedures.

**14. Functions of the Council.**

The functions of the Council are:

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

***Division 3.—Registrar of Tenements.***

**15. Registrar of tenements.**

- (1) There shall be a Registrar of Tenements, who shall be an employee of the Authority appointed by the Managing Director by notice in the National Gazette or a national newspaper.
- (2) The functions, powers and duties of the Registrar are as specified in this Act.
- (3) The Registrar may, by instrument in writing, delegate all or any of his or her powers (except this power of delegation) to any employee of the Authority.

***Division 4.—Wardens.***

**16. Wardens.**

- (1) The Managing Director shall appoint:
  - (a) an employee of the Authority to be Chief Warden; and
  - (b) such other number of employees as he or she considers necessary to be Wardens, for the purpose of this Act.
- (2) The functions, powers and duties of a Warden are as specified in this Act.
- (3) The Chief Warden shall undertake:
  - (a) the duties of a Warden; and

- (b) such additional functions as are specifically allocated to him or her under this Act or as the Managing Director may refer to him or her.
- (4) The Chief Warden may, by instrument in writing, delegate all or any of his or her powers (except this power of delegation) to a Warden.

***Division 5.—Decision Making and Timing***

**17. Decision making procedure.**

- (1) Where this Act requires a decision of the Minister under this Act to be made having regard to the recommendation of the Council, then that decision shall be made in accordance with the procedures set out in this Section 17.
- (2) Upon making its final determination in relation to the decision upon which the Council is required to provide a recommendation to the Minister, the Council shall:
  - (a) forward that recommendation, as set out in the Council's final determination, to the Minister; and
  - (b) notify the affected party that the recommendation has been forwarded to the Minister and of the date the recommendation was so forwarded.
- (3) If the Minister does not agree with the Council's final determination, the Minister may refer the Council's recommendation back to the Council and direct the Council to reconsider that recommendation having regard to any directions given by the Minister (which direction shall be accompanied by a statement setting out the reasons for the giving of that direction).
- (4) Directions which may be given by the Minister to the Council under Subsection (3) include, without limitation:
  - (a) to consider a matter not previously considered by the Council; or
  - (b) to consider a matter considered by the Council in more detail,
 but the Minister may not direct the Council to consider a matter which is not relevant to the decision to be made by the Minister under this Act.
- (5) Subject to Subsection (16), the Minister shall notify the Council and the affected party within 21 days of receipt of the Council's recommendation in relation to a decision:
  - (a) whether the Minister agrees with the Council's recommendation and thereby makes the decision recommended by the Council; or
  - (b) whether the Minister refers the Council's final determination back to the Council under Subsection (3).
- (6) Where the Minister fails to take an action referred to in Subsection (5) within the 30 day time limit referred to in that Subsection, then either or both of:
  - (a) the Council; and
  - (b) the affected party,
 may serve notice upon the Minister requiring the Minister to take an action referred to in Subsection (5).
- (7) Where the Minister fails to take an action referred to in Subsection (5) within 15 days of receipt of a notice served under Subsection (6), then the Minister shall be deemed to have agreed with the Council's recommendation and thereby made the decision recommended by the Council.
- (8) A copy of any direction given to the Council by the Minister under Subsection (3) shall be provided to the affected party.

- (9) If requested by the affected party, the Council shall allow the affected party an opportunity to make submissions within such period specified by the Council (which period shall be at least 21 days following the receipt by the affected party of a copy of the Minister's direction under Subsection (3)) in relation to the matters upon which the Council has been directed.
- (10) Upon the earlier of the expiration of the period allowed to the affected party under Subsection (9) and receipt of notice by the Council from the affected party that it has lodged all submissions it wishes to lodge under Subsection (9), or if no request is made by the affected party under Subsection (9) then upon the receipt by the Council of the Minister's direction, the Council shall proceed to consider the direction given by the Minister and:
- (a) affirm the Council's original recommendation or revise that recommendation; and
  - (b) forward to the Minister and the affected party:
    - (i) a notice that the Council affirms its original recommendation, which notice shall be accompanied by a statement of the reasons for the Council affirming that recommendation; or
    - (ii) the revised recommendation of the Council, which revised recommendation shall set out the reasons for the revision of the recommendation.
- (11) Within 21 days of receipt of a notice or revised recommendation from the Council under Subsection (10), the Minister shall notify the Council and the affected party:
- (a) that the Minister agrees with the Council's recommendation and thereby makes the decision recommended by the Council; or
  - (b) that the Minister does not agree with the Council's recommendation,
- and, where the Minister does not agree with the Council's recommendation, the Minister's notice shall set out the reasons for the Minister's disagreement.
- (12) Where the Minister fails to issue a notice referred to in Subsection (11) within the 21 day time limit referred to in that Subsection, then either or both of:
- (a) the Council; and
  - (b) the affected party,
- may serve notice upon the Minister requiring the Minister to issue such notice.
- (13) Where the Minister fails to issue a notice referred to in Subsection (11) within 15 days of receipt of a notice served under Subsection (12), then the Minister is deemed to have agreed with the Council's original or revised recommendation (as applicable) and thereby made the decision recommended by the Council.
- (14) Where the Minister issues a notice, within the time limits required by Subsections (11) or (13) (as applicable), providing that the Minister does not agree with the Council's recommendation, then the relevant decision under this Act shall be referred to the National Executive Council to determine, in accordance with the relevant criteria under this Act and having regard to the recommendation of the Council, the decision under this Act.
- (15) In this Section 17, "**affected party**" means the tenement holder, applicant for a tenement or other person in relation to whom the relevant decision under this Act is to be made.
- (16) Where, in relation to a decision, there is more than one affected party then:
- (a) any notice or document under this Section 17 required to be given to the affected party shall be given to each such affected party; and
  - (b) any time limits in this Section 17 which run from the time a notice or document is given to an affected party commence to run from the time that notice or document has been given to each such affected party.

- (17) This Section 17 does not apply in relation to a decision whether to grant an alluvial mining lease.

**18. Appearance before Council.**

Where this Act gives a person a right to appear personally before the Council, then that person may be represented before the Council by a legal practitioner or other representative appointed by the person.

**19. Timing of decisions.**

- (1) The Minister, the Council, the Managing Director, a Warden and any other person in whom, pursuant to this Act, is vested the authority or responsibility to make a decision or determination, shall make that decision or determination with due expedition and without unnecessary delay.
- (2) No failure to comply with Subsection (1) affects the validity of any decision or determination made under this Act.
- (3) The regulations may prescribe time limits within which decisions or determinations under this Act shall be made and for the consequences of a failure to make a decision or determination within such time limit.
- (4) In the absence of any stipulation to the contrary in the regulations, a failure to make a decision or determination within a time limit prescribed by the regulations does not affect the validity of that decision or determination.

**20. Consideration of information.**

Where, under this Act, the Council is required to make a decision or determination in response to an application made to the Council, then in reaching its decision or determination the Council shall have regard to any information, submissions or documents provided to the Council by the applicant or applicants for that decision or determination, other than information, submissions or documents:

- (a) which are, on their face, irrelevant to the decision or determination to be made by the Council; or
- (b) which are provided to the Council after the expiration of any time limit allowed under this Act to the applicant or applicants for the lodgment of submissions.

**21. Draft and final determinations.**

- (1) Subject to Subsection (2), where the Council is required to make a decision or determination under this Act in response to an application made to the Council and the Council determines to approve (or recommend approval of) that application without the imposition of any further conditions (to those which are automatically imposed or required to be imposed by this Act or the regulations), then the Council may dispense with the requirement to issue a draft determination in relation to that application (but nothing in this Subsection (1) derogates from the Council's obligation to provide reasons in relation to any final determination made by the Council).
- (2) The Council may not dispense with the requirement to issue a draft determination in relation to an application if notified by the applicant that the applicant does not wish the Council to dispense with that requirement.

**22. Proceeding to final determination.**

Where, under this Act, the Council is required, after issuing a draft determination, to provide a person or persons with a period ("**response period**") to lodge submissions or make representations to the Council prior to the Council proceeding to make a final determination and, prior to the expiration of that response period that person, or where there is more than one person, each such person:

- (a) notifies the Council that they do not wish to lodge submissions or make representations; and/or
- (b) makes a submission or representation prior to the expiration of the response period and notifies the Council that they do not intend to make any further submission or representation,

then the Council shall proceed to make its final determination without waiting for the expiration of the response period.

**23. Provision of information.**

Where a person ("**applicant**") makes an application under this Act, which application is to be considered by the Council, then the Council may request the applicant to provide (within such period specified by the Council, acting reasonably) such additional information in relation to the application as is reasonably required by the Council and the applicant shall, to the extent that the applicant is able to, comply with that request.

**24. Streamlining of determinations.**

Where, under this Act, the Council is required to make more than one determination in relation to a person, then the Council shall, to the extent practicable and for the purposes of processing those determinations in as streamlined and efficient manner as possible, undertake the consideration of the matters relevant to making those determinations simultaneously.

**PART IV.—MINING DEVELOPMENT CONTRACTS.**

***Division 1.—Agreements Generally.***

**25. Power to enter into agreements.**

- (1) The State may enter into an agreement, not inconsistent with this Act, relating to a mining development or the financing of a mining development under a tenement (such an agreement being a "**mining development contract**") and, without prejudice to the generality of the foregoing, any such mining development contract may, subject to this Section 25, contain provisions relating to:
  - (a) the circumstances or the manner in which the Minister or the Managing Director shall exercise any discretion conferred by this Act; and
  - (b) the settlement of disputes arising out of or relating to the mining development contract or the administration of this Act, including provisions relating to the settlement of any such dispute by international arbitration; and
  - (c) such matters prescribed by the regulations; and
  - (d) any other matter connected therewith as the parties to the mining development contract may consider necessary.
- (2) Where this Act confers on the Minister or the Managing Director a discretion, the Minister or the Managing Director, as the case may be, shall exercise that discretion subject to and in accordance with any relevant stipulation contained in a mining development contract and, in making any recommendation to the Minister under this Act in relation to that discretion, the Council shall have regard to that stipulation of the mining development contract.
- (3) The regulations shall prescribe a standard mining development contract.
- (4) Except as otherwise agreed by the State and the holder of the tenement to which the relevant mining development contract relates, a mining development contract shall be in the form of the standard mining development contract prescribed by the regulations.

- (5) Where the terms of a mining development contract vary from the standard mining development contract prescribed by the regulations, then the National Executive Council shall approve each such variation.
- (6) The National Executive Council shall approve a variation referred to in Subsection (5), unless the National Executive Council, acting reasonably, considers that the variation is materially detrimental to the interests of the State and the efficient and viable development of the mineral resources of the State.
- (7) Where the National Executive Council proposes not to approve a variation referred to in Subsection (5), then the National Executive Council shall issue a draft determination to the holder of the relevant tenement setting out the reasons why the National Executive Council proposes not to approve the variation and shall allow the holder such period specified by the National Executive Council (being not less than 21 days from the receipt by the holder of the National Executive Council's draft determination) to lodge written submissions in response to that draft determination.

**26. Amendment of mining development contract.**

- (1) Subject to this Section 26, the State and the holder of a tenement may from time to time, by instrument in writing, amend a mining development contract to which they are party.
- (2) An amendment to a mining development contract of the type referred to in Subsection (1) shall be approved by the National Executive Council, which approval the National Executive Council shall give unless the National Executive Council, acting reasonably, considers that the amendment is materially detrimental to the interests of the State and the efficient and viable development of the mineral resources of the State.
- (3) Where the National Executive Council proposes not to approve an amendment referred to in Subsection (1), then the National Executive Council shall issue a draft determination to the holder of the relevant tenement setting out the reasons why the National Executive Council proposes not to approve the amendment and shall allow the holder such period specified by the National Executive Council (being not less than 21 days from the receipt by the holder of the National Executive Council's draft determination) to lodge written submissions in response to that draft determination.

***Division 2.—When Mining Development Contracts are to be entered into.***

**27. Circumstances under which the Minister may require mining development contract.**

- (1) Where the Minister considers, on reasonable grounds, that the size or distribution of a mineral deposit, the method of mining or treating it, the extent of the impact of that mining or treatment upon affected communities, the infrastructure required for the mining or treatment of the mineral deposit or financial or economic considerations make a mining development contract necessary, the Minister may require the applicant for a mining lease enabling that mineral deposit to be mined to enter into a mining development contract with the State.
- (2) A notice under Subsection (1) shall be served by the Minister on the applicant for the mining lease by not later than 1 month after the lodging of the application.
- (3) Where a notice is served under Subsection (1), then the relevant applicant shall negotiate in good faith and use all reasonable endeavours to conclude and execute that mining development contract as soon as practicable after the service of that notice.

**28. Request by tenement applicant for entry into mining development contract.**

- (1) An applicant for a mining lease may, by notice to the Minister, request the State to enter into a mining development contract with that applicant if the applicant is granted that mining lease.
- (2) A notice under Subsection (1) shall be served upon the Minister within 1 month of lodgment of the application for the mining lease or by such later date as the Council agrees.



- (3) Where a notice is served upon the Minister in accordance with this Section 28, the State shall, subject to the grant of the mining lease to the party which served the notice, negotiate in good faith with that party and use all reasonable endeavours to conclude a mining development contract with that party.
- (4) The regulations may prescribe circumstances in which due to the size of a mining lease or projected scale of production under that mining lease, the State is not required, despite the service of a notice under this Section 28, to negotiate and enter into a mining development contract with the holder of a mining lease.

**29. Entry into mining development contract by agreement.**

The State and the holder of a tenement may at any time, by mutual agreement (but subject to Division 1), enter into a mining development contract.

**30. Effect of mining development contract.**

The mining development of a mineral deposit in respect of which a mining development contract has been entered into shall be undertaken in accordance with the provisions of the mining development contract, except that, to the extent of any conflict between the provisions of the mining development contract and the provisions of this Act, the provisions of this Act shall prevail.

**PART IVA.—MEMORANDA OF AGREEMENT.**

**31. Entry into memoranda of agreement.**

- (1) Subject to Subsection (2) and to any exceptions prescribed by the regulations, the holder of a mining lease shall enter into a memorandum of agreement.
- (2) The Council may, in accordance with Section 32, waive the requirement for the holder of a mining lease to enter into a memorandum of agreement.
- (3) A memorandum of agreement may be entered into by an applicant for a mining lease in anticipation of that applicant being granted the mining lease.
- (4) The parties to a memorandum of agreement, in addition to the holder of the relevant mining lease, shall be:
  - (a) representatives of the landholders of the land situated within the area of the mining lease or any associated tenement thereof; and
  - (b) the State; and
  - (c) the Provincial Government or Provincial Governments, if any, in whose province or provinces the land the subject of the mining lease is situated; and
  - (d) the Local Level Governments, if any, within the areas of whose jurisdiction the land the subject of the mining lease is situated.
- (5) The purpose of a memorandum of agreement is to:
  - (a) provide a mechanism for the distribution of part of the monetary benefits from the operations undertaken pursuant to a mining lease between the parties referred to in Subsection (4); and
  - (b) provide a mechanism for co-ordinating relations between the parties referred to in Subsection (4).
- (6) The purpose of a memorandum of agreement is not to provide a mechanism for compensating landholders for loss or damage suffered or foreseen to be suffered by them from exploration or mining or ancillary operations, such compensation issues being dealt with in Part VIII of this Act.

### **32. Exemption from requirement to enter into memorandum of agreement.**

- (1) An applicant for a mining lease may, at the time of making that application or by such later time as may be prescribed, apply to the Council for a waiver of the requirement to enter into a memorandum of agreement, which application shall set out the basis upon which the applicant submits that the requirement should be waived.
- (2) The Council shall consider an application lodged under Subsection (1) and determine whether or not to grant a waiver.
- (3) A waiver may be granted subject to such conditions as the Council, acting reasonably, considers appropriate including conditions designed to ensure compliance with any mechanisms referred to in Subsection (4)(b)(iii).
- (4) In making its determination under Subsection (2), the Council shall have regard to the principles that:
  - (a) a memorandum of agreement should generally be required for a mining lease; and
  - (b) the Council should only waive the requirement for the holder of a mining lease to enter into a memorandum of agreement if it is satisfied that, having regard to:
    - (i) the nature and scale of the mining operations to be carried out pursuant to the mining lease; and
    - (ii) the impact of the mining lease upon the lifestyles, living conditions, welfare and income of the landholders of the land the subject of the application for the mining lease; and
    - (iii) any other mechanisms in place (or which shall be in place) to ensure that such landholders receive an equitable proportion of the royalties from the operations undertaken pursuant to the mining lease,
 it is in all the circumstances appropriate to grant a waiver from that requirement.
- (5) The regulations may set out indicative criteria to which the Council should have regard in making its determination under Subsection (2)
- (6) In considering an application lodged under Subsection (1), the Council may seek submissions from:
  - (a) the landholders of the land the subject of the application for the mining lease; and
  - (b) the State; and
  - (c) the Provincial Government or Provincial Governments, if any, in whose province or provinces the land the subject of the application for the mining lease is situated; and
  - (d) the Local Level Governments, if any, within the areas of whose jurisdiction the land the subject of the application for the mining lease is situated,
 as to whether, having regard to the factors in Subsection (4), the Council should waive the requirement for a memorandum of agreement in relation to the relevant mining lease.
- (7) A copy of any submission lodged under Subsection (6) shall be provided to the relevant applicant.
- (8) In relation to each application submitted to the Council under Subsection (1), the Council shall issue a draft determination, which sets out:
  - (a) whether the Council has determined, having regard to the factors in Subsection (4), to waive the requirement for a memorandum of agreement in relation to the relevant mining lease and where the requirement is to be waived any conditions to which that waiver is subject; and
  - (b) the reasons for the Council's determination.

- (9) The Council shall provide an applicant under Subsection (1) with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by that applicant of the Council's draft determination), to lodge submissions in response to the Council's draft determination.
- (10) Upon the expiration of the period allowed to an applicant under Subsection (9), the Council shall proceed to issue a final determination as to whether the Council waives the requirement for a memorandum of agreement in relation to the relevant mining lease, which final determination shall be in writing and set out the reasons for that determination.

**33. Standard form memorandum of agreement.**

- (1) The regulations shall prescribe a standard form memorandum of agreement, which shall be used as a basis for negotiation of a memorandum of agreement in relation to a mining lease.
- (2) The standard form memorandum of agreement shall provide for the allocation of the royalties payable by the holder of the mining lease between the landholders situated within the area of the mining lease, the State, Provincial Governments and Local Level Governments in a manner consistent with that prescribed in the regulations.

**34. Approval of memorandum of agreement by Council.**

- (1) Upon a memorandum of agreement being agreed by the proposed parties to it, the applicant for, or the holder of, the relevant mining lease shall submit that memorandum of agreement to the National Executive Council for approval.
- (2) Subject to Subsection (3), the National Executive Council shall approve a memorandum of agreement unless the National Executive Council (acting reasonably) considers:
  - (a) the variations of the proposed memorandum of agreement from the standard form of memorandum of agreement prescribed in the regulations materially disadvantage the landholders situated within the area of the mining lease; or
  - (b) there has been insufficient consultation with those landholders, such that those landholders have not been in a position to make an informed assessment as to the acceptability of the terms of the proposed memorandum of agreement.
- (3) The National Executive Council may not approve a memorandum of agreement (and a memorandum of agreement may not be entered into) which provides for a distribution of royalties on a basis which is inconsistent with the basis provided for in Subsection 33(2).
- (4) A memorandum of agreement shall take effect, as a legally enforceable contract which is binding upon the parties to it, from the date of its approval by the National Executive Council (irrespective of when, and whether, that memorandum of agreement is executed by the parties to it).
- (5) The approval by the National Executive Council of a memorandum of agreement shall be in writing and set out the basis upon which the National Executive Council has determined that it is appropriate, having regard to Subsection (2), to approve that memorandum of agreement.
- (6) Where the National Executive Council proposes not to approve a memorandum of agreement, then the National Executive Council shall issue a draft determination to the applicant for, or holder of, the relevant mining lease setting out its reasons and shall allow that applicant or holder such period specified by the National Executive Council (being not less than 21 days from the receipt of the National Executive Council's draft determination) to lodge written submissions in response to that draft determination.

**35. Amendment of memorandum of agreement.**

- (1) Subject to this Section 35, the parties to a memorandum of agreement may from time to time, by instrument in writing, agree to amend that memorandum of agreement.

- (2) A memorandum of agreement may not be amended so as to provide for a distribution of royalties on a basis which is inconsistent with the basis provided for in Subsection 33(2).
- (3) Each amendment to a memorandum of agreement shall be approved by the National Executive Council, which approval shall be given unless the National Executive Council (acting reasonably) considers:
  - (a) the amendment materially disadvantages the landholders situated within the area of the mining lease; or
  - (b) there has been insufficient consultation with those landholders, such that those landholders have not been in a position to make an informed assessment as to the acceptability of the relevant amendment.
- (4) Amendments to a memorandum of agreement shall take effect from the date of the approval of those amendments by the National Executive Council (irrespective of when, and whether, the instrument setting out those amendments is executed by the parties to the memorandum of agreement).
- (5) The approval by the National Executive Council to amendments to a memorandum of agreement shall be in writing and set out the basis upon which the National Executive Council has determined that it is appropriate, having regard to the requirements of Subsection (3), to approve those amendments.
- (6) Where the National Executive Council proposes not to approve amendments to a memorandum of agreement, then the National Executive Council shall issue a draft determination to the holder of the relevant mining lease setting out its reasons and shall allow that holder such period specified by the National Executive Council (being not less than 21 days from the receipt of the National Executive Council's draft determination) to lodge written submissions in response to that draft determination.

## **PART V.—TENEMENTS.**

### ***Division 1.—Exploration Licences.***

#### **36. Grant of exploration licence.**

- (1) The Minister shall, on the application of a person, grant to that person an exploration licence if that person is entitled to the grant of an exploration licence under this Act.
- (2) Subject to the remaining provisions of this Act, a person is entitled to the grant of an exploration licence if that person:
  - (a) is of good repute; and
  - (b) has, or has access to, sufficient financial and technical resources to discharge the obligations imposed by this Act on the holder of an exploration licence (and, in determining whether an applicant has, or has access to, sufficient financial resources, particular regard should be had to the financial resources to which the applicant will have, or have access to, in respect of the first 12 months of the term of the exploration licence); and
  - (c) has submitted to the Council a programme which the Council has approved in accordance with Section 46.
- (3) In determining whether a person is entitled to the grant of an exploration licence the Minister shall have regard to the recommendation of the Council.
- (4) An exploration licence shall be on the prescribed form.

**37. Term of exploration licence.**

- (1) The initial term of an exploration licence is 5 years.
- (2) An exploration licence is capable of being renewed in accordance with Sections 49 and Sections 50 to 52.

**38. Area of exploration licence and relinquishment of portions.**

- (1) The area of land in respect of which an exploration licence may be granted shall be:
  - (a) no more than 750 sub-blocks; and
  - (b) one area comprising:
    - (i) one sub-block; or
    - (ii) more than one sub-block, each of which shall share a common side with at least one other such sub-block.
- (2) Subject to Subsection (3), on or prior to the expiry of:
  - (a) the third year of an exploration licence; and
  - (b) the fifth year of an exploration licence; and
  - (c) the eighth year of an exploration licence; and
  - (d) the tenth year of an exploration licence,

the holder of that exploration licence shall, by notice to the Managing Director, relinquish a portion or portions comprising in aggregate not less than half of the area the subject of that exploration licence immediately prior to that relinquishment.
- (3) A relinquishment under Subsection (2) shall take effect from, as applicable, the end of the third, fifth, eighth and tenth year of the exploration licence.
- (4) Where the holder of an exploration licence fails to serve a notice as required by Subsection (2), then the Managing Director may determine the portions of the exploration licence which are to be relinquished as from the end of the relevant year and, if the Managing Director makes such a determination, he or she shall notify the holder of the exploration licence of the relinquished areas.
- (5) The areas of an exploration licence to be relinquished under Subsection (2) or (4) shall be determined so that, after each relinquishment, the area of land that remains subject to the exploration licence consists of not more than three discrete areas each of which comprises one sub-block, or more than one sub-block each of which shall have a common side with at least one other such sub-block.
- (6) Where, as a result of the requirements of Subsection (2), the area of an exploration licence has been reduced to not more than:
  - (a) 30 sub-blocks – the holder shall not be required to make any further relinquishments under Subsection (2); or
  - (b) 75 sub-blocks – the holder may, prior to each date the holder would otherwise be required to relinquish areas under Subsection (2), apply to the Managing Director to waive or vary the requirements of Subsection (2) and where the Managing Director is satisfied, after receiving advice from the Council, that special circumstances exist which in his or her opinion justify retention of more than 30 sub-blocks, he or she may waive or vary those requirements, but the total area permitted to be held after such a waiver or variation shall not exceed 75 sub-blocks.

**39. Rights conferred by exploration licence.**

- (1) An exploration licence authorizes the holder, in accordance with any conditions to which it may be subject, to:
- (a) enter and occupy the land which comprises the exploration licence for the purpose of carrying out exploration for minerals on that land; and
  - (b) subject to Section 267, 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 his or her exploration activities subject to and in accordance with the provisions of the *Environment Act 2000*; 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.

**40. Conditions of each exploration licence.**

Each exploration licence is subject to the following conditions:

- (a) its holder shall diligently pursue the exploration and related operations authorised by that exploration licence in accordance with good industry practice; and
- (b) its holder shall comply with the approved programme for that exploration licence; and
- (c) its holder shall use the land the subject of that exploration licence for:
  - (i) exploration and related operations; and
  - (ii) ancillary purposes,
 and for no other purposes; and
- (d) to the extent practicable, having regard to the intended purpose of the exploration licence, its holder shall carry on exploration and related operations in a manner which minimizes the impact on the environment and the impact upon affected communities; and
- (e) its holder shall ensure that holder has adequate technical and financial resources to carry on exploration and related operations in accordance with the approved programme for the exploration licence; and
- (f) its holder shall comply with the requirements of this Act; and
- (g) such conditions as are prescribed by the regulations.

**41. Incorporation of additional conditions.**

- (1) An exploration licence may contain such additional conditions to those set out in Section 40 as the Council, acting reasonably, considers are necessary having regard to:
- (a) the operations to be undertaken pursuant to that exploration licence; and
  - (b) the potential impact of those operations upon affected communities; and
  - (c) the need to ensure that exploration operations are conducted in an efficient and effective manner.
- (2) Where the Council proposes to incorporate additional conditions within an exploration licence pursuant to Subsection (1), the Council shall serve notice upon the applicant for that exploration licence setting out:
- (a) the proposed conditions; and

- (b) the reasons why the Council considers it necessary to impose those additional conditions,

and shall allow the applicant such period specified by the Council (being not less than 21 days from receipt of the Council's notice) to provide a written submission to the Council in relation to the content of the proposed conditions and whether those conditions should be imposed.

- (3) This Section 41 does not permit the incorporation of additional conditions in an exploration licence after the date of its grant.

**42. Variation of conditions by agreement.**

- (1) Subject to Subsection (2), at any time, by agreement in writing between the holder of an exploration licence and the Minister and subject to the Council first approving the relevant new condition or variation to an existing condition:

- (a) new conditions may be incorporated in that exploration licence; and
- (b) any conditions incorporated in that exploration licence under this Section 42 or under Section 41 may be varied.

- (2) Nothing in this Section 42 permits the variation of a condition to which an exploration licence is subject under Section 40.

**43. Application for grant or extension of exploration licence.**

An application for the grant or extension of the term of an exploration licence shall be:

- (a) on 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 on the prescribed form outlining:
    - (A) in the case of an application for grant of an exploration licence, the activities proposed to be conducted by the applicant during the first 3 years of the exploration licence; and
    - (B) in the case of an application for extension of the term of an exploration licence, the activities proposed to be conducted by the holder of the exploration licence during the first 3 years of that extended term; and
  - (ii) a statement giving particulars of the technical and financial resources available to the applicant; and
- (c) lodged in triplicate with the prescribed application fee; and
- (d) lodged in accordance with the procedures specified in Part VII Division 2; and
- (e) in the case of an application for extension, lodged not earlier than 6 months and not later than 3 months prior to the expiry date of the current term of the exploration licence.

**44. Assessment of application for exploration licence grant.**

- (1) In considering an application for the grant of an exploration licence the Council shall have regard to:
  - (a) any submissions made by the applicant; and

- (b) any reports provided to the Council under Section 172; and
  - (c) the report provided by the Warden to the Council under Section 177; and
  - (d) any report submitted by a Provincial Government advised of the application under Subsection 174(a); and
  - (e) any written submissions made by any person to the Council.
- (2) Prior to commencing its consideration of an application, the Council shall provide to the applicant a copy of each report and submission referred to in Subsection (1)(b) to (e) and provide the applicant with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the last of the reports or submissions), to lodge written responses with the Council in relation to those reports and submissions and, in considering the application, the Council shall have regard to any such responses.
  - (3) Upon the earlier of the expiration of the period specified by the Council under Subsection (2) and receipt of notice from the applicant that it has lodged all responses it wishes to lodge under Subsection (2), the Council shall proceed to consider the application.
  - (4) Upon consideration of an application, the Council shall issue to the applicant a draft determination, setting out whether the applicant meets the criteria in Subsection 36(2) (which determination shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion).
  - (5) The Council shall provide an applicant for an exploration licence with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the Council's draft determination), to lodge submissions in response to the Council's draft determination.
  - (6) Upon the expiration of the period allowed to the applicant under Subsection (5), the Council shall proceed to issue a final determination in response to the application, which final determination shall set out whether or not the Council has formed the view the applicant meets each of the criteria in Subsection 36(2) (which final determination shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion).

#### **45. Expenditure requirements.**

- (1) The minimum expenditure required to be spent annually in connection with an approved programme shall be as prescribed.
- (2) If the holder of an exploration licence incurs expenditure in any year greater than the minimum expenditure required for that year under the exploration licence, the amount of the overspend may be carried forward and off-set against the minimum expenditure requirements for any one or more of the remaining years of the current term of the exploration licence.
- (3) Any overspend carried forward under Subsection (2) may not be carried forward into any subsequent term of an exploration licence granted under Section 49, 50 or 51.
- (4) In determining whether the holder of an exploration licence has undertaken the minimum expenditure required under the exploration licence, the Council shall take into account any amount of expenditure carried forward pursuant to Subsection (2).
- (5) For the purposes of this Section 45, 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.
- (6) Without limiting the generality of Subsection (5), expenditures in respect of:
  - (a) the purchase of a tenement; or
  - (b) the purchase of land or buildings,



are not acceptable expenditures for the purposes of this Section 45.

- (7) Where the holder of an exploration licence fails to undertake the minimum expenditure required under that exploration licence in a year of the term of that licence, then:
- (a) the holder may, within 2 months of the expiration of that year, pay to the Authority the shortfall from the minimum expenditure requirement (but excluding any part of that shortfall which the holder establishes, to the reasonable satisfaction of the Council, was caused by events or circumstances beyond the reasonable control of the holder and the effect of which, despite the exercise of reasonable endeavours, the holder has been unable to overcome ("**excluded shortfall**")); and
  - (b) any such payment and the excluded shortfall shall be taken into account in determining whether the holder has met the minimum expenditure requirement for the relevant year.
- (8) A payment under Subsection (7) shall be made in accordance with any requirements prescribed by the regulations.

#### **46. Approved programme.**

- (1) In assessing whether a programme lodged by an applicant for the grant of an exploration licence constitutes an acceptable programme and should be approved under this Section 46, the Council shall consider:
- (a) whether the programme submitted by the applicant:
    - (i) provides for a substantial increase in the acquisition and interpretation of exploration data from the area of the proposed exploration licence, or the conduct of related laboratory or feasibility work; and
    - (ii) meets the prescribed minimum expenditure requirements; and
    - (iii) contains a community relations plan, which plan provides a reasonable basis for ensuring affected communities:
      - (A) are provided with adequate information as to the nature of those activities; and
      - (B) are consulted in relation to those activities, with a view to endeavouring to ensure that those activities are carried out in a manner that addresses legitimate concerns which affected communities may have in relation to the activities; and
    - (iv) provides adequately for the protection of the environment; and
  - (b) whether the applicant has the technical and financial resources available effectively to carry out the programme.
- (2) Where the Council considers that a programme submitted by an applicant does not comply with the requirements of Subsection (1), the Council shall:
- (a) notify the applicant of this fact, which notice shall set out the Council's reasons for the non-compliance; and
  - (b) provide the applicant with an opportunity, within such period specified by the Council, being not less than 21 days from the receipt by the applicant of the Council's notice, to submit a revised programme or to submit information to the Council setting out why, in the applicant's opinion, the programme submitted by the applicant does comply with the requirements of Subsection (1).
- (3) Where the Council considers that the applicant has satisfied the conditions of Subsection (1), the Council shall approve the programme lodged by the applicant.

- (4) Where the programme does not meet the prescribed minimum expenditure requirements, but the Council considers that the applicant has otherwise satisfied the conditions in Subsection (1), the Council may approve the programme provided the Council is satisfied it is an efficient and effective means for conducting exploration activities.
- (5) Where after consideration of a revised programme or information lodged with the Council under Subsection (2), the Council determines not to approve the programme, the Council shall notify the applicant of this fact and of the reasons why the Council has determined not to approve the programme.

**47. Review of approved programme.**

- (1) By the prescribed time prior to:
  - (a) each relinquishment date for an exploration licence; and
  - (b) the expiry of the initial term and each renewal term for an exploration licence,
 (each such date being a "**review date**"), the holder of that exploration licence shall lodge with the Council a programme on the prescribed form setting out the activities proposed to be conducted by the applicant in the period from the relevant review date until the next review date.
- (2) For the purposes of Subsection (1):
  - (a) the prescribed time is the time prescribed by the regulations or, if no such time is prescribed, 3 months; and
  - (b) a relinquishment date is a date in respect of which a relinquishment of areas of an exploration licence is required to be made under Section 38 (or would be required to be made but for Subsection 38(6)).
- (3) Subject to Subsection (4), the Council shall approve a programme lodged under Subsection (1) if:
  - (a) that programme:
    - (i) meets the criteria in Subsection 46(1)(a)(i) and (ii); and
    - (ii) contains an appropriate community relations plan; and
    - (iii) provides adequately for the protection of the environment; and
  - (b) the holder of the exploration licence has the technical and financial resources available effectively to carry out the programme.
- (4) Where in the period since the latter of the date of grant of an exploration licence and the most recent review date, the holder of the exploration licence has breached one or more terms of this Act (excluding breaches which are trivial or inconsequential), the Council may require such modifications to a programme as are reasonably required to prevent or lessen the risk of recurrence of such breaches.
- (5) For the purposes of Subsection (3)(a)(ii), a programme contains an appropriate community relations plan if that plan provides a reasonable basis for addressing the issues referred to in Subsection 46(1)(a)(iii), as assessed having regard to any community relations issues which have arisen during the term of the exploration licence.
- (6) Where a programme lodged with the Council under Subsection (1) does not meet the prescribed minimum expenditure requirements, but the Council considers that:
  - (a) the programme is an efficient and effective means for conducting exploration activities; and
  - (b) the holder of the exploration licence has otherwise satisfied the conditions in Subsection (3),

the Council may, subject to Subsection (4), approve the programme.

