

No. 17 of 2019.

*Ok Tedi Environment Management Act 2019.*

Certified on : **13 FEB 2020**



No. 17 of 2019.

AN ACT

entitled

*Ok Tedi Environment Management Act 2019.*

**ARRANGEMENT OF SECTIONS.**

**PART I. - PRELIMINARY.**

1. Compliance with constitutional requirements.
2. Interpretation -
  - “activity”
  - “approval in principle”
  - “Approved Proposals”
  - “authorised officer”
  - “Authority”
  - “beneficial value”
  - “carrying out an activity”
  - “contaminant”
  - “contamination of the environment”
  - “Council”
  - “Director”
  - “element”
  - “environment”
  - “environment management plan”
  - “environmental audit” or “audit”
  - “environmental harm”
  - “environmental impact assessment”
  - “environmental impact statement”
  - “environmental investigation” or “investigation”
  - “governmental authority”
  - “inception report”
  - “litter”
  - “major amendment”
  - “material environmental harm”
  - “matters of national importance”
  - “Mine Closure Plan”
  - “Minister”
  - “minor amendment”
  - “New Environmental Regime”
  - “Ok Tedi Clean-up Order”
  - “Ok Tedi Emergency Authorisation”
  - “Ok Tedi Emergency Direction”

“Ok Tedi Environment Protection Order”  
“Ok Tedi Environmental Improvement Plan”  
“Ok Tedi Mine”  
“Ok Tedi Operational Procedure”  
“Ok Tedi Permit”  
“Ok Tedi Technical Standard”  
“OTML”  
“permit holder”  
“person”  
“premises”  
“prescribed”  
“proponent”  
“Protected Areas Program”  
“register”  
“Regulations”  
“segment”  
“serious environmental harm”  
“this Act”  
“trade”  
“water”  
“water-course”

3. Meaning of Ok Tedi Mine.
4. Application.

## **PART II. - OBJECTS, VALUES AND GENERAL ENVIRONMENTAL DUTY.**

5. Objects.
6. Matters of national importance.
7. How the object of this Act is to be achieved.
8. General environmental duty.

## **PART III. - ADMINISTRATION.**

9. Functions and powers of the Minister.
10. Director of Environment.
11. Functions and powers of Director of Environment.

## **PART IV. - OK TEDI PERMIT.**

### *Division 1. - Interpretation.*

12. Carrying out of an activity.

### *Division 2. - Ok Tedi Permit.*

13. Ok Tedi Permit.
14. Referral by other governmental authorities.

### *Division 3. - Administration.*

15. Procedures for administration of Ok Tedi Permit.

16. Major and minor amendments to Ok Tedi Permit.
17. Notification, referral and consultation requirements.
18. Suspension or cancellation.
19. Offences in relation to permit.

***Division 4. - Environmental impact assessment.***

20. Environmental impact assessment.
21. Inception report.
22. Environmental impact statement.
23. Assessment.
24. Public review and submissions.
25. Acceptance of environmental impact statement.
26. Referral to council.
27. Council's recommendation.
28. Minister may grant approval in principle.
29. Review of Director's decisions.
30. Stay of operation of original decision.

**PART V. - ENVIRONMENTAL MANAGEMENT.**

31. Environmental audits and investigations.
32. Ok Tedi Environmental Improvement Plans.
33. Ok Tedi Emergency Authorisation.
34. Data collection.

**PART VI. - FINANCIAL PROVISIONS.**

35. Miscellaneous charges.

**PART VII. - ENFORCEMENT.**

***Division 1. - Orders and directions.***

36. Ok Tedi Environment Protection Orders.
37. Offence of failing to comply with Ok Tedi Environment Protection Order.
38. Ok Tedi Clean-up Order.
39. Offence of failing to comply with Ok Tedi Clean-up Order.
40. Recovery of costs.
41. Emergency direction.
42. Offence of failing to comply with emergency direction.
43. Requirement for information.
44. Review.

***Division 2. - Offences.***

45. Offence of interfering with monitoring equipment.
46. General defence.
47. Notice of defence to charge of unlawful environmental harm.
48. Liability of permit holder.
49. Offences in relation to provision of information.
50. General penalty.
51. Continuing offences.
52. Proof of intention.