- (7) Where the holder of an exploration licence has located a mineral deposit and has demonstrated to the reasonable satisfaction of the Council that:
- (a) the holder cannot reasonably mine the deposit at that time by reason that:
    - (i) it is not economically viable due to the state of market prices, mining technology and/or financing costs at the time; or
    - (ii) the deposit is required to sustain future operations of an existing or proposed mining operation at another location; or
    - (iii) difficulties in obtaining requisite approvals prevent mining or restrict it in a manner that is for the time being impracticable; and
  - (b) the holder has progressed exploration as far as is practicable at the time and therefore cannot comply with the requirements of Subsection (3)(a)(i),
- the Council shall, subject to Subsection (4), approve the programme if:
- (a) the programme satisfies the remaining requirements of Subsection (3); and
  - (b) the Council, acting reasonably, considers the programme appropriate having regard to the nature of the mineral deposit and the reason mining or exploration cannot be progressed at the current time.
- (8) A programme approved under Subsection (7) may include:
- (a) the maintenance of airstrips, buildings and services established in the course of exploration on the land the subject of the application; and
  - (b) a review of the feasibility of commencing mining operations.
- (9) Where the Council does not consider that a programme complies with the requirements of Subsection (3) (or, if applicable, Subsection (7)) or requires a modification to the programme pursuant to Subsection (4), the Council shall:
- (a) notify the holder of this fact, which notice shall set out the Council's reasons; and
  - (b) provide the holder with an opportunity, within such period specified by the Council (being not less than 21 days from the receipt by the holder of the Council's notice), to submit:
    - (i) a revised programme; or
    - (ii) a submission to the Council setting out why the programme lodged by the holder complies with the requirements of Subsection (3) (or, if applicable, Subsection (7)) and/or why all or part of the modifications required by the Council pursuant to Subsection (4) are not required.
- (10) Where after consideration of a revised programme or information lodged with the Council under Subsection (9), the Council determines not to approve the programme, the Council shall notify the applicant of this fact and of the reasons why the Council has determined not to approve the programme.

#### **48. Variation of approved programme.**

- (1) The holder of an exploration licence may at any time apply to the Managing Director, on behalf of the Council, in writing for a variation of the approved programme.
- (2) An application under Subsection (1) shall specify one or more of the following bases on which a variation is sought:
  - (a) that events beyond the reasonable control of the holder prevent him or her from carrying out the approved programme;

- (b) that the holder wishes to conduct exploration in a manner different from that originally proposed;
  - (c) that the holder is unable to establish a mining operation for one or more of the reasons referred to in Subsection 47(7),  
and shall be accompanied by a revised programme on the prescribed form.
- (3) The Council shall not unreasonably refuse to approve a variation to an approved programme requested by the holder of an exploration licence.
- (4) In determining whether to approve a variation under Subsection (1), the Council shall have regard to the following matters:
- (a) whether the approved programme as varied will meet the criteria in Subsection 46(1)(a)(i); and
  - (b) whether the approved programme as varied will contain an appropriate community relations plan (as that concept is defined in Subsection 47(5)); and
  - (c) whether the approved programme as varied will provide adequately for the protection of the environment; and
  - (d) whether the reason adduced for the variation requested is consistent with and justifies the variation sought; and
  - (e) whether the holder of the exploration licence has, or has access to, the technical and financial resources available effectively to carry out the programme (as varied); and
  - (f) whether the holder of the exploration licence has complied with their existing approved programme and the requirements of this Act and, where the holder has not so complied, the reasons for the non-compliance.
- (5) The Council may approve a variation to an approved programme subject to such conditions as the Council, acting reasonably, considers are necessary to:
- (a) protect affected communities; and
  - (b) ensure that exploration operations are carried out pursuant to the exploration licence in an effective and efficient manner.
- (6) The Council shall issue a draft determination to the holder of an exploration licence who has requested a variation to an approved programme, which draft determination shall:
- (a) state whether the Council proposes to approve the variation and set out the reasons for the Council's determination; and
  - (b) set out any conditions the Council proposes to impose as a condition of approving the variation and the justification, having regard to Subsection (5), for the imposition of those conditions.
- (7) The Council shall provide the holder with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the holder of the Council's draft determination), to lodge submissions in response to the Council's draft determination.
- (8) Upon the expiration of the period allowed to the holder under Subsection (7), the Council shall proceed to issue a final determination, which final determination shall be in writing and set out the reasons for that determination (including the justification, having regard to Subsection (5), for any conditions to which the approval of a variation may be subject).
- (9) Upon the Council determining to approve a variation to the approved programme for an exploration licence, that approved programme shall (subject to Subsection (10)) be so varied, subject to any conditions to which that approval is subject.

- (10) The holder of an exploration licence may, within 21 days of the making of a valid determination by the Council to approve a variation to the approved programme for that exploration licence subject to conditions, elect, by notice to the Council, that the approved variation not take effect.

**49. Automatic extension of term of exploration licence.**

- (1) Subject to Section 51, the Minister shall, on the application under Section 43 of the holder of an exploration licence, extend the term of the exploration licence for a period of 5 years, where the Council advises the Minister that:
- (a) either:
    - (i) the holder has, during the previous term of the exploration licence (that is, the term which is about to expire) complied with the conditions of the exploration licence and the requirements of this Act; or
    - (ii) that the only failures of the holder to comply with the conditions of the exploration licence or the requirements of this Act during that previous term are failures which constitute excused events; and
  - (b) the holder has paid compensation as required by this Act; and
  - (c) the holder has submitted to the Council a programme to apply during the first 3 years of the proposed renewal term, which programme the Council has approved under Section 47.
- (2) The Minister may direct the Council to take into account specific factors in making the determination referred to in Subsection (1)(a) and, if so directed, the Council shall take those factors into account in making that determination (without derogating from the Council's statutory responsibility to take into account all other factors relevant to that determination).
- (3) For the purposes of Subsection (1), an "**excused event**" means:
- (a) a force majeure event; or
  - (b) a breach of the conditions of an exploration licence or the provisions of this Act, which breach is trivial or inconsequential; or
  - (c) a remedied breach.
- (4) A "**force majeure event**" is a failure by the holder of an exploration licence to comply (despite the reasonable endeavours of the holder to so comply) with the conditions of an exploration licence or the provisions of this Act caused by events or circumstances beyond the reasonable control of the holder, but only where the holder of the exploration licence demonstrates, to the reasonable satisfaction of the Council, that in respect of those events or circumstances:
- (a) the holder has overcome the effects of those events or circumstances, such that the holder is able to comply with the conditions of the exploration licence and the provisions of this Act during the renewal term; or
  - (b) that within a reasonable period of time, there is a reasonable prospect the holder will be able to overcome the effects of those events or circumstances, such that the holder will be able to comply with the conditions of the exploration licence and the provisions of this Act during the renewal term; or
  - (c) that the events or circumstances are caused by a breach of the law by a third party.
- (5) For the purposes of Subsections (3)(b) and 47 and without limiting when a breach is trivial or inconsequential, a breach is trivial or inconsequential if that breach did not cause loss or damage to any person (other than the holder of the exploration licence) and did not derogate from the efficient and effective conduct of exploration operations pursuant to the exploration licence.

- (6) A "**remedied breach**" means a breach of the conditions of an exploration licence or the provisions of this Act which breach:
- (a) has been remedied by the holder of the exploration licence or the effects of which have been cured by the holder (as that concept is defined in Section 219); and
  - (b) was not committed intentionally by the holder or as a result of a reckless disregard by the holder of the provisions of this Act,
- and provided that:
- (c) since the time of that breach, the holder has complied with the requirements of this Act and the conditions of the exploration licence (other than in respect of failures to comply to which Subsection (3)(a) or (3)(b) apply) and demonstrated itself to be of good standing and repute; and
  - (d) the holder demonstrates, to the reasonable satisfaction of the Council, that it will be able to comply with the provisions of this Act and the conditions of the exploration licence during the renewal term.

#### **50. Discretionary renewal.**

- (1) The Minister may, on the application under Section 43 of the holder of an exploration licence, extend the term of that exploration licence for a period of 5 years, despite the requirements of Subsection 49(1) not being satisfied in respect of that application, provided that in all relevant circumstances it is reasonable and appropriate to renew that exploration licence.
- (2) In determining whether to exercise the discretion to renew an exploration licence under Subsection (1), the Minister shall have regard to the recommendation of the Council.
- (3) This Section 50 does not apply to an exploration licence which has previously been renewed twice.

#### **51. Renewals after first 2 renewals.**

- (1) Sections 49 and 50 do not apply to an exploration licence which has previously been renewed twice.
- (2) Where an exploration licence has previously been renewed at least twice, the Minister shall, on application under Section 43 of the holder of that exploration licence, further extend the term of the exploration licence for such period (up to five years) recommended by the Council if:
  - (a) the holder has submitted to the Council a programme to apply during the proposed renewal term, which programme the Council has approved under Section 47; and
  - (b) in all relevant circumstances, it is reasonable and appropriate to renew that exploration licence.
- (3) In determining whether the requirements referred to in Subsection 2(a) and (b) are satisfied, the Minister shall have regard to the recommendation of the Council.
- (4) For the purposes of Subsection (2)(b) the following factors are to be taken into account by the Council in determining whether to recommend to the Minister whether it is reasonable and appropriate to renew an exploration licence and in determining what should be the recommended renewal term for the exploration licence:
  - (a) the extent of compliance with this Act and the conditions of the exploration licence by the holder of the exploration licence during the previous terms of the exploration licence and, where there has been non-compliance, the reason for that non-compliance; and

- (b) whether further time is legitimately required by the holder of the exploration licence to locate minerals within the area of the exploration licence or to commercially exploit mineral deposits which have been identified; and
- (c) whether the ability of the holder of the exploration licence to undertake exploration operations during previous terms of the exploration licence has been materially hindered by events or circumstances beyond the control of the holder, and whether:
  - (i) those events or circumstances have been overcome by the holder; or
  - (ii) there is a reasonable prospect that, within a reasonable period of time, the holder will be able to overcome the effects of those events or circumstance; and
- (d) any other factor which is relevant to ensuring the efficient exploration, utilisation and development of the mineral resources of the State,

and the Council should recommend renewal of an exploration licence where the holder of that exploration licence has complied with this Act and that renewal is reasonably expected to lead to a material increase in the exploration data available to the State or the subsequent development of a mineral resource located within the area of the exploration licence.

- (5) An exploration licence may be renewed more than once pursuant to this Section 51.

## **52. Renewal consideration procedure.**

- (1) In considering an application for the extension of the term of an exploration licence under section 43 (including where section 51 applies to that application), the Council shall have regard to:
  - (a) any submissions made by the holder of the exploration licence; and
  - (b) any reports provided to the Council under Section 172; and
  - (c) the report provided by the Warden to the Council under Section 177; and
  - (d) any report submitted by a Provincial Government advised of the application for the extension under Subsection 174(a); and
  - (e) any written submissions made by any person to the Council.
- (2) Prior to commencing its consideration of an extension application, the Council shall provide to the holder of the exploration licence a copy of each report and submission referred to in Subsections (1)(b) to (e) and provide the applicant with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the last of the reports or submissions), to lodge written responses with the Council in relation to those reports and submissions and, in considering the application for the extension, the Council shall have regard to any such responses.
- (3) Upon the earlier of the expiration of the period specified by the Council under Subsection (2) and receipt of notice from the holder that it has lodged all responses that it wishes to lodge under Subsection (2), the Council shall proceed to consider the extension application.
- (4) Upon consideration of an extension application, the Council shall issue a draft determination to the holder of the exploration licence setting out:
  - (a) whether (as applicable):
    - (i) the Council considers the holder satisfies the requirements in Subsection 49(1); or
    - (ii) where the requirements of Subsection 49(1) are not satisfied or where Section 51 applies to the extension application, whether the Council proposes to recommend renewal of the exploration licence; and

- (b) the reasons for the Council's determination.
- (5) The Council shall provide the holder with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the holder of the Council's draft determination), to lodge submissions in response to the Council's draft determination.
- (6) Upon the expiration of the period allowed to the holder under Subsection (5), the Council shall proceed to issue a final determination in relation to the renewal of the exploration licence, which final determination shall be in writing and set out the reasons for that determination.

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

- (1) The application for a mining lease by the holder of an exploration licence over the land or part of the land the subject of that 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 48.
- (2) Where an application for a mining lease has been made, the term of the exploration licence over the land the subject of the application shall 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.

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

Where:

- (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,

no valid application for an exploration licence over the same land shall be made by any person, within a period of 20 business days after the date on which the land ceases to be the subject of the exploration licence as provided for under Sections 38(2), 38(4), 211 and 224.

**55. Reporting requirements in respect of an exploration licence.**

- (1) The holder of an exploration licence shall lodge with the Managing Director, in respect of every period of 1 year calculated from the date of grant of the exploration licence, a report in duplicate dealing with the following matters:
  - (a) information, in the prescribed form, summarizing all works undertaken in connection with the exploration licence during that year; and
  - (b) information, in the prescribed form, summarizing all acceptable expenditure incurred under Subsection 45(5) in connection with the exploration licence during that year; and
  - (c) such additional information as is required to give full details of all work undertaken in connection with the exploration licence during that year so as to convey accurately and comprehensively the aims of the works, the procedures adopted and the conclusions reached, and containing all data which may be of relevance to the geology and mineral resources of the State; and
  - (d) a summary of the compensation payments made by the holder during that year, setting out the aggregate amount of such payments made during that year and such other matters as may be prescribed; and



- (e) the progress of the holder in achieving the objectives of the community relations plan set out in the approved programme and a summary of the activities undertaken by the holder in connection with that plan during that year; and
  - (f) any difficulties encountered by the holder during that year in implementing the approved programme, or otherwise in undertaking operations pursuant to the exploration licence, due to issues which have arisen between the holder and affected communities and the actions taken by the holder to resolve those issues; and
  - (g) any incidents of non-compliance by the holder with the requirements of this Act (including the conditions of the exploration licence) during that year and, in respect of each such incident:
    - (i) the cause of the non-compliance; and
    - (ii) the actions taken, or proposed to be taken, by the holder to remedy the non-compliance and prevent its recurrence (which action may include lodging a request for variation to an approved programme under Section 48).
- (2) Where an exploration licence is surrendered or cancelled on a date other than an anniversary of the grant of that licence, then the holder of that exploration licence shall lodge a report dealing with the matters referred to in Subsection (1)(a), (b), (c), (d) and (g) in respect of the period from the previous anniversary of the date of the grant of the licence to the date of surrender or cancellation.
- (3) A report under:
- (a) Subsection (1) shall be lodged within 60 days of the end of the relevant year; and
  - (b) Subsection (2) shall be lodged within 60 days of the date of surrender or cancellation of the exploration licence.
- (4) Subject to Subsection (5), except with the consent of the holder of an exploration licence, the contents of a report lodged under Subsection (1) shall not (until the expiration of the period of 5 years from its lodgment) be made available to any person outside the Authority, the Council or the Minister nor shall its content be revealed except to the extent necessary for the Managing Director to publish statistical information concerning the geology and mineral resources of the State or for him or her to give advice to the National Executive Council on a confidential basis.
- (5) Where an exploration licence has been converted to a mining lease, the contents of a report lodged under Subsection (1) shall be deemed to be a report lodged under Subsection 70(1)(c).
- (6) A report lodged under Subsection (2) shall be available for perusal and copying by any person.

## ***Division 2.—Mining Leases.***

### **56. Grant of a mining lease.**

- (1) Subject to the remaining provisions of this Act, on the application of:
- (a) the holder of an exploration licence, in respect of the land the subject of the exploration licence; or
  - (b) the holder of an exploration licence and any other person to whom the holder of the exploration licence at the time of application for a mining lease applies to transfer his or her interest in the application under Section 186, in respect of the land the subject of the exploration licence; or
  - (c) any person, in respect of land that is not the subject of an exploration licence, a mining lease or a lease for mining purposes,
- the Minister:

- (d) shall grant the applicant a mining lease if the applicant satisfies the criteria set out in Section 60 for the grant of a mining lease; and
  - (e) may grant the applicant a mining lease if, despite the applicant not satisfying the criteria set out in Section 60, such mining lease is reasonably expected to be economically viable and the Minister considers the grant of that mining lease is in the public interest.
- (2) In determining whether:
- (a) an applicant satisfies the criteria set out in Section 60; or
  - (b) a mining lease is reasonably expected to be economically viable,
- the Minister shall have regard to the recommendation of the Council.
- (3) A mining lease:
- (a) shall be on the prescribed form; and
  - (b) shall be subject to the conditions set out in Section 57; and
  - (c) may include such other conditions as determined by the Council in accordance with the procedures set out in Section 58.

**57. Conditions of each mining lease.**

Each mining lease is subject to the following conditions:

- (a) its holder shall diligently pursue the mining and related operations authorised by that mining lease in accordance with good industry practice; and
- (b) its holder shall comply with the approved proposals for that mining lease; and
- (c) its holder shall use the land the subject of that mining lease for:
  - (i) mining and related operations; and
  - (ii) ancillary purposes,
 and for no other purposes; and
- (d) to the extent practicable having regard to the intended purpose of the mining lease, its holder shall carry on mining and related operations in a manner which minimizes the impact upon the environment and the impact upon affected communities; and
- (e) its holder shall ensure that holder has adequate technical and financial resources to carry on mining and related operations under the mining lease in accordance with the approved proposals for the mining lease; and
- (f) its holder shall comply with the requirements of this Act, any mining development contract to which the holder of the mining lease is party, the mine closure plan for the mining lease and any memorandum of agreement to which the holder of the mining lease is party; and
- (g) such conditions as are prescribed by the regulations.

**58. Incorporation of additional conditions.**

- (1) A mining lease may contain such additional conditions to those set out in Section 57 as the Council, acting reasonably, considers are necessary having regard to:
- (a) the operations to be undertaken pursuant to that mining lease; and
  - (b) the potential impact of those operations upon affected communities; and
  - (c) the need to ensure that mining operations are conducted in an efficient and effective manner.

- (2) Where the Council proposes to incorporate additional conditions within a mining lease pursuant to Subsection (1), the Council shall serve notice upon the applicant for that mining lease setting out:

- (a) the proposed conditions; and
- (b) the reasons why the Council considers it necessary to impose those additional conditions,

and shall allow the applicant for the mining lease such period specified by the Council (being not less than 21 days from receipt of the Council's notice) to provide a written submission to the Council in relation to the content of the proposed conditions and whether those conditions should be imposed.

- (3) This Section 58 does not permit the incorporation of additional conditions in a mining lease after the date of its grant.

**59. Variation of conditions by agreement.**

- (1) Subject to Subsection (2), at any time, by agreement in writing between the holder of a mining lease and the Minister and subject to the Council first approving the relevant new condition or variation to an existing condition:

- (a) new conditions may be incorporated in that mining lease; and
- (b) any conditions incorporated in that mining lease under this Section 59 or under Section 58 may be varied.

- (2) Nothing in this Section 59 permits the variation of a condition to which a mining lease is subject under Section 57.

**60. Criteria for grant of mining lease.**

- (1) An applicant for a mining lease is entitled to the grant of a mining lease if:

- (a) sufficient minerals have been identified with the area of the proposed mining lease to allow the development of an economically viable mining project within that area; and
- (b) the applicant has, or has access to, the technical and financial resources to develop the minerals within the area of the mining lease in accordance with the applicant's approved proposals and in compliance with the requirements of this Act; and
- (c) the applicant has submitted proposals which:
  - (i) are an effective and efficient means for the development of the area of the proposed mining lease in accordance with good industry practice; and
  - (ii) are appropriate having regard to the proposed area of the mining lease; and
  - (iii) contain a conceptual mine closure plan complying with the requirements of the regulations; and
- (d) the applicant has submitted proposals (including a community relations programme) which address in an effective, reasonable and appropriate manner the impact of the grant of the mining lease, and the operations to be carried out pursuant to the mining lease, upon affected communities and the legitimate concerns of those affected communities; and
- (e) there will be no unacceptable ecological degradation or damage to the environment resulting from the operations pursuant to the mining lease which cannot be effectively managed, rehabilitated or compensated for; and
- (f) the applicant has not previously breached this Act (other than a breach caused by events or circumstances beyond the reasonable control of the applicant or a breach which is trivial or inconsequential).

- (2) For the purposes of Subsection (1) and without limiting when a breach is trivial or inconsequential, a breach is trivial or inconsequential if that breach did not cause loss or damage to any person (other than the applicant) and, where the breach occurred while the applicant held a tenement, did not derogate from the efficient and effective conduct of operations pursuant to that tenement.

**61. Term of mining lease.**

A mining lease has a term of 40 years from the date of the grant of the lease, which term may be extended under Section 69.

**62. Area and shape of mining lease.**

The area of land in respect of which a mining lease shall be granted shall be:

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

**63. Rights conferred by a mining lease.**

- (1) A mining lease authorizes the holder, in accordance with the *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 that 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 that land and treat any mineral derived from mining operations, whether on that 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 such land and use it for any purpose necessary for his or her mining or treatment operations subject to and in accordance with the *Environment Act 2000*; and
- (e) do all other things necessary or expedient for the undertaking of mining or treatment operations on that land.

- (2) Subject to this Act, the holder of a mining lease:

- (a) is entitled to the exclusive occupancy for mining and mining purposes of the land in respect of which the mining lease was granted; and
- (b) owns all minerals lawfully mined from that land.

**64. Application for a mining lease.**

An application for the grant of a mining lease:

- (a) shall be on the prescribed form and shall have attached either:
  - (i) a schedule on 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 shall enable the area to be correctly located; or
  - (ii) a survey as required under Section 165; and
- (b) shall 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 164; and
- (iii) a statement giving the particulars of the technical and financial resources available to the applicant; and
- (c) shall be lodged in triplicate with the prescribed application fee; and
- (d) shall be lodged in accordance with the procedures specified in Part VII.

**65. Consideration of application for mining lease.**

- (1) In considering an application for a mining lease, including whether:
  - (a) the applicant meets the criteria in Subsection 60(1); and
  - (b) such mining lease is reasonably expected to be economically viable,
 the Council shall have regard to:
  - (c) any submissions made by the applicant; and
  - (d) any reports provided to the Council under Section 172; and
  - (e) the report provided by the Warden to the Council under Section 177; and
  - (f) any report submitted by a Provincial Government advised of the application under Subsection 174(a); and
  - (g) any written submissions made by any person to the Council.
- (2) Prior to commencing its consideration of an application, the Council shall provide to the applicant for the mining lease a copy of each report and submission referred to in Subsections (1)(d) to (g) and provide the applicant with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the last of the reports or submissions), to lodge written responses with the Council in relation to those reports and submissions and, in considering the application, the Council shall have regard to any such responses.
- (3) Upon the earlier of the expiration of the period specified by the Council under Subsection (2) and receipt of notice from the applicant that it has lodged all responses under Subsection (2) that it wishes to lodge, the Council shall proceed to consider the application.
- (4) Upon consideration of an application, the Council shall issue to the applicant a draft determination, setting out:
  - (a) whether or not the Council has formed the view the applicant meets the criteria in Subsection 60(1) (which determination shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion); and
  - (b) where the Council has formed the view that the applicant does not meet a criterion in Subsection 60(1), whether the Council has formed the view that, nevertheless, the mining lease is reasonably expected to be economically viable and the basis upon which the Council has formed or not formed that view; and
  - (c) where the Council considers that:
    - (i) the applicant would satisfy the criteria in Subsection 60(1) if one or more changes were made to the applicant's application; and/or
    - (ii) the mining lease would be reasonably expected to be economically viable if one or more changes were made to the applicant's application,
 the nature of those changes.
- (5) The Council shall provide an applicant for a mining lease with an opportunity:

- (a) within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the Council's draft determination) to:
    - (i) lodge submissions in response to the Council's draft determination; and
    - (ii) modify the applicant's application to take into account any comments of the Council pursuant to Subsection 65(4)(c); and
  - (b) if requested by the applicant, to appear personally before the Council to make oral submissions to the Council before the expiration of the period allowed to the applicant to make written submissions.
- (6) Upon the expiration of the period allowed to the applicant under Subsection (5), the Council shall proceed to issue a final determination setting out:
- (a) whether or not the Council has formed the view that the applicant meets the criteria in Subsection 60(1) (which final determination shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion); and
  - (b) where the Council has formed the view that the applicant does not meet a criterion in Subsection 60(1), whether the Council has formed the view that the mining lease is reasonably expected to be economically viable and the basis upon which the Council has formed or not formed that view.

**66. Timing of grant of mining lease.**

- (1) A mining lease may be granted by the Minister under Section 56 at any time after:
- (a) the development forum (referred to in Section 3) has been held for that mining lease; and
  - (b) the Minister has received from the Council its final determination in relation to that mining lease.
- (2) Despite Subsection (1), where a memorandum of agreement is required to be entered into in connection with a mining lease then, except as otherwise approved by the Minister and the Council, the grant of that mining lease shall not take effect and the holder of the mining lease shall not enter or occupy an area of land the subject of the tenement for the purpose of mining until that memorandum of agreement has been entered into.

**67. Variation of approved proposals.**

The approved proposals for a mining lease may be varied in accordance with Section 157.

**68. Expansion of area of a mining lease.**

The area of a mining lease may be expanded in accordance with Sections 158 to 163.

**69. Extension of term of mining lease.**

- (1) Subject to Subsection (2) the holder of a mining lease may, by notice to the Minister and the Council, served not later than 2 months and not earlier than 3 months prior to the expiry of the current term of the mining lease, extend that term for a further 40 years provided that the holder still requires that mining lease for the purposes of mining or processing minerals located within the area of the mining lease or for the purposes of implementing mine closure obligations or environmental closure obligations.
- (2) With the consent of the Managing Director, the holder of a mining lease may serve a notice under Subsection (1) less than two months prior to the expiry of the current term of the mining lease, provided that a notice may not be served under Subsection (1) after the expiry of the relevant mining lease.

- (3) The Managing Director may, by notice to the holder of a mining lease served not later than 1 month prior to the expiry of the current term of that mining lease, extend the term of that mining lease for a further term of 40 years.
- (4) Nothing in Subsection (3) affects or prejudices any right the holder of a mining lease has under this Act to surrender all or part of a mining lease.
- (5) The regulations may prescribe the format in which notices under Subsection (1) shall be served.
- (6) A notice served by the holder of a mining lease under Subsection (1) shall attach evidence that the holder of the mining lease requires it to be renewed for a purpose referred to in Subsection (1).
- (7) More than one notice renewing the term of a mining lease may be served under this Section 69.

**70. Reporting requirements in respect of a mining lease.**

- (1) The holder of a mining lease shall lodge with the Managing Director the following reports within the prescribed times covering the following periods:
  - (a) in respect of each calendar month commencing with the first calendar month in which minerals are produced from the area of the mining lease—a report on 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; and
  - (b) in respect of each calendar month, commencing with the first calendar month in which minerals are forecast to be produced from the area of the mining lease – a report on the prescribed form detailing the forecast quantity of minerals to be produced from the area of the mining lease during that month; and
  - (c) in respect of each period of one year calculated from the date of grant of the mining lease a report on the prescribed form setting out:
    - (i) 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 State; and
    - (ii) a summary of the compensation payments made by the holder of the mining lease during that year, setting out the aggregate amount of such payments made during that year and such other matters as may be prescribed; and
    - (iii) full details of the progress made by the holder of the mining lease in achieving the objectives of the community relations programme set out in the approved proposals, and the holder’s compliance with any other obligations relating to affected communities set out in those approved proposals; and
    - (iv) a summary of the activities undertaken by the holder pursuant to its community relations programme and any other obligations related to communities set out in its approved proposals; and
    - (v) full details of any difficulties encountered by the holder during that year in implementing the approved proposals, or otherwise in undertaking operations pursuant to the mining lease, due to issues which have arisen between the holder and affected communities, and the actions taken by the holder to resolve those issues; and
    - (vi) full details of any incidents of non-compliance by the holder with the requirements of this Act (including the conditions of the mining lease, the approved proposals for the mining lease, any mining development contract relating to the mining lease, any memorandum of agreement relating to the

mining lease and the mine closure plan for the mining lease) and, in respect of each such incident:

- (A) the cause of the non-compliance; and
  - (B) the actions taken, or proposed to be taken, by the holder to remedy the non-compliance and prevent its recurrence (which action may include lodging a request for variation to the approved proposals under Section 157); and
- (vii) the impact of the operations conducted pursuant to the mining lease during that year on the environment (in particular, but without limitation, those aspects of the environment which impact upon the welfare of affected communities); and
  - (viii) a summary of any exploration activities undertaken pursuant to the mining lease during the year; and
  - (ix) the following information in respect of the year commencing upon the expiry of the year to which the information referred to in paragraphs (i) to (viii) relates:
    - (A) a description of the activities proposed to be undertaken pursuant to the mining lease in that year; and
    - (B) a forecast of the quantity of minerals to be produced from the area of the mining lease in that year; and
    - (C) a forecast of the production expenditure for that year under the mining lease; and
    - (D) a forecast of the sales of minerals pursuant to the mining lease (expressed both in terms of volume and revenue); and
    - (E) the forecast impact of the operations conducted pursuant to the mining lease on the environment (in particular, but without limitation, those aspects of the environment which impact upon the welfare of affected communities); and
    - (F) any potential difficulties the holder anticipates it may have in complying with its obligations under this Act and the action the holder of the mining lease proposes to take to address those difficulties; and
  - (x) such other details in relation to the development and implementation of any mine closure plan for the mining lease as may be prescribed by the regulations; and
- (d) 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 summarizes 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 (where paragraph (ii) of this Subsection applies) meets the requirements of paragraphs (c)(i) to (viii) in relation to the period since the last report was lodged under that paragraph.
- (2) A report:
    - (a) under Subsection (1)(a) – shall be lodged within 30 days of the end of the month to which it relates; and



- (b) under Subsection (1)(b) – shall be lodged at least 30 days prior to the commencement of the month to which it relates; and
  - (c) under Subsection (1)(c) – shall be lodged within 60 days of the end of the year to which it relates; and
  - (d) under Subsection (1)(d) – shall be lodged within 60 days of the relevant expiry, surrender or cancellation.
- (3) Except with the consent of the holder of the mining lease, a report lodged under Subsection (1)(a) or Subsection (1)(b) shall not, until the relevant mining lease has expired or been surrendered or cancelled, be made available to any person outside the Authority nor shall its content be revealed except to the extent necessary for the Managing Director to publish statistical information concerning the geology and mineral resources of the State or to give advice to the National Executive Council on a confidential basis or to provide information to the Department of Treasury, on a confidential basis, necessary to calculate the royalties owing and forecast to accrue due to the State.
- (4) Except with the consent of the holder of the mining lease, until the relevant mining lease has expired or been surrendered or cancelled a report lodged under Subsection (1)(c) shall not be made available to any person outside the Authority, nor shall its content be revealed, except to the extent necessary for the Managing Director to publish statistical information concerning the geology and mineral resources of the State, to give advice to the National Executive Council, Departments of the State or the Central Bank on a confidential basis or to provide information to the Department of Treasury, on a confidential basis, necessary to calculate the royalties owing and forecast to accrue due to the State.
- (5) A report lodged under Subsection (1)(d) shall be available for perusal and copying by any person.

### ***Division 3.—Alluvial Mining Leases.***

#### **Subdivision A.—General.**

##### **71. Grant of an alluvial mining lease.**

- (1) On the application of:
- (a) a natural person who is a citizen in respect of land owned by that natural person; or
  - (b) a clan in respect of land owned by the members of that clan; or
  - (c) a company in respect of land which is owned by one or more shareholders in that company, provided those shareholders are citizens and hold not less than 51% of the issued ordinary shares in that company; or
  - (d) any other person who has entered into an approved alluvial mining agreement with the owners of the land ("**landowners**") to which the application relates,
- the Minister, subject to the remaining provisions of this Act:
- (e) shall grant the applicant an alluvial mining lease if the applicant satisfies the criteria set out in Section 75; and
  - (f) may grant the applicant an alluvial mining lease if, having regard to all relevant circumstances, it is appropriate to grant that alluvial mining lease and the Minister considers such grant is not detrimental to the public interest,
- which alluvial mining lease shall be granted in respect of:
- (g) in the case of paragraph (a), the land owned by that natural person to which the application relates; and

- (h) in the case of paragraph (b), the land owned by the members of the clan to which the application relates; and
  - (i) in the case of paragraph (c), the land, owned by the shareholders in that company who are citizens, to which the application relates; and
  - (j) in the case of paragraph (d), the land owned by the landowners to which the application relates.
- (2) Despite Subsection (1), the grant of an alluvial mining lease may be refused if that grant is likely to jeopardise or prejudice the effective conduct of operations pursuant to a potential:
- (a) mining lease; or
  - (b) other form of development,
- which lease or development is likely to be undertaken in the foreseeable future and the undertaking of which will be of material benefit to the State.
- (3) In determining whether:
- (a) an applicant satisfies the criteria in Section 75; and
  - (b) to grant an alluvial mining lease,
- the Minister shall have regard to the recommendation of the Council.
- (4) An alluvial mining lease shall not be granted over land that is the subject of an existing tenement except as provided for in Sections 87, 132, 207(7) and 208.
- (5) An alluvial mining lease:
- (a) shall be on the prescribed form; and
  - (b) shall be subject to the conditions set out in Section 72; and
  - (c) may include such other conditions as determined by the Council in accordance with Section 73.

## **72. Conditions of each alluvial mining lease.**

Each alluvial mining lease is subject to the following conditions:

- (a) its holder shall diligently pursue the mining and related operations authorised by that alluvial mining lease in accordance with good industry practice; and
- (b) its holder shall comply with the approved proposals for that alluvial mining lease; and
- (c) its holder shall use the land the subject of that alluvial mining lease for:
  - (i) alluvial mining and related operations; and
  - (ii) ancillary purposes,
 and for no other purposes (except for such other purposes for which, due to (if applicable) the holder's ownership of the land, the holder may lawfully use that land); and
- (d) its holder shall comply with the requirements of this Act; and
- (e) such conditions as are prescribed by the regulations.

## **73. Incorporation of additional conditions.**

- (1) An alluvial mining lease may contain such additional conditions to those set out in Section 72 as the Council, acting reasonably, considers are necessary having regard to:
- (a) the operations to be undertaken pursuant to that alluvial mining lease; and
  - (b) the potential impact of those operations upon affected communities; and

- (c) the need to ensure that mining operations are conducted in an efficient and effective manner.
- (2) Where the Council proposes to incorporate additional conditions within an alluvial mining lease pursuant to Subsection (1), the Council shall serve notice upon the applicant for that alluvial mining lease setting out:
  - (a) the proposed conditions; and
  - (b) the reasons why the Council considers it necessary to impose those conditions,
 and shall allow the applicant such period specified by the Council (being not less than 21 days from receipt of the Council's notice) to provide a written submission to the Council in relation to the content of the proposed conditions and whether those conditions should be imposed.
- (3) This Section 73 does not permit the incorporation of additional conditions in an alluvial mining lease after the date of its grant.

**74. Variation of conditions by agreement.**

- (1) Subject to Subsection (2), at any time, by agreement in writing between the holder of an alluvial mining lease and the Minister and subject to the Council first approving the relevant new condition or variation to an existing condition:
  - (a) new conditions may be incorporated in that alluvial mining lease; and
  - (b) those conditions incorporated in that alluvial mining lease under this Section 74 or under Section 73 may be varied.
- (2) Nothing in this Section 74 permits the variation of a condition to which an alluvial mining lease is subject under Section 72.

**75. Criteria for grant of an alluvial mining lease.**

- (1) An applicant for an alluvial mining lease is entitled, subject to this Act, to the grant of an alluvial mining lease if:
  - (a) there are likely to be sufficient alluvial minerals within the area of the proposed alluvial mining lease to allow the development of an economically viable mining operation within that area; and
  - (b) the applicant has, or has access to, the technical and financial resources to develop the minerals within the area of the alluvial mining lease in accordance with the applicant's approved proposals and in compliance with the requirements of this Act; and
  - (c) the applicant has submitted proposals which:
    - (i) are an effective and efficient means for the development of the area of the proposed alluvial mining lease in accordance with good industry practice; and
    - (ii) are appropriate having regard to the proposed area of the alluvial mining lease; and
  - (d) the applicant has not previously breached this Act (other than a breach caused by events or circumstances beyond the reasonable control of the applicant or a breach which is trivial or inconsequential).
- (2) For the purposes of Subsection (1) and without limiting when a breach is trivial or inconsequential, a breach is trivial or inconsequential if that breach did not cause loss or damage to any person (other than the applicant) and, where the breach occurred while the applicant held a tenement, did not derogate from the efficient and effective conduct of operations pursuant to that tenement.