*Division 3. - Appointment and powers of authorised officers.*

53. Appointment of analysts and authorised officers.
54. Protection of Director, authorised officers, etc., from liability.
55. Powers of authorised officers.
56. Power to require name and address.
57. Power to require answers to questions.
58. Offences in relation to authorised officers.

*Division 4. - Proceedings.*

59. Institution of proceedings.
60. Service.
61. Liability of corporate officers.
62. Evidence.
63. Forfeiture of items on conviction.
64. Court may order action to minimise environmental harm.

**PART VIII. - MISCELLANEOUS.**

65. Register.
66. Operational procedures.
67. Ok Tedi Technical Standards.
68. Regulations.



No. 17 of 2019.

AN ACT

entitled

***Ok Tedi Environment Management Act 2019,***

Being an Act to provide for and give effect to the National Goals and Directive Principles in relation to the Ok Tedi Mine and in particular -

- (a) to provide for protection of the environment in accordance with the Fourth National Goal and Directive Principle (National Resources and Environment) of the ***Constitution***; and
- (b) to regulate the environment impacts of development activities in order to promote sustainable development of the environment and the economic, social and physical well-being of people by safeguarding the life-supporting capacity of air, water, soil and ecosystems for present and future generations and avoiding, remedying and mitigating any adverse effects of activities on the environment; and
- (c) to provide for the protection of the environment from further environmental harm, and for related purposes,

MADE by the National Parliament to come into operation -

- (a) in respect of Section 13(1) and the definition of "Ok Tedi Permit" in Section 2, on the date on which this Act is certified; and
- (b) in respect of the remainder of the Act on such date not being a date prior to the date on which the Ok Tedi Permit is issued under Section 13(1), as is specified in a notice published in the National Gazette by the Minister.

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts 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; and
- (b) the right to freedom of expression conferred by Section 46; and
- (c) the right to privacy conferred by Section 49; and
- (d) the right to freedom of information conferred by Section 51; and
- (e) the right to freedom of movement conferred by Section 52,

of the ***Constitution*** is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

## *Ok Tedi Environment Management*

(2) For the purpose 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 purpose of Section 53(1) of the *Constitution*, to the extent that this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property, the purposes and the reasons for each such taking and acquisition are declared and described to be -

- (a) the protection of the environment from environmental harm; and
- (b) the control, prevention and minimisation of the contamination of the environment,

which are hereby declared to be public purposes and required for a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind for the purposes of Section 53 of the *Constitution*.

## 2. INTERPRETATION.

In this Act, unless the contrary intention appears -

“activity” means an activity which results or is likely to result in a change to the environment;

“approval in principle” means an approval in principle by the Minister under Section 28;

“Approved Proposals” means proposals for development submitted to the State under the *Mining (Ok Tedi Agreement) Act 1976* (as amended and supplemented) that have been approved, deemed to have been approved or otherwise agreed;

“authorised officer” means a person authorised for the purposes of this Act under Section 53;

“Authority” means the Conservation and Environment Protection Authority established by the *Conservation and Environment Protection Authority Act 2014*;

“beneficial value” means a quality or characteristic of the environment or any element or segment of the environment, which -

- (a) is conducive to ecological health, public benefit, welfare, safety, health or aesthetic enjoyment and which requires protection from environmental harm; or
- (b) is declared in a Regulation, an Ok Tedi Technical Standard or the Ok Tedi Permit to be a beneficial value;

“carrying out an activity” has the meaning given in Section 12;

“contaminant” means -

- (a) a gas, liquid or solid; or
- (b) an odour; or
- (c) an organism (whether alive or dead), including a virus; or
- (d) energy, including noise, heat, radioactivity and electromagnetic radiation; or
- (e) an ozone-depleting substance; or
- (f) litter; or
- (g) a combination of contaminants,

which, when released into the environment causes or is likely to cause serious or material environmental harm;

“contamination of the environment” means the release (whether by an act or omission) of a contaminant into the environment;

“Council” means the Environment Council appointed under Section 17 of the *Environment Act 2000*;

“Director” means the Director of Environment referred to in Section 15 of the *Environment Act 2000*;

## *Ok Tedi Environment Management*

“element”, in relation to the environment, means any of the principal constituent parts of the environment including water, atmosphere, land, vegetation, climate, sound, odour, aesthetics, flora and fauna;