## 76. Alluvial mining agreement.

- (1) An alluvial mining agreement is an agreement, the specific terms of which have been approved by the Council, under which the owners of land agree with a person ("**alluvial developer**") that such alluvial developer may:
  - (a) apply for an alluvial mining lease over that land; and
  - (b) carry out alluvial mining operations on that land pursuant to that alluvial mining lease,

in consideration of that alluvial developer paying to the landowners a portion of the revenue or profits derived by that alluvial developer from undertaking those alluvial mining operations.
- (2) Where landowners and an alluvial developer wish to enter into an alluvial mining agreement then those parties shall submit the form of that agreement agreed between them to the Council for approval.
- (3) The Council shall approve an alluvial mining agreement submitted to the Council under Subsection (2) provided that the Council is reasonably satisfied:
  - (a) the landowners understand the terms of that alluvial mining agreement; and
  - (b) the terms of that agreement otherwise adequately provide for the protection of the interests of the landowners; and
  - (c) the landowners are the owners of the land to which the alluvial mining agreement relates.
- (4) The parties to a proposed alluvial mining agreement submitted to the Council under Subsection (2) shall:
  - (a) provide such information reasonably required by the Council to determine whether it is satisfied as to the matters referred to in Subsection (3); and
  - (b) if required by the Council, appear before the Council, a Warden or such other representative of the Authority, to answer questions in relation to the matters referred to in Subsection (3) and the terms of the alluvial mining agreement.
- (5) Upon consideration of an alluvial mining agreement lodged under Subsection (2), the Council shall issue to the proposed parties to that agreement a draft determination setting out whether the Council proposes to approve that alluvial mining agreement and where the Council does not propose to approve that alluvial mining agreement:
  - (a) the reasons why the Council is not satisfied as to the matters referred to in Subsection (3); and
  - (b) the modifications required to the agreement, or the other steps that shall be taken, to satisfy the Council of the matters referred to in Subsection (3).
- (6) The Council shall provide the proposed parties to an alluvial mining agreement with an opportunity:
  - (a) within such period specified by the Council (which period shall be at least 21 days from the later of the date of receipt by the landowners of the Council's draft determination and the date of receipt by the alluvial developer of the Council's draft determination) to:
    - (i) lodge submissions in response to the Council's draft determination; and
    - (ii) modify the agreement or take such other steps to address the concerns set out in the Council's draft determination; and

- (b) if requested by any of the parties to the proposed agreement, to appear personally before the Council to make oral submissions to the Council before the expiration of the period allowed to the landowners and the alluvial developer to make written submissions.
- (7) Upon the expiration of the period allowed to the parties under Subsection (6)(a), the Council shall proceed to issue a final determination as to whether it approves the proposed alluvial mining agreement, which final determination shall set out whether the Council is reasonably satisfied as to the matters in Subsection (3) and the basis upon which the Council has formed the view whether it is reasonably satisfied as to those matters.
- (8) An alluvial mining agreement is not a tribute agreement.

**77. Term of alluvial mining lease.**

An alluvial mining lease shall be granted for a term of 5 years, which period may be extended under Section 83.

**78. Area and shape of alluvial mining lease.**

- (1) The area of land in respect of which an alluvial mining lease may be granted shall be:
  - (a) not more than 25ha; and
  - (b) in a rectangular or polygonal shape.
- (2) An alluvial mining lease may only be granted to a depth which is consistent with the safe conduct of the mining development described in the approved proposals and the depth shall be specified on the lease document.

**79. Rights conferred by alluvial mining lease.**

- (1) An alluvial mining lease authorizes the holder, in accordance with the *Mining (Safety) Act 1977* and conditions to which it is subject, to:
  - (a) enter and occupy the land for the purpose of mining alluvial 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 for the purpose of treating those alluvial minerals; and
  - (b) take and remove rock, earth, soil and alluvial 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 his or her mining or treatment activities subject to and in accordance with the *Environment Act 2000*; and
  - (d) do all things necessary or expedient for the undertaking of alluvial mining or treatment operations on that land.
- (2) Subject to this Act, the holder of an alluvial mining lease:
  - (a) is entitled, for alluvial mining purposes, to the exclusive occupancy of the land in respect of which the alluvial mining lease was granted; and
  - (b) owns all alluvial minerals derived from alluvials lawfully mined from that land.

**80. Application for alluvial mining lease.**

An application for the grant of an alluvial mining lease:

- (a) shall be on the prescribed form and shall have attached either:
  - (i) a schedule on 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 165; and
- (b) shall 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 164; and
  - (iii) where the applicant is a clan or an owner of the land to which the application relates, a statutory declaration to the effect that the applicant is an owner of the land the subject of the application; and
  - (iv) where the applicant is a party who has entered into or proposes to enter into an alluvial mining agreement, a copy of that agreement or proposed agreement and a statutory declaration by the landowners who are party to that agreement or proposed agreement that they are the owners of the land the subject of the application; and
  - (v) a statement giving the particulars of the technical and financial resources available to the applicant; and
- (c) shall be lodged in triplicate with the prescribed application fee; and
  - (d) shall be lodged in accordance with the procedures specified in Part VII; and
  - (e) where the application is in respect of land subject to an existing exploration licence, the consent of the holder of the exploration licence to the grant of an alluvial mining lease in respect of the land the subject of the exploration licence.

**81. Consideration of application for alluvial mining lease.**

- (1) In considering an application for an alluvial mining lease, including whether:
- (a) the applicant meets the criteria in Subsection 75(1); and
  - (b) the grant of that alluvial mining lease is, having regard to all relevant circumstances, appropriate; and
  - (c) the alluvial mining lease should not be granted due to the matters referred to in Subsection 71(2),
- the Council shall have regard to:
- (d) any submissions made by the applicant; and
  - (e) any reports provided to the Council under Section 172; and
  - (f) the report provided by the Warden to the Council under Section 177; and
  - (g) any report submitted by a Provincial Government advised of the application under Subsection 174(a); and
  - (h) any written submissions made by any person to the Council.
- (2) Prior to commencing its consideration of an application, the Council shall provide to the applicant for an alluvial mining lease a copy of each report and submission referred to in Subsection (1)(e) to (h) and provide the applicant with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the last of the reports or submissions), to lodge written responses with the Council in relation to those reports and submissions and, in considering the application, the Council shall have regard to any such responses.

- (3) Upon the earlier of the expiration of the period specified by the Council under Subsection (2) and receipt of notice from the applicant that it has lodged all responses it wishes to lodge under Subsection (2), the Council shall proceed to consider the application.
- (4) Upon consideration of an application, the Council shall issue to the applicant a draft determination, setting out:
- (a) whether or not the Council has formed the view the applicant meets the criteria in Subsection 75(1) (which report shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion); and
  - (b) where the Council has formed the view that the applicant does not meet a criterion in Subsection 75(1), whether the Council has formed the view that, nevertheless, the grant of the alluvial mining lease to the applicant is, having regard to all relevant circumstances, appropriate and the basis upon which the Council has formed or not formed that view; and
  - (c) where the Council considers that:
    - (i) the applicant would satisfy the criteria in Subsection 75(1) if one or more changes were made to the applicant's application; and/or
    - (ii) it would be appropriate to grant the alluvial mining lease if one or more changes were made to the applicant's application,
      - the nature of those changes; and
  - (d) whether the Council considers the grant of the alluvial mining lease should be refused due to the factors referred to in Subsection 71(2) and, if so, the basis upon which the Council has formed that view.
- (5) The Council shall provide an applicant for an alluvial mining lease with an opportunity:
- (a) within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the Council's draft determination) to:
    - (i) lodge submissions in response to the Council's draft determination; and
    - (ii) modify the applicant's application to take into account any comments of the Council pursuant to Subsection 81(4)(c); and
  - (b) if requested by the applicant, to appear personally before the Council to make oral submissions to the Council before the expiration of the period allowed to the applicant to make written submissions.
- (6) Upon the expiration of the period allowed to the applicant under Subsection (4)(a), the Council shall proceed to issue a final determination in response to the application, which final determination shall set out:
- (a) whether or not the Council has formed the view the applicant meets the criteria in Subsection 75(1) (which final determination shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion); and
  - (b) where the Council has formed the view that the applicant does not meet a criterion in Subsection 75(1), whether the Council has formed the view that, nevertheless, the grant of the alluvial mining lease to the applicant is, having regard to all relevant circumstances, appropriate and the basis upon which the Council has formed or not formed that view; and
  - (c) if the Council considers that, despite any conclusion reached by the Council under paragraphs (a) and (b) above, the grant of the alluvial mining lease should be refused

because of the factors set out in Subsection 71(2), the basis upon which the Council has formed that view.

**82. Variation of approved proposals.**

The approved proposals for an alluvial mining lease may be varied in accordance with Section 157.

**83. Extension of term of alluvial mining lease.**

- (1) The Minister may, on the application by the holder of an alluvial mining lease and after considering a recommendation from the Council, extend the term of an alluvial mining lease for such period or periods each not exceeding 5 years as the Minister determines.
- (2) An application for extension of the term of an alluvial mining lease:
  - (a) shall be on the prescribed form; and
  - (b) shall be lodged in triplicate with the prescribed application fee; and
  - (c) shall be lodged in accordance with the procedures specified in Part VII Division 2.

**84. Reporting requirements for an alluvial mining lease.**

- (1) The holder of an alluvial mining lease shall, in respect of each month during which any alluvial mineral is produced or obtained from the land the subject of that alluvial mining lease, record the quantity and value of alluvial minerals recovered in a form that may be produced for inspection by an employee of the Authority.
- (2) The holder of an alluvial mining lease shall lodge quarterly with the Managing Director (and in such form as may be prescribed) the records under Subsection (1).
- (3) The holder of an alluvial mining lease shall, on request, provide to an officer of the Authority a copy of the records required to be maintained under Subsection (1).

**85. Transfer or other dealings in an alluvial mining lease.**

- (1) A legal or equitable interest in or affecting an alluvial mining lease or in or affecting the interest of a landowner under an alluvial mining agreement shall not validly be created, transferred or otherwise disposed of, whether directly or indirectly, unless:
  - (a) the dealing arises in the due administration of the estate or affairs of a holder:
    - (i) who is dead; or
    - (ii) who is a person who is insolvent within the meaning of the *Insolvency Act* 1951; or
    - (iii) who is otherwise incapacitated at law; and
  - (b) prior written consent to the dealing is given by the Managing Director or an employee of the Authority acting with the authority of the Managing Director.
- (2) Nothing in Subsection (1) prevents, or affects the validity of, any agreement made in contemplation of a dealing to which that Subsection applies where the agreement expressly provides that the consent required by that Subsection is to be obtained as a condition of the agreement.
- (3) The Managing Director shall only consent to the dealing if the transferee or person in whose favour the interest is to be created is a landowner of the land the subject of the alluvial mining lease.
- (4) Nothing in Subsections (1) to (3) prevents the holder of an alluvial mining lease, where that holder is an alluvial developer, creating an interest in or affecting that alluvial mining lease or dealing with an interest in that alluvial mining lease but all such dealings are subject to Division 3 of Part VII of this Act and, if applicable, Subsection (5).



- (5) The rights and obligations of an alluvial developer under an alluvial mining lease may only be transferred to another person if each of the following requirements are complied with:
- (a) the rights and obligations of the alluvial developer under the alluvial mining agreement for that alluvial mining lease shall be transferred to the person to whom the rights and obligations under the alluvial mining lease are transferred; and
  - (b) any consents required to be obtained from the landowners, pursuant to the terms of the alluvial mining agreement for that alluvial mining lease, to transfer the alluvial mining agreement shall have been obtained.

**86. Consolidation of an alluvial mining lease.**

Notwithstanding the provisions of Section 200, an alluvial mining lease may not be consolidated with any other alluvial mining lease if the size of that consolidated alluvial mining lease will exceed 25ha.

**Subdivision B.—Application over Existing Tenements.**

**87. Alluvial mining lease may be granted over land the subject of an existing exploration licence and vice versa.**

- (1) Subject to this Subdivision, an alluvial mining lease may be granted over land or part of land over which there is an existing exploration licence if the holder of the exploration licence consents to that grant, which consent may be given or withheld in the absolute discretion of the holder and may be given subject to such conditions as the holder thinks fit.
- (2) A person may make application in accordance with Part VII Division 2 for an exploration licence over land which is the subject of an alluvial mining lease and may be granted such exploration licence over such portion of the land as is below the depth to which the alluvial mining lease was granted.

**88. Effect of alluvial mining lease on exploration licence and vice versa.**

- (1) The effect of the grant of an alluvial 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 such portion of that land lying beneath it to the depth to which the alluvial mining lease was granted.
- (2) Where an alluvial mining lease has been granted over an exploration licence or *vice versa* the exploration licence shall have full force and effect below the depth to which the alluvial mining 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 an alluvial mining lease for the purpose of carrying out exploration below the depth to which the alluvial mining lease was granted, but he or she shall not unreasonably interfere with the operations of the holder of the alluvial mining lease.
- (4) On the surrender, cancellation or expiry of an alluvial mining lease, the alluvial mining lease shall cease to have effect and:
  - (a) any land excised from an exploration licence under Subsection (1) shall revert to that exploration licence; or
  - (b) where another tenement has been granted over all or part of the land the subject of the alluvial mining lease that part of the land that would otherwise have reasonably been included in the other tenement but for the existence of the alluvial mining lease shall be amalgamated with the land the subject of that other tenement.
- (5) Where an alluvial mining lease is granted over land which is subject to an existing exploration licence, then the operation of Subsections (1) to (4) of this Section 88 is subject to any

conditions imposed by the holder of the exploration licence as contemplated in Subsection 87(1).

**89. Registrar to notify holder of exploration licence of application for alluvial mining lease.**

Where an application for the grant of an alluvial mining lease is registered in respect of land which is the subject of an exploration licence, the Registrar shall immediately notify the holder of the exploration licence of the application and supply him or her with a copy of the application and the proposals as provided for in Section 174.

**Subdivision C.—Effect of grant of Mining Lease and Lease for Mining Purposes over alluvial mining lease.**

**90. Effect of grant of tenement over alluvial mining lease.**

- (1) A mining lease and a lease for mining purposes (each a "**primary tenement**") may be granted over an area of land in respect of which an alluvial mining lease is held.
- (2) Subject to Subsection (3), the effect of the grant of a primary tenement over an area of land the subject of an alluvial mining lease ("**granted area**") is to:
  - (a) excise that granted area from the alluvial mining lease; or
  - (b) where there is no part of the alluvial mining lease outside of the granted area, cancel the alluvial mining lease as with effect from the date of that grant.
- (3) Subsection (2) does not apply if, pursuant to Section 208, the Council approves the co-existence of the alluvial mining lease and the primary tenement.
- (4) Where under Subsection (2):
  - (a) the granted area is excised from an alluvial mining lease; or
  - (b) an alluvial mining lease is cancelled,
 the holder of the primary tenement shall (subject to Subsection (6)) be required to compensate the holder of that alluvial mining lease for:
  - (c) the net revenue foregone by the holder of the alluvial mining lease due to (as applicable):
    - (i) the excision of the granted area from the alluvial mining lease; or
    - (ii) its cancellation; and
  - (d) any costs incurred by the holder of the alluvial mining lease in vacating the granted area or the area of the alluvial mining lease (as applicable).
- (5) Where the extent of the granted area excised from an alluvial mining lease is such that it is not practicable to carry on a viable alluvial mining operation on the remaining area the subject of the alluvial mining lease, then:
  - (a) the holder of that alluvial mining lease may surrender, in accordance with this Act, the entire alluvial mining lease; and
  - (b) for the purposes of this Section 90, the entire alluvial mining lease shall be regarded as having been cancelled under Subsection (4).
- (6) No compensation is payable pursuant to Subsection (4) for an area of land ("**relevant area**") which:
  - (a) is excised from the area of an alluvial mining lease; or
  - (b) ceases to be part of an alluvial mining lease due to the cancellation of that lease,

where, prior to the grant of the alluvial mining lease over that relevant area, an exploration licence was held over that relevant area by:

- (c) one or more of the holders of the primary tenement; or
- (d) a related company of one of those holders; or
- (e) a person who has assigned, in accordance with this Act, its rights as the holder of the exploration licence to one or more of the holders of the primary tenement.

## **91. Principles of compensation.**

- (1) For the purposes of determining the compensation which the holder of the primary tenement is required to pay the holder of an alluvial mining lease under Subsection 90(4):
  - (a) the net revenue foregone by the holder of the alluvial mining lease is equal to:
    - (i) the best estimate of the revenue which would have been derived from alluvial mining on the foregone land; less
    - (ii) the best estimate of the costs which would have been incurred in carrying out that mining,

over the assumed remaining life of that alluvial mining lease;
  - (b) the assumed remaining life of an alluvial mining lease is:
    - (i) 5 years from the date of the grant of the primary tenement; or
    - (ii) where having regard to the conduct of the holder of the alluvial mining lease and other relevant factors (but excluding the possibility of a primary tenement being granted over the area of the alluvial mining lease) there was no reasonable prospect of the alluvial mining lease continuing for a further 5 years, the maximum period for which it could be reasonably expected that the alluvial mining lease would have continued from the date of the grant of the primary tenement (but for the grant of that primary tenement); and
  - (c) the foregone land is (as applicable):
    - (i) the area excised from the alluvial mining lease; or
    - (ii) where the alluvial mining lease is cancelled, or deemed to be cancelled pursuant to Subsection 90(5), the entire area of the alluvial mining lease.
- (2) The compensation payable by the holder of the primary tenement to the holder of an alluvial mining lease shall be:
  - (a) recorded in a compensation agreement to which Section 92 applies; or
  - (b) determined by a Warden under Section 93.

## **92. Compensation agreements for alluvial miners.**

- (1) The amount of compensation payable by the holder of a primary tenement to the holder of an alluvial mining lease under Section 90 may be determined by agreement (in this Section referred to as an "**alluvial compensation agreement**").
- (2) An alluvial compensation agreement is not valid unless the provisions of this Section 92 have been complied with.
- (3) Where the holder of a primary tenement and the holder of an alluvial mining lease propose to enter into an alluvial compensation agreement, the holder of the primary tenement shall, 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 alluvial compensation agreement to the Chief Warden.

- (4) Within 14 days of receipt of a proposed alluvial compensation agreement under Subsection (3), the Chief Warden shall give written notice to the parties that:
  - (a) he or she approves the proposed alluvial compensation agreement; or
  - (b) he or she requests the parties to consider certain amendments specified in the notice.
- (5) Upon a proposed alluvial compensation agreement being approved by the Chief Warden under Subsection (4)(a):
  - (a) that compensation agreement shall take effect (as an enforceable legal document) irrespective of when, and whether, that compensation agreement is executed by the parties to it; and
  - (b) the Chief Warden shall provide a copy of the alluvial compensation agreement to the Registrar who shall register it.
- (6) The parties shall consider any request by the Chief Warden under Subsection (4)(b), but are not obliged to accept the amendments specified in the notice under that Subsection.
- (7) Where the Chief Warden makes a request under Subsection (4)(b), the parties may then execute the alluvial compensation agreement (as amended, to the extent agreed by the parties to take into account any request by the Chief Warden under Subsection (4)(b)) and submit it to the Registrar who shall register it.

### **93. Determination of compensation.**

- (1) The:
  - (a) holder of a primary tenement; or
  - (b) holder of an alluvial mining lease,
 may, where they are unable to agree on the amount of compensation payable by the holder of the primary tenement under Subsection 90(4), by notice to the Chief Warden, request a Warden to determine the amount payable.
- (2) Where an alluvial compensation agreement has come into force between the holder of a primary tenement and the holder of an alluvial mining lease, whether:
  - (a) by virtue of the operation of Subsection 92(5); or
  - (b) by virtue of that agreement being executed as contemplated in Subsection 92(7),
 then the holder of the primary tenement and the holder of the alluvial mining lease shall be taken to have agreed between them the amount of compensation payable by the holder of the primary tenement under Subsection 90(4).
- (3) On receipt of a notice under Subsection (1), the Chief Warden shall:
  - (a) fix a place or places and date or dates for conducting a determination of the amount of compensation to be paid by the holder of the primary tenement under Subsection 90(4); and
  - (b) notify the holder of the primary tenement and the holder of the alluvial mining lease 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 under Subsection 90(4).
- (4) In conducting a determination under this Section 93 the Warden shall allow the holder of the primary tenement and the holder of the alluvial mining lease to present their evidence and arguments to him or her in such manner as he or she thinks fit, but shall at all times have regard to the principles of natural justice.
- (5) The Warden shall:

- (a) make a determination on the basis of the evidence presented to him or her; and
- (b) record his or her decision in writing; and
- (c) give a copy of his or her decision to the holder of the primary tenement and the holder of the alluvial mining lease.

**94. Appeal from a Warden's determination.**

The:

- (a) holder of the primary tenement; or
- (b) holder of the alluvial mining lease,

who is aggrieved by a determination of the Warden under Subsection 93(5) as to the amount of compensation to which the holder is entitled or which the holder is obliged to pay, may appeal to the National Court.

**95. Compensation to be binding.**

Subject to Section 94, the provisions of:

- (a) an alluvial compensation agreement duly registered under Section 92; or
- (b) a Warden's determination under Section 93,

shall be:

- (c) a condition of the primary tenement to which it relates, the breach of which may, subject to this Act, be grounds for the cancellation of the tenement; and
- (d) binding as a contract on both the holder of the primary tenement and the holder of the alluvial mining lease.

**96. References to holder of alluvial mining lease.**

In Sections 90 to 95, references to the holder of an alluvial mining lease include the former holder of such a lease, which lease is cancelled due to the application of Section 90.

***Division 4.—Lease for Mining Purposes.***

**Subdivision A.—General.**

**97. Grant of a lease for mining purposes.**

- (1) Subject to the remaining provisions of this Act and on the application of any person, the Minister:
  - (a) shall grant the applicant a lease for mining purposes if the applicant satisfies the criteria in Section 101 for the grant of a lease for mining purposes; and
  - (b) may grant the applicant a lease for mining purposes if, although the applicant does not satisfy the criteria in Section 101, such lease for mining purposes, together with the tenement to which it relates, is reasonably expected to be economically viable and the Minister considers the grant of that lease for mining purposes is in the public interest.
- (2) In determining whether:
  - (a) an applicant satisfies the criteria in Section 101; and
  - (b) a lease for mining purposes is reasonably expected to be economically viable,
 the Minister shall have regard to the recommendation of the Council.
- (3) A lease for mining purposes:

- (a) shall be on the prescribed form; and
- (b) shall specify the purpose or purposes under Section 104 for which it was granted; and
- (c) shall be subject to the conditions referred to in Section 98; and
- (d) may include such other conditions as determined by the Council in accordance with Section 99.

**98. Conditions of each lease for mining purposes.**

Each lease for mining purposes is subject to the following conditions:

- (a) the operations carried out pursuant to that lease for mining purposes shall be undertaken in accordance with good industry practice; and
- (b) its holder shall comply with the approved proposals for that lease for mining purposes; and
- (c) its holder shall use the land the subject of that lease for mining purposes for the operations authorised under the approved proposals for that lease for mining purposes and for ancillary purposes and for no other purposes; and
- (d) to the extent practicable having regard to the intended purpose of the lease for mining purposes, its holder shall carry on the operations authorised by that lease for mining purposes in a manner which minimizes the impact on the environment and the impact upon affected communities; and
- (e) its holder shall ensure that holder has adequate technical and financial resources to carry out operations authorised by the lease for mining purposes in accordance with the approved proposals for that lease for mining purposes; and
- (f) its holder shall comply with the requirements of this Act; and
- (g) such conditions as are prescribed by the regulations.

**99. Incorporation of additional conditions.**

- (1) A lease for mining purposes may contain such additional conditions to those set out in Section 98 as the Council, acting reasonably, considers are necessary having regard to:
  - (a) the operations to be undertaken pursuant to that lease for mining purposes; and
  - (b) the potential impact of those operations upon affected communities; and
  - (c) the need to ensure that mining operations are conducted in an efficient and effective manner.
- (2) Where the Council proposes to incorporate additional conditions within a lease for mining purposes pursuant to Subsection (1), the Council shall serve notice upon the applicant for that lease for mining purposes setting out:
  - (a) the proposed conditions; and
  - (b) the reasons why the Council considers it necessary to impose those additional conditions,

and shall allow the applicant such period specified by the Council (being not less than 20 days from receipt of the Council's notice) to provide a written submission to the Council in relation to the content of the proposed conditions and whether those conditions should be imposed.

- (3) This Section 99 does not permit the incorporation of additional conditions in a lease for mining purposes after the date of its grant.

**100. Variation of conditions by agreement.**

- (1) Subject to Subsection (2), at any time, by agreement in writing between the holder of a lease for mining purposes and the Minister and subject to the Council first approving the relevant new condition or variation to an existing condition:
- (a) new conditions may be incorporated in that lease for mining purposes; and
  - (b) those conditions incorporated in that lease for mining purposes under this Section 100 or under Section 99 may be varied.
- (2) Nothing in this Section 100 permits the variation of a condition to which a lease for mining purposes is subject under Section 98.

**101. Criteria for grant of lease for mining purposes.**

- (1) An applicant for a lease for mining purposes is entitled to the grant of a lease for mining purposes if:
- (a) the applicant has, or has access to, the technical and financial resources to efficiently undertake the operations to be authorised pursuant to the lease for mining purposes in accordance with the applicant's approved proposals and in compliance with the requirements of this Act; and
  - (b) the applicant has submitted proposals which:
    - (i) are an effective and efficient means for undertaking the operations to be authorised pursuant to the lease for mining purposes; and
    - (ii) are appropriate having regard to the proposed area of the lease for mining purposes; and
  - (c) the applicant has submitted proposals which will address in an effective, reasonable and appropriate manner the impact of the grant of the lease for mining purposes, and the operations to be carried out pursuant to the lease for mining purposes, upon affected communities and the legitimate concerns of those affected communities; and
  - (d) there will be no unacceptable ecological degradation or damage to the environment resulting from the operations pursuant to the lease for mining purposes which cannot be effectively managed, rehabilitated or compensated for; and
  - (e) the applicant has not previously breached this Act (other than a breach caused by events or circumstances beyond the reasonable control of the applicant or a breach which is trivial or inconsequential).
- (2) For the purposes of Subsection (1) and without limiting when a breach is trivial or inconsequential, a breach is trivial or inconsequential if that breach did not cause loss or damage to any person (other than the applicant) and, where the breach occurred while the applicant held a tenement, did not derogate from the efficient and effective conduct of operations pursuant to that tenement.
- (3) In assessing whether the criteria referred to in Subsections (1)(c) and (1)(d) are met, the Council's and the Minister's determination is limited to the incremental effects arising from the grant of the lease for mining purposes rather than a consideration of the effects of the entire mining project being carried out by the applicant for the lease for mining purposes.

**102. Term of lease for mining purposes.**

A lease for mining purposes has a term of 40 years from the date of the grant of that lease for mining purposes, which term may be extended under Section 110.

**103. 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 shall be:

- (a) not more than 60 Km<sup>2</sup>; and
  - (b) in a rectangular or polygonal shape.
- (2) A lease for mining purposes shall be granted to a depth consistent with the purposes for which it was granted.

**104. 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 therein;
- (c) the deposit of tailings or waste;
- (d) housing and other infrastructure required in connection with mining or treatment operations;
- (e) transport facilities including roads, airstrips and ports;
- (f) any other purpose ancillary to mining or treatment operations or to any of the preceding purposes which may be approved by the Minister.

**105. Rights conferred by a lease for mining purposes.**

- (1) A lease for mining purposes authorizes the holder, in accordance with the *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 that land and undertake such works as may be necessary or expedient; and
  - (c) take and divert water situated on or flowing through such land and use it in accordance with the *Environment Act 2000*; and
  - (d) do all other things necessary or expedient,
- to achieve the purposes for which the lease for mining purposes was granted.
- (2) Subject to this Act, 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.

**106. Application for a lease for mining purposes.**

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

- (a) shall be on the prescribed form and shall have attached either:
  - (i) a schedule on 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 165; and
- (b) shall 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 164; and
- (c) shall be lodged in triplicate with the prescribed application fee; and



(d) shall be lodged in accordance with the procedures specified in Part VII Division 2.

**107. Consideration of application for a lease for mining purposes.**

- (1) In considering an application for a lease for mining purposes, including whether:
  - (a) the applicant meets the criteria in Subsection 101(1); and
  - (b) such lease for mining purposes is reasonably expected to be economically viable, the Council shall have regard to:
    - (c) any submissions made by the applicant; and
    - (d) any reports provided to the Council under Section 172; and
    - (e) the report provided by the Warden to the Council under Section 177; and
    - (f) any report submitted by a Provincial Government advised of the application under Subsection 174(a); and
    - (g) any written submissions made by any person to the Council.
- (2) Prior to commencing its consideration of an application, the Council shall provide to the applicant for the lease for mining purposes a copy of each report and submission referred to in Subsection (1)(d) to (g) and provide the applicant with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the last of the reports or submissions) to lodge written responses with the Council in relation to those reports and submissions and, in considering the application, the Council shall have regard to any such responses.
- (3) Upon the earlier of the expiration of the period specified by the Council under Subsection (2) and receipt of notice from the applicant that it has lodged all responses it wishes to lodge under Subsection (2), the Council shall proceed to consider the application.
- (4) Upon consideration of an application, the Council shall issue to the applicant a draft determination, setting out:
  - (a) whether or not the Council has formed the view the applicant meets the criteria in Subsection 101(1) (which report shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion); and
  - (b) where the Council has formed the view that the applicant does not meet a criterion in Subsection 101(1), whether the Council has formed the view that the lease for mining purposes is reasonably expected to be economically viable and the basis upon which the Council has formed or not formed that view; and
  - (c) where the Council considers that:
    - (i) the applicant would satisfy the criteria in Subsection 101(1) if one or more changes were made to the applicant's application; and/or
    - (ii) the lease for mining purposes would be reasonably expected to be economically viable if one or more changes were made to the applicant's application,

the nature of those changes.
- (5) The Council shall provide an applicant for a lease for mining purposes with an opportunity:
  - (a) within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the Council's draft determination) to:
    - (i) lodge submissions in response to the Council's draft determination; and

- (ii) modify the applicant's application to take into account any comments of the Council pursuant to Subsection 107(4)(c); and
  - (b) if requested by the applicant, to appear personally before the Council to make oral submissions to the Council before the expiration of the period allowed to the applicant to make written submissions.
- (6) Upon the expiration of the period allowed to the applicant under Subsection (5), the Council shall proceed to issue a final determination in response to the application, which final determination shall set out:
- (a) whether or not the Council has formed the view the applicant meets each of the criteria in Subsection 101(1) (which final determination shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion); and
  - (b) where the Council has formed the view that the applicant does not meet a criterion in Subsection 101(1), whether the Council has formed the view that the lease for mining purposes is reasonably expected to be economically viable and the basis upon which the Council has formed or not formed that view.
- (7) Where an application for a lease for mining purposes is made by the holder of a mining lease and, in considering the application made by the holder for the mining lease, the Council has made determinations relevant to the criteria in Subsection 101(1) then, in considering an application under this Section 107, the Council shall rely on those previous determinations unless:
- (a) the Council has a reasonable basis to believe that, due to a change in circumstances, it is not appropriate to rely on one or more previous determinations, for example because there has been a decline in the technical and financial resources of the applicant (in which case the Council shall not rely on the previous determinations which the Council considers it is not appropriate to rely upon); or
  - (b) the Council (acting reasonably) considers that due to the length of time from the Council's assessment of whether the applicant satisfies the criteria for the grant of a mining lease it is no longer appropriate to rely on the Council's determinations made in the course of undertaking that assessment.

**108. Variation of approved proposals.**

The approved proposals for a lease for mining purposes may be varied in accordance with Section 157.

**109. Expansion of area of a lease for mining purposes.**

The area of a lease for mining purposes may be expanded in accordance with Sections 158 to 163.

**110. Extension of term of lease for mining purposes.**

- (1) Subject to Subsection (2), the holder of a lease for mining purposes may, by notice to the Minister and the Council, served not later than 2 months and not earlier than 3 months prior to the expiry of the current term of the lease for mining purposes, extend that term for a further 40 years, provided that the holder still requires that lease for mining purposes for the purposes for which it was granted or for the purposes of implementing mine closure obligations or environmental closure obligations.
- (2) With the consent of the Managing Director, the holder of a lease for mining purposes may serve a notice under Subsection (1) less than 2 months prior to the expiry of the current term of the lease for mining purposes, provided that a notice may not be served under Subsection (1) after the expiry of the relevant lease for mining purposes.

- (3) The Managing Director may, by notice to the holder of a lease for mining purposes served not later than 1 month prior to the expiry of the current term of that lease for mining purposes, extend the term of that lease for mining purposes for a further term of 40 years.
- (4) Nothing in Subsection (3) affects or prejudices any right the holder of a lease for mining purposes has under this Act to surrender all or part of a lease for mining purposes.
- (5) The regulations may prescribe the format in which notices under Subsection (1) shall be served.
- (6) A notice served by the holder of a lease for mining purposes under Subsection (1) shall attach evidence that the holder of the lease for mining purposes requires it to be renewed for a purpose referred to in Subsection (1).
- (7) More than one notice renewing the term of a lease for mining purposes may be served under this Section 110.

**111. Reporting requirements for a lease for mining purposes.**

The holder of a lease for mining purposes shall lodge with the Managing Director such reports as the Managing Director may from time to time reasonably require.

**Subdivision B.—Application over Existing Tenements.**

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

- (1) Subject to this Subdivision B, 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 Part VII Division 2 for an exploration licence over land which is the subject of a lease for mining purposes and may, subject to this Subdivision, 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.
- (3) Where an application is made under Section 158 to expand the area of a lease for mining purposes and all or part of the expanded area is in respect of land over which there is an existing exploration licence, then this Subdivision B applies to that expansion as though:
  - (a) references in this Subdivision B to the grant of a lease for mining purposes were to the expansion of the area of that lease for mining purposes by the expanded area; and
  - (b) references in this Subdivision B to the applicant for a lease for mining purposes were to the holder of the lease for mining purposes who has made an application under Section 158.

**113. 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) Where a lease for mining purposes has been granted over an exploration licence or *vice versa* the exploration licence shall have 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 exploring (and, where the holder of an exploration licence converts his or her tenement to a mining lease, mining) the land below the depth to which the lease for mining purposes was granted, but he or she shall 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 shall cease to have effect and:
- (a) any land excised from an exploration licence under Subsection (1) shall revert to that exploration licence; or
  - (b) where 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 shall be amalgamated with the land the subject of that other tenement.

**114. Registrar to notify holder of exploration licence of application for lease for mining purposes in certain circumstances and vice versa.**

- (1) Where an application for the grant of a lease for mining purposes is registered in respect of land that is the subject of an exploration licence, the Registrar shall, where the applicant is not the holder of the exploration licence, immediately notify the holder of the exploration licence of the application and supply him or her with a copy of the application and the proposals as provided for in Section 174.
- (2) Where an application for the grant of an exploration licence is registered in respect of land that is the subject of a lease for mining purposes, the Registrar shall, where the applicant is not the holder of the lease for mining purposes, immediately notify the holder of the lease for mining purposes of the application and supply him or her with a copy of the application and the programme as provided for in Section 174.

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

- (1) The holder of an exploration licence may, within 21 days of receiving notification under Subsection 114(1) of an application, lodge a written objection to the application on the prescribed form with the Registrar (which objection may only be on the basis that the grant of the lease for mining purposes over the land in respect of which the exploration licence is held will cause material detriment to the operations of the holder of the exploration licence).
- (2) For the purposes of this Section 115, material detriment to the operations of the holder of an exploration licence is interference with those operations which prevents that holder:
  - (a) using the exploration licence in accordance with the purposes for which it was granted (including the subsequent establishment of a mining operation or operation ancillary to mining which is reasonably anticipated to be established by the holder); and/or
  - (b) conducting operations pursuant to the exploration licence in substantially the same manner as the operations were conducted prior to the grant of the lease for mining purposes,
 either:
  - (c) absolutely; or
  - (d) without incurring additional cost (other than costs which are trivial or inconsequential); or
  - (e) without taking steps which materially threaten the health and safety of any person or property, materially increase the risk of causing environmental harm or materially hinder the ability of the holder to comply with this Act.
- (3) For the purposes of determining the additional costs which will be incurred by the holder of an exploration licence, those costs do not include any costs which the applicant for the lease for mining purposes undertakes, by notice to the Council and the holder of the exploration licence in the prescribed form, to reimburse the holder of the exploration licence (provided

that the applicant for the lease for mining purposes has the financial resources and creditworthiness to ensure reimbursement of those costs).