“environment” includes -

- (a) ecosystems and their constituent parts including people and communities and including human-made or modified structures and areas; and
- (b) all natural and physical resources; and
- (c) amenity values; and
- (d) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community;

“environment management plan” means a plan relating to the Ok Tedi Permit to manage the environmental risks of an activity by -

- (a) identifying the risks of the activity and the measures which will be taken to mitigate the risks; and
- (b) providing for internal and external monitoring and reporting, contingency planning and plans for corrective action; and
- (c) any other measure necessary or desirable for managing the environmental risks of the activity;

“environmental audit” or “audit” means a documented evaluation of an activity which provides information on compliance with this Act or a condition of a permit and determines ways in which the carrying out of the activity may be improved to protect the environment;

“environmental harm” means any change to the environment, or any part of the environment, which -

- (a) has a detrimental effect on any beneficial value relating to the environment; and
- (b) may be caused by an act or omission whether the harm -
  - (i) is a direct or indirect result of the act or omission; or
  - (ii) results from the act or omission alone or from the combined effects of the act or omission and any other act or omission;

“environmental impact assessment” means the process described in Section 20;

“environmental impact statement” means a statement under Section 22;

“environmental investigation” or “investigation” means an investigation carried out to determine whether or not a process, activity or use that is carried on, or proposed to be carried on -

- (a) has caused, or is likely to cause, environmental harm; or
- (b) constitutes, or is likely to constitute, a breach of this Act; or
- (c) has caused, or is likely to cause, a failure to comply with -
  - (i) a standard or other requirement of this Act; or
  - (ii) a condition of the Ok Tedi Permit;

“governmental authority” includes a Minister, Departmental Head, head of a statutory authority or body, a member of a Provincial Government or Local-level Government, Provincial Government body, Local Government Council or Local Government Authority;

“inception report” means a report prepared under Section 21;

“litter” includes any bottle, tin, carton, package, paper, glass or other refuse, rubbish or unwanted thing or any abandoned vehicle or part thereof;

“major amendment” means an amendment to the Ok Tedi Permit defined as a major amendment in accordance with Section 16;



## *Ok Tedi Environment Management*

- “material environmental harm” means environmental harm -
- (a) that causes, or could reasonably be expected to cause, harm that is not trivial or negligible in nature, extent or context; or
  - (b) that causes, or could reasonably be expected to cause, actual or potential loss or damage to property of an amount exceeding K10,000.00 but less than K100,000.00; or
  - (c) that results in costs of more than K10,000.00 but less than K100,000.00 in taking appropriate action to prevent or minimise the harm, or rehabilitate or restore the environment to its condition before the harm occurred;
- “matters of national importance” means the matters set out in Section 6;
- “Mine Closure Plan” means the Mine Closure Plan approved by the State from time to time under the Ok Tedi Mine Closure and Decommissioning Code which is set out in the Third Schedule to the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act 2001*;
- “Minister” means the Minister responsible for the environment;
- “minor amendment” means an amendment to the Ok Tedi Permit other than a major amendment;
- “New Environmental Regime” means the environment management regime for the Ok Tedi Mine approved by the State pursuant to the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act 2001*;
- “Ok Tedi Clean-up Order” means a Clean-up Order issued under Section 38;
- “Ok Tedi Emergency Authorisation” means an Emergency Authorisation under Section 41;
- “Ok Tedi Emergency Direction” means an Emergency Direction under Section 41;
- “Ok Tedi Environment Protection Order” means an Environment Protection Order issued under Section 36;
- “Ok Tedi Environmental Improvement Plan” means an Ok Tedi Environmental Improvement Plan approved under Section 32;
- “Ok Tedi Mine” has the meaning given by Section 3;
- “Ok Tedi Operational Procedure” means an Operational Procedure issued under Section 66;
- “Ok Tedi Permit” means the Ok Tedi Permit issued under Section 13;
- “Ok Tedi Technical Standard” means a standard established in accordance with Section 67 and, for the avoidance of doubt, includes an amended Ok Tedi Technical Standard;
- “OTML” means Ok Tedi Mining Limited, a company incorporated in Papua New Guinea;
- “permit holder” means the holder of the Ok Tedi Permit;
- “person” means an individual or a corporation;
- “premises” includes -
- (a) any property or building or property and building together, any allotment, parcel or area of land held by lease or otherwise; and
  - (b) in relation to any trade or industry, any machinery, plant or vehicle used in connection therewith; and
  - (c) a ship and an aircraft;
- “prescribed” means prescribed by the Regulations or an Ok Tedi Technical Standard;
- “proponent”, in relation to a proposed activity, means the person or body who intends to carry out that activity;
- “Protected Areas Program” means a program of activities as determined by the Director in consultation with the permit holder and which are to be carried out or funded by the permit holder and which provide for the establishment and management of one or more nationally significant protected areas within the Western Province or Telefomin District of Sandaun Province;

## *Ok Tedi Environment Management*

- “register” means the register required to be maintained under Section 65;
- “Regulations” means the regulations made under this Act;
- “segment”, in relation to the environment, means any portion or portions of the environment expressed in terms of volume, space, area, quantity, quality, time or any combination thereof;
- “serious environmental harm” means environmental harm -
- (a) that causes, or could reasonably be expected to cause, detriment to any beneficial value that is irreversible, of a high impact or widespread; or
  - (b) that causes, or could reasonably be expected to cause, actual or potential harm to beneficial values relating to an area of high conservation value or special significance; or
  - (c) that causes or would cause loss or damage to property of an amount exceeding K100,000.00; or
  - (d) that results or would result in costs of more than K100,000.00 in taking appropriate action to prevent or minimise the harm, or rehabilitate or restore the environment to its condition before the harm occurred;
- “this Act” includes the Regulations;
- “trade” means any business or undertaking carried on by persons, whether of a commercial or other nature;
- “water” means internal waters, including any river, stream, water-course, reservoir, well, bore, tank, dam, canal, channel, lake, lagoon, swamp, open drain, surface and underground water and other waters over which Papua New Guinea exercises or claims jurisdiction or sovereign rights and includes the seabed and subsoil underlying those waters;
- “water-course” includes any river, stream, passage and channel on or under the ground whether natural or not, through which water flows, whether continuously or intermittently.

### **3. MEANING OF OK TEDI MINE.**

(1) The Ok Tedi Mine is the open cut copper and gold mining development contemplated by the *Mining (Ok Tedi Agreement) Act 1976* (as amended and supplemented) and defined therein as the “Project” for the mining, concentrating, transporting and shipping of ores of copper, gold and other minerals and concentrates and includes all facilities constructed and developed in accordance with the Approved Proposals.

(2) The Ok Tedi Mine is deemed to include any land or water within or outside of the area of the Special Mining Lease and related tenements issued pursuant to the *Mining (Ok Tedi Agreement) Act 1976* (as amended and supplemented) if any works or activities of, or associated with the mine referred to in Subsection (1) have had, are having or may have a direct or indirect impact on that land or water.

### **4. APPLICATION.**

(1) This Act binds the State.

(2) This Act applies to and in relation to the Ok Tedi Mine with prospective effect on and from the date it commences operation.

(3) Subject to Subsection (4), this Act does not affect, limit, derogate from or prejudice the provisions of the *Mining (Ok Tedi Restated Eighth Supplemental Agreement) Act 1995*, the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental) Agreement) Act 2001* or the *Mining (Ok Tedi Mine Extension (Eleventh Supplemental) Agreement) Act 2014*.

(4) For the purposes of the *Mining (Ok Tedi Mine Continuation (Ninth Supplemental Agreement) Act 2001*, this Act substitutes for the New Environmental Regime, which ceases to apply to the Ok Tedi Mine.