- (4) Where an applicant for a lease for mining purposes provides an undertaking referred to in Subsection (3), then the holder of the exploration licence has a legally enforceable right to enforce that undertaking.
- (5) On receipt of any objection under Subsection (1), the Registrar shall forward it to the Council and to the applicant for the lease for mining purposes.
- (6) Within 21 days of receipt of a copy of an objection under Subsection (5), the applicant for the lease for mining purposes may lodge a response to that objection with the Council.
- (7) Despite Section 101, the Minister may, where an objection has been lodged by the holder of an exploration licence to the grant of a lease for mining purposes over an area of land subject to that exploration licence, refuse or defer an application for the grant of a lease for mining purposes where operations on the land the subject of the application will cause material detriment to the holder of that exploration licence.
- (8) In determining whether to refuse or defer an application for the grant of a lease for mining purposes the Minister shall have regard to the recommendation of the Council.
- (9) Where an objection has been lodged by the holder of an exploration licence to the grant of a lease for mining purposes over an area of land subject to that exploration licence, then the Council shall, subsequent to expiry of the 21 day period referred to in Subsection (6) or, if earlier, receipt of notice from the applicant for the lease for mining purposes that it has lodged all responses it wishes to lodge under Subsection (6), issue a draft determination setting out whether:
  - (a) the Council considers that the grant of the lease for mining purposes will or may cause material detriment to the operations of the holder of the exploration licence; and
  - (b) whether, having regard to the extent of that material detriment, the lease for mining purposes should be granted over the proposed area of the exploration licence; and
  - (c) where the Council considers that:
    - (i) the grant of the lease for mining purposes will or may cause material detriment to the operations of the holder of the exploration licence; but
    - (ii) the lease for mining purposes should, having regard to the matters in Subsection (10), still be granted over a part of the land the subject of the exploration licence,

such conditions which the Council considers should be imposed under the lease for mining purposes to minimise the extent of the detriment caused to the operations under the exploration licence; and
  - (d) where, in accordance with Subsection (11), the Council considers an application should be refused because the operations proposed to be conducted pursuant to the lease for mining purposes are able to be undertaken in respect of an alternative area:
    - (i) the basis upon which the Council has formed that view; and
    - (ii) the alternative area or alternative areas identified by the Council,

and which draft determination shall set out the reasons for the Council's determination, including the reasons justifying any conditions proposed to be imposed by the Council under Subsection (9)(c).
- (10) For the purposes of determining whether, despite the fact that the grant of a lease for mining purposes will or may cause material detriment to the activities under an exploration licence,

that lease for mining purposes should nevertheless be granted over an area of that exploration licence, regard shall be had to the following matters:

- (a) the expenditure undertaken by the holder of the exploration licence in relation to the land in respect of which the application for the lease for mining purposes has been made and in relation to land in the vicinity of that land; and
- (b) the likelihood that any minerals, exploitable on a commercial scale, are contained within the area of land referred to in paragraph (a); and
- (c) the remaining term of the exploration licence (including any periods for which the holder of the exploration licence is entitled to a renewal of the exploration licence under Section 49 or is otherwise likely to have the exploration licence renewed under Section 50 or Section 51); and
- (d) the holder of the exploration licence's history of compliance with this Act; and
- (e) the interest of the State in ensuring the development in an environmentally sustainable manner of all available mineral resources of the State.

(11) Where the Council determines that:

- (a) the operations proposed to be conducted under a lease for mining purposes may be conducted in an alternative area ("**alternative area**") to that proposed by the applicant ("**proposed area**") such that they will not cause material detriment to the operations conducted pursuant to an exploration licence (or will cause less material detriment); and
- (b) the carrying on of those operations in that alternative area will not:
  - (i) be materially more expensive than the carrying on of those operations in the proposed area; or
  - (ii) have a materially greater impact upon affected communities than the carrying on of those operations in the proposed area; or
  - (iii) have a materially greater impact upon the environment than the carrying on of those operations in the proposed area,

then the Council shall recommend to the Minister that the application for the lease for mining purposes be refused unless that application is amended to apply in respect of the alternative area (or some other area).

(12) The Council shall provide the holder of the exploration licence, and the applicant for the lease for mining purposes, with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the later of the receipt by the holder and the applicant of the Council's draft determination), to lodge submissions in response to the Council's draft determination.

(13) If requested by:

- (a) the applicant for a lease for mining purposes; and/or
- (b) the holder of an exploration licence who has lodged an objection under Subsection (1),

the Council shall permit each such person who has made a request to appear personally before the Council, before the expiration of the period allowed for the making of written submissions, to make oral submissions to the Council in response to the Council's draft determination and shall allow any other person referred to in Subsection (12) to be present during the making of those submissions and to respond to those submissions at the same hearing before the Council.

(14) Upon the earlier of:

- (a) the date of receipt of written submissions from the holder and the applicant as contemplated in Subsection (12); and
- (b) the expiration of the period allowed to the holder and the applicant for lodgment of written submissions in response to a draft determination; and
- (c) the receipt by the Council of notice from both the holder and the applicant that they do not intend to lodge written submissions in response to the draft determination,

the Council shall proceed to issue a final determination, which final determination shall be in writing and set out the reasons for that determination (including the justification for any conditions which the Council recommends be imposed under Subsection (9)(c)).

- (15) Subsections (7) to (14) do not apply to an application for a lease for mining purposes if:
  - (a) no objection to the grant of that lease for mining purposes is lodged by the holder of an exploration licence within the area of whose licence that application relates; or
  - (b) the holder of each exploration licence within the area of whose licence the application relates informs the Council that it does not object to the grant of that lease for mining purposes.
- (16) Where all objections lodged by holders of exploration licences to an application for a lease for mining purposes are withdrawn, then Subsections (7) to (14) shall cease to apply to that application.

**116. Holder of a lease for mining purposes may object to application for an exploration licence.**

- (1) The holder of a lease for mining purposes may, within 21 days of receiving notification under Subsection 114(2) of an application, lodge a written objection to the application on the prescribed form with the Registrar (which objection may only be on the basis that the grant of the exploration licence over the area of the lease for mining purposes may cause unreasonable interference to the operations conducted pursuant to the lease for mining purposes).
- (2) For the purposes of this Section 116, unreasonable interference with the operations conducted pursuant to a lease for mining purposes is interference which prevents the holder of that lease for mining purposes:
  - (a) using the lease for mining purposes in accordance with the purposes for which it was granted; and/or
  - (b) conducting operations pursuant to the lease for mining purposes in substantially the same manner as the operations were conducted prior to the grant of the exploration licence,
 either:
  - (c) absolutely; or
  - (d) without incurring additional cost (other than costs which are trivial or inconsequential); or
  - (e) without taking steps which materially threaten the health or safety of any person or property, materially increase the risk of causing environmental harm or materially hinder the ability of the holder of the exploration licence to comply with this Act.
- (3) For the purposes of determining the additional costs which will be incurred by the holder of a lease for mining purposes, those costs do not include any costs which the applicant for the exploration licence undertakes, by notice to the Council and the holder in the prescribed form, to reimburse the holder (provided that the applicant has the financial resources and creditworthiness to ensure reimbursement of those costs).

- (4) Where an applicant for an exploration licence provides an undertaking referred to in Subsection (3), then the holder of the lease for mining purposes has a legally enforceable right to enforce that undertaking.
- (5) On receipt of an objection under Subsection (1), the Registrar shall forward it to the Council and to the applicant for the exploration licence.
- (6) Within 21 days of receipt of a copy of an objection under Subsection (5), the applicant for the exploration licence may lodge a response to that objection with the Council.
- (7) Where an objection has been lodged under Subsection (1) by the holder of a lease for mining purposes to the grant of an exploration licence, then the Council shall, subsequent to the expiry of the 21 day period referred to in Subsection (6) (or, if earlier, receipt of notice from the applicant for the exploration licence that it has lodged all responses it wishes to lodge under Subsection (6)), issue a draft determination setting out whether:
- (a) the Council considers that the grant of the exploration licence over that area will or may cause unreasonable interference to the operations of the holder of the lease for mining purposes; and
  - (b) where the Council considers that the grant of the exploration licence will or may cause such unreasonable interference, whether conditions may be imposed upon the holder of the exploration licence so as to avoid such unreasonable interference and, if so, those conditions,

and which draft determination shall set out the reasons for the Council's determination, including the reasons justifying the conditions proposed to be imposed by the Council under Subsection (7)(b).

- (8) The Council shall provide the holder of the lease for mining purposes, and the applicant for the exploration licence, with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the later of receipt by the holder and the applicant of the Council's draft determination), to lodge submissions in response to the Council's draft determination.
- (9) If requested by:
- (a) the applicant for an exploration licence; and/or
  - (b) the holder of a lease for mining purposes who has lodged an objection under Subsection (1),

the Council shall permit each such person who has made a request to appear personally before the Council, before the expiration of the period allowed for the making of written submissions, to make oral submissions to the Council in response to the Council's draft determination and shall allow any other person referred to in Subsection (8) to be present during the making of those submissions and to respond to those submissions at the same hearing before the Council.

- (10) Upon the earlier of:
- (a) the date of receipt of written submissions from the holder and the applicant as contemplated in Subsection (8); and
  - (b) the expiration of the period allowed to the holder and the applicant for lodgment of written submissions in response to a draft determination; and
  - (c) the receipt by the Council of notice from both the holder and the applicant that they do not intend to lodge written submissions in response to the draft determination,

the Council shall proceed to issue a final determination, which final determination shall be in writing and set out the reasons for that determination (including the justification for any conditions which the Council recommends be imposed under Subsection (7)(b)).



- (11) Where the Council determines that an exploration licence:
- (a) may not be granted over the area of a lease for mining purposes without causing unreasonable interference to the operations conducted pursuant to that lease for mining purposes then, unless otherwise agreed by the holder of the lease for mining purposes, the holder of the exploration licence may not conduct operations pursuant to that exploration licence (or pursuant to any mining lease into which that exploration licence is converted) within the area of that lease for mining purposes until such time as that lease for mining purposes expires, is cancelled or surrendered; and
  - (b) may only be granted over the area of a lease for mining purposes without causing unreasonable interference to the operations conducted pursuant to that lease for mining purposes if conditions are imposed upon the conduct of operations pursuant to that exploration licence then, unless otherwise agreed by the holder of the lease for mining purposes, the holder of the exploration licence may only conduct operations pursuant to that exploration licence (or pursuant to any mining lease into which that exploration licence is converted) within the area of that lease for mining purposes in compliance with those conditions until such time as that lease for mining purposes expires, is cancelled or surrendered.
- (12) Subsections (7) to (11) do not apply to an application for an exploration licence if:
- (a) no objection to the grant of that exploration licence is lodged by the holder of a lease for mining purposes within the area of whose lease for mining purposes that application relates; or
  - (b) the holder of each lease for mining purposes within the area of whose lease for mining purposes the application relates informs the Council that it does not object to the grant of that exploration licence.
- (13) Where all objections lodged by holders of leases for mining purposes to an application for an exploration licence are withdrawn, then Subsections (7) to (11) shall cease to apply to that application.

***Division 5.—Mining Easements.***

**Subdivision A.—General.**

**117. Grant of a mining easement.**

- (1) Subject to the remaining provisions of this Act, on the application of a person, the Minister:
- (a) shall grant the applicant a mining easement if the applicant satisfies the criteria in Section 121 for the grant of a mining easement; and
  - (b) may grant the applicant a mining easement if, though the applicant does not satisfy the criteria in Section 121, such mining easement together with the tenement to which it relates is reasonably expected to be economically viable and the Minister considers the grant of that mining easement is in the public interest.
- (2) In determining whether:
- (a) an applicant satisfies the criteria in Section 121; and
  - (b) a mining easement is reasonably expected to be economically viable,
- the Minister shall have regard to the recommendation of the Council.
- (3) A mining easement:
- (a) shall be on the prescribed form; and
  - (b) shall specify the purposes under Section 124 for which it is granted; and

- (c) shall be subject to the conditions referred to in Section 118; and
- (d) may include such other conditions as determined by the Council in accordance with the procedures in Section 119.

**118. Conditions of each mining easement.**

Each mining easement is subject to the following conditions:

- (a) the operations carried out pursuant to that mining easement shall be undertaken in accordance with good industry practice; and
- (b) its holder shall comply with the approved proposals for that mining easement; and
- (c) its holder shall use the land the subject of that mining easement for the operations authorised under the approved proposals for that mining easement and for ancillary purposes and for no other purposes; and
- (d) to the extent practicable having regard to the intended purpose of the mining easement, its holder shall carry on the operations authorised by that mining easement in a manner which minimizes the impact on the environment and the impact upon affected communities; and
- (e) its holder shall ensure that holder has adequate technical and financial resources to carry out operations authorised by the mining easement in accordance with the approved proposals for that mining easement; and
- (f) its holder shall comply with the requirements of this Act; and
- (g) such conditions as are prescribed by the regulations.

**119. Incorporation of additional conditions.**

- (1) A mining easement may contain such additional conditions, to those set out in Section 118, as the Council, acting reasonably, considers are necessary having regard to:
  - (a) the operations to be undertaken pursuant to that mining easement; and
  - (b) the potential impact of those operations upon affected communities; and
  - (c) the need to ensure that mining operations are conducted in an efficient and effective manner.
- (2) Where the Council proposes to incorporate additional conditions within a mining easement pursuant to Subsection (1), the Council shall serve notice upon the applicant for that mining easement setting out:
  - (a) the proposed conditions; and
  - (b) the reasons why the Council considers it necessary to impose those additional conditions,

and shall allow the applicant such period specified by the Council (being not less than 21 days from receipt of the Council's notice) to provide a written submission to the Council in relation to the content of the proposed conditions and whether those conditions should be imposed.

- (3) This Section 119 does not permit the incorporation of additional conditions in a mining easement after the date of its grant.

**120. Variation of conditions by agreement.**

- (1) Subject to Subsection (2), at any time, by agreement in writing between the holder of a mining easement and the Minister and subject to the Council first approving the relevant new condition or variation to an existing condition:
  - (a) new conditions may be incorporated in that mining easement; and

- (b) any conditions incorporated in that mining easement under this Section 120 or under Section 119 may be varied.
- (2) Nothing in this Section 120 permits the variation of a condition to which a mining easement is subject under Section 118.

**121. Criteria for grant of mining easement.**

- (1) An applicant for a mining easement is entitled to the grant of a mining easement if:
  - (a) the applicant has, or has access to, the technical and financial resources to efficiently undertake the operations to be authorised pursuant to the mining easement in accordance with the applicant's approved proposals and in compliance with the requirements of this Act; and
  - (b) the applicant has submitted proposals which:
    - (i) are an effective and efficient means for undertaking the operations to be authorised pursuant to the mining easement; and
    - (ii) are appropriate having regard to the proposed area of the mining easement; and
  - (c) the applicant has submitted proposals which will address in an effective, reasonable and appropriate manner the impact of the grant of the mining easement, and the operations to be carried out pursuant to the mining easement, upon affected communities and the legitimate concerns of those affected communities; and
  - (d) there will be no unacceptable ecological degradation or damage to the environment resulting from the operations pursuant to the mining easement which cannot be effectively managed, rehabilitated or compensated for; and
  - (e) the applicant has not previously breached this Act (other than a breach caused by events or circumstances beyond the reasonable control of the applicant or a breach which is trivial or inconsequential).
- (2) For the purposes of Subsection (1) and without limiting when a breach is trivial or inconsequential, a breach is trivial or inconsequential if that breach did not cause loss or damage to any person (other than the applicant) and, where the breach occurred while the applicant held a tenement, did not derogate from the efficient and effective conduct of operations pursuant to that tenement.
- (3) In assessing whether the criteria referred to in Subsection (1)(c) and (1)(d) are met, the Council's and the Minister's determination is limited to the incremental effects arising from the grant of the mining easement rather than a consideration of the effects of the entire mining project being carried out by the applicant for the mining easement.

**122. Term of mining easement.**

A mining easement has a term of 40 years from the date of grant of that mining easement, which term may be extended under Section 129.

**123. Area of a mining easement.**

- (1) The area of land over which a mining easement may be granted will be that sufficient for the purpose or purposes for which it was granted and shall be in a rectangular or polygonal shape.
- (2) If requested by the applicant for a mining easement, a mining easement shall originally be granted in respect of an indicative area (being such area as determined by the Council acting reasonably) pending the construction of the infrastructure to which the mining easement relates and, if so granted in this manner, then:
  - (a) that infrastructure may be installed at any point within that indicative area; and

- (b) on completion of the installation of the infrastructure, the holder of the mining easement shall, in accordance with Subsection (3), submit as-built drawings of that infrastructure to the Managing Director and the mining easement shall be deemed to have been granted in respect of:
  - (i) the actual area of land upon which the infrastructure is built; and
  - (ii) a corridor around that area of such width specified by the Council at the time of grant of the mining easement (which corridor shall be of sufficient area as is reasonably required to enable the holder of the mining easement to effectively use, operate and maintain the infrastructure, plant and equipment installed within the area of the mining easement).
- (3) The as-built drawings referred to in Subsection (2)(b) shall be:
  - (a) submitted to the Managing Director not later than 3 months, or such greater period as the Council permits, after the completion of the construction of the infrastructure; and
  - (b) in such form as may be prescribed by the regulations; and
  - (c) certified as correct by a surveyor; and
  - (d) accompanied by a statutory declaration made by an officer of the holder of the mining easement, which declaration states that the as-built drawings are accurate and complete.

**124. 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 which may be approved by the Minister.

**125. Rights conferred by mining easement.**

- (1) A mining easement authorizes the holder, in accordance with the *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 that land and undertake such works as may be necessary or expedient; and
  - (c) take and divert water situated on or flowing through such land and use it in accordance with the *Environment Act 2000*; and
  - (d) do all other things necessary or expedient,
 to achieve the purposes for which the mining easement was granted.

- (2) Subject to this Act, 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.

**126. Application for a mining easement.**

An application for the grant of a mining easement:

- (a) shall be on the prescribed form and shall have attached either:
  - (i) a schedule on 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 165; and
- (b) shall 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 164; and
- (c) shall be lodged in triplicate with the prescribed application fee; and
- (d) shall be lodged in accordance with the procedures specified in Part VII Division 2.

**127. Consideration of application for mining easement.**

- (1) In considering an application for a mining easement, including whether:
- (a) the applicant meets the criteria in Subsection 121(1); and
  - (b) such mining easement is reasonably expected to be economically viable,
- the Council shall have regard to:
- (c) any submissions made by the applicant; and
  - (d) any reports provided to the Council under Section 172; and
  - (e) the report provided by the Warden to the Council under Section 177; and
  - (f) any report submitted by a Provincial Government advised of the application under Subsection 174(a); and
  - (g) any written submissions made by any person to the Council.
- (2) Prior to commencing its consideration of an application, the Council shall provide to the applicant for the mining easement a copy of each report and submission referred to in Subsection (1)(d) to (g) and provide the applicant with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the last of the reports or submissions), to lodge written responses with the Council in relation to those reports and submissions and, in considering the application, the Council shall have regard to any such responses.
- (3) Upon the earlier of the expiration of the period specified by the Council under Subsection (2) and receipt of notice from the applicant that it has lodged all responses it wishes to lodge under Subsection (2), the Council shall proceed to consider the application.
- (4) Upon consideration of an application, the Council shall issue to the applicant a draft determination setting out:
- (a) whether or not the Council has formed the view the applicant meets the criteria in Subsection 121(1) (which report shall set out, in respect of each criterion, the basis

- upon which the Council has formed the view whether or not the applicant meets that criterion); and
- (b) where the Council has formed the view that the applicant does not meet a criterion in Subsection 121(1), whether the Council has formed the view that the mining easement is reasonably expected to be economically viable and the basis upon which the Council has formed or not formed that view; and
  - (c) where the Council considers that:
    - (i) the applicant would satisfy the criteria in Subsection 121(1) if one or more changes were made to the applicant's application; and/or
    - (ii) the mining easement would be reasonably expected to be economically viable if one or more changes were made to the applicant's application,
 the nature of those changes.
- (5) The Council shall provide an applicant for a mining easement with an opportunity:
- (a) within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the Council's draft determination) to:
    - (i) lodge submissions in response to the Council's draft determination; and
    - (ii) modify the applicant's application to take into account any comments of the Council pursuant to Subsection 127(4)(c); and
  - (b) if requested by the applicant, to appear personally before the Council to make oral submissions to the Council before the expiration of the period allowed to the applicant to make written submissions.
- (6) Upon the expiration of the period allowed to the applicant under Subsection (5), the Council shall proceed to issue a final determination in response to the application, which final determination shall set out:
- (a) whether or not the Council has formed the view the applicant meets the criteria in Subsection 121(1) (which final determination shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion); and
  - (b) where the Council has formed the view that the applicant does not meet a criterion in Subsection 121(1), whether the Council has formed the view that the mining easement is reasonably expected to be economically viable and the basis upon which the Council has formed or not formed that view.
- (7) Where an application for a mining easement is made by the holder of a mining lease or lease for mining purposes and, in considering the application made by the holder for the mining lease or lease for mining purposes, the Council has made determinations relevant to the criteria in Subsection 121(1) then in considering an application under this Section 127, the Council shall rely on those previous determinations unless:
- (a) the Council has a reasonable basis to believe that, due to a change in circumstances, it is not appropriate to rely on one or more previous determinations, for example because there has been a decline in the technical and financial resources of the applicant (in which case the Council shall not rely on the previous determinations which the Council considers it is not appropriate to rely upon); or
  - (b) the Council (acting reasonably) considers that due to the length of time from the Council's assessment of whether the applicant satisfies the criteria for the grant of a mining lease or lease for mining purposes it is no longer appropriate to rely on the Council's determinations made in the course of undertaking that assessment.

**128. Variation of approved proposals.**

The approved proposals for a mining easement may be varied in accordance with Section 157.

**129. Extension of term of mining easement.**

- (1) Subject to Subsection (2), the holder of a mining easement may, by notice to the Minister and the Council, served not later than 2 months and not earlier than 3 months prior to the expiry of the current term of the mining easement, extend that term for a further 40 years, provided that the holder still requires that mining easement in connection with mining or treatment or ancillary operations or for the purpose of implementing mine closure obligations or environmental closure obligations.
- (2) With the consent of the Managing Director, the holder of a mining easement may serve a notice under Subsection (1) less than two months prior to the expiry of the current term of the mining easement, provided that a notice may not be served under Subsection (1) after the expiry of the relevant mining easement.
- (3) The Managing Director may, by notice to the holder of a mining easement served not later than 1 month prior to the expiry of the current term of that mining easement, extend the term of that mining easement for a further term of 40 years.
- (4) Nothing in Subsection (3) affects or prejudices any right the holder of a mining easement has under this Act to surrender all or part of a mining easement.
- (5) The regulations may prescribe the format in which notices under Subsection (1) shall be served.
- (6) A notice served by the holder of a mining easement under Subsection (1) shall attach evidence that the holder of the mining easement requires it to be renewed for a purpose referred to in Subsection (1).
- (7) More than one notice renewing the term of a mining easement may be served under this Section 129.

**130. Expansion of area of a mining easement.**

The area of a mining easement may be expanded in accordance with Sections 158 to 163.

**131. Reporting requirements for a mining easement.**

The holder of a mining easement shall lodge with the Managing Director such reports as the Managing Director may from time to time reasonably require.

**Subdivision B.—Application over Existing Tenement.****132. Mining easement may be granted over land the subject of an existing tenement and vice versa.**

- (1) Subject to this Subdivision:
  - (a) a mining easement may be granted over the land or part of the land over which there is an existing tenement; and
  - (b) 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 that land
- (2) Where an application is made under Section 158 to expand the area of a tenement and all or part of the expanded area is in respect of land over which there is an existing mining easement, then this Subdivision B applies to that expansion as though:
  - (a) references in this Subdivision B to the grant of a tenement were to the expansion of the area of that tenement by the expanded area; and

- (b) references in this Subdivision B to the applicant for a tenement were to the holder of the tenement who has made an application under Section 158.
- (3) Where an application is made under Section 158 to expand the area of a mining easement and all or part of the expanded area is in respect of land over which there is an existing tenement, then this Subdivision B applies to that expansion as though:
  - (a) references in this Subdivision B to the grant of a mining easement were to the expansion of the area of that mining easement by the expanded area; and
  - (b) references in this Subdivision B to the applicant for a mining easement were to the holder of the mining easement who has made an application under Section 158.

**133. Excision of land from tenement.**

- (1) Where a mining easement is granted over land over which there is an existing tenement then, to the extent practicable, that mining easement shall be granted such that it can properly be used and enjoyed without the need to excise from the land over which the existing tenement was granted the land over which the mining easement is granted.
- (2) Where a mining easement is granted over land over which there is an existing tenement but, to enable that mining easement to properly be used and enjoyed it is necessary to excise from the existing tenement certain of the land over which that existing tenement is granted, then the grant of that mining easement shall excise from that existing tenement that land to such depth as is reasonably necessary for the proper use and enjoyment of the mining easement.

**134. Effect of mining easement on existing tenement.**

- (1) An existing tenement over which a mining easement is granted shall continue in full force and effect subject only to any excision made under Section 133.
- (2) The holder of an existing tenement over which a mining easement is granted (whether or not there has been an excision under Section 133) may enter on and occupy the surface of the land (comprised within that existing tenement) over which there is a mining easement for the purpose of exercising the rights conferred by that tenement, but shall not unreasonably interfere with the operations of the holder of the mining easement.
- (3) On the surrender, cancellation or expiry of a mining easement granted over the area of an existing tenement, the mining easement shall cease to have effect and:
  - (a) any land excised from the existing tenement under Section 133 shall revert to that tenement; or
  - (b) where 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 shall be amalgamated with the land the subject of that other tenement.

**135. Registrar to notify holder of tenement of application for mining easement in certain circumstances and vice versa.**

- (1) Where an application for the grant of a mining easement is registered in respect of land which is the subject of another tenement, the Registrar shall, where the applicant is not the holder of that tenement, immediately notify the holder of the other tenement of the application and supply him or her with a copy of the application and the proposals as provided for in Section 174.
- (2) Where an application for the grant of a tenement is registered in respect of land that is the subject of a mining easement, the Registrar shall, where the applicant is not the holder of that mining easement, immediately notify the holder of the mining easement of the application and supply him or her with a copy of the application and the proposals or programme as provided for in Section 174.



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

- (1) The holder of a tenement may within 21 days of receiving notification under Subsection 135(1) of an application, lodge a written objection to the application on the prescribed form with the Registrar (which objection may only be on the basis that the grant of the mining easement over the land in respect of which the tenement is held will cause material detriment to the operations of the holder of that tenement).
- (2) For the purposes of this Section 136, material detriment to the operations of the holder of a tenement is interference with those operations which prevents that holder:
  - (a) using the tenement in accordance with the purposes for which it was granted; and/or
  - (b) conducting operations pursuant to the tenement in substantially the same manner as the operations were conducted prior to the grant of the mining easement,
 either:
  - (c) absolutely; or
  - (d) without incurring additional cost (other than costs which are trivial or inconsequential); or
  - (e) without taking steps which materially threaten the health and safety of any person or property, materially increase the risk of causing environmental harm or materially hinder the ability of the holder to comply with this Act.
- (3) For the purposes of determining the additional costs which will be incurred by the holder of a tenement, those costs do not include any costs which the applicant for the mining easement undertakes, by notice to the Council and the holder in the prescribed form, to reimburse the holder (provided that the applicant has the financial resources and creditworthiness to ensure the reimbursement of those costs).
- (4) Where an applicant for a mining easement provides an undertaking referred to in Subsection (3), then the holder of the tenement has a legally enforceable right to enforce that undertaking.
- (5) On receipt of any objection under Subsection (1), the Registrar shall forward it to the Council and to the applicant for the mining easement.
- (6) Within 21 days of receipt of a copy of an objection under Subsection (5), the applicant for the mining easement may lodge a response to that objection with the Council.
- (7) Despite Section 121, the Minister may, where an objection has been lodged by the holder of a tenement under Subsection (1), refuse or defer an application for the grant of a mining easement where operations on the land the subject of the application will cause material detriment to the operations of the holder of that tenement.
- (8) In determining whether to refuse or defer an application for the grant of a mining easement over an area of land the subject of another tenement, the Minister shall have regard to the recommendation of the Council.
- (9) Where an objection has been lodged by the holder of a tenement to the grant of a mining easement over an area of land subject to that tenement, then the Council shall, subsequent to expiry of the 21 day period referred to in Subsection (6) (or, if earlier, receipt of notice from the applicant for the mining easement that it has lodged all responses it wishes to lodge under Subsection (6)), issue a draft determination setting out whether:
  - (a) the Council considers that the grant of the mining easement will or may cause material detriment to the operations of the holder of the tenement; and
  - (b) whether, having regard to the extent of that material detriment, the mining easement should be granted over the proposed area of the other tenement; and
  - (c) where the Council considers that:

- (i) the grant of the mining easement will or may cause material detriment to the operations of the holder of the other tenement; but
  - (ii) the mining easement should, having regard to the matters in Subsection (10), still be granted over a part of the land the subject of the other tenement, such conditions which the Council considers should be imposed under the mining easement to minimise the extent of the detriment caused to the operations under the other tenement; and
  - (d) where, in accordance with Subsection (11), the Council considers an application should be refused because the activities proposed to be conducted pursuant to the mining easement are able to be undertaken in respect of an alternative area:
    - (i) the basis upon which the Council has formed that view; and
    - (ii) the alternative area or alternative areas identified by the Council,
 and which draft determination shall set out the reasons for the Council's determination, including the reasons justifying any conditions proposed to be imposed by the Council under Subsection (9)(c).
- (10) For the purposes of determining whether, despite the fact that the grant of a mining easement will or may cause material detriment to the activities under another tenement, that mining easement should nevertheless be granted over an area of land the subject of that tenement, regard shall be had to the following matters:
- (a) where the other tenement is an exploration licence:
    - (i) the expenditure undertaken by the holder of the exploration licence in relation to the land in respect of which the application for the mining easement has been made and in relation to land in the vicinity of that land; and
    - (ii) the likelihood that any minerals, exploitable on a commercial scale, are contained within the area of land referred to in paragraph (i); and
    - (iii) the remaining term of the exploration licence (including any periods for which the holder of the exploration licence is entitled to a renewal of the exploration licence under Section 49 or is otherwise likely to have the exploration licence renewed under Section 50 or Section 51); and
    - (iv) the holder of the exploration licence's history of compliance with this Act; and
    - (v) the interest of the State in ensuring the development in an environmentally sustainable manner of all available mineral resources of the State; and
  - (b) in the case of a mining lease, alluvial mining lease or lease for mining purposes:
    - (i) the remaining term of the tenement (including any periods for which that tenement is likely to be renewed); and
    - (ii) the remaining commercially exploitable production reasonably expected to be undertaken pursuant to the tenement; and
    - (iii) the interest of the State in ensuring the development in an environmentally sustainable manner of all available mineral resources of the State.
- (11) Where the Council determines that:
- (a) the activities proposed to be conducted under a mining easement may be conducted in an alternative area ("**alternative area**") to that proposed by the applicant ("**proposed area**") such that they will not cause material detriment to the activities conducted pursuant to a tenement (or will cause less material detriment); and

- (b) the carrying on of those activities in that alternative area will not:
  - (i) be materially more expensive than the carrying on of those activities in the proposed area; or
  - (ii) have a materially greater impact upon affected communities than the carrying on of those activities in the proposed area; or
  - (iii) have a materially greater impact upon the environment than the carrying on of those activities in the proposed area,

then the Council shall recommend to the Minister that the application for the mining easement be refused unless that application is amended to apply in respect of the alternative area (or some other area).

- (12) The Council shall provide the holder of each tenement the subject of the land to which the application for the mining easement relates, and the applicant for the mining easement, with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the later of the receipt by the holder of each tenement and the applicant of the Council's draft determination), to lodge submissions in response to the Council's draft determination.
- (13) If requested by:
  - (a) the applicant for a mining easement; and/or
  - (b) the holder of a tenement who has lodged an objection under Subsection (1),

the Council shall permit each such person who has made a request to appear personally before the Council, before the expiration of the period allowed for the making of written submissions, to make oral submissions to the Council in response to the Council's draft determination and shall allow any other person referred to in Subsection (12) to be present during the making of those submissions and to respond to those submissions at the same hearing before the Council.

- (14) Upon the earlier of:
  - (a) the date of receipt of written submissions from the holder of each tenement and the applicant as contemplated in Subsection (12); and
  - (b) the expiration of the period allowed to the holder of each such tenement and the applicant for lodgment of written submissions in response to a draft determination; and
  - (c) the receipt by the Council of notice from the holder of each such tenement and the applicant that they do not intend to lodge written submissions in response to the draft determination,

the Council shall proceed to issue a final determination, which final determination shall be in writing and set out the reasons for that determination (including the justification for any conditions which the Council recommends be imposed under Subsection (9)(c)).

- (15) Subsections (7) to (14) do not apply to an application for a mining easement if:
  - (a) no objection to the grant of that mining easement is lodged by the holder of a tenement under Subsection (1); or
  - (b) the holder of each tenement, within the area of whose tenement the application relates, informs the Council that it does not object to the grant of that mining easement.
- (16) Where all objections lodged by holders of tenements to an application for a mining easement are withdrawn, then Subsections (7) to (14) shall cease to apply to that application.

**137. Holder of a mining easement may object to application for another tenement.**

- (1) The holder of a mining easement may, within 21 days of receiving notification under Subsection 135(2) of an application, lodge a written objection to the application on the prescribed form with the Registrar (which objection may only be on the basis that the grant of the tenement over the area of the mining easement will cause unreasonable interference to the operations conducted pursuant to the mining easement).
- (2) For the purposes of this Section 137, unreasonable interference with the operations conducted pursuant to a mining easement is interference which prevents the holder of that mining easement:
  - (a) using the mining easement in accordance with the purposes for which it was granted; and/or
  - (b) conducting operations pursuant to the mining easement in substantially the same manner as the operations were conducted prior to the grant of the other tenement, either:
    - (c) absolutely; or
    - (d) without incurring additional cost (other than costs which are trivial or inconsequential); or
    - (e) without taking steps which materially threaten the health or safety of any person or property, materially increase the risk of causing environmental harm or materially hinder the ability of the holder of the mining easement to comply with this Act.
- (3) For the purposes of determining the additional costs which will be incurred by the holder of a mining easement, those costs do not include any costs which the applicant for the tenement undertakes, by notice to the Council and the holder in the prescribed form, to reimburse the holder (provided that the applicant has the financial resources and creditworthiness to ensure that it can reimburse those costs).
- (4) Where an applicant for a tenement provides an undertaking referred to in Subsection (3), then the holder of the mining easement has a legally enforceable right to enforce that undertaking.
- (5) On receipt of an objection under Subsection (1), the Registrar shall forward it to the Council and to the applicant for the tenement.
- (6) Within 21 days of receipt of a copy of an objection under Subsection (5), the applicant for the tenement may lodge a response to that objection with the Council.
- (7) Where an objection has been lodged under Subsection (1) by the holder of a mining easement to the grant of a tenement, then the Council shall, subsequent to the expiry of the 21 day period referred to in Subsection (6) or, if earlier, receipt of notice from the applicant for the tenement it has lodged all responses it wishes to lodge under Subsection (6), issue a draft determination setting out whether:
  - (a) the Council considers that the grant of the tenement over that area will or may cause unreasonable interference to the operations of the holder of the mining easement; and
  - (b) where the Council considers that the grant of the tenement will or may cause such unreasonable interference, whether conditions may be imposed upon the holder of the tenement so as to avoid such unreasonable interference and, if so, those conditions,
 and which draft determination shall set out the reasons for the Council's determination, including the reasons justifying the conditions proposed to be imposed by the Council under Subsection (7)(b).
- (8) The Council shall provide the holder of the mining easement, and the applicant for the tenement, with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the later of receipt by the holder and the applicant of the

Council's draft determination), to lodge submissions in response to the Council's draft determination.