## **PART II. - OBJECTS, VALUES AND GENERAL ENVIRONMENTAL DUTY.**

### **5. OBJECTS.**

The objects of this Act in relation to the Ok Tedi Mine are -

- (a) to ensure that proper weight is given to both long-term and short-term social, economic, environmental and equity considerations in deciding all matters relating to environmental management, protection, restoration and enhancement; and
- (b) to avoid, remedy or mitigate any adverse effects of activities on the environment by regulating in an integrated, cost-effective and systematic manner, activities, products, substances and services that cause environmental harm; and
- (c) to require the permit holder to progressively reduce or mitigate the impact of harmful effects on the environment as such reductions and mitigation become practicable through technology and economic developments; and
- (d) to allocate the costs of environmental protection and restoration equitably and in a manner that encourages responsible use of and reduce harm to the environment; and
- (e) to ensure that all aspects of environmental quality affected by environmental harm are considered in decisions relating to the Ok Tedi Mine; and
- (f) to regulate activities which may have a harmful effect on the environment in an open and transparent manner and ensure that consultation occurs in relation to decisions under this Act with persons and bodies who are likely to be affected by them; and
- (g) to provide a means for carrying into effect obligations under any international treaty or convention relating to the environment to which Papua New Guinea is a party; and
- (h) to promote the wise management of Papua New Guinea natural resources for the collective benefit of the whole nation; and
- (i) to protect the environment while allowing for development in a way that improves the quality of life and maintains the ecological processes on which life depends; and
- (j) to sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations and safeguard the life supporting capacity of air, water, land and ecosystems.

### **6. MATTERS OF NATIONAL IMPORTANCE.**

All persons exercising powers and functions under this Act shall recognise and provide for the following matters of national importance:

- (a) the preservation of Papua New Guinea traditional social structures; and
- (b) the maintenance of sources of clean water and subsistence food sources to enable those Papua New Guineans who depend upon them to maintain their traditional lifestyles; and
- (c) the protection of areas of significant biological diversity and the habitats of rare, unique or endangered species; and
- (d) the recognition of the role of land owners in decision-making about the development of the resources on their land; and

## *Ok Tedi Environment Management*

- (e) responsible and sustainable economic development.

### **7. HOW THE OBJECT OF THIS ACT IS TO BE ACHIEVED.**

(1) The protection of the environment in relation to the Ok Tedi Mine is to be achieved by a process of setting environmental objectives and providing the means to encourage and ensure their observance.

- (2) The process described in Subsection (1) is to be achieved by -
  - (a) determining environmental objectives by researching the state of the environment and identifying the beneficial values which are important to the community of Papua New Guinea and which require protection from environmental harm by the formulation of environment policies through a process of consultation; and
  - (b) achieving the environmental objectives in relation to activities by means of -
    - (i) conditions in the Ok Tedi Permit; and
    - (ii) the environment management plan relating to the Ok Tedi Permit; and
    - (iii) Ok Tedi Environmental Improvement Plan; and
    - (iv) the Ok Tedi Technical Standard; and
    - (v) the Ok Tedi Environment Protection Order; and
    - (vi) the Ok Tedi Clean-up Order; and
    - (vii) the Ok Tedi Emergency Direction; and
    - (viii) the Regulations; and
  - (c) requiring proposed activities involving matters of national importance to undergo a process of public and detailed consideration of environmental implications through a process of environmental impact assessment; and
  - (d) enforcement of the protection of beneficial values through preventative measures described above as well as through prosecutions for the offences of causing environmental harm; and
  - (e) implementing a Protected Areas Program.

### **8. GENERAL ENVIRONMENTAL DUTY.**

(1) The permit holder shall not carry out an activity, in relation to the Ok Tedi Mine, that causes or is likely to cause environmental harm unless the permit holder takes all reasonable and practicable measures to prevent or minimise the harm.

(2) In determining what measures are required under Subsection (1), regard shall be given to the following matters:

- (a) the nature of the harm or potential harm; and
- (b) the sensitivity of the receiving environment; and
- (c) the current state of technical knowledge for the activity; and
- (d) the likelihood of successful application of the different measures that might be taken; and
- (e) the financial implications of the different measures as they would relate to the type of activity.

(3) Failure to comply with the general environmental duty does not constitute an offence or give rise of itself to a right to civil remedy, but compliance with the duty may be enforced by -

- (a) an Ok Tedi Environment Protection Order; or
- (b) an Ok Tedi Clean-up Order; or
- (c) an Ok Tedi Emergency Direction.

## *Ok Tedi Environment Management*

(4) Where in a proceeding it is alleged that the permit holder failed to comply with the general environmental duty by causing environmental harm, it will be a defence if the harm is caused in the course of complying with or authorised to be caused under -

- (a) a Regulation; or
- (b) a condition of the Ok Tedi Permit; or
- (c) the environment management plan relating to the Ok Tedi Permit; or
- (d) an Ok Tedi Environment Protection Order or Ok Tedi Clean-up Order; or
- (e) an Ok Tedi Emergency Authorisation.