- (9) If requested by:
- (a) the applicant for the tenement; and/or
  - (b) the holder of a mining easement who has lodged an objection under Subsection (1),
- the Council shall permit each such person who has made a request to appear personally before the Council, before the expiration of the period allowed for the making of written submissions, to make oral submissions to the Council in response to the Council's draft determination and shall allow any other person referred to in Subsection (8) to be present during the making of those submissions and to respond to those submissions at the same hearing before the Council.
- (10) Upon the earlier of:
- (a) the date of receipt of written submissions from the holder and the applicant as contemplated in Subsection (8); and
  - (b) the expiration of the period allowed to the holder and the applicant for lodgment of written submissions in response to a draft determination; and
  - (c) the receipt by the Council of notice from each of the holder and the applicant that they do not intend to lodge written submissions in response to the draft determination,
- the Council shall proceed to issue a final determination, which final determination shall be in writing and set out the reasons for that determination (including the justification for any conditions which the Council recommends be imposed under Subsection (7)(b)).
- (11) Where the Council determines that a tenement:
- (a) may not be granted over an area the subject of a mining easement without causing unreasonable interference to the operations conducted pursuant to that mining easement then, unless otherwise agreed by the holder of that mining easement:
    - (i) where the tenement is an exploration licence, the holder of the exploration licence may not, unless otherwise agreed by the holder of the mining easement, conduct operations pursuant to that exploration licence (or pursuant to any mining lease into which that exploration licence is converted) within that area of that mining easement until such time as that mining easement expires, is cancelled or surrendered; and
    - (ii) where the tenement is a mining lease, lease for mining purposes or alluvial mining lease, the holder of the tenement may not, unless otherwise agreed by the holder of the mining easement, conduct operations pursuant to that tenement within that area of the mining easement until such time as that mining easement expires, is cancelled or surrendered; and
  - (b) may only be granted over all or part of the area of a mining easement without causing unreasonable interference to the operations conducted pursuant to that mining easement if conditions are imposed upon the conduct of operations pursuant to that tenement then, unless otherwise agreed by the holder of the mining easement, the holder of the tenement may only conduct operations pursuant to that tenement (and where the tenement is an exploration licence, pursuant to any mining lease into which that exploration licence is converted) within that area of the mining easement in compliance with those conditions until such time as that mining easement expires, is cancelled or surrendered.
- (12) Subsections (5) to (11) do not apply to an application for a tenement if:

- (a) no objection to the grant of that tenement is lodged by the holder of a mining easement within the area of whose mining easement that application relates; or
  - (b) the holder of each mining easement within the area of whose easement the application relates informs the Council that it does not object to the grant of that tenement.
- (13) Where all objections lodged by holders of mining easements to an application for a tenement are withdrawn, then Subsections (5) to (11) shall cease to apply to that application.

***Division 6.—Prospecting Permits.***

**138. Grant of prospecting permits.**

Upon application in the prescribed form by a natural person of good repute, and payment of the prescribed fee, the Managing Director shall grant to that person a prospecting permit.

**139. Rights conferred by prospecting permit.**

- (1) Subject to Subsection (2), a prospecting permit entitles its holder to enter land, which is not subject to a tenement, for the purposes of prospecting for minerals and taking mineral samples by hand.
- (2) The holder of a prospecting permit may not enter land owned or lawfully occupied by a person without the consent of that person.
- (3) Part VII of this Act does not apply to activities conducted pursuant to a prospecting permit.
- (4) A prospecting permit does not authorize the holder to, and the holder of a prospecting permit may not (unless authorised by some other permit, licence, tenement or other law):
  - (a) undertake exploration or mining operations that involve bulk sampling or drilling; or
  - (b) disturb land by means of mechanized machinery or explosives; or
  - (c) prospect in respect of offshore areas.

**140. Term of prospecting permit.**

- (1) A prospecting permit is granted for an initial term of 2 years.
- (2) A prospecting permit shall be renewed, for a further period of 2 years, upon the expiry of each term of that prospecting permit if:
  - (a) the holder of the prospecting permit lodges a renewal application in the prescribed form and pays the prescribed fee; and
  - (b) the holder has, during the term of the prospecting permit which is to expire, complied with the requirements of this Act (other than non-compliance which is trivial or immaterial or caused by events or circumstances beyond the reasonable control of the permit holder).

***Division 7.—Infrastructure Corridor Licences.***

**141. Infrastructure corridor licences.**

- (1) The Minister may, upon the application by the holder of an exploration licence or a mining lease, grant to that person an infrastructure corridor licence.
- (2) An infrastructure corridor licence may only be granted in respect of land which is not subject to a tenement, other than an alluvial mining lease.
- (3) The purpose of an infrastructure corridor licence is to reserve land for a period of 5 years for the purposes of enabling the holder of the infrastructure corridor licence to:
  - (a) investigate and determine whether that land is suitable for the installation of infrastructure to be operated pursuant to, or in connection with, a mining lease, lease

for mining purposes or mining easement (whether held presently by the holder or which the holder proposes to apply for in the future); and

- (b) raise the finances, and enter into other arrangements, necessary to use that infrastructure corridor licence for the operation of such infrastructure.
- (4) In determining whether to grant a person an infrastructure corridor licence the Minister shall have regard to the recommendation of the Council.
- (5) In determining whether to grant, or recommend the grant of, an infrastructure corridor licence, regard is to be had to the following factors:
  - (a) whether the land in respect of which the infrastructure corridor licence is proposed to be granted may be required for an alternative purpose, which purpose is of benefit to the State; and
  - (b) the likelihood that the applicant for the infrastructure corridor licence will, if granted a tenement in respect of that land (other than an infrastructure corridor licence), be able to develop it; and
  - (c) whether any breach notices have been issued against the applicant for the infrastructure corridor licence which relate to a breach which has not been remedied by the applicant,

and the Council is to assess an application on the basis that it should generally grant an infrastructure corridor licence unless the Council considers that grant will prevent the land in respect of which the infrastructure corridor licence is granted being used for some other purpose which is of more benefit to the State.

#### **142. Application for infrastructure corridor licence.**

An application for the grant of an infrastructure corridor licence shall be:

- (a) on the prescribed form and have attached:
  - (i) a schedule as prescribed describing the boundary of the required infrastructure corridor 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 an outline of the reasons why the applicant seeks the infrastructure corridor licence (including the type of infrastructure which the applicant proposes to construct within the area of the infrastructure corridor licence if the applicant is subsequently granted a tenement (other than an infrastructure corridor licence) in respect of the land to which that infrastructure corridor licence relates); and
- (c) accompanied by a feasibility study of the feasibility of establishing mining operations pursuant to a mining lease, lease for mining purposes or mining easement on the area of land the subject of the application; and
- (d) lodged in triplicate with the prescribed application fee; and
- (e) lodged in accordance with the procedures specified in Part VII Division 2.

#### **143. Consideration of application for infrastructure corridor licence.**

- (1) In considering an application for an infrastructure corridor licence the Council shall have regard to:
  - (a) any submissions made by the applicant; and
  - (b) any reports provided to the Council under Section 172; and
  - (c) any written submissions made by any person to the Council.

- (2) Prior to commencing its consideration of an application, the Council shall provide to the applicant for the infrastructure corridor licence a copy of each report and submission referred to in Subsection (1)(b) and (c) and provide the applicant with an opportunity within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the last of the reports or submissions), to lodge written responses with the Council in relation to those reports and submissions and, in considering the application, the Council shall have regard to any such responses.
- (3) Upon the earlier of the expiration of the period specified by the Council under Subsection (2) and receipt of notice from the applicant that it has lodged all responses it wishes to lodge under Subsection (2), the Council shall proceed to consider the application.
- (4) Upon consideration of an application, the Council shall issue to the applicant a draft determination, setting out whether the Council proposes to recommend the grant of that infrastructure corridor licence and the basis for the Council's proposed recommendation.
- (5) The Council shall provide an applicant for an infrastructure corridor licence with an opportunity:
  - (a) within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the Council's draft determination), to lodge submissions in response to the Council's draft determination; and
  - (b) if requested by the applicant, to appear personally before the Council to make oral submissions to the Council.
- (6) Upon the expiration of the period allowed to the applicant under Subsection (5), the Council shall proceed to issue a final determination in response to the application, which final determination shall set out whether the Council recommends the grant of that infrastructure corridor licence and the basis for the Council's determination.

**144. Area of infrastructure corridor licence.**

The area of land in respect of which an infrastructure corridor licence may be granted shall be:

- (a) no more than 30 sub-blocks; and
- (b) one area comprising:
  - (i) one sub-block; or
  - (ii) more than one sub-block, each of which shall share a common side with at least one other such sub-block.

**145. Term of infrastructure corridor licence.**

An infrastructure corridor licence has a term of 5 years, which term is not capable of renewal.

**146. Cessation of Infrastructure Corridor Licence**

An infrastructure corridor licence shall cease to apply in respect of an area of land if:

- (a) a tenement is granted to the holder of that infrastructure corridor licence in respect of that area of land; or
- (b) a tenement is, with the consent of the holder of the infrastructure corridor licence, granted to another person in respect of that area of land.

**147. Conditions of each infrastructure corridor licence.**

Each infrastructure corridor licence is subject to the following conditions:

- (a) its holder shall at all times act in accordance with good industry practice when accessing the land the subject of that licence; and



- (b) its holder shall only use that land for the purposes referred to in Section 141(3) and for no other purposes; and
- (c) to the extent practicable having regard to the intended purpose of the infrastructure corridor licence, its holder shall, in exercising its rights under that licence, do so in a manner which minimises the impact on the environment and the impact upon affected communities; and
- (d) its holder shall not take samples of rock, earth, soil or other minerals from land the subject of that infrastructure corridor licence unless:
  - (i) agreed with the owner of that land; or
  - (ii) doing so will not cause economic loss or damage to the owner of that land or prejudice the owner's ability to use that land in accordance with its current usage and for such other purposes as it is reasonably foreseeable the owner will use that land; and
- (e) its holder shall comply with the requirements of this Act; and
- (f) such conditions as are prescribed by the regulations.

**148. Reporting.**

The holder of an infrastructure corridor licence shall lodge with the Managing Director, in respect of every period of 1 year calculated from the date of grant of the infrastructure corridor licence, a report in duplicate summarizing the activities, if any, undertaken by the holder of the infrastructure corridor licence in respect of that infrastructure corridor licence during the relevant year.

**PART VI.—MINE CLOSURE.**

**149. Requirement for a mine closure plan.**

The holder of every mining lease granted after the commencement of this Section 149 shall, except where the holder is exempted by the regulations, develop and implement a mine closure plan for the mining project undertaken pursuant to that mining lease and its associated tenements.

**150. Development of a mine closure plan.**

During the term of a mining lease for which a mine closure plan is required to be developed and implemented, the holder of that mining lease shall revise and develop that mine closure plan in accordance with the requirements of the regulations.

**151. Socio-economic development plan.**

- (1) The holder of a mining lease who is required to prepare a mine closure plan shall, except where the holder is exempted by the regulations, develop a socio-economic development plan in accordance with the regulations.
- (2) A mining project shall be undertaken, and a mine closure plan shall be developed and implemented, having regard to the provisions of the socio-economic development plan which relates to that mining project.

**152. Finalisation of a mine closure plan.**

- (1) For each mining lease for which a mine closure plan is required to be developed and implemented, a finalised mine closure plan shall be prepared by the holder by the time, and in accordance with the procedures, set out in the regulations.

- (2) A mine closure plan will not be treated as a finalised mine closure plan until such time as it has been approved in accordance with the regulations.

**153. Security.**

- (1) The holder of a mining lease for which a mine closure plan is required to be developed and implemented shall, unless the holder is exempted by the regulations, lodge security in accordance with the regulations to support the performance of the mine closure obligations of the holder under this Act.
- (2) The holder of a mining lease is not permitted to commence mining and ancillary operations pursuant to that mining lease or its associated tenements until such time as any security required to be lodged pursuant to this Act has been so lodged in accordance with the requirements of the regulations.
- (3) Where an associated tenement of a mining lease is held by a person other than the holder of that mining lease then that person is not permitted to commence mining and ancillary operations pursuant to that associated tenement until such time as any security required to be lodged pursuant to this Act has been so lodged in accordance with the requirements of the regulations.
- (4) The holder of a mining lease is not required under this Act to lodge security for the performance of its environmental closure obligations and the security required in respect of such obligations shall be determined in accordance with the *Environment Act 2000*.

**154. Mine closure trust fund.**

- (1) The holder of a mining lease for which a mine closure plan is required to be developed and implemented shall establish and administer a mine closure trust fund for that mining lease in accordance with the regulations.
- (2) The amount of security which the holder of a mining lease is required to provide under Section 153 shall be reduced, in accordance with the procedures determined in the regulations, to the extent that funds are deposited in a mine closure trust fund for that mining lease for the purpose of providing security for the performance of the mine closure obligations of the holder.
- (3) Except as provided in the regulations, a liquidator, receiver or other type of insolvency official may not, without the consent of:
- (a) the Council; and
  - (b) the Minister; and
  - (c) the Director of Environment,

use the funds contained in a mine closure trust fund for a purpose other than implementing mine closure obligations or environmental closure obligations.

**155. Use of security and mine closure trust fund by State.**

- (1) Where a prescribed event occurs in respect of the holder of a mining lease, then the State may:
- (a) drawn down up any security provided by the holder under Section 153; or

- (b) seize and drawn down upon the proceeds of the mine closure trust fund for that mining lease,

for the purposes of implementing the mine closure obligations and/or environmental closure obligations of the holder.

- (2) For the purposes of Subsection (1), a "**prescribed event**" is:
  - (a) the cancellation of the mining lease; or
  - (b) the appointment of a liquidator, receiver or similar insolvency official to the holder of the mining lease or to a holding company of the holder; or
  - (c) a failure by the holder of a mining lease to implement the holder's mine closure obligations or environmental closure obligations, which failure is not remedied within 90 days of receipt of notice from the Managing Director or from the Director of Environment; or
  - (d) such other event as is prescribed.
- (3) Where security provided under Section 153 is drawn upon by the State or proceeds of a mine closure trust fund are seized and drawn down by the State, then:
  - (a) that security or those funds may only be used by the State for the purposes of implementing the mine closure obligations or environmental closure obligations of the holder of the relevant mining lease; and
  - (b) the State shall return to the holder of the mining lease any excess of the funds drawn down by the State (over the funds required to implement mine closure obligations and environmental closure obligations).
- (4) This Section 155 applies in respect of the remedial period for a mining lease in the same manner as it applies prior to the commencement of the remedial period for that mining lease.

## **156. Mining Closure Regulations.**

- (1) The regulations may make provision for:
  - (a) the imposition, regulation, monitoring and enforcement of mine closure obligations and all matters related and ancillary thereto; and
  - (b) the coordination of the administration of the mine closure obligations with environmental closure obligations; and
  - (c) ensuring that adequate funds are available to implement the mine closure obligations and that the State is not responsible for meeting the costs of performing those obligations; and
  - (d) giving effect to any other matter specified in this Part VI or any matter otherwise related or ancillary to any matter specified in this Part VI.
- (2) Without limiting the generality of Subsection (1), the regulations may in particular make provision for:
  - (a) specific categories of mining leases to be exempted from the requirement to comply with all or some of the mine closure obligations set out in the regulations; and

- (b) a requirement that a conceptual plan for the implementation of mine closure obligations be prepared by the applicant for a mining lease and lodged together with that applicant's proposals for the mining lease; and
- (c) a requirement that the holder of a mining lease:
  - (i) develops during the term of the mining lease the conceptual plan into a finalised mine closure plan which is approved by the Council; and
  - (ii) complies with the current version of the mine closure plan during the term of the mining lease; and
  - (iii) implements closure of the mining project in accordance with the approved mine closure plan;
- (d) the constitution and administration of a committee which is responsible for overseeing the development and implementation of the mine closure plan for a mining project;
- (e) the establishment and administration of funds designed to:
  - (i) assist in servicing the needs of the current and future members of the communities impacted by the undertaking of a mining project; and
  - (ii) provide for the operation, development and maintenance of public infrastructure and social services established in connection with a mining project; and
- (f) the accounting, auditing, reporting and monitoring requirements for mine closure trust funds and the funds referred to in paragraph (e) above; and
- (g) procedures for assessing the performance by the holder of a mining lease of its mine closure obligations and environmental closure obligations; and
- (h) the conditions relating to mine closure which shall be satisfied before a holder is entitled to surrender its mining lease and associated tenements; and
- (i) the obligations of the holder of a mining lease to remedy defects in the implementation of mine closure obligations and environmental closure obligations during the remedial period; and
- (j) an obligation for the holders of:
  - (i) mining leases which are exempted from the requirement to prepare and comply with a mine closure plan ("**exempted mining leases**"); and/or
  - (ii) alluvial mining leases,

to comply with any closure guidelines that may be published by the Authority from time to time; and
- (k) the imposition of a levy on the holders of alluvial mining leases and/or exempted mining leases to provide for a fund that may be drawn upon by the State in the event that a holder of an alluvial mining lease or exempted mining lease fails to comply with closure guidelines binding on it; and

- (1) dispute resolution procedures to apply to resolve disputes between the Council and the holder of a mining lease in relation to mine closure obligations.

## **PART VII.—PROVISIONS GENERALLY APPLICABLE TO TENEMENTS.**

### ***Division 1.—Variations and Expansions.***

#### **157. Variation of approved proposals for a tenement.**

- (1) This Section 157 applies to mining leases, mining easements, leases for mining purposes and alluvial mining leases.
- (2) The holder of a tenement may at any time apply to the Minister for a variation of the approved proposals for that tenement.
- (3) An application under Subsection (2) shall:
  - (a) be made in writing; and
  - (b) specify the basis on which the variation to the approved proposals is sought.
- (4) Approval of a variation to the approved proposals for a tenement shall not be unreasonably refused.
- (5) In determining whether to approve a variation to the approved proposals for a tenement, the Minister shall have regard to the recommendation of the Council.
- (6) In determining whether approval is to be given to a variation to the approved proposals for a tenement, regard is to be had to the following matters:
  - (a) whether the reason adduced for the variation requested is consistent with and justifies the variation sought; and
  - (b) whether the holder of the tenement has, or has access to, the technical and financial resources necessary to comply with the approved proposals (as varied in accordance with the application under Subsection (2)); and
  - (c) whether the holder of the tenement has complied with their existing approved proposals and the requirements of this Act and, where the holder of the tenement has not so complied, the reasons for the non-compliance; and
  - (d) the impact of the variation upon affected communities; and
  - (e) whether the variation is consistent with the efficient, effective and viable conduct of operations pursuant to the tenement in accordance with good industry practice; and
  - (f) that the approved proposals for a tenement shall be consistent with any mining development contract and memorandum of agreement that relate to that tenement.
- (7) A variation to the approved proposals for a tenement may be approved subject to such conditions as the Council, acting reasonably, considers are necessary to:
  - (a) protect affected communities; or
  - (b) ensure that mining and related operations are carried out pursuant to the tenement in an effective and efficient manner.
- (8) Upon consideration of a variation application lodged under Subsection (2), the Council shall issue a draft determination to the holder of the tenement, which draft determination shall:
  - (a) state whether the Council proposes to recommend approval of the application for a variation and set out the reasons for the Council's determination; and

- (b) set out any conditions the Council recommends be imposed as a condition of approving the variation and the justification, having regard to Subsection (7), for the imposition of those conditions.
- (9) The Council shall provide the holder of the tenement with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the holder of the tenement of the Council's draft determination), to lodge submissions in response to the Council's draft determination.
- (10) Upon the expiration of the period allowed to the holder under Subsection (9), the Council shall proceed to issue a final determination in response to the application to vary the approved proposals, which final determination shall set out the reasons for that determination (including the justification, having regard to Subsection (7), for any conditions to which the approval of the variation may be subject).
- (11) Subject to Subsection (12), upon the Minister determining to approve a variation to the approved proposals for a tenement the approved proposals for that tenement shall be so varied, subject to any conditions to which that approval is subject.
- (12) The holder of a tenement may, within 21 days of the making of a valid determination by the Minister to approve a variation to the approved proposals for that tenement subject to conditions, elect, by notice to the Council and the Minister, that the approved variation not take effect.

**158. Expansion of area of a tenement.**

- (1) The holder of a tenement which is a mining lease, mining easement or lease for mining purposes may, subject to this Section 158, at any time apply to the Minister for an increase in the area of that tenement and, if such an application is made the Minister, subject to the remaining provisions of this Act:
  - (a) shall grant the application if the criteria in Subsection (3) are satisfied; and
  - (b) may grant the application if, although the criteria in Subsection (3) are not satisfied, the tenement, as so expanded, is reasonably expected to be economically viable and the Minister considers the expansion is in the public interest.
- (2) In determining whether:
  - (a) the criteria in Subsection (3) are satisfied; and
  - (b) a tenement, as expanded, is reasonably expected to be economically viable,
 the Minister shall have regard to the recommendation of the Council.
- (3) The holder of a tenement is entitled to an expansion of the area of that tenement if:
  - (a) the holder has, or has access to, the technical and financial resources to undertake the operations authorised pursuant to the tenement (as expanded) in accordance with the approved proposals for the tenement and in compliance with the requirements of this Act; and
  - (b) the holder has submitted revisions to its approved proposals, to take into account the expansion of the area of the tenement, which:
    - (i) are an effective and efficient means for conducting operations pursuant to the tenement (as so expanded) in accordance with good industry practice; and
    - (ii) are appropriate having regard to the area of the tenement (as expanded); and
    - (iii) address in an effective, reasonable and appropriate manner the impact of the expanded tenement and the operations to be carried out pursuant to it, upon affected communities and the legitimate concerns of those affected communities; and

- (c) where there is a mine closure plan which relates to that tenement, the holder of the mining lease for which that mine closure plan was prepared has submitted an outline of the changes which will be required to that mine closure plan, which outline the Council considers is appropriate having regard to the impact of expanding the area of the tenement; and
  - (d) there will be no unacceptable ecological degradation or damage to the environment resulting from the operations pursuant to the expanded tenement which cannot be effectively managed, rehabilitated or compensated for; and
  - (e) no breach notice has been issued to the holder of the tenement which relates to a breach which has not been remedied by the holder.
- (4) Despite Subsections (1) to (3), in no circumstances may the area of a mining lease or lease for mining purposes be increased to in excess of 60 Km<sup>2</sup>.

**159. Procedure for application for expansion of the area of a tenement.**

An application under Section 158 shall:

- (a) be made in writing; and
- (b) be on the prescribed form and shall have attached:
  - (i) a schedule showing the existing area of the tenement; and
  - (ii) in respect of the area by which the tenement is proposed to be expanded ("**expanded area**"), either:
    - (A) a schedule on the prescribed form describing the corners of the boundary of the expanded area in latitude and longitude, and a sketch map showing the boundary of the expanded area and such other natural features as shall enable the expanded area to be correctly located; or
    - (B) a survey as required under Section 165; and
- (c) be accompanied by:
  - (i) a description of how the approved proposals for the tenement are proposed to be varied if the tenement is expanded to include the expanded area; and
  - (ii) where applicable, the outline referred to in Subsection 158(3)(c); and
  - (iii) a statutory declaration that the area of land over which the application is made has been marked out in accordance with Section 164; and
- (d) be lodged in triplicate with the prescribed application fee; and
- (e) be lodged in accordance with the procedures specified in Part VII Division 2.

**160. Consideration of application for expansion of area of a tenement.**

- (1) In considering an application for the expansion of the area of a tenement, including whether:
- (a) the criteria in Subsection 158(3) are satisfied; and
  - (b) the tenement, as so expanded, is reasonably expected to be economically viable, the Council shall have regard to:
    - (c) any submissions made by the applicant; and
    - (d) any reports provided to the Council under Section 172; and
    - (e) any report provided by the Warden to the Council under Section 177; and

- (f) any report submitted by a Provincial Government advised of the application under Subsection 174(a); and
  - (g) any written submissions made by any person to the Council.
- (2) Prior to commencing its consideration of an application, the Council shall provide to the applicant for the expansion of the area of the tenement a copy of each report and submission referred to in Subsection (1)(d) to (g) and provide the applicant with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the last of the reports or submissions), to lodge written responses with the Council in relation to those reports and submissions and, in considering the application, the Council shall have regard to any such responses.
- (3) Upon the earlier of the expiration of the period specified by the Council under Subsection (2) and receipt of notice from the applicant that it has lodged all responses it wishes to lodge under Subsection (2), the Council shall proceed to consider the application.
- (4) An application for the expansion of the area of a tenement may be approved subject to such conditions as the Council, acting reasonably, considers are necessary, having regard to:
- (a) the operations to be undertaken within the expanded area; and
  - (b) the potential impact of those operations upon affected communities; and
  - (c) the need to ensure that mining and related operations are conducted in an efficient and effective manner.
- (5) Upon consideration of an application, the Council shall issue to the applicant a draft determination, setting out:
- (a) whether or not the Council has formed the view the criteria in Subsection 158(3) are met (which report shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the applicant meets that criterion); and
  - (b) where the Council has formed the view that the applicant does not meet a criterion in Subsection 158(3), whether the Council has formed the view that the tenement, as so expanded, is reasonably expected to be economically viable and the basis upon which the Council has formed or not formed that view; and
  - (c) where the Council considers that:
    - (i) the application would satisfy the criteria in Subsection 158(3) if one or more changes were made to the application; and/or
    - (ii) the tenement, as so expanded, would be reasonably expected to be economically viable if one or more changes were made to the application, the nature of those changes; and
  - (d) set out any conditions the Council recommends be imposed as a condition of approving the application to expand the area of the tenement and the justification, having regard to Subsection (3), for the imposition of those conditions.
- (6) The Council shall provide the holder of the tenement with an opportunity:
- (a) within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the Council's draft determination) to:
    - (i) lodge submissions in response to the Council's draft determination; and
    - (ii) modify the application to take into account any comments of the Council pursuant to Subsection 160(5); and



- (b) if requested by the holder of the tenement, to appear personally before the Council to make oral submissions to the Council before the expiration of the period allowed to the applicant to make written submissions.
- (7) Upon the expiration of the period allowed to the holder of the tenement for the lodgment of written submissions in response to the draft determination, the Council shall proceed to issue a final determination in response to the application, which final determination shall set out:
- (a) whether or not the Council has formed the view the application meets each of the criteria in Subsection 158(3) (which final determination shall set out, in respect of each criterion, the basis upon which the Council has formed the view whether or not the application meets that criterion); and
  - (b) where the Council has formed the view that the application does not meet a criterion in Subsection 158(3), whether the Council has formed the view that the tenement, as so expanded, is reasonably expected to be economically viable and the basis upon which the Council has formed or not formed that view; and
  - (c) the justification, having regard to Subsection (4), for any conditions to which the approval of the application is subject.

**161. Amendment of memorandum of agreement.**

- (1) Where:
- (a) a memorandum of agreement has been entered into in connection with a mining lease; and
  - (b) an expanded area is added to the area of that mining lease; and
  - (c) in respect of that expanded area there are landholders who are not party to the memorandum of agreement ("**additional landholders**"),
- then the memorandum of agreement shall be amended so as to make the representatives of those additional landholders party to that memorandum of agreement.
- (2) Any proposed amendments to a memorandum of agreement pursuant to Subsection (1) shall be submitted to the National Executive Council for approval in accordance with Section 35.

**162. Entry into memorandum of agreement.**

- (1) Where:
- (a) in respect of a mining lease, the Council has determined under Section 32 to waive the requirement for the holder of the mining lease to enter into a memorandum of agreement; and
  - (b) an expanded area is added to the area of that mining lease; and
  - (c) in respect of that expanded area there are landholders,
- then the holder of that mining lease shall enter into a memorandum of agreement in respect of that mining lease (as increased by the expanded area) unless the holder of the mining lease makes a further application for the waiver of the requirement to enter into a memorandum of agreement in connection with that mining lease to the Council which waiver application is granted by the Council.
- (2) Section 32 applies to the making of any waiver application under Subsection (1) and to the determination of that application by the Council.

**163. Time of grant of expansion in area of a tenement.**

- (1) The Minister may determine to approve the expansion of the area of a tenement by an expanded area at any time after the Minister has received from the Council its final

determination in relation to the application to expand the area of the tenement by that expanded area.

- (2) Despite Subsection (1), where a memorandum of agreement is required to be entered into, or an existing memorandum of agreement is required to be amended, in connection with the expansion of the area of a mining lease, then, except as otherwise approved by the Minister and the Council, the expansion of the area of that mining lease shall not take effect until that memorandum of agreement has been entered into or amended.
- (3) The holder of a tenement may, within 21 days of the making of a valid determination by the Minister to approve an expansion to the area of that tenement subject to conditions, elect, by notice to the Council and the Minister, that the expansion to the area of the tenement not take effect.

***Division 2.—Application for the Grant and Extension of Term of a Tenement.***

**164. Marking out of a tenement.**

- (1) An applicant for the grant of a tenement (other than an exploration licence or infrastructure corridor licence) shall, before making his or her 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 Managing Director, comply substantially with the requirements of paragraphs (a) and (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 shall maintain the posts and markers or cleared lines established in accordance with Subsection (1).
- (3) The holder of a tenement shall maintain posts and markers or cleared lines established in accordance with Subsection (1) during the term of the tenement.
- (4) The Managing Director may, at any time, grant to a person not otherwise authorized under this Act the right on 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 164.
- (5) A person carrying out any work as required or authorized by this Section 164 shall not interfere unreasonably with the activities undertaken on the land over which the tenement is sought.

**165. Survey.**

- (1) Prior to the grant of a tenement (other than an exploration licence or infrastructure corridor licence) the boundary of the land the subject of an application shall be surveyed as provided for in Subsection (3).
- (2) The Managing Director may, at any time, grant to a person not otherwise authorized under this Act the right on the prescribed form to enter land for the purposes of surveying a tenement as required under this Section 165.
- (3) A survey of the land the subject of an application shall:
  - (a) be made by a surveyor or under the direction of a 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 on the prescribed form describing the corners of the boundary of the land in latitude and longitude.
- (4) A copy of the survey made under this Section 165 shall be lodged with the Registrar either:
- (a) at the time of lodgment of an application under this Division; or
  - (b) subject to Subsection (6), at any time thereafter.
- (5) Where a survey is lodged under Subsection (4) the Registrar shall immediately register the survey and:
- (a) where 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 National Gazette or a national newspaper; or
  - (b) where only part of the land is available:
    - (i) prepare a schedule of the land that is available for the tenement on the prescribed form in substitution for the schedule submitted with the survey; and
    - (ii) cause a copy of the revised schedule to be published in the National Gazette or a national newspaper; and
    - (iii) send a copy of the revised schedule to the applicant.
- (6) Where, at the time of lodgment of an application, a survey is not available, the application shall nevertheless be dealt with under this Division, and if the Minister is prepared to grant the tenement subject to the survey confirming the availability of a substantial portion of the land applied for, the Minister shall give to the applicant 90 days notice to lodge a survey which shall be dealt with by the Registrar under Subsection (5).
- (7) Where, in a case to which Subsection (6) applies, the applicant lodges a survey and the land is available for the purposes for which the application was made, the Minister shall grant the application.
- (8) Where the applicant fails to lodge a survey under this Section 165 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 shall be refused.
- (9) Where there is a dispute as to the location of a boundary of a tenement, the Registrar shall arrange for the disputed boundary to be surveyed and the costs shall be met by the party or parties claiming a location of the boundary different from that surveyed.
- (10) Where the Registrar considers that any party may default on the payment for a survey under Subsection (9), he or she may, prior to arranging the survey, require each party to lodge a bond sufficient to cover the cost of the survey.
- (11) A person carrying out a survey under this Section 165 shall not interfere unreasonably with the activities undertaken on the land the subject of the survey.

**166. Lodging of applications for grant, extension and expansion.**

- (1) An application for the grant of a tenement shall be lodged with the Registrar, at his or her office in the National Capital District, by the applicant in person, by his or her agent, by mail or electronically in accordance with the procedures prescribed by the regulations.
- (2) An application for an extension of the term of a tenement shall be lodged with the Registrar, at his or her office in the National Capital District, by the applicant in person, by his or her

agent, by mail or electronically in accordance with the procedures prescribed by the regulations.

- (3) An application for the expansion of the area of a tenement, under Section 158, shall be lodged with the Registrar, at his or her office in the National Capital District, by the applicant in person, by his or her agent, by mail or electronically in accordance with the procedures prescribed by the regulations.

**167. Time of lodgment of application for extension.**

An applicant, who lodges an application for an extension of the term of a tenement less than two months prior to the date of expiry of the tenement, shall pay a late fee equal and additional to the fee prescribed for the application.

**168. Priority of applications.**

- (1) Subject to this Section and to Section 169, where 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 Registrar has the right in priority over every other applicant to have his or her application considered and determined.
- (2) The regulations may prescribe a procedure for determining the priority of applications where two or more applications in respect of the same land or any part of the same land are lodged electronically.
- (3) Subject to Subsection (4), where the Registrar is satisfied that two or more applicants for the grant of a tenement over the same land or any part thereof were present in his or her office at the same time for the purpose of lodging applications for that tenement, then notwithstanding the order in which he or she receives the applications, priority shall be determined by ballot conducted by the Registrar in the presence of the applicants.
- (4) The procedure specified in Subsection (3) is only applicable in respect of applications which meet the requirements of Section 169.
- (5) The applicant not accorded priority under a ballot under Subsection (3), or where there is more than one 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) where 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) Where applications to which Subsection (1) applies are made by persons associated with each other, only one such application may be submitted for ballot under Subsection (3) and where, on request by the Registrar, those persons do not select one application, the Registrar shall select the application which he or she first receives.
- (6) Where, subsequent to a ballot under Subsection (3), the Registrar ascertains that the successful applicant was an associated person of a person whose application was also considered in the ballot, the Registrar shall:
- (a) refuse that application; or
  - (b) where a tenement has already been granted, cancel the grant.
- (7) For the purposes of the application of this Section 168, an application under Section 158 for an expansion to the area of a tenement is to be regarded as an application for the grant of a tenement in respect of the land to which the expansion application relates.

**169. Preliminary examination of applications for grant, extension or expansion.**

The Registrar shall, at the time of the lodging of an application for the grant, or extension of the term, of a tenement or for the expansion of the area of a tenement under Section 158, verify to his or her reasonable satisfaction the following matters in the presence of the applicant or his or her agent:

- (a) in relation to an application for grant of a tenement or expansion of the area of a tenement, that 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 or for the expansion of the area of a tenement; and
- (b) that the application is on the prescribed form and has been completed by inclusion of all the required particulars; and
- (c) that the application form has been lodged in triplicate and signed by or on behalf of the applicant; and
- (d) that the documents required under this Act to accompany an application for the grant, expansion of the area or extension of the term, of that class of tenement in relation to which the application is made have been lodged; and
- (e) that the application fee and any late fee due under Section 167 have been included.

**170. Duties of Registrar where preliminary examination shows that requirements have not been met.**

Where, following a preliminary examination of the matters referred to in Section 169, the Registrar is not satisfied that all such matters have been verified, the Registrar shall:

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

**171. Duties of Registrar where preliminary examination shows that requirements have been met.**

Where, following a preliminary examination of the matters referred to in Section 169, the Registrar is satisfied that all such matters have been verified, the Registrar shall:

- (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 one copy of the application form back to the applicant; and
- (b) subject to Subsection 7(3) as soon as possible thereafter:
  - (i) give one copy of the application form each to such employees of the Authority as the Managing Director has determined will be responsible for the administration and technical assessment of applications; and
  - (ii) report in writing to the Council.

**172. Reports on application to Council.**

The employees to whom the Registrar has given a copy of the application under Subsection 171(b)(i) shall, as soon as practicable, give a report thereon to the Council.

**173. Time for objections and hearings.**

- (1) An application for the grant of a tenement (other than an infrastructure corridor licence) shall come before a Warden for hearing.
- (2) If required by the Council an application for renewal of an exploration licence shall come before a Warden for hearing.
- (3) Where an application is made under Section 158 for the expansion of the area of a tenement and, within the expanded area, there are landholders then, unless those landholders otherwise agree, a Warden's hearing shall be held in relation to that application.
- (4) Within seven days of the acceptance and registration of an application under Subsection 171(a) for which a Warden's hearing is required to be held, the Registrar shall:
  - (a) confer with the Chief Warden; and
  - (b) thereafter 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 seven 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) notify the applicant in writing of the dates and places.
- (5) Where applications are made by a person (or by a person and a related company of that person) for more than one tenement (which applications are made at the same time, or in sufficient proximity to each other that it is practicable to have one Warden's hearing in relation to the applications), which tenements are intended to be used in conjunction with the same mining project then where:
  - (a) the affected community for each such tenement is the same; or
  - (b) the affected communities for each such tenement are located in sufficient proximity to each other that it is practicable for representatives of such communities to attend one hearing,

then, unless the applicant (or applicants) for the tenement otherwise requests, one Warden's hearing shall be held in relation to the application for each such tenement.

**174. Notice of applications.**

The Registrar shall, as soon as practicable after his or her compliance with Subsection 173(4) where that Section applies to an application and, if the Section does not apply, then as soon as practicable after his or her compliance with Section 171:

- (a) send a copy of the application to the Provincial Government or Provincial Governments in whose province or provinces is situated the land in relation to which the application is made; and
- (b) in the case of an application for a mining lease, an alluvial mining lease, a lease for mining purposes or a mining easement, send a copy of the application to the holder of each tenement on which the application may encroach (other than a tenement already held by the applicant); and
- (c) in the case of an application for an exploration licence, send a copy of the application to the holder of any lease for mining purposes or mining easement on which the application may encroach; and
- (d) send or deliver to each District Office and Sub-District Office nearest to the area in relation to which the application is made, a copy of the application; and

- (e) advertise a copy of the application in a national newspaper; and
- (f) where the application relates to the grant of a tenement or the expansion of the area of a tenement under Section 158, keep a copy of the application continuously posted at the headquarters of the Authority, until the application is determined.

**175. Objections.**

- (1) Any person may object to the grant of a tenement, the extension of the term of an exploration licence or the expansion of the area of a tenement under Section 158 by lodging with the Registrar a written objection before the date fixed by the Registrar under Subsection 173(4)(b).
- (2) On receipt of an objection under Subsection (1), the Registrar shall give a copy thereof to:
  - (a) the applicant; and
  - (b) the Executive Officer of the Council,
 and keep a copy of the objection continuously posted at the headquarters of the Authority, until the application in respect of which the objection was lodged is determined.

**176. Conduct of Warden's hearing.**

- (1) The Warden shall attend at the places and on the dates fixed by the Registrar under Subsection 173(4) and shall conduct a hearing in accordance with the procedures specified in Subsection (2) and such other procedures as will afford a fair hearing to the applicant, the landholders present at the hearing and such other persons as the Warden considers will be affected by the applicant's programme or proposals.
- (2) The Warden shall:
  - (a) satisfy himself as to the identity of the persons present at the hearing and that they are persons affected by the applicant's programme or proposals; and
  - (b) 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
  - (c) record and assess the views of any landholders present at the hearing concerning the conduct of exploration, operations ancillary to mining or mining on their land; and
  - (d) record and assess the views of such other persons whom the Warden considers to be affected by the applicant's programme or proposals.
- (3) The purpose of a Warden's hearing in relation to the grant or renewal of an exploration licence is to obtain information relevant to assist the Council's assessment of whether the community relations plan submitted by the applicant as part of their programme complies with the requirements of Subsection 46(1)(a)(iii).
- (4) The purpose of a Warden's hearing in relation to the grant of a mining lease is to obtain information relevant to assist the Council's assessment of whether the applicant for that mining lease has proposed effective, reasonable and appropriate means for addressing the impact of the grant of the mining lease, and the operations to be carried out pursuant to the mining lease, upon affected communities and the legitimate concerns of those affected communities.
- (5) The purpose of a Warden's hearing in relation to the grant of an alluvial mining lease is to obtain such information as is relevant to determine whether the applicant is entitled under this Act to the grant of an alluvial mining lease.
- (6) The purpose of a Warden's hearing in relation to the grant of:
  - (a) a lease for mining purposes; or

(b) a mining easement,

is to obtain information relevant to assist the Council's assessment of whether the applicant for the lease for mining purposes or mining easement has proposed effective, reasonable and appropriate means for addressing the impact of the grant of the lease for mining purposes or mining easement, and the operations to be carried out pursuant to the lease for mining purposes or mining easement, upon affected communities and the legitimate concerns of those affected communities (as determined having regard to any community relations programme already in effect under any mining lease to which the proposed lease for mining purposes or mining easement relates).

- (7) In respect of a Warden's hearing held in connection with an application lodged under Section 158 for the expansion of the area of a tenement:
- (a) the purpose of the Warden's hearing is to obtain information relevant to assist the Council's assessment of whether the applicant for that tenement has proposed effective, reasonable and appropriate means for addressing the impact of the expansion of the area of the tenement, and the operations to be carried out pursuant to the expanded tenement, upon affected communities within the expanded area and the legitimate concerns of those affected communities; and
- (b) for the purposes of such a Warden's hearing, a person is not affected by the holder of the tenement's proposals unless they are affected by the activities proposed to be conducted by the holder of the tenement within the expanded area.
- (8) Matters which may be relevant to the assessments referred to in Subsections (4), (6) and (7), and upon which submissions may be made at a Warden's hearing, include:
- (a) the potential environmental, social and economic impact of the proposed tenement, and the operations pursuant thereto, on affected communities; and
- (b) the mechanisms proposed by the applicant to address those impacts (whether by incorporation in the programme or proposals proposed by the applicant, any proposed memorandum of agreement or through some other mechanism); and
- (c) whether there are any potential impacts on affected communities which are not capable of being adequately addressed, whether by the payment of compensation or otherwise; and
- (d) any other matters which the Warden considers relevant to the assessment referred to in, as applicable, Subsections (4), (6) or (7).
- (9) The 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.

**177. Warden to submit report on hearing to the Council.**

- (1) The Warden shall, within 14 days after a hearing, submit a written report on the hearing to the Executive Officer of the Council.
- (2) The report submitted by the Warden shall summarise the matters raised by:
- (a) affected communities at the Warden's hearing; and
- (b) the applicant in response to those matters,
- and is to be prepared for the purpose of assisting the Council make the assessment referred to in Subsections 176(3), (4), (5), (6) or (7) (as applicable).
- (3) A copy of the Warden's report under Subsection (1) shall be provided by the Council to the applicant for the grant of the tenement, extension of the term of the exploration licence or expansion of the area of the tenement (as applicable) within 5 days of receipt of that report by the Executive Officer of the Council.



- (4) Within 7 days of the acceptance and registration of an application for the extension of the term of an exploration licence, the Registrar shall provide a copy of the application to the Chief Warden. The Chief Warden shall, within 28 days after registration of the application, submit a report to the Executive Officer of the Council assessing the tenement holder's compliance with its community relations plan during the term of the exploration licence.
- (5) A copy of the Chief Warden's report under Subsection (4) shall be provided by the Council to the applicant for an extension of the term of an exploration licence within 5 days of receipt of that report by the Executive Officer.

**178. Additional Powers of Wardens.**

In addition to any other powers specified in this Act, a Warden may:

- (a) if requested by and at the cost of a tenement holder, assist the tenement holder to consult with affected communities; and
- (b) if requested by and at the cost of a tenement holder, assist in the resolution of any dispute arising between a tenement holder and affected communities; and
- (c) educate affected communities as to exploration and mining activities; and
- (d) if requested by and at the cost of any other government department, assist that department in dealing with affected communities; and
- (e) exercise any other powers prescribed by regulation.

**179. Duties of the Registrar upon grant, extension of the term, or expansion of the area, of a tenement.**

- (1) Upon the grant or extension of the term of a tenement under this Act or approval of the expansion of the area of a tenement, the Registrar shall:
  - (a) advise the applicant of the grant, extension or expansion; and
  - (b) require the applicant, in the case of a grant or extension, to submit the prescribed rent within 30 days; and
  - (c) in the case of the grant of a tenement, require the applicant to lodge within 30 days the prescribed security, if any, in the manner required by Section 231; and
  - (d) cause a notice of the grant or extension of the term of a tenement or expansion of the area of the tenement to be published in the National Gazette or a national newspaper.
- (2) Where the applicant fails to comply with Subsection (1)(b) or (c), the Council may cancel the grant or extension of the term of the tenement.
- (3) Where the applicant complies with any applicable requirements of Subsection (1)(b) and (c), the Registrar shall issue to the applicant a title document to the tenement (including, where applicable, as the area of that tenement is expanded) on the prescribed form.

**180. Date of extension of term.**

- (1) Where, prior to the expiry of a tenement, the holder has applied for an extension of the term of the tenement in accordance with this Act, the tenement shall continue 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 shall be deemed 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.**

**181. Register of tenements.**

- (1) The Registrar shall establish and maintain a Register, to be known as the Register of Tenements.
- (2) The Register shall 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 Register shall be received by all courts as *prima facie* evidence of all matters required or authorized by this Act to be entered in the Register.

**182. Registration.**

- (1) All instruments requiring registration shall be lodged with the Registrar in the manner specified in this Act or as prescribed and shall be accompanied by the prescribed fee.
- (2) Subject to this Division 3, the time and date of lodgment with the Registrar shall be deemed to be the time and date at which registration was effected.

**183. Provisional registration.**

- (1) Where the Registrar is of the opinion that a document lodged for registration is erroneous or defective, he or she may reject the lodgment, but, except in the case of an application as provided for under Section 169, where he or she is of the opinion that the error or defect can be corrected, he or she shall:
  - (a) cause the time and date of lodgment and particulars of the instrument to be entered in the 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.
- (2) Where a direction under Subsection (1)(b):
  - (a) is complied with on or before the date specified in the notice – the instrument shall be deemed to have been registered at the time and date at which the instrument was originally lodged and the Registrar shall delete the word "provisional" from the Register; and
  - (b) is not complied with on or before the date specified in the notice – the Registrar shall delete the entry from the Register entirely.

**184. 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 authorized agent.

**185. Dealing in tenements and prohibition on dealing in prospecting permits.**

- (1) 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.
- (2) A prospecting permit may not 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.

**186. Transfer of a tenement to be approved and registered.**

- (1) An application for approval of a transfer of a tenement shall be in writing and shall be submitted with an instrument of transfer on the prescribed form to the Registrar, who shall submit the application to the Council for its consideration.
- (2) The Minister shall approve an application under Subsection (1) if the proposed transferee:
  - (a) has, or has access to, the technical and financial resources required to discharge the obligations of the holder of that tenement under this Act; and
  - (b) has not been convicted of an offence under this Act; and
  - (c) has not held a tenement under this Act which has been cancelled due to a breach by that proposed transferee of the terms of that tenement.
- (3) The Minister may approve an application under Subsection (1), despite a proposed transferee not meeting the criteria in Subsection (2)(b) and (c), if:
  - (a) since the time of the relevant conviction or cancellation, the proposed transferee has shown itself to be of good repute; and
  - (b) having regard to all relevant circumstances, it is reasonable to expect that the proposed transferee will discharge the obligations of the holder of the relevant tenement under this Act,

and the Minister may make such approval subject to such reasonable conditions as are necessary to ensure the proposed transferee's compliance with this Act.
- (4) In determining whether:
  - (a) a proposed transferee meets the criteria in Subsection (2); and
  - (b) a proposed transferee meets the criteria in Subsection (3); and
  - (c) the conditions which should be imposed upon a proposed transferee pursuant to Subsection (3),

the Minister shall have regard to the recommendation of the Council.
- (5) Where the Minister approves a transfer under this Section 186, the Registrar shall register the instrument of transfer.
- (6) 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 Minister under this Section 186; and
  - (b) registered under Subsection (5).
- (7) Where a mining lease is transferred from the holder of the mining lease to another person ("**transferee**"):
  - (a) as a result of an instrument of transfer approved under this Section 186; or
  - (b) as a result of a transfer pursuant to an instrument approved under Section 187,

then the rights and obligations of the holder of the mining lease under any mining development contract and memorandum of agreement which relates to the mining lease will be deemed to be transferred to the transferee with effect from the same time that the transfer of the mining lease becomes effective.
- (8) Where an undivided interest (other than a 100% interest) in a mining lease is transferred from the holder of the mining lease to another person ("**transferee**"):
  - (a) as a result of an instrument of transfer approved under this Section 186; or
  - (b) as a result of a transfer pursuant to an instrument approved under Section 187,

then an undivided interest, equal to the undivided interest in the mining lease so transferred, in the rights and obligations under any mining development contract and memorandum of agreement which relates to the mining lease will be deemed to be transferred to the transferee with effect from the same time that the transfer of the mining lease becomes effective.

**187. Instruments, other than transfers to be approved and registered.**

- (1) This Section 187 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 186 applies; and
  - (b) a tribute agreement.
- (2) No legal or equitable interest is created, assigned or otherwise dealt with by an instrument, either directly or indirectly, unless and until the instrument has been:
  - (a) approved by the Minister under this Section 187; and
  - (b) registered under Subsection (9).
- (3) A tribute agreement shall be submitted to the Registrar for registration. Nothing in this Section 187 requires a tribute agreement to be approved by the Minister.
- (4) An application for approval of an instrument referred to in Subsection (1)(a) shall be submitted, together with the instrument, to the Registrar, who shall submit the application to the Council for its consideration.
- (5) The Minister shall approve an application submitted under Subsection (4) if:
  - (a) no person will, or may, as a result of the execution of the instrument or any transaction effected under the instrument, acquire an interest in a tenement under this Act, which person ("**relevant person**"):
    - (i) does not have, or does not have access to, the technical and financial resources required to discharge the obligations under this Act which will be imposed upon that relevant person as a result of the acquisition of that interest (which obligations, in the case of a relevant person to whom the tenement may be transferred under the instrument, are all obligations under this Act which apply to the holder of that tenement); or
    - (ii) has been convicted of an offence under this Act; or
    - (iii) has held a tenement under this Act which tenement has been cancelled due to a breach by that relevant person of the terms of that tenement; and
  - (b) the instrument does not contain any provisions which may materially adversely affect the discharge of the obligations of the holder of the tenement under this Act.
- (6) The Minister may approve an application submitted under Subsection (4) despite a relevant person not meeting the criteria in Subsections (5)(a) (ii) and (iii), if:
  - (a) since the time of the relevant conviction or cancellation, that relevant person has shown themselves to be of good repute; and
  - (b) having regard to all relevant circumstances, it is reasonable to expect that the acquisition by that relevant person of an interest in the relevant tenement will not prejudicially affect the discharge of the obligations of the holder of the tenement under this Act,

and the Minister may make such approval subject to such reasonable conditions as are necessary to ensure the compliance with this Act by the holder of the tenement.

- (7) The Minister may approve an application submitted under Subsection (4) despite the criteria in Subsection (5)(b) not being met if the Minister considers that, having regard to all relevant circumstances, it is appropriate to approve that application and the Minister may make such approval subject to such reasonable conditions as are necessary to ensure the compliance with this Act by the holder of the tenement.
- (8) In determining whether:
  - (a) a relevant person meets the criteria in Subsection (5); and
  - (b) the criteria in Subsections (6) and (7) are met; and
  - (c) conditions should be imposed under Subsections (6) or (7),
 the Minister shall have regard to the recommendation of the Council.
- (9) Where the Minister approves an application under Subsection (4), the Registrar shall register the instrument.
- (10) Where the Minister has approved an instrument under this Section 187, any subsequent transfer of the tenement under Section 186 effected by the instrument shall be deemed to have been approved by the Minister and shall be registered by the Registrar, provided that:
  - (a) the transfer is made in accordance with the provisions of the instrument; and
  - (b) there has been substantial compliance with the conditions of the tenement to which the transfer relates.

**188. Consideration of instruments by Council.**

- (1) In relation to each application submitted by the Registrar to the Council under Subsections 186(1) or 187(4), Council shall issue a draft determination, which draft determination shall:
  - (a) state whether the Council considers (as applicable):
    - (i) the proposed transferee meets the criteria in Subsection 186(2);
    - (ii) if the Council considers a proposed transferee does not meet the criteria in Subsection 186(2), whether the proposed transferee meets the criteria in Subsection 186(3);
    - (iii) each relevant person meets the criteria in Subsection 187(5)(a);
    - (iv) if the Council considers that a relevant person does not meet the criteria in Subsection 187(5)(a), whether the criteria in Subsection 187(6) are met in relation to that relevant person;
    - (v) whether the criterion in Subsection 187(5)(b) is met; and
    - (vi) if the criterion in Subsection 187(5)(b) is not met, whether it is nevertheless appropriate to approve the instrument under Subsection 187(7); and
  - (b) (vii) where the Council proposes to recommend approval of a transfer or instrument pursuant to, as applicable, Subsection 186(3), Subsection 187(6) or Subsection 187(7), any conditions the Council recommends be imposed, pursuant to the relevant Section, as a condition of giving that approval, and set out the reasons for the Council's determination.
- (2) The Council shall provide the holder of the tenement with an opportunity:
  - (a) within such period specified by the Council (which period shall be at least 21 days from the receipt by the holder of the Council's draft determination) to lodge submissions in response to the Council's draft determination; and

- (b) if requested by the holder, to appear personally before the Council to make oral submissions to the Council before the expiration of the period allowed to the holder of the tenement to make written submissions.
- (3) Upon the expiration of the period allowed to the holder under Subsection (2), the Council shall proceed to issue a final determination in response to the application, which final determination shall be in writing and set out the reasons for that determination (including the justification for any conditions which the Council recommends be imposed as a condition of an approval given under Subsection 186(3), Subsection 187(6) or Subsection 187(7).

**189. Effect of registration.**

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

**190. Approval, etc., of Minister, etc., not to give an instrument any effect outside this Division.**

The Minister, or a person under the direction or authority of the Minister, is not concerned with the effect in law of an instrument lodged under this Division 3, and the approval of such an instrument does not give it any force, effect or validity that it would not have had if this Division 3 had not been enacted.

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

The:

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

except in so far as is otherwise provided for in this Act.

**192. Instruments made in contemplation of approval.**

Where:

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

nothing in this Division 3 prevents or affects the validity of an agreement made in contemplation of a dealing to which this Section 192 applies where the instrument evidencing the agreement expressly provides that registration under this Act shall be effected or such approval obtained, as the case may be, as a condition of the coming into force of the provisions of that instrument which require such registration or approval.

**193. Devolution.**

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

**194. Rectification of the Register.**

- (1) Where the Registrar or another person discovers that there has been:
  - (a) an omission of an entry from the Register or the rejection of an instrument presented for registration; or
  - (b) an entry made in the Register without sufficient cause; or
  - (c) an entry wrongly existing in the Register; or
  - (d) an error or defect in an entry in the Register,
 the Registrar or that other person may make an application to the Managing Director for rectification of the Register.
- (2) On receipt of an application under Subsection (1), the Managing Director may:
  - (a) make an investigation into the matter; and
  - (b) direct the Registrar to rectify the Register in any matter which the Managing Director considers requires rectification.
- (3) A person may appeal to the National Court against a direction or decision or to seek a decision by the Managing Director under Subsection (2), and the National Court may make such order as it considers necessary to settle the matter.
- (4) The Registrar shall give effect to an order of the National Court under Subsection (3).

**195. Mortgages.**

- (1) The consent of the Minister under Section 187 is not required to the grant of a mortgage, charge or analogous security to a recognised financial institution over a tenement but any transfer or dealing with that tenement as a result of the enforcement of that mortgage, charge or analogous security ("**secured dealing**") requires such consent.
- (2) Where an application is made for the consent to a secured dealing then, for the purposes of Section 188, the recognised financial institution may make submissions, and deal with the Council, on behalf of the holder of the relevant tenement.
- (3) For the purposes of this Section 195, recognised financial institution means:
  - (a) an Authorized Institution under the *Banks and Financial Institutions Act 2000*; and
  - (b) any bank or financial institution prescribed for the purposes of this Section 195; and
  - (c) any bank or financial institution licensed or constituted under any legislation of a foreign state prescribed for the purposes of this Section 195.

- (4) A mortgage shall have effect as a security only for the sum of money or the discharge of the liability intended to be secured by it and shall not take effect as an assignment.
- (5) A mortgagor shall be 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.
- (6) Subject to Subsections (4) and (5), a mortgage may contain such covenants and powers as are agreed between the parties.

***Division 4.—Caveats.***

**196. Lodging of caveats.**

- (1) A person claiming an interest in a tenement may lodge with the Registrar a caveat forbidding the registration of a transfer or other instrument affecting the tenement or interest.
- (2) A caveat lodged under Subsection (1) shall:
  - (a) be on the prescribed form; and
  - (b) give an address within the country 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.

**197. Duties of Registrar on lodging of a caveat.**

On the lodging of a caveat under Subsection 196(1) the Registrar shall:

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

**198. Duration and effect of a caveat.**

- (1) A caveat shall lapse and cease 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, that application has been made for the registration of a transfer or other instrument affecting the subject matter of the caveat, has been sent by the Registrar by registered post to the caveator at the address for service given in the caveat, unless within that period the National Court otherwise orders.
- (2) No transfer or other instrument affecting a tenement the subject of a caveat shall be registered while the caveat remains in force.
- (3) When a caveat lapses and ceases to have effect under this Section 198, the Registrar shall enter in the Register a memorandum of that fact.

***Division 5.—Consolidation.***

**199. Application of this Division.**

This Division 5 applies to the consolidation of existing tenements of the same type (in this Division 5 referred to as the "**existing tenements**") into one or more tenements of that type (in this Division 5 referred to as the "**consolidated tenement**").



**200. Grant of a consolidated tenement.**

- (1) The Minister may, on the application by the holder of two or more adjoining tenements of the same type and after having regard to the recommendation of the Council, grant to the applicant one or more consolidated tenements of that type.
- (2) A consolidated tenement:
  - (a) shall be on the prescribed form; and
  - (b) shall contain such conditions as were attached to the existing tenements, provided that where the conditions attached to existing tenements were not the same, the conditions attaching to the consolidated tenement shall be such of the conditions attaching to the existing tenements as the Minister determines having regard to the recommendation of the Council; and
  - (c) may contain such other conditions as the Minister, having regard to the recommendation of the Council, determines.
- (3) The Minister may grant a consolidated tenement under Subsection (1) without a Warden's hearing.

**201. Term of a consolidated tenement.**

The term of a consolidated tenement shall be either:

- (a) where the unexpired terms of the existing tenements at the date of grant of the consolidated tenement are the same—that unexpired term; or
- (b) where 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.

**202. Area of a consolidated tenement.**

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

**203. 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) Where an existing tenement is consolidated any interest in that tenement shall be deemed to be an equivalent interest in the consolidated tenement.
- (3) Where 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.

**204. Application for consolidation.**

An application for the grant of a consolidated tenement:

- (a) shall be on the prescribed form and shall have attached a schedule on 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) shall 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 (other than an infrastructure corridor licence) – the applicant's proposals for the consolidated tenement or tenements; and
- (c) shall be accompanied by a signed consent, from the holder of each tenement to be consolidated, to the application for consolidation; and
- (d) shall be lodged in triplicate with the prescribed application fee; and
- (e) shall be lodged in accordance with the procedures specified in Part VII Division 2.

**205. Consideration of application for consolidation.**

- (1) Where an application is made for the grant of a consolidated tenement then, upon consideration of that application, the Council shall issue a draft determination to the applicant setting out:
  - (a) whether or not the Council proposes to recommend approval of the application; and
  - (b) the conditions the Council proposes to recommend be imposed as a condition of grant of the application,
 which draft determination shall set out the reasons for the Council's determination.
- (2) The Council shall provide the applicant for the grant of a consolidated tenement with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the Council's draft determination), to lodge submissions in response to the Council's draft determination.
- (3) Upon the expiration of the period allowed to the applicant for the lodgment of written submissions in response to a draft determination, the Council shall proceed to issue a final determination in response to the application for grant of a consolidated tenement, which final determination shall set out the reasons for that determination (including the justification for any conditions to which approval of the consolidation may be subject).
- (4) In making a determination in relation to the application for the grant of a consolidated tenement, the Council shall have regard to all relevant factors, including, without limitation:
  - (a) the need to promote the efficient, effective and sustainable development of the mineral resources of the State; and
  - (b) the need to ensure the adequate protection of affected communities; and
  - (c) the need to ensure that development of the mineral resources of the State occurs in an environmentally sustainable manner.
- (5) An applicant for the grant of a consolidated tenement or the holder of a tenement which is to be consolidated may, within 21 days of the making of a valid determination by the Minister to approve the grant of a consolidated tenement, elect, by notice to the Council and the Minister, that the grant of the consolidated tenement not take effect.
- (6) The grant of a consolidated tenement by the Minister will take effect from the earlier to occur of:
  - (a) the expiration of the 21 day period referred to in Subsection (5), without an election being made that the consolidation not take effect; and
  - (b) the lodgment of a notice signed by the applicant and each other holder of a tenement which is to be consolidated with the Registrar that it will not be making an election

that the grant of the consolidated tenement not take effect (and, if such a notice is lodged, then an election may not be made under Subsection (5)).

**206. Provisions relating to tenements to apply to consolidated tenements.**

Subject to the foregoing provisions of this Division 5, the provisions of this Act applicable to tenements of the type held prior to consolidation shall also apply to the consolidated tenements of the same type.

**207. Grant of tenements in respect of same land.**

- (1) Except as provided in this Section 207, a tenement may not be granted over an area of land the subject of another tenement.
- (2) An exploration licence may be granted over an area of land the subject of a lease for mining purposes in accordance with Part V, Division 4, Subdivision B.
- (3) A lease for mining purposes may be granted over an area of land the subject of an exploration licence in accordance with Part V, Division 4, Subdivision B.
- (4) A mining easement may be granted over an area of land the subject of another tenement in accordance with Part V, Division 5, Subdivision B.
- (5) A tenement may be granted over an area of land the subject of a mining easement in accordance with Part V, Division 5, Subdivision B.
- (6) An exploration licence may be granted over an area of land the subject of an alluvial mining lease in accordance with Part V, Division 3, Subdivision B.
- (7) An alluvial mining lease may be granted over an area of land the subject of an exploration licence in accordance with Part V, Division 3, Subdivision B.
- (8) A tenement, other than a mining easement, may not be granted over the area of an infrastructure corridor licence.
- (9) In addition to the circumstances in which tenements may co-exist as set out in Subsections (2) to (7), a tenement may be granted in respect of the area of another tenement ("**existing tenement**") where:
  - (a) the holder of the existing tenement agrees; and
  - (b) the Council, acting reasonably, is satisfied that the co-existence of those tenements will not:
    - (i) prejudice the ability of the holder of either tenement to comply with their obligations under this Act; or
    - (ii) prejudice the interests of affected communities; or
    - (iii) prevent the effective implementation of a mine closure plan; or
    - (iv) prevent the effective management or rehabilitation of any ecological degradation or damage to the environment resulting from operations pursuant to either tenement,

provided that this Subsection (9) does not permit a mining lease to be granted in respect of the area of another mining lease.

- (10) Consent to the co-existence of two tenements may be granted subject to such conditions as the Council, acting reasonably, considers are:
  - (a) required to protect the interests of affected communities; or
  - (b) required to ensure the efficient, effective and sustainable development of the mineral resources of the State; or

- (c) required to ensure the effective implementation of a mine closure plan is not prejudiced; or
- (d) required to ensure the effective management or rehabilitation of any ecological degradation or damage to the environment which may result from operations pursuant to either tenement; or
- (e) otherwise desirable having regard to the issues raised by the co-existence of the two tenements,

which conditions may be imposed upon both the applicant for the new tenement and the holder of the existing tenement.

**208. Application procedure for co-existing tenements.**

- (1) Where an applicant for a tenement proposes that, pursuant to Subsection 207(9), such tenement co-exist with another tenement, the applicant shall apply to the Council for approval of the co-existence of those tenements, which application shall be in such form as may be prescribed and shall be accompanied by:
  - (a) the consent (if such consent has been obtained) of the holder of the existing tenement to the co-existence of those tenements (which consent shall identify the area of land in respect of which the holder consents to the tenements co-existing); and
  - (b) any procedures agreed between the holder and the applicant to co-ordinate the co-existence of their tenements.
- (2) The Council may request the applicant for the new tenement, and/or the holder of the existing tenement, to provide (within such period specified by the Council, acting reasonably) such additional information in relation to the application as is reasonably required by the Council to consider the application and the applicant or the holder (as applicable) shall, to the extent that they are able, comply with that request.
- (3) Upon consideration of an application lodged under Subsection (1), the Council shall issue to the applicant for the new tenement and the holder of the existing tenement a draft determination setting out:
  - (a) whether the Council is reasonably satisfied the co-existence of the two tenements will not have the effects set out in Subsection 207(9)(b); and
  - (b) any conditions the Council proposes be imposed as a condition of the co-existence of the tenements,

and which draft determination shall set out the reasons for the Council's determination and the justification, having regard to Subsection 207 (10), for the conditions which the Council recommends be imposed.
- (4) The Council shall provide the applicant and the holder with an opportunity:
  - (a) within such period specified by the Council (which period shall be at least 21 days from the later of the date of receipt by the applicant for the new tenement of the Council's draft determination and the date of receipt by the holder of the existing tenement of the Council's draft determination) to:
    - (i) lodge submissions in response to the Council's draft determination; and
    - (ii) modify the area in respect of which it is proposed the tenements co-exist (provided that the Council shall be provided with a copy of the consent of the holder of the existing tenement to the modification of the area in respect of which it is proposed the tenements co-exist); and
    - (iii) modify any procedures lodged under Subsection (1)(b) (or where no procedures were lodged under that Subsection, lodge such procedures); and

- (b) if requested by the applicant and/or the holder, to appear personally before the Council to make oral submissions to the Council before the expiration of the period allowed for the making of written submissions.
- (5) Upon the earlier of:
- (a) the date the Council has received from each of the applicant and the holder:
    - (i) written submissions (as contemplated by Subsection (4)); or
    - (ii) notification that the applicant or holder (as applicable) does not intend to lodge written submissions in response to the Council's draft determination; and
  - (b) the expiration of the period allowed to the applicant and the holder for the lodgment of written submissions in response to the draft determination,
- the Council shall proceed to issue a final determination in response to the application, which final determination shall set out:
- (c) whether the Council is reasonably satisfied the co-existence of the two tenements will not have the effects set out in Subsection 207(9)(b); and
  - (d) any conditions the Council recommends be imposed as a condition of the co-existence of the tenements; and
  - (e) the reasons for the Council's determination and the justification, having regard to Subsection 207(10), for the conditions which the Council recommends be imposed.
- (6) Within 21 days of the issue of a final determination by the Council which proposes that conditions be imposed upon the holder of an existing tenement as a condition of the co-existence of the new tenement and the existing tenement, the holder of the existing tenement may, by notice to the Council and the applicant for the new tenement, withdraw its consent to the co-existence of the new tenement and the existing tenement.
- (7) Within 21 days of the issue of a final determination by the Council which proposes that conditions be imposed upon the holder of the new tenement (if granted) as a condition of the co-existence of that new tenement and an existing tenement, the applicant for the new tenement may withdraw its application for the co-existence of that new tenement and the existing tenement.

***Division 6.—Surrender.***

**209. Holder may surrender tenement.**

- (1) Subject to this Act, the holder of a tenement may apply to the Registrar on the prescribed form to surrender the tenement in whole or in part.
- (2) The holder of a tenement may not surrender all or part of that tenement unless all conditions under this Act (including, without limitation, those applying under the regulations) which shall be complied with as a condition to that surrender have been complied with.

**210. Application for partial surrender.**

An application for partial surrender shall have attached:

- (a) in the case of an exploration licence:
  - (i) a schedule on 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 38; 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 165; and
  - (ii) a statutory declaration that the area of land to be retained has been marked out in accordance with Section 164.

**211. Duties of Registrar, etc., on surrender.**

- (1) The Registrar shall, as soon as practicable after the application for surrender has been lodged under Section 209, satisfy himself or herself that the holder has complied with any conditions of the tenement which relate to the cessation of exploration and mining operations, restoration of land and surrender and immediately thereafter:
  - (a) register the surrender in the 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 National Gazette or in a national newspaper; and
  - (e) keep a copy of the registered surrender continuously posted at the headquarters of the Authority for a period of 30 days; and
  - (f) send a copy of the registered surrender to the applicant.
- (2) In the case of the surrender of the whole of a tenement and on the completion of the requirements of Subsection (1) the Registrar shall, after deducting from the security lodged under Section 231:
  - (a) any unpaid 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 Authority in ensuring that any other liabilities are met, remit the balance, if any, to the former holder of the tenement.

**212. Liabilities of holder on surrender.**

Subject to Section 214, where 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.

**213. Rights of holder on surrender.**

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

**214. Surrender to facilitate grant of new tenement.**

- (1) The holder of a tenement ("**relevant tenement**") other than an exploration licence may, when applying to the Registrar for surrender of the whole or a part of that relevant tenement (such portion of the relevant tenement being surrendered being the "**surrendered portion**"), notify the Registrar that the holder is, as a result of an agreement made by the holder with:

- (a) an applicant for a tenement; or
- (b) the holder of another existing tenement ("**pre-existing tenement**"),  
surrendering the surrendered portion for the purposes of that surrendered portion being incorporated within the area of (as applicable):
- (c) the tenement being applied for by that applicant; or
- (d) the pre-existing tenement (as a result of an application for the expansion of the area of that pre-existing tenement),

which application shall be accompanied by a notice from the applicant or the holder of the pre-existing tenement consenting to that incorporation.

- (2) A surrendered portion of a relevant tenement may (with the consent of the Council) be surrendered, despite its holder not having complied with all conditions of this Act (including those applying under the regulations) which would otherwise need to be complied with as a condition of that surrender, if:
  - (a) the applicant for the new tenement or holder of the pre-existing tenement (as applicable) agrees to discharge all outstanding obligations under this Act (applying in respect of the surrendered portion); and
  - (b) the applicant or the holder of the pre-existing tenement (as applicable) has, or has access to, the technical and financial resources necessary to discharge those obligations; and
  - (c) the applicant or the holder of the pre-existing tenement agrees to comply with such conditions as the Council determines are necessary to ensure that those obligations will be properly discharged.
- (3) Where an application is made under Subsection (1), then subject to the surrendered portion being surrendered:
  - (a) a new tenement may (subject to compliance with all other applicable procedures in this Act) be granted to the applicant (referred to in Subsection (1)) in respect of an area which includes the surrendered portion (despite the fact that surrendered portion formed part of the relevant tenement as at the date the applicant lodged its application for the new tenement); and
  - (b) the area of the pre-existing tenement may (subject to compliance with all other applicable procedures in this Act) be expanded to include all or part of the surrendered portion (despite the fact that surrendered portion formed part of the relevant tenement as at the date the holder of the pre-existing tenement lodged its application for expansion).