### **PART III. - ADMINISTRATION.**

#### **9. FUNCTIONS AND POWERS OF THE MINISTER.**

(1) The Minister has the following powers and functions:

- (a) to approve environmental impact statements; and
- (b) such other powers and functions as are provided for in this Act, or any other Act or law.

(2) The Minister may, by instrument in writing, delegate all or any of his powers under this Act (except this power of delegation) to the Director.

#### **10. DIRECTOR OF ENVIRONMENT.**

The Director of Environment, for the purposes of this Act, is the Managing Director of the Authority.

#### **11. FUNCTIONS AND POWERS OF DIRECTOR OF ENVIRONMENT.**

(1) The Director of Environment has the following powers and functions:

- (a) to administer this Act; and
- (b) to issue the Ok Tedi Permit in accordance with Section 13; and
- (c) to require or initiate the preparation of Ok Tedi Environmental Improvement Plan in accordance with Section 32; and
- (d) to ensure that environmental impact assessments are carried out in accordance with this Act; and
- (e) to undertake environmental audits and investigations; and
- (f) to enforce the provisions of this Act (including permit conditions) and institute proceedings for breach of this Act; and
- (g) to take appropriate measures in accordance with this Act for protecting, restoring and enhancing the environment; and
- (h) to prepare and submit reports to the Minister on the Ok Tedi Permit and other matters for which the Director is responsible under this Act; and
- (i) such other powers and functions as are provided for in this Act, or any other Act or law.

(2) The Director may in writing delegate all or any of his powers and functions under this Act (except this power of delegation and any power or function delegated to the Director by the Minister under Section 9(2)) to an appropriately qualified employee of the Authority.

**PART IV. - OK TEDI PERMIT.**

*Division 1. - Interpretation.*

**12. CARRYING OUT OF AN ACTIVITY.**

(1) For the purposes of this Part, the permit holder carries out an activity if the permit holder carries out in connection with the Ok Tedi Mine -

- (a) the construction of works, land clearance, demolition, excavation or other works in relation to land or water; or
- (b) the installation, operation or maintenance of plant or equipment; or
- (c) any activities for the purpose of extracting, transporting or harvesting natural resources; or
- (d) the release of contaminants to air, land or water, in connection with any of the activities specified in Paragraph (a), (b) or (c).

(2) The permit holder carries out an activity if the permit holder has effective control over that activity at the site at which the activity is carried out or if the activity is carried out by, on behalf of, at the request or direction of or under the supervision of, the permit holder.

(3) If the permit holder carries out an activity under Subsection (2), no other person is regarded as carrying out the activity.

*Division 2. - Ok Tedi Permit.*

**13. OK TEDI PERMIT.**

(1) The Director shall issue the initial Ok Tedi Permit to OTML in the appropriate form.

(2) The Ok Tedi Permit is deemed to have come into force immediately after the commencement of this Act, regardless of when the Ok Tedi Permit is issued.

(3) Subject to meeting the conditions of the Ok Tedi Permit, the permit holder is authorised to discharge tailings and waste to the environment as follows:

- (a) waste rock being placed in failing waste rock dumps located near the mine in the headwaters of drainages that ultimately flow into the Ok Tedi River; and
- (b) tailings being discharged into headwaters of Ok Mani River that will ultimately report to the Ok Tedi River; and
- (c) sediment being dredged from the river at Bige and the material deposited on the east and west banks of the Ok Tedi River; and
- (d) pyrite concentrate being separated from the tailing and pumped to Bige via a pipeline and stored subaqueously in designated pyrite concentrate storage pits at Bige; and
- (e) waste limestone rock being added to the tailing and to the waste dumps to mitigate acid rock drainage.

(4) Subsection (3) applies on its terms notwithstanding that the Ok Tedi Permit is amended (other than an amendment arising from an environment improvement plan) after the commencement of this Act.

(5) The Ok Tedi Permit may include conditions containing requirements to do any or all of the following:

- (a) the installation and operation of certain plant or equipment within a certain time; and

## *Ok Tedi Environment Management*

- (b) taking specified action to minimise the risk of serious or material environmental harm; and
- (c) at the cost of the permit holder, installation of monitoring equipment, carrying out a specified monitoring program and reporting on its progress; and
- (d) the preparation and carrying out of an environment management plan; and
- (e) the provision of reports on any matter specified by the Director; and
- (f) submission for approval and carrying out of an environmental improvement plan; and
- (g) undertaking an audit at periodic intervals; and
- (h) the preparation and lodgement of a plan for emergency response in relation to accidental release of contaminants or risk of other emergency; and
- (i) provision of information reasonably required by the Director for the administration and enforcement of this Act; and
- (j) conducting baseline studies or surveys and reporting the results prior to commencing operations; and
- (k) complying with the Ok Tedi Mine Closure Plan; and
- (l) implementing a Protected Areas Program; and
- (m) any other relevant matter.