### ***Division 7.—Cancellation and Expiry of a Tenement.***

#### **215. Cancellation of tenements for breach.**

- (1) A tenement may only be cancelled in accordance with the procedures set out in this Section 215 or Section 221.
- (2) Where the holder of a tenement has breached that tenement (other than an "**excused breach**", as defined in Section 216), such a breach being a "**prescribed breach**", then the Managing Director or the Minister may, by written notice served on the holder ("**breach notice**"), require the holder to cure the effects of the prescribed breach within the time specified in the breach notice ("**cure period**"), which cure period shall be at least 40 days and shall be sufficient to provide the holder of the tenement a reasonable opportunity to remedy the prescribed breach.
- (3) A breach notice shall:

- (a) describe the prescribed breach in sufficient detail to enable the holder of the tenement to understand the nature of that breach; and
  - (b) set out, as applicable, the provision or provisions of this Act, the regulations and/or the tenement which has or have been breached; and
  - (c) set out the information upon which the Managing Director or the Minister, as the case may be, has relied to determine that a prescribed breach has occurred; and
  - (d) set out the cure period.
- (4) Within 7 days of receipt of a breach notice, the holder of the tenement may lodge a written objection ("**objection notice**") with whichever of the Managing Director or the Minister served the breach notice objecting to the breach notice on one or more of the following bases:
- (a) that no prescribed breach has occurred; or
  - (b) that the cure period set out in the breach notice is insufficient to provide the holder a reasonable opportunity to remedy the prescribed breach; or
  - (c) that the breach notice is otherwise invalid.
- (5) Where an objection notice is served on the Managing Director or the Minister within the time required by Subsection (4), the Managing Director or Minister (as relevant) shall consider the terms of that objection notice and shall notify the holder of the tenement that:
- (a) the breach notice is affirmed; or
  - (b) the breach notice is modified (for example, by varying the cure period); or
  - (c) the breach notice is withdrawn,
- and which notice shall set out the reasons for the Managing Director's or Minister's decision under this Subsection (5).
- (6) The failure by the holder of a tenement to lodge an objection notice does not prevent the holder challenging a breach notice by any other legal means open to the holder.
- (7) Where an objection notice is served, then the cure period for the breach notice to which that objection notice relates is taken to be extended (in addition to any extension resulting from the modification of the breach notice) by the number of days (from receipt by the Minister or Managing Director of the objection notice) taken by the Minister or Managing Director to affirm or modify the objection notice.
- (8) A breach notice is not required to be served in the case of a flagrant breach (as defined in Section 217).
- (9) Where the holder of a tenement:
- (a) fails to cure the effects of a prescribed breach within the cure period (as that concept is defined in Section 219); or
  - (b) commits a flagrant breach,
- then the Minister may, by written notice to the holder ("**cancellation notice**"), cancel the tenement.
- (10) In determining whether it is appropriate to exercise the discretion under Subsection (9) to serve a cancellation notice, regard shall be had to the following factors:
- (a) the nature of the prescribed breach or flagrant breach; and
  - (b) the reason the breach occurred, in particular whether the breach occurred due to a negligent or wilful act or omission of the holder of the tenement; and
  - (c) the effects of the breach (including the effects of the breach on the environment, safety and affected communities); and



- (d) any measures taken by the holder of the tenement to remedy the breach or mitigate its effect; and
  - (e) the proportionality between the impact of cancellation of the tenement upon the holder of the tenement (having regard, without limitation, to the amounts already expended by the holder upon the development of the tenement) and the breach; and
  - (f) any detriment to the State through the cancellation of the tenement; and
  - (g) any other relevant factor.
- (11) In determining whether to issue a cancellation notice, the Minister shall have regard to the recommendation of the Council.
- (12) Prior to issuing a recommendation to the Minister, the Council shall issue a draft determination setting out:
- (a) the relevant breach and the basis upon which the Council has concluded that the breach has occurred; and
  - (b) the basis upon which the Council has concluded that breach is a flagrant breach or, in the case of a prescribed breach, the basis upon which the Council has concluded that breach has not been cured within the cure period; and
  - (c) the basis upon which the Council has concluded, having regard to the factors in Subsection (10), that it is appropriate or not appropriate, as the case may be, to issue a cancellation notice,
- and which draft determination shall set out the reasons for the Council's determination.
- (13) The Council shall provide the holder of the tenement with an opportunity, within such period specified by the Council (which period shall be at least 21 days from the receipt by the holder of the Council's draft determination), to lodge submissions in response to the Council's draft determination.
- (14) Upon the expiration of the period under Subsection (13), the Council shall proceed to issue a final determination, which final determination shall be in writing and set out the reasons for that determination.

#### **216. Excused breach.**

- (1) An "**excused breach**" is a breach of a tenement which is caused by an event or circumstance beyond the reasonable control of the holder of the tenement and which breach could not have been avoided by the exercise of reasonable care and diligence by the holder.
- (2) Where, from a point of time, a breach (referred to in Subsection (1)) would have been remedied or ceased had the holder of the tenement exercised reasonable care and diligence then:
  - (a) in respect of the period prior to that point of time, the breach is an excused breach; and
  - (b) in respect of the period from that point of time, the breach is not an excused breach.
- (3) A breach is not, or will cease to be, an excused breach if (despite the fact that breach falls within the ambit of the definition in Subsection (1)):
  - (a) the breach is of a nature such that it materially adversely affects affected communities and/or the safe and effective conduct of mining operations pursuant to the tenement; and
  - (b) there is no reasonable prospect that the holder of the tenement, by using reasonable care and diligence, will be able to overcome the breach within the excused breach remedial period.

- (4) The excused breach remedial period for an excused breach is:
- (a) 18 months from the occurrence of the excused breach; or
  - (b) such greater period as the Council may allow, which period shall be determined having regard to:
    - (i) the nature of the excused breach; and
    - (ii) its impact upon:
      - (A) affected communities; and
      - (B) the development and operation of the tenement; and
    - (iii) any other relevant factors.

**217. Flagrant breach.**

A flagrant breach is a breach (other than an excused breach) of a tenement which breach is part of a series of similar such breaches by the holder of the tenement, the nature of which breaches demonstrates that the holder is not making a good faith attempt to comply with, or is incapable of complying with, the requirements of this Act and, in respect of at least one of such breaches, the holder has been provided with an opportunity to cure the effects of that breach in accordance with Section 215.

**218. Breaches which do not justify cancellation.**

- (1) Despite anything to the contrary in Section 215, a tenement may not be cancelled for a breach which breach:
  - (a) is trivial or inconsequential; or
  - (b) is caused by an inadvertent act or omission by the holder of the tenement.
- (2) For the purposes of Subsection (1)(a), in determining whether a breach is trivial or inconsequential, regard is to be had, without limitation, to the effects of the breach upon the development and operation of the tenement and upon affected communities.
- (3) For the purposes of Subsection (1)(b), a breach is not inadvertent if it results from a negligent act or omission of the holder or otherwise results from a failure by the holder to exercise reasonable care.

**219. Means of cure of breach.**

- (1) For the purposes of this Act, the effects of a breach may be cured by the holder of the tenement:
  - (a) remedying the breach; or
  - (b) where it is not possible to remedy the breach:
    - (i) providing an undertaking to the Minister to pay compensation to those affected communities who have suffered material loss or damage due to the breach; and
    - (ii) implementing effective measures to mitigate against the risk of the breach (or a breach of a similar nature) recurring.
- (2) An undertaking under Subsection (1)(b)(i) binds the holder to pay compensation to persons (who are members of affected communities) who have suffered material loss or damage due to the relevant breach but the provision of such an undertaking does not prevent the holder contesting:
  - (a) which persons have suffered such loss or damage; and
  - (b) the quantum of loss or damage suffered by each such person.

- (3) A person who claims to be entitled to compensation from the holder of a tenement as a result of an undertaking provided under Subsection (2) may, by notice to the Chief Warden, request a Warden to determine:
  - (a) whether that person is so entitled to compensation; and
  - (b) the amount of that compensation.
- (4) Subsections 238(2), (3) and (4) and Section 239 apply to a determination of a Warden under Subsection (3) except that:
  - (a) references to determination of the amount of compensation to be paid shall be read as references to determination of whether the person is entitled to compensation and the amount of that compensation; and
  - (b) the reference in Section 239 to a determination under Subsection 238(4)(a) is to be read as a reference to a determination under this Subsection 219(4).

**220. Failures to pay amounts due or provide security.**

- (1) A breach which consists of:
  - (a) a failure to provide security required to be provided under this Act; or
  - (b) a failure to pay fees, rent or royalties payable under this Act,
 does not constitute:
  - (c) an excused breach; or
  - (d) a breach which is trivial or inconsequential; or
  - (e) a breach caused by the inadvertent act or omission of the holder of a tenement.
- (2) Subsections 215(10) to (14) do not apply to a breach which consists of:
  - (a) a failure to provide security required to be provided under this Act; or
  - (b) a failure to pay fees, rent or royalties payable under this Act,
 and, in the case of such a breach, the Minister may proceed to issue a cancellation notice where Subsection 215(9) applies to that breach.

**221. Cancellation of tenements for suspension of production.**

- (1) A mining lease or an alluvial mining lease may be cancelled in accordance with this Section 221.
- (2) Where, without reasonable cause or without the written approval of the Council, commercial production of minerals from a tenement:
  - (a) does not commence within the prescribed commencement period; or
  - (b) is suspended for more than the prescribed suspension period,
 the Minister, if advised by the Council that such a notice should be served, may serve a notice upon the holder of the tenement ("**production notice**") requiring, as applicable:
  - (c) commercial production of minerals to commence within the commencement delay cure period or such additional time as specified in the notice; or
  - (d) commercial production of minerals to recommence within the recommencement cure period or such additional time as specified in the notice.
- (3) Prior to advising the Minister to serve a production notice, the Council shall:
  - (a) notify the holder of the tenement of its intention to so advise the Minister and of the basis upon which the Council has formed the view that Subsection (2) applies; and

- (b) allow the holder not less than 21 days to provide written submissions to the Council as to whether circumstances permitting the issue of a production notice have occurred.
- (4) Where the holder does not lodge submissions within the time required by Subsection (3) then, upon the expiration of that period, the Council may proceed to advise the Minister to serve a production notice.
- (5) Where the holder lodges submissions within the time required by Subsection (3) then the Council shall consider those submissions and:
  - (a) proceed to advise the Minister to serve a production notice; or
  - (b) notify the holder that the Council has determined not to, at that point in time, advise the Minister to serve a production notice.
- (6) Where the Council advises the Minister to serve a production notice, that advice shall be accompanied by a written report, a copy of which shall be provided to the holder of the tenement, outlining the basis upon which the Council has formed the view that, as applicable, commercial production of minerals from the tenement:
  - (a) did not commence within the prescribed commencement period; or
  - (b) was suspended for more than the prescribed suspension period, without reasonable cause or the written approval of the Council.
- (7) Where a production notice has been served upon the holder of a tenement in accordance with the requirements of this Section 221 and the holder fails, without reasonable cause, to (as applicable) commence or recommence commercial production of minerals within the time required by that notice, then the Minister, if advised by the Council that without reasonable cause the holder of the tenement failed to comply with the production notice, may, having regard to the recommendation provided by the Council under Subsection (10)(c), cancel the tenement in relation to which that production notice was served.
- (8) Prior to advising the Minister that the holder of a tenement has failed, without reasonable cause, to comply with a production notice, the Council shall:
  - (a) notify the holder of its intention to so advise the Minister and of the basis upon which the Council has formed the view that the holder has failed to comply; and
  - (b) allow the holder not less than 15 days to provide written submissions to the Council as to whether:
    - (i) the holder has complied with the production notice; or
    - (ii) while the holder has not so complied, there is a reasonable excuse for that non-compliance; or
    - (iii) despite the holder's non-compliance with the production notice, there is some other basis upon which it would be appropriate for the Minister not to cancel the tenement.
- (9) Where the holder of the tenement does not lodge submissions within the time required by Subsection (8), then upon the expiration of that period the Council may proceed to advise the Minister that the holder has not complied with the production notice.
- (10) Where the holder of the tenement lodges submissions within the time required by Subsection (8) then the Council shall consider those submissions and proceed to advise the Minister:
  - (a) whether there has been a failure by the holder to comply with the production notice; and
  - (b) where there has been such a failure, whether there is a reasonable excuse for that failure; and

- (c) where the holder has made submissions in relation to the matters referred to in Subsection (8)(b)(iii), the Council's view as to whether, having regard to those submissions and any failure to comply with the production notice without reasonable excuse, it is appropriate to cancel the tenement.
- (11) The Council's advice to the Minister under Subsection (10) shall be accompanied by a written report, a copy of which shall be provided to the holder of the tenement, outlining the basis upon which the Council has formed the views set out in that report.

**222. Definitions applicable to Section 221.**

- (1) The regulations may make provision for:
- (a) the prescribed commencement period for a mining lease; and
  - (b) the prescribed commencement period for an alluvial mining lease; and
  - (c) the prescribed suspension period for a mining lease; and
  - (d) the prescribed suspension period for an alluvial mining lease; and
  - (e) the commencement delay cure period for a mining lease; and
  - (f) the commencement delay cure period for an alluvial mining lease; and
  - (g) the recommencement cure period for a mining lease; and
  - (h) the recommencement cure period for an alluvial mining lease.
- (2) For the purposes of Section 221, reasonable cause for:
- (a) a failure of commercial production of minerals from a tenement to commence within the prescribed commencement period; and
  - (b) commercial production of minerals from a tenement to be suspended for more than the prescribed suspension period; and
  - (c) failure to comply with a production notice,
- includes, without limitation, the occurrence of an event or circumstance beyond the reasonable control of the holder of the tenement and which could not have been avoided by the exercise of reasonable care and diligence by the holder provided that the holder demonstrates to the reasonable satisfaction of the Council that there is a reasonable prospect that the holder can overcome the effects of that event or circumstance within 12 months (or, in the case of an alluvial mining lease, 6 months) or such greater period specified in any mining development contract which relates to the tenement.
- (3) A reference to commercial production of minerals is to the recovery and sale or disposal of minerals from a tenement, such that a revenue stream is earned from the recovery of such minerals.

**223. Mining development contracts.**

- (1) A mining development contract may specify:
- (a) additional requirements (in addition to those set out in Sections 215 and 221) which shall be complied with before a tenement may be cancelled and, if so, the tenement may not be cancelled unless those additional requirements are complied with; or
  - (b) additional restrictions on the basis upon which a tenement may be cancelled.
- (2) A mining development contract may not derogate from the rights and protections given to the holder of a tenement by Sections 215 to 221.

**224. Duties of Registrar, etc., on cancellation.**

- (1) The Registrar shall, immediately after the Minister has cancelled a tenement under Section 215(9) or 221(7):
  - (a) register the cancellation in the Register; and
  - (b) cause notice of the registration of the cancellation on the prescribed form to be published in the National Gazette or a national newspaper; and
  - (c) keep a copy of the notice of the registration of the cancellation continuously posted at the headquarters of the Authority 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 Registrar shall, after deducting from any security lodged under Section 231:
  - (a) any unpaid 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 Authority in ensuring that any other liabilities are met, and, once all conditions which would need to be satisfied to surrender the tenement have been satisfied, remit the balance, if any, to the former holder of the tenement.

**225. Duties of Registrar, etc., on expiry.**

- (1) The Registrar shall, immediately after the expiry of a tenement, register the expiry in the Register.
- (2) After registering the expiry in accordance with Subsection (1) the Registrar shall, after deducting from the security lodged under Section 231:
  - (a) any unpaid 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 Authority in ensuring that any other liabilities are met, remit the balance, if any, to the former holder of the tenement.

**226. 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 shall 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.*****227. Fees.**

Fees in respect of all matters shall be as determined by the Authority from time to time and published in the National Gazette or a national newspaper.

**228. Rents.**

In respect of each tenement the prescribed rent shall be paid annually in advance from the date of grant, except as provided for in Section 179(1)(b).

**229. Royalties.**

Royalties for mine products shall be paid in accordance with the provisions of this Act.

**230. Fees, rent, etc., not refundable.**

The fees and rents payable under this Division 8 shall not be refunded.

**Division 9.—General Provisions.**

**231. Security.**

- (1) A person to whom a tenement has been granted shall, within 30 days of being notified of the grant by the Registrar, lodge with the Registrar a security for compliance with his or her obligations under this Act.
- (2) A security under Subsection (1):
  - (a) shall be in an amount equal to the prescribed sum; and
  - (b) shall, subject to the approval of the Managing Director, 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 Managing Director allows; or
    - (iv) by such other method as the Managing Director allows; and
    - (v) shall comply with such requirements prescribed in the regulations or, where requirements for a particular form of security are not so prescribed, comply with such requirements reasonably specified by the Managing Director.
- (3) The Managing Director shall, on the expiry, surrender or cancellation of a tenement and on the application in writing by the person who was the tenement holder accompanied by evidence satisfactory to the Managing Director showing cause why a security should (having regard to the remaining provisions of this Act and the regulations) be discharged, discharge, wholly or in part, a security lodged under this Section 231 within 30 days of cause having been so shown.
- (4) The security required to be provided under this Section 231:
  - (a) is in addition to the security required to be provided under Section 153 in respect of mine closure obligations and under the *Environment Act 2000* in respect of environmental closure obligations and other environmental obligations; and
  - (b) is designed to provide security against the obligations of the holder of a tenement other than mine closure obligations and environmental closure obligations and other environmental obligations.

**232. Conflicting boundary descriptions.**

- (1) Where, in the case of the boundaries of an exploration licence or infrastructure corridor 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 shall prevail and shall be deemed to be the boundaries.
- (2) Where, in the case of the boundaries of an application for a tenement other than an exploration licence or infrastructure corridor 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 shall prevail until survey, and, after survey, the boundaries established by the survey shall prevail.

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

- (1) In this Section 233:
- (a) "**mining plant**" means any building, plant, machinery, equipment, tools or other property of any kind, whether or not affixed to land; and
  - (b) "**prescribed period**" means a period of three months or such longer period as the Managing Director may determine after a tenement expires, is surrendered or is cancelled, or any land the subject of the tenement is relinquished.
- (2) Except as otherwise provided in a mine closure plan or as otherwise agreed with the State (including pursuant to a mining development contract), 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 shall, within the prescribed period, remove from the land relating to the tenement any mining plant, which removal shall be carried out in accordance with good industry practice and with due regard to the environment and the need to adequately rehabilitate the area of the tenement.
- (3) Where mining plant is not removed in accordance with Subsection (2), the Managing Director may arrange for the mining plant to be sold by public auction or public tender and removed, and the proceeds of such sale shall be retained by the State.
- (4) Except as otherwise provided in a mine closure plan or as otherwise agreed with the State (including pursuant to a mining development contract), where, 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 shall, at the expiration of the prescribed period, become the property of the State.
- (5) Notwithstanding the preceding provisions of this Section 233, but subject to any provisions of a mine closure plan, 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 shall be removed without the consent in writing of an inspector.

**234. Graticulation of earth's surface and constitution of blocks and sub-blocks.**

- (1) For the purposes of this Act, the surface of the Earth shall be deemed to be divided into graticular sections:
- (a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of five minutes, or a multiple of five minutes, of longitude; and
  - (b) by the equator and by parallels of latitude that are at a distance from the equator of five minutes or a multiple of five minutes, of latitude,
- each of which is bound:
- (c) by portions of two of those meridians that are at a distance from each other of five minutes of longitude; and
  - (d) by portions of two of those parallels that are at a distance from each other of five 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 country and the offshore area, constitutes a block.
- (3) Each block shall be comprised of 25 sub-blocks each of which shall be bounded by:
  - (a) portions of two meridians of longitude that are at a distance from each other of one minute of longitude; and
  - (b) portions of two parallels of latitude that are at a distance from each other of one 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 country and the offshore area constitutes a sub-block.

## **PART VIII.—COMPENSATION TO LANDHOLDERS.**

### **235. Principles of compensation and relationship compensation and memorandum of agreement.**

- (1) The holder of a tenement is liable to pay compensation, in respect of his or her 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) Subject to Subsection (4), the compensation to which landholders are entitled includes compensation for:
  - (a) being deprived of the possession or use of the natural surface of the land; and
  - (b) damage to the natural surface of the land; and
  - (c) severance of land or any part thereof from other land held by the landholder; and
  - (d) any loss or restriction of a right of way, easement or other right; and
  - (e) the loss of, or damage to, improvements; and
  - (f) in the case of land under cultivation, loss of earnings; and
  - (g) disruption of agricultural activities on the land; and
  - (h) social disruption.
- (3) Where applicable, compensation shall be determined with reference to the values for economic trees published by the Valuer-General.
- (4) No compensation shall be payable and no claim for compensation shall lie, whether under this Act or otherwise:
  - (a) in consideration of permitting entry on to the land for exploration or mining purposes; or
  - (b) in respect of the value of any mineral which is or may be on the land; or
  - (c) by reference to any rent, royalty or other amount assessed in respect of the mining of the mineral,
 other than as provided for in this Act.
- (5) For the purposes of this Act, payments received, or receivable, by a landholder under a memorandum of agreement are not a form of, and are not to be designed to be a form of, compensation to the landholder for loss or damage suffered or foreseen to be suffered by him or her from exploration or mining or operations ancillary to mining and consequently:
  - (a) such payments are not to be taken into account in determining the amount of compensation to which a landholder is entitled under this Section 235; and

- (b) Subsection (4) does not prohibit any payments being made pursuant to a memorandum of agreement.
- (6) A landholder:
- (a) has a statutory right, in accordance with the principles set out in this Part VIII, to compensation for loss or damage suffered or foreseen to be suffered by the landholder from exploration or mining or operations ancillary to mining; and
  - (b) does not have a statutory right under this Act to receive payments pursuant to a memorandum of agreement, but has such rights under contract or the general law (or pursuant to any other Act) to receive payments pursuant to a memorandum of agreement which rights arise from that memorandum of agreement taking effect as a legally binding contract.
- (7) A person who pays, or agrees to pay, compensation in respect of any of the matters referred to in Subsection (4), is guilty of an offence.
- Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding five years, or both.
- (8) Where 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, or operations ancillary to mining on, the tenement, the landholders of that land are entitled to compensation for all loss or damage sustained and the amount of such compensation shall be determined as provided in this Part VIII.

**236. No entry until compensation agreed or determined.**

The holder of a tenement (other than an exploration licence) shall not enter onto or occupy an area of land, the subject of the tenement, for the purpose of mining, until:

- (a) he or she has made an agreement with the landholders of that area of land as to the amount, times and mode of compensation and the agreement has been registered in accordance with Subsection 237(5) or Subsection 237(7); or
- (b) compensation has been determined in accordance with this Part VIII and the holder of the tenement has paid or tendered such compensation as is then due.

**237. Compensation agreements.**

- (1) The amount of compensation payable by the holder of a tenement to landholders in respect of an area of the land the subject of the tenement to be entered upon for exploration or mining may be determined by agreement (in this Section 237 referred to as a "**compensation agreement**").
- (2) A compensation agreement shall not be valid unless the provisions of this Section 237 have been complied with.
- (3) Where the holder of a tenement and landholders propose to enter into a compensation agreement, the holder of the tenement shall, 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 Chief Warden.
- (4) Within 14 days of receipt of a proposed compensation agreement under Subsection (3), the Chief Warden shall give written notice to the parties that:
  - (a) he or she approves the proposed compensation agreement; or
  - (b) he or she requests the parties to consider certain amendments specified in the notice.
- (5) Upon a proposed compensation agreement being approved by the Chief Warden under Subsection (4)(a):

- (a) that compensation agreement shall take effect (as an enforceable legal document) irrespective of when, and whether, that compensation agreement is executed by the parties to it; and
  - (b) the Chief Warden shall provide a copy of the compensation agreement to the Registrar who shall register it.
- (6) The parties shall consider any request by the Chief Warden under Subsection (4)(b), but are not obliged to accept the amendments specified in the notice under that Subsection.
- (7) Where the Chief Warden makes a request under Subsection (4)(b) and the provisions of Subsections (3), (4) and (6) have been complied with, the parties may then execute the compensation agreement (as amended, to the extent agreed by the parties, to take into account any request by the Chief Warden under Subsection (4)(b)) and submit it to the Registrar who shall register it.

**238. Determination of compensation by the Warden.**

- (1) The:
- (a) holder of a tenement; or
  - (b) landholders claiming an entitlement to compensation, including the claimants to disputed land,
- may, where they are unable to agree on the amount of compensation to be paid, by notice to the Chief Warden, request a Warden to determine the amount payable.
- (2) On receipt of a notice under Subsection (1), the Chief Warden shall:
- (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 under this Section 238 the Warden shall allow the holder of the tenement and the claimant to present their evidence and arguments to him or her in such manner as he or she thinks fit, but shall at all times have regard for the principles of natural justice.
- (4) The Warden shall:
- (a) make a determination on the basis of the evidence presented to him or her and the argument submitted to him or her and in accordance with the principles of compensation specified in Section 235; 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) Where the Warden considers it impracticable or inexpedient to assess the amount of compensation to be paid in full satisfaction of the loss or damage, the Warden may make a determination as to the compensation payable in respect of a part of the total claim for compensation and defer his or her assessment of the total claim until a later hearing.
- (6) A determination in part under Subsection (5) shall meet the requirements of Section 236.
- (7) In making a determination under this Section 238 the Warden may, if agreed by the holder of the tenement and the landholders to which the determination relates, engage one or more experts to assist the Warden make that determination.
- (8) If an expert is engaged by a Warden pursuant to Subsection (7) then:

- (a) 50% of the costs of that expert are to be borne by the holder of the tenement; and
- (b) 50% of the costs of that expert as to be borne by the landholders to which the determination relates.

**239. Appeal from a Warden's determination.**

A:

- (a) holder of a tenement; or
- (b) landholder claiming an entitlement to compensation,

aggrieved by a determination of the Warden under Subsection 238(4)(a) as to the amount of compensation to which he or she is entitled or which he or she is obliged to pay, may appeal to the National Court.

**240. Compensation to be binding.**

Subject to appeal under Section 239 the provisions of:

- (a) a compensation agreement duly registered under Section 237; or
- (b) a Warden's determination under Section 238,

shall be:

- (c) a condition of the tenement to which it relates, the breach of which may be grounds for the cancellation of the tenement; and
- (d) binding as a contract on both the holder of the tenement and the landholders.

**241. Compensation in the case of a land dispute.**

- (1) Where a dispute, as defined in the *Land Disputes Settlement Act 1975*, concerning the land the subject of a tenement under this Act makes agreement on compensation impracticable, the amount of compensation to be paid by the holder of the tenement shall be determined as provided for in Section 238.
- (2) The amount of compensation determined under Subsection (1) shall be payable into a statutory trust established for that purpose to be held therein until the land dispute has been resolved, and thereafter such compensation shall be paid from the trust account as determined by the Warden or subject to a compensation agreement, as the case may be.

**242. Effect of variation to approved programme or approved proposals or area of a tenement.**

- (1) Where, as a result of a variation to:
  - (a) the approved programme for an exploration licence; or
  - (b) the approved proposals for any other form of tenement; or
  - (c) the area of a tenement as a result of an application made under Sections 68, 109 or 130,

additional loss or damage will be suffered by landholders (from that which would have been suffered had that variation not been made) and for which additional loss or damage those landholders are not to be, or have not been, compensated for by a compensation agreement entered into pursuant to Section 237 or a determination made by a Warden under Section 238 then, subject to Subsection (2):

- (d) the holder of the relevant tenement is required to pay, whether by means of a compensation agreement entered into pursuant to Section 237 or a determination made by a Warden under Section 238, additional compensation to those landholders for that additional loss or damage; and

- (e) Part VIII of this Act applies to the determination of that compensation.
- (2) Where a compensation agreement entered into pursuant to Section 237:
  - (a) sets out a mechanism for determining the additional compensation payable to the landholders who are party to that agreement if there is a variation to the approved programme or approved proposals for the relevant tenement, then the additional compensation to which the landholders are entitled due to a variation to the approved programme or the approved proposals shall be determined in accordance with the principles set out in that compensation agreement; and
  - (b) provides that no compensation is payable to the landholders who are party to that agreement if there is a variation to the approved programme or approved proposals for the relevant tenement, then no compensation is payable under this Act to those landholders due to that variation.
- (3) To avoid doubt, where no additional loss or damage is suffered by a landholder due to a variation to an approved programme, approved proposals or expansion of the area of a tenement, then no compensation is payable to that landholder as a result of that variation or expansion.

## **PART IX.—ROYALTIES.**

### **243. Interpretation of Part IX.**

In this Part IX, unless the contrary intention appears:

"**f.o.b. revenue**" means:

- (a) in the case of a delivery of mine products made pursuant to a sale by the miner, other than a sale to which paragraph (b) of this definition applies – the whole of the consideration receivable by the miner for the mine products less the costs, charges and expenses bona fide incurred or suffered by the miner in respect of them from the time when the mine products are loaded on a ship or aircraft in the country; and
- (b) in the case of any delivery of mine products made pursuant to a sale by the miner for a consideration that is not a consideration that would be receivable by a willing seller from a willing buyer or that is made pursuant to a disposition by the miner otherwise than by way of sale:
  - (i) an amount equal to the whole of such consideration as would have been receivable by the miner if such mine products had been sold at the weighted average of the whole of the considerations receivable by the miner (less the costs, charges and expenses referred to in paragraph (a) of this definition) in respect of deliveries of mine products of substantially the same composition which were made during the period of 60 days immediately preceding the relevant delivery and to which paragraph (a) applied; or
  - (ii) in the event of there being no such deliveries – such amount as the Managing Director may, acting reasonably, determine to be the value of the mine products after the miner has presented to him or her evidence of its value;

"**mine products**" means any minerals (including without limitation gold), ores containing minerals or gold or concentrated ores of minerals or gold that have been extracted from or produced from the area of a mining lease or an alluvial mining lease;

"**miner**" means the holder of a mining lease or an alluvial mining lease;

"**net smelter returns**" means:

- (a) in the case of a miner who is also a processor of the mine products mined by that miner – the value of the products of his or her smelter or his or her smelter and refinery, as the case may be, less the costs, charges and expenses bona fide incurred

or suffered by the miner in respect of those products from the time when the mine products are delivered to the smelter until the time when the smelter or refinery products are delivered to and accepted by the purchasers including, without limiting the generality thereof:

- (i) smelting and refining costs that may include a reasonable profit element but that shall be no greater than amounts that are or would be charged to any other person by the miner for the smelting or smelting and refining, as the case may be, of similar mine products; and
  - (ii) realization costs; and
  - (iii) the costs itemised in the definition of "f.o.b. revenue" to the extent they are payable by the miner in respect of the transporting of the smelter or refinery products to the point of delivery to the purchasers; and
- (b) in the case of a miner who has his or her mine products smelted or smelted and refined by a person other than himself or herself – the value of the products of the smelter or the smelter and the refinery, as the case may be, from mine products supplied by the miner less the costs, charges and expenses bona fide incurred or suffered in respect of the products from the time when the mine products are delivered to the smelter until the time when the smelter or refinery products are delivered to and accepted by the purchasers including, without limiting the generality thereof:
- (i) smelting and refining charges payable by the miner to the processor which, if the processor is a related company or joint venture partner of that miner or otherwise engaged in undertaking business operations in conjunction with the miner or is a director or secretary of the miner, shall be no greater than amounts that are or would be charged by the processor to any person or company who is not so associated with the miner; and
  - (ii) realization costs incurred by the processor or by the miner; and
  - (iii) the costs itemised in the definition of "f.o.b. revenue" to the extent they are payable by the processor or by the miner in respect of the transporting of the smelter or refinery products to the point of delivery to the purchasers;

"**processor**" means a person who is engaged in smelting or smelting and refining of mine products;

"**quarter**" means a period of three successive calendar months beginning on 1 January, 1 April, 1 July or 1 October.

#### **244. Royalty.**

Every miner shall pay to the State royalty at the rate of 2% of the value of:

- (a) except where paragraph (b) applies, the f.o.b. revenue applicable to deliveries of mine products by the miner pursuant to sale or other dispositions where the mine products are directly or indirectly for export from the country; and
- (b) the net smelter returns applicable to deliveries of mine products where the mine products are smelted or smelted and refined prior to delivery by the miner (whether by sale or disposition) to another person.

#### **245. Time for payment of royalties and royalty returns.**

- (1) Royalties for a mine product produced from a mining lease or alluvial mining lease shall be paid within 30 days after the end of the month during which the relevant amount of the mine product is, as applicable:

- (a) sold or disposed of (to the extent the royalty is being calculated on an f.o.b. revenue basis); and
  - (b) smelted or smelted and refined and that smelted or smelted and refined product delivered to the miner or delivered, on behalf of the miner, to a third party (to the extent the royalty is being calculated on a net smelter return basis).
- (2) Royalties shall be paid in accordance with such procedures as are prescribed in the regulations and, in the absence of such procedures, paid in accordance with such procedures published by the Council or the Managing Director from time to time.
- (3) At or prior to the time required for payment of a royalty in respect of a month the holder of the relevant mining lease or alluvial mining lease shall lodge with the Managing Director a royalty return, setting out in respect of that month:
- (a) the quantity of mine products sold or disposed of (to the extent the royalty is being calculated on an f.o.b. revenue basis); and
  - (b) the f.o.b. revenue attributable to those mine products and the basis of its calculation; and
  - (c) the quantity of smelted or smelted and refined mine products delivered to the miner or delivered, on behalf of the miner, to a third party (to the extent the royalty is being calculated on a net smelter return basis); and
  - (d) the net smelter returns attributable to those mine products and the basis of its calculation; and
  - (e) the total amount of royalties payable for the relevant month; and
  - (f) such other details as are prescribed.
- (4) No royalty return is required to be lodged by the holder of a mining lease or an alluvial mining lease prior to the first month in which mine products are produced or obtained from the area of that mining lease or alluvial mining lease.

**246. Further information in respect of royalties.**

- (1) The holder of a mining lease or alluvial mining lease shall provide to the Managing Director, within such reasonable period required by the Managing Director, such information required by the Managing Director:
- (a) to understand and verify the accuracy of a royalty return; and
  - (b) to confirm that the correct amount of royalties have been paid by the holder.
- (2) Information may be requested under Subsection (1) in relation to a royalty return up to seven years after the lodgment of that return where it relates to a mining lease and up to three years after the lodgment of that return where it relates to an alluvial mining lease.

**247. Determination of royalties by Managing Director.**

- (1) Where the Managing Director, on a reasonable basis, considers that a royalty return is incorrect (including, without limitation, because the f.o.b. revenue or the net smelter return has not been correctly calculated) then the Managing Director shall:
- (a) notify the holder of the mining lease or alluvial mining lease of the reasons why the Managing Director considers the royalty return is incorrect; and
  - (b) provide that holder with an opportunity to lodge (within such period specified by the Managing Director, which shall be at least 14 days) a response to that notice.
- (2) If a response under Subsection (1)(b) is lodged within the requisite time, the Managing Director shall consider that response and may (whether or not a response was lodged), if the Managing Director still considers the royalty return is incorrect,:

- (a) issue a revised royalty return; and
  - (b) require the holder of the mining lease or alluvial mining lease to pay, within 14 days of the issue of the revised royalty return, any additional amount of royalties payable under that revised royalty return.
- (3) Interest is payable on an amount required to be paid under Subsection (2) by the holder of the relevant tenement from the day on which the amount would have been paid had the royalty return lodged by the holder been correct to the date of payment of the amount, at such rate prescribed by the Minister for the purposes of this Section 247 by notice published in the National Gazette or a national newspaper.
- (4) Where the holder of the relevant mining lease or alluvial mining lease disputes a revised royalty return issued by the Managing Director, then the holder may appeal to the National Court.

#### **248. Penalties.**

- (1) Where the holder of a mining lease or alluvial mining lease, intentionally or by virtue of their reckless act or omission, fails to pay an amount of royalty due under this Act then the holder shall, within 14 days of receipt of notice from the Managing Director, pay to the Authority a penalty equal to 100% of the royalty underpaid due to that intentional or reckless act.
- (2) The penalty payable under Subsection (1) is in addition to any other penalty, including interest, that may be imposed under this Act for underpayment of royalties.
- (3) Subsection (1) does not apply to a failure by the holder of a mining lease or alluvial mining lease to pay an amount of a royalty where that failure arises due to:
- (a) an error, made in good faith, in the calculation of the royalty; or
  - (b) an error, made in good faith, in the construction of this Act or the regulations.

#### **249. Late payments.**

- (a) Where any payment made under this Part IX is made late (for any reason), then interest will accrue on that payment, at such rate as is prescribed by the Minister for the purposes of this Section 249 by notice published in the National Gazette or a national newspaper, until such time as that payment (and all interest accrued on it) is paid.
- (b) The Managing Director may, by instrument in writing, waive the payment of all or part of the interest accrued due under Subsection (1) where adequate cause is shown to justify that waiver, which instrument shall identify that sufficient cause and a copy of that instrument shall be provided to the Council.