### **14. REFERRAL BY OTHER GOVERNMENTAL AUTHORITIES.**

Where the permit holder applies under the provisions of other legislation to a governmental authority for an approval of any kind in respect of an activity which would cause environmental harm where to do so would be a breach of this Act, then, despite any other Act or law, the other governmental authority shall consult with the Director before determining the application.

### *Division 3. - Administration.*

### **15. PROCEDURES FOR ADMINISTRATION OF OK TEDI PERMIT.**

- (1) The Regulations may prescribe -
  - (a) procedures for renewal of the Ok Tedi Permit; and
  - (b) procedures for transfer of the Ok Tedi Permit; and
  - (c) procedures for amendment of the Ok Tedi Permit; and
  - (d) procedures for amalgamation of the Ok Tedi Permit; and
  - (e) procedures for surrender of the Ok Tedi Permit; and
  - (f) reporting by the holder of the Ok Tedi Permit; and
  - (g) the effect on the validity of the Ok Tedi Permit of a failure to lodge an annual return or pay fees; and
  - (h) procedures for approval in circumstances where there is a material change of control of the permit holder.
- (2) For the purposes of this section, a material change of control will be taken to have occurred if there has been a change of the person or the persons who, acting together, and whether directly, indirectly or through a chain of companies, has or have a controlling interest in the permit holder, whether such change occurs as a result of a single transaction or as a result of a series of transactions occurring since the issue of the permit or the latest material change that has been approved pursuant to this section, as applicable.
- (3) Subsection (2) does not apply to a change of control that occurs solely as a consequence of a change in the shareholders or directors of a company which is listed on a stock exchange that is prescribed for the purposes of Section 32 of the *Investment Promotion Act 1992*.

## *Ok Tedi Environment Management*

- (4) A person has a controlling interest in a corporation or trust if -
  - (a) the corporation or its directors or the trustee or manager of the trust or its directors, are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of that person in consultation with others; or
  - (b) the person has the ability to control 50 percent or more of the issued or voting shares, units or other interests in the corporation or trust (in number, voting power or value), or would have the ability to control 50 percent or more of such interests if any rights were exercised to subscribe for, or acquire or convert into, shares, units or other interests which are issued or unissued. For this purpose, units or other interests are treated as if they were shares.

### **16. MAJOR AND MINOR AMENDMENTS TO OK TEDI PERMIT.**

- (1) An amendment to the Ok Tedi Permit is a major amendment if the amendment affects or is made in respect of an activity which -
  - (a) may result in serious environmental harm; or
  - (b) may have a significant negative impact on a matter of national importance; or
  - (c) may significantly change, alter or replace the environment management regime prescribed in the Ok Tedi Permit and any other amendment is a minor amendment.
- (2) The permit holder may apply to amend the Ok Tedi Permit -
  - (a) of the holder's own volition; or
  - (b) where the holder is directed by the Director under this section to do so.
- (3) Where the permit holder applies to amend the Ok Tedi Permit, the Director shall determine whether the proposed amendment is a major amendment or a minor amendment.
- (4) Where the Director determines that the amendment is a major amendment, the Director shall -
  - (a) issue a notice to undertake an environmental impact assessment under Section 20 in relation to the proposed amendment; and
  - (b) in any case, having regard to criteria set out in Section 5, may grant an amendment of the permit.
- (5) Where -
  - (a) the Minister has issued an approval in principle under Section 28 in relation to an application for a major amendment; or
  - (b) the Director has determined that an application for amendment is a minor amendment and all prescribed processes have been followed,the Director shall approve the application and amend the Ok Tedi Permit.
- (6) Where -
  - (a) an Ok Tedi Environmental Audit or Investigation under Section 31 has been undertaken and the Director considers that an amendment to the Ok Tedi Permit is warranted as a result of the circumstances identified or confirmed as a result of the Audit or Investigation -
    - (i) an