#### **250. Refunds.**

- (1) Where the holder of a mining lease or alluvial mining lease has overpaid an amount of royalty then, unless that overpayment was due to the reckless act or omission of the holder, the holder is entitled to a refund of the overpaid amount of the royalty.
- (2) No interest is payable by the State on a refund payable under Subsection (1), unless the need for that refund arises due to a revised royalty return issued by the Managing Director under Section 247.
- (3) The interest payable on a refund referred to in Subsection (2) will be equal to such interest which accrues on the overpaid amount, at such rate as is prescribed by the Minister for the purposes of this Section 250 by notice published in the National Gazette or a national newspaper, from the date of payment of the overpaid amount to the date of its refund by the State.



**251. Records.**

- (1) The holder of a mining lease shall maintain sufficient records to substantiate the amounts included in a royalty return lodged under Section 245 for a period of 7 years from the lodgment of that return.
- (2) The holder of an alluvial mining lease shall maintain sufficient records to substantiate the amounts included in a royalty return lodged under Section 245 for a period of 3 years from the lodgment of that return.
- (3) Records kept under this Section 251 shall comply with any applicable requirements of the regulations.

**252. Failure to lodge royalty return.**

- (1) Where for a month the holder of an alluvial mining lease or mining lease fails to lodge a royalty return within 10 days of the due date for lodgment of that return, then the Managing Director may make a determination, using such information available to the Managing Director, as to the royalty payable by the holder for the relevant month.
- (2) Any royalty determined to be payable under Subsection (1) shall be paid within 14 days of the Managing Director's determination.
- (3) No refund is payable by the State where the amount of royalty determined for the purposes of Subsection (1) exceeds the actual amount of royalty for the relevant month.
- (4) Where the amount of royalty determined by the Managing Director under Subsection (1) is less than the actual amount of royalty payable under this Act for the relevant month, then the holder of the relevant mining lease or alluvial mining lease remains liable to pay that excess amount.

**253. Powers of inspection.**

For the purposes of determining whether any royalty payable under this Act has been properly calculated and paid, an officer of the Authority authorised by the Managing Director may:

- (a) enter upon any land where mining operations are carried out or any other premises used for the purpose of preparing accounting or other records which are relevant to the determination of the amount of royalties payable; and
- (b) inspect and examine any mining operations and accounting and other records related to those operations; and
- (c) inspect and examine any mine products; and
- (d) take, at the cost of the holder of the relevant mining lease or alluvial mining lease, copies or extracts of accounting or other records relating to mining operations, mine product and determination of the amount of royalties payable under this Act; and
- (e) require any person to produce to the officer, within a reasonable time, any accounting or other records or other information (in the possession or control of the person) relating to mining operations, mine product and determination of the amount of royalties payable under this Act; and
- (f) require any person in control of premises referred to in paragraph (a) to provide the officer with appropriate means and facilities and assistance for the effective exercise of the powers conferred by this Section 253.

**254. Hindering of inspections.**

A person who, without reasonable cause, hinders the exercise of an officer of powers under Section 253 or who fails to comply with a requirement under Section 253 commits an offence.

**255. Allocation of royalties.**

- (1) Royalties payable by the holder of a mining lease shall be allocated in accordance with the terms of any memorandum of agreement which relates to that mining lease and any other requirements of this Act.
- (2) If a memorandum of agreement has not been entered into in respect of a mining lease, the royalties payable by the holder of the mining lease shall be paid to the Authority.
- (3) Royalties payable by the holder of an alluvial mining lease shall be paid to the Authority.

**PART X.—OFFSHORE MINING.****256. Application to offshore mining.**

Subject to the remaining provisions of this Part X, the procedures and requirements of this Act apply to the mining of minerals located offshore in the same way as they apply to the mining of minerals located onshore.

**257. Right to grant of tenement over offshore areas.**

- (1) Despite anything to the contrary in this Act, the Minister is not required to grant a tenement in respect of an offshore area if the Minister considers that the grant of that tenement is inconsistent with the requirements of an international treaty to which the State is a party.
- (2) Where an application is lodged seeking the grant of a tenement in respect of an offshore area and the Registrar considers that the grant of such tenement is inconsistent with an international treaty to which the State is a party, the Registrar shall, as soon as reasonably practicable, notify the applicant of this fact.
- (3) An applicant who has received a notice from the Registrar under Subsection (2) may, upon payment of the prescribed fee, request the Minister to determine whether the grant of the tenement would be inconsistent with an international treaty to which the State is a party.
- (4) Upon receipt of a request under Subsection (3), the Council shall proceed to consider whether the grant of the tenement would be inconsistent with an international treaty to which the State is a party and shall, unless the Council and the applicant otherwise agree, defer consideration of whether the applicant is otherwise entitled to the grant of the tenement until the Council has made a final determination of that matter.
- (5) Upon consideration of whether the grant of a tenement would be inconsistent with an international treaty to which the State is a party the Council shall proceed to issue a draft determination to the applicant in relation to that matter, which draft shall set out the reasons for the Council's determination.
- (6) The Council shall allow the applicant such period specified by the Council (which period shall be at least 21 days from the receipt by the applicant of the Council's draft determination under Subsection (5)) to lodge submissions in response to that draft determination.
- (7) Upon the expiration of the period allowed under Subsection (6), the Council shall proceed to issue a final determination, which final determination shall set out the reasons for the Council's determination.

**258. Offshore areas shared with other states.**

- (1) Despite anything to the contrary in this Act, the Minister is not required to grant a tenement in respect of offshore areas which areas are partly controlled by the State and partly controlled by another country or an international body if the Minister considers that the grant of that tenement should be deferred until such time as the State has entered into arrangements with that other country (or countries) or international body co-ordinating the administration of the tenement, including:

- (a) the distribution of royalties from the tenement between the State and that country (or countries) or international body; and
  - (b) the co-ordination of the regulation of the activities of the holder of the tenement.
- (2) Any provisions of this Act relating to the distribution of royalties are, in respect of an offshore area, subject to any arrangements agreed between the State and other countries or international bodies as to the distribution of those royalties.

**259. No grant of alluvial mining lease.**

An alluvial mining lease may not be granted in respect of an offshore area.

**260. Conditions of offshore tenements.**

A tenement granted in respect of an offshore area is subject to the condition that the holder of the tenement shall not carry out activities pursuant to that tenement which interfere with:

- (a) navigation and commercial shipping (provided such shipping is being conducted within lawfully authorized routes); or
- (b) fishing activities (which are being undertaken on a commercial scale); or
- (c) any other activities lawfully carried out by a person in respect of the offshore area,

where those activities are not reasonably required for the undertaking of operations pursuant to that tenement.

**261. Conditions imposed upon tenements.**

Without limiting Section 41, Section 58, Section 99 and Section 119, where a tenement is proposed to be granted in respect of offshore areas, then the additional conditions which may be incorporated in that tenement pursuant to those Sections include such conditions as necessary to:

- (a) ensure that operations pursuant to that tenement are carried out in compliance with the State's obligations under any international treaties relating to the sea to which the State is party; and
- (b) co-ordinate the activities pursuant to that tenement with commercial and other shipping activities so as to minimise risks to property and the health and safety of persons.

**262. Safety zones.**

- (1) The Minister may, if the making of such a declaration is recommended to the Minister by the tenement holder, by notice published in the National Gazette establish a safety zone around a structure or equipment constructed or established in an offshore area pursuant to a tenement ("**offshore structure**").
- (2) A safety zone:
  - (a) may only be established where reasonably required for the protection of an offshore structure; and
  - (b) may not extend more than 500 metres from the outer edge of the offshore structure.
- (3) The Minister may, if the making of such revocation or variation is recommended to the Minister by the tenement holder, by a subsequent notice published in the National Gazette revoke or vary a notice published under Subsection (1).
- (4) A notice published under Subsection (1) shall specify the vessels to which it applies.
- (5) The person in command of a vessel to which a notice published under Subsection (1) applies shall ensure that vessel does not enter a safety zone without the written consent of the tenement holder.

- (6) The consent of the tenement holder, for the purposes of Subsection (5), may be given subject to such reasonable conditions as necessary to preserve the safety and integrity of the offshore structure and the person in command of the vessel shall ensure the vessel only enters the relevant safety zone in compliance with those conditions.
- (7) A person who breaches Subsections (5) or (6) commits an offence and is liable to a fine not exceeding K50,000 or imprisonment for a term not exceeding 4 years or both.
- (8) It is a defence to a prosecution for a breach of Subsection (5) or (6) if a vessel entered a safety zone without the consent of, or contravened the conditions of a consent given by, the tenement holder:
  - (a) as necessary, due to an unforeseen emergency, to preserve the safety or health of persons or to avoid material damage to the vessel, another vessel or pipelines, wells, offshore infrastructure or similar property; or
  - (b) due to events (including poor weather conditions) beyond the reasonable control of the commander of the vessel.

## **PART XI.—MISCELLANEOUS.**

### **263. Information.**

- (1) The Managing Director may require any person whom the Managing Director reasonably believes to be in possession of information concerning the geology and mineral resources of the State, including geotechnical or hydrogeological information, to provide to the Managing Director details or copies of that information.
- (2) The:
  - (a) Minister; or
  - (b) Managing Director,
 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:
  - (c) an instrument, or transaction pertaining to that instrument, lodged for approval or approved under Part VII Division 3; or
  - (d) mining and exploration activities within the State.
- (3) A person, required under this Section 263 to provide information or make available for inspection any document or information, who refuses or fails to do so, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00.

### **264. Presentation of information.**

Where under this Act or the regulations a person, including the holder of a tenement or the applicant for a tenement, is required to submit a report, submission or other information ("**Report**") to the Managing Director, the Council, the Minister or another person exercising statutory functions under this Act, then:

- (a) the information in that Report shall be presented in a manner which is balanced and objective; and
- (b) the person submitting the Report shall notify the recipient of the Report of any limitations that apply, or should apply, to the use of the information in the Report; and
- (c) where, in respect of a matter to which the Report relates, there is a significant lack of relevant information or significant degree of uncertainty, then this shall be noted in the Report; and

- (d) where assumptions have been made in the preparation and presentation of the Report, these assumptions shall be identified and the sensitivity of the accuracy of the information in the Report to those assumptions shall be outlined; and
- (e) so far as is reasonably practicable, the information in the Report shall be presented in a way that allows a person reviewing the Report to understand how the conclusions in the Report have been reached.

**265. Auditing of information.**

- (1) Subject to this Section 265, the Minister, the Council or the Managing Director may, by notice to the holder of a tenement or an applicant for a tenement, undertake an audit of:
  - (a) the accuracy of any information lodged by the holder or the applicant under this Act; or
  - (b) whether the holder has complied with the provisions of this Act; or
  - (c) any matter relevant to the exercise by the State of its rights or performance of its regulatory functions under this Act.
- (2) The audit may be undertaken by employees of the Authority or by such independent auditor appointed by the Authority.
- (3) The holder of, or applicant for, a tenement, in relation to whom an audit is conducted, shall provide to the Authority all documents (whether located within Papua New Guinea or otherwise) in the possession or control of the holder or applicant (or its officers or related companies) which are required by the Authority for the conduct of the audit (but excluding documents subject to legal professional privilege).
- (4) An audit under this Section 265 is to be conducted at the cost of the State.
- (5) An independent auditor appointed by the Authority to conduct an audit under this Section 265 shall keep confidential any information acquired by that independent auditor in relation to the holder of, or applicant for, the tenement and may only disclose that information:
  - (a) to the holder of, or applicant for, the tenement, including its employees and officers; and
  - (b) to the Minister, the Authority and the Council; and
  - (c) as otherwise required by any other law; and
  - (d) as otherwise agreed with the holder or applicant.
- (6) In this Section 265, a reference to a document includes a document stored electronically on a computer or computer disc.

**266. Landrights in respect of property transferred to State.**

- (1) Where, pursuant to the terms of a mining development contract, memorandum of agreement, the conditions of a tenement or pursuant to some other agreement with the State, a Provincial Government or a Local Level Government, infrastructure or other similar property installed by the holder of a tenement on land is transferred to:
  - (a) the State; or
  - (b) a Provincial Government; or
  - (c) a Local Level Government,
 (respectively, a "**government agency**"),

then, from the time the transfer of that property takes effect, the government agency shall, in accordance with the terms of this Section 266, have an easement over the land on which that

infrastructure or other property is located (such easement being an "**infrastructure easement**").

- (2) An infrastructure easement enables the government agency (including through government employees and non-government agents and contractors) to:
  - (a) access the land upon which the infrastructure easement is located (including with vehicles and equipment); and
  - (b) operate, for public purposes, the infrastructure or other property located on the infrastructure easement; and
  - (c) maintain or repair the infrastructure or other property located on the infrastructure easement; and
  - (d) replace the infrastructure or other property located on the infrastructure easement with similar infrastructure or property, or infrastructure or other property which may be used for the same or similar purposes as the infrastructure or property which is being replaced.
- (3) A government agency may, by instrument in writing:
  - (a) sub-licence its rights under an infrastructure easement to a third party; or
  - (b) transfer its rights under an infrastructure easement to a third party; or
  - (c) suspend or limit, or impose conditions on the exercise of, its rights under the infrastructure easement.
- (4) A government agency may at any time, by notice in writing to the Minister administering the *Land Act* 1996, surrender its rights under an infrastructure easement.
- (5) Where due to:
  - (a) all or part of the property located on an infrastructure easement being removed from the infrastructure easement; or
  - (b) all or part of the property located on an infrastructure easement being decommissioned,

that infrastructure easement ceases to be used for the operation, for public purposes, of infrastructure or other property for a period of 18 months (or such other period agreed to by the Minister administering the *Land Act* 1996 on application by the government agency which holds the infrastructure easement made prior to the expiry of the 18 month period) then that infrastructure easement shall cease to exist.
- (6) Land that is subject to an infrastructure easement may be reserved by the Minister administering the *Land Act* 1996 by means of a declaration under section 49 of the *Land Act* 1996 and, if such a declaration is made in respect of that land, the infrastructure easement shall cease to apply in respect of that land.
- (7) In this Section 266, "**public purpose**" has the meaning given to that term in the *Land Act* 1996.

## **267. Preservation of cores.**

- (1) The holder of a tenement shall preserve all cores and drilling samples, except such amounts as may be required for assaying and testing and, at such time as he or she no longer requires them, or upon the expiry, surrender or cancellation of the tenement, shall advise the Managing Director.
- (2) On receiving an advice under Subsection (1), the Managing Director may request that the cores and drilling samples (or such of them as are required) be provided to the Authority and the holder of the tenement shall comply with such a request at his or her own cost.

- (3) The obligation of the holder of a tenement under Subsections (1) and (2) shall cease three months after the tenement expires, is surrendered or is cancelled.

**268. Confidentiality.**

- (1) Information disclosed under this Act to the Minister, to an employee of the Authority, or to a member of the Council, shall not be disclosed to any person who is not an employee of the Authority, the Minister or a member of the Council without the prior written approval of the person who provided that information, except:
- (a) to the extent that disclosure is authorized or required under this Act or any other law; or
  - (b) to the extent the person providing the information authorized its disclosure at the time of providing the information; or
  - (c) to the extent necessary for the Managing Director to publish statistical information or geographical data concerning the geology and mineral resources of the State; or
  - (d) to the extent necessary for the Managing Director or the Minister to give advice to the National Executive Council, other Departments and the Central Bank on a confidential basis.
- (2) An employee of the Authority or member of the 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 employee of the Authority or his or her membership of the Council, is guilty of an offence.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding four years, or both.

**269. Conflict between the holder of a tenement and a licensee under the *Oil and Gas Act 1998*.**

- (1) Where a dispute arises between:
- (a) the holder of a tenement; and
  - (b) a licensee under the *Oil and Gas Act 1998*,
- concerning any operations carried out or proposed to be carried out by the holder of the tenement or the licensee on the land the subject of the tenement or licence:
- (c) the holder of the tenement; or
  - (d) the licensee; or
  - (e) both the holder of the tenement and the licensee,
- may refer the dispute to the Managing Director for resolution.
- (2) The Managing Director shall, as soon as is practicable after a dispute has been referred to him or her under Subsection (1), inquire into the dispute and seek the advice of the Council.
- (3) After inquiring into a dispute and seeking the advice of the Council under Subsection (2), the Managing Director may:
- (a) make such order and such direction to:
    - (i) the holder of the tenement; or
    - (ii) the licensee; or
    - (iii) both the holder of the tenement and the licensee,
 as he or she determines to be both just and equitable and in the public interest; and
  - (b) in an order under paragraph (a), direct the payment by:

- (i) the holder of the tenement; or
  - (ii) the licensee; or
  - (iii) both the holder of the tenement and the licensee,
- of any costs and expenses incidental to the conduct of the inquiry,

which orders shall be complied with by the holder of the tenement and the licensee.

(4) Where:

- (a) the holder of a tenement; or
- (b) a licensee under the *Oil and Gas Act 1998*,

fails or neglects to comply with an order or direction under Subsection (3), the Minister may, subject to compliance with any applicable procedures under this Act, cancel the tenement or the licence, as the case may be.

**270. Tenement prevails over subsequent interests.**

- (1) The rights of the holder of a tenement under this Act in respect of the area of that tenement prevail over rights granted to any other person pursuant to any other Act or regulations after the date of the grant of that tenement.
- (2) Nothing in Subsection (1) affects the operation of those provisions of this Act providing for the co-existence of more than one tenement in respect of the same area of land.

**271. Right to enter land.**

- (1) The Managing Director may, at any time, grant to an employee of the Authority or a person or persons employed by the State, the right to enter any land for the purpose of carrying out geological, geotechnical or any other investigations.
- (2) A right to enter land shall be on the prescribed form.

**272. No grant of injunction without hearing.**

Despite any other rule of law or statute to the contrary, a court shall not grant an injunction, or make any other form of order, restraining the holder of a tenement undertaking operations pursuant to that tenement without providing the holder of that tenement with an opportunity to present submissions to the court as to whether that injunction should be granted or that order made.

**273. Police to assist Wardens, etc.**

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

**274. Offences.**

- (1) A person shall not carry on exploration or mining on any land unless he or she is duly authorized under this Act.
- (2) The Managing Director may request a person whom he or she suspects is carrying on unauthorized exploration or mining to provide any information required to enable the Managing Director to establish whether unauthorized exploration or mining is taking place.
- (3) Where the Managing Director determines that a person is carrying on unauthorized exploration or mining he or she 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 unauthorized exploration or mining is taking place.



- (4) A person who:
- (a) carries on exploration or mining on any land without being duly authorized under this Act; or
  - (b) carries on exploration or mining on, or removes minerals from, land subject to a tenement held by another person without the approval of that person or without authorization under this Act; or
  - (c) carries on (other than by virtue of Subsection 7(4)) exploration or mining on, or removes minerals from, land reserved under Section 7; or
  - (d) fails to provide any information that he or she has been requested to provide relating to his or her entitlement to explore or mine; or
  - (e) fails to comply with a direction under Subsection (3)(a); or
  - (f) assaults, hinders, obstructs or resists a Warden or other officer carrying out his or her duties as authorized by this Act; or
  - (g) when lawfully evicted or removed from land where unauthorized exploration or mining was taking place, re-enters or takes possession of such land; or
  - (h) gives false or misleading information to the Managing Director, the Council or to an employee of the Authority; or
  - (i) obstructs execution of any right conferred under this Act; or
  - (j) enters the area of a mining lease without the permission of the holder of that mining lease or a lawful reason; or
  - (k) buys, sells, transports, smelts or refines or has in his or her possession, custody or control, minerals unlawfully removed from a tenement,

is guilty of an offence under this Act.

Penalty: A fine not exceeding K50,000.00 or imprisonment for a term not exceeding four years, or both such fine and imprisonment.

Default penalty: A fine not exceeding K1,000.00.

- (5) A person who carries out unlawful mining within the area of a tenement is, in addition to any penalty that may be imposed upon that person under this Act, required to indemnify and keep indemnified:

- (a) the State; and
- (b) the holder of the relevant tenement,

against any losses and damages the State and the holder suffer and costs and expenses they incur (respectively) as a result of those unlawful mining activities.

- (6) The offences created by this Section 274 are in addition to and not in derogation of any offence created by the Criminal Code (Chapter 262) or the Central Banking (Foreign Exchange and Gold) Regulation.

## **275. 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 K50,000.00 or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment, and where the offence is a continuing one, is further liable to a default penalty of a fine not exceeding K5,000.00 for every day during which the offence was committed after conviction.

- (3) Where a body corporate is convicted of an offence against this Act, every director of the body corporate is guilty of an offence and liable to the same penalty (but excluding any penalty which consists of imprisonment) as is prescribed for that offence (when committed by a natural person) unless he or she did not know and could not reasonably be expected to have known of the commission of that offence or he or she exercised all due diligence to prevent the commission of that offence.
- (4) Where a person is convicted of an offence against this Act, the Court may, if the Court considers it appropriate in all the circumstances, order the offender to:
- (a) take such steps, within such reasonable period specified by the Court, as necessary to remedy the effects of the offender's failure to comply with this Act; and/or
  - (b) take such steps, within such reasonable period specified by the Court, as necessary to ensure that the person complies with the provisions of this Act in the future.
- (5) Where a person fails to carry out an order made under Subsection (4)(a), the State may, in any court of competent jurisdiction, recover from that person, as a debt due to the State, the costs of undertaking those steps necessary to remedy the effects of the offender's failure to comply with this Act.
- (6) Any amounts recovered by the State pursuant to Subsection (5) may only be used by the State:
- (a) to undertake those steps necessary to remedy the effects of the offender's failure to comply with this Act; and/or
  - (b) as reimbursement for costs incurred by the State in taking those steps necessary to remedy those effects,

and any additional amounts recovered by the State, less the costs incurred by the State in recovering those amounts from the offender, shall be refunded to the offender.

**276. Immunity of Minister and officials.**

No liability shall attach to the Minister, a Warden or any other employee of the Authority, a member of the Council, or a member of the Police Force, in the exercise of a power, or in the discharge or purported discharge of a duty, under this Act.

**277. Interaction with *Environment Act 2000*.**

Nothing in the *Environment Act 2000* prevents or restrains the issue of a licence or a tenement under this Act, however nothing in this Act entitles the holder of a tenement to commence activities under this Act which activities require an environmental permit or other approval under the *Environment Act 2000* prior to the holder of that tenement being granted that environmental permit or other approval.

**278. Consideration of environmental issues.**

- (1) Where, under this Act, the Council is required to make a determination in relation to a matter affecting the environment then the Council may rely upon any advice provided to the Council by the Department of Environment.
- (2) Nothing in Subsection (1) prevents the holder of a tenement, an applicant for a tenement or an applicant for some other right, approval or consent under this Act, challenging a decision of the Council on the basis that the advice provided by the Department of Environment was incorrect (whether due to an error of fact or law or due to some other reason).
- (3) Where, under this Act:
- (a) the Council is required to determine whether a matter provides adequately for the protection of the environment; and

- (b) the Council has been advised by the Department of Environment that such matter does so provide adequately for the protection of the environment,

then that matter will be regarded, for the purposes of this Act, as adequately providing for the protection of the environment.

- (4) Where, under this Act:

- (a) the Council is required to determine whether from an activity or operations there will be no unacceptable ecological degradation or damage to the environment which cannot be effectively managed, rehabilitated or compensated for; and
- (b) the Council has been advised by the Department of Environment that from such activity or operations there will be no unacceptable ecological degradation or damage to the environment which cannot be effectively managed, rehabilitated or compensated for,

then, for the purposes of this Act, that activity or those operations will be regarded as not causing unacceptable ecological degradation or damage to the environment which cannot be effectively managed, rehabilitated or compensated for.

- (5) Nothing in Subsections (1) to (4) prevents the Council making a determination under this Act where the Council has not been provided with advice by the Department of Environment.

## **279. Regulations.**

- (1) The Head of State, acting on advice, 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 Managing Director, the Council, the Wardens, the 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 shall 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 shall be held, and the terms on which variations thereof may be applied for, and granted; and
  - (i) the persons or class of persons on whom copies of applications for tenements or 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 Managing Director 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 Register including inspection of the Register by the public; and
  - (n) provisions for information to be supplied to the Managing Director by the holder of a tenement in respect of boring or other operations for water or 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) any other matter to effect the proper administration of this Act.
- (2) The regulations may prescribe a fine for an offence against a regulation and if the offence is a continuing one, a fine for each day or part thereof during which the offence has continued after conviction.
  - (3) A regulation may require any matter or thing to be verified by statutory declaration.
  - (4) Where under this Act a decision or determination is made by reference to criteria, then the regulations may prescribe additional criteria, to those set out in this Act, to be considered in making that decision.

## **PART XII.—REPEAL.**

### **280. Repeal.**

The Acts specified in Schedule 1 are repealed.

## **PART XIII.—SAVING AND TRANSITIONAL PROVISIONS.**

### **281. Actions, etc., not to abate.**

Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding, was pending, or any cause of action was pending or existed in respect of any tenement or authority granted, renewed or continued in existence under the repealed Acts, such action, arbitration or proceeding or cause of action does not abate and is not affected by the coming into operation of this Act, but it may be prosecuted, continued and enforced as if this Act had not been made.

### **282. Savings.**

- (1) Nothing in this Act shall affect the provisions of the Acts and the agreements specified in Schedule 2.
- (2) Notwithstanding anything in this Act, a special mining lease issued under the provisions of the repealed Acts and the provisions referred to in Subsection (1) shall continue in full force and effect as though the repealed Acts had not been repealed.
- (3) Subject to the relevant agreement referred to in Subsection (1), a person may in accordance with this Act apply for a tenement in respect of part or all of the land the subject of a prospecting authority or lease granted under the repealed Acts or in accordance with that agreement.
- (4) Any reservation of land made under the repealed Acts and in force immediately before the coming into operation of this Act shall, on that coming into operation, continue in full force and effect as if the repealed Acts had not been repealed.

**283. Prospecting authority, lease for mining purposes and special mining easement deemed to be corresponding tenement under this Act.**

A prospecting authority, lease for mining purposes or a special mining easement granted under the repealed Acts and in force immediately before the coming into operation of this Act shall:

- (a) on that coming into operation be deemed to be an exploration licence, lease for mining purposes or mining easement respectively as if granted under this Act; and
- (b) unless sooner terminated according to law, remain in force for the unexpired period for which it was granted or renewed under the repealed Acts; and
- (c) unless inconsistent with this Act, be subject to the conditions (other than a condition restricting the scope of a prospecting authority to certain minerals) and encumbrances which were in force immediately before the coming into operation of this Act.

**284. Mining leases and claims to be converted to mining leases or alluvial mining leases.**

(1) In this Section 284, "**mining lease or claim**" includes the following tenements granted or continued in force under the repealed Acts:

- (a) ordinary reef claim for gold;
- (b) ordinary reef claim for other minerals;
- (c) ordinary alluvial claim for gold;
- (d) wet alluvial claim for gold;
- (e) ordinary alluvial claim for other minerals;
- (f) ordinary river or creek claim for gold;
- (g) puddling claim;
- (h) prospecting claim for discovery of gold in reefs;
- (i) prospecting claim for discovery of alluvial gold;
- (j) extended reef claim;
- (k) extended alluvial claim;
- (l) hydraulic claim;
- (m) dredging or sluicing claim;
- (n) dredging or sluicing claim in river;
- (o) dredging or sluicing claim under ocean;
- (p) dredging or sluicing claim in lake;
- (q) dredging or sluicing lease;
- (r) gold mining lease;
- (s) mineral lease;
- (t) miner's right;
- (u) mining lease;
- (v) permit to occupy a lot for mining;
- (w) prospecting area for reef gold;
- (x) prospecting area for alluvial gold;
- (y) prospecting area for minerals other than gold or coal;

(z) special areas,

and includes any other tenement, authority, title or holding other than a special mining lease which permits the use of land for mining, granted or otherwise existing under the repealed Acts or under any other legislation or Ordinance relating to mining previously in force in the State or in the Territory of Papua or the Territory of New Guinea.

- (2) A mining lease or claim which was in force immediately before the coming into operation of this Act shall remain in force, subject to the repealed Acts and as though the repealed Acts had not been repealed, for a period of two years after that coming into operation, and shall then expire.
- (3) The holder of a mining lease or claim to which Subsection (2) applies may, at any time while it is in force, make an application under this Act for a mining lease or an alluvial mining lease in respect of a single area that is constituted by all the land the subject of each mining lease or claim or two or more mining leases or claims and such mining lease or alluvial mining lease shall, subject to this Act, be granted to him.
- (4) Where an application under Subsection (3) is pending immediately before the mining lease or claim held by the applicant expires under Subsection (2), that mining lease or claim continues in force subject to the repealed Acts and as though those Acts had not been repealed until the application is finally determined under this Act.

**285. Ancillary areas may be converted to lease for mining purposes.**

- (1) In this Section 285, "**ancillary area**" includes the following tenements granted or continued in force under the repealed Acts:
  - (a) machine area;
  - (b) area for erection of furnace;
  - (c) area for stacking of tailings,

and also includes any other tenement, authority, title or holding which permits the use of land for purposes ancillary to mining granted or otherwise existing under the repealed Acts or under any other legislation or Ordinance relating to mining previously in force in the State or in the Territory of Papua or the Territory of New Guinea, but does not include any such tenement, authority, title or holding if it is included within the definition of "mining lease or claim" under Subsection 284(1).

- (2) An ancillary area which was in force immediately before the coming into operation of this Act shall remain in force, subject to the repealed Acts and as though these Acts had not been repealed, for a period of two years after that coming into operation and shall then expire.
- (3) The holder of an ancillary area to which Subsection (2) applies may at any time while the ancillary area is in force make an application under this Act for a lease for mining purposes in respect of the land the subject of the ancillary area and such lease shall, subject to this Act, be granted to him.
- (4) Where an application under Subsection (3) is pending immediately before the ancillary area held by the applicant expires under Subsection (2), that ancillary area continues in force subject to the repealed Acts and as though those Acts had not been repealed until the application is finally determined under this Act.

**286. Land areas converted to titles under the *Land Act 1996*.**

- (1) In this Section 286, "**land areas**" includes the following tenements granted or continued in force under the repealed Acts:
  - (a) business areas;
  - (b) business licences;

(c) residence areas,

and includes any other tenement, authority, title or holding which permits the use of land for business or residential purposes existing under the repealed Acts or under any other legislation or Ordinance relating to mining previously in force in the State or in the Territory of Papua or the Territory of New Guinea, but does not include any such tenement, authority, title or holding if it is included within the definition of "mining lease or claim" under Subsection 284(1) or within the definition of "ancillary area" under Subsection 285(1).

- (2) A land area which was in force immediately before the coming into operation of this Act shall remain in force, subject to the repealed Acts, as if the repealed Acts had not been repealed, for a period of two years after that coming into operation and shall then expire.
- (3) Where, within the period of two years referred to in Subsection (2), an application is made to the Minister and the Minister is satisfied that the applicant is the holder of a land area, the Minister shall issue a certificate to that effect to the Minister responsible for land matters.
- (4) In a case to which Subsection (3) applies, the Minister responsible for land matters may grant under the *Land Act* 1996 a fee simple or lease of the whole or such portion of the land comprising the land area as he determines, and on such terms and conditions as he determines, but he shall not grant a fee simple of such land unless in his opinion the land is substantially developed and improved.
- (5) To give full effect to the objects of this Section 286 and the powers conferred by it, the *Land Act* 1996 shall be read and construed with such modifications as are necessary.

#### **287. Mortgages, other encumbrances and agreements.**

- (1) Subject to Subsection (2), where:
  - (a) a tenement is granted under this Part XIII in place of a mining tenement granted or continued under the repealed Acts; and
  - (b) the mining tenement or any interest therein was, immediately prior to its expiry, the subject of a registered mortgage, other encumbrance or registered agreement,

the tenement shall be deemed to be the subject of the mortgage, other encumbrance or agreement as if the tenement had been referred to therein, and a memorandum of that mortgage, other encumbrance or agreement shall be endorsed on the title document to the tenement and noted in the Register.
- (2) Where two or more mortgages, other encumbrances or agreements were registered against a mining tenement, the memorandum shall be endorsed on the title document to the tenement, and noted in the Register in the order in which they were registered immediately before the expiry of the mining tenement, and they shall have priority accordingly.
- (3) The holder of a mining tenement who is empowered by this Part XIII to apply for a tenement in substitution for that mining tenement shall, where that mining tenement is the subject of an existing mortgage, other encumbrance or agreement, immediately after lodging his application for the tenement, notify the mortgagee, encumbrancee or other party concerned of that lodging.
- (4) An application for a tenement under this Act in substitution for a mining tenement held under the repealed Acts, the holding of which entitled the applicant to apply under this Part XIII for a tenement, shall be deemed to be an interest in a tenement for the purposes of Section 196.
- (5) Any mining development contract or agreement entered into between the State and the holder of a mining tenement granted under the repealed Acts shall be deemed to be a mining development contract or agreement under this Act.

**288. Officers.**

A person holding office under the repealed Acts immediately before the coming into operation of this Act shall be deemed to have been appointed to the corresponding office under this Act.

**289. Consents and compensation agreements to follow the land.**

In relation to a mining tenement, or authority or interest in land, of whatever kind, to which the repealed Acts applied:

- (a) a consent to the grant of any such tenement, authority or interest given under the repealed Acts or the provisions of any agreement or determination of compensation made in relation to any such tenement, authority or interest are deemed to follow that land and to confer such consent or to apply such provisions in relation to that land for the purposes of any application, proceeding or tenement under this Act made, or deemed to be made, under the operation of this Part XIII; and
- (b) where paragraph (a) applies, no further consent or agreement or determination of compensation is required to be obtained.

**290. References to repealed Acts.**

A reference in any Act, regulation, rule, by-law, instrument or document to the repealed Acts, or any provision thereof, shall, unless the contrary intention appears, be read and construed as a reference to this Act, or the corresponding provision, if any, of this Act.

**291. Difficulties with transitional provisions.**

Where a difficulty arises in respect of the transitional provisions in this Part XIII, the Head of State, acting on advice, may, by regulation:

- (a) make such modifications to those provisions as may appear necessary for preventing anomalies during the transition to the provisions of this Act from the provisions of the repealed Acts; and
- (b) make such incidental, consequential and supplementary provisions as may be necessary or expedient for the purpose of giving full effect to those transitional provisions,

and any such modifications or provisions made by the Head of State, acting on advice, have, and shall be deemed always to have had, the same force and effect as if they had been enacted by way of an amendment to this Part XIII, and on publication of the regulation in the National Gazette, this Part XIII shall be amended accordingly.

**SCHEDULE 1.**

Sec. 280.

**Repealed Acts.**

*Mining Act* (Chapter 195).

*Mining (Amendment) Act* 1986.

*Mining (Amendment) Act* 1987.

*Mining (Amendment) Act* 1990.

**SCHEDULE 2.**

Sec. 282(1).



**Acts and Agreements not affected by this Act.**

*Mining (Bougainville Copper Agreement) Act* (Chapter 196).

*Mining Development Act* (Chapter 197).

*Mining (Ok Tedi Agreement) Act* (Chapter 363).

*Mining (Ok Tedi Supplemental Agreement) Act* (Chapter 363A).

*Mining (Ok Tedi Second Supplemental Agreement) Act* (Chapter 363B).

*Mining (Ok Tedi Third Supplemental Agreement) Act* (Chapter 363C).

*Mining (Ok Tedi Fourth Supplemental Agreement) Act* (Chapter 363D).

*Mining (Ok Tedi Fifth Supplemental Agreement) Act* (Chapter 363E).

*Mining (Ok Tedi Sixth Supplemental Agreement) Act* 1986.

*Mining (Ok Tedi Agreements) (Amendment) Act* 1986.

*Mining (Ok Tedi Seventh Supplemental Agreement) Act* 1986.

*Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act* 1995.

*Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act* 2001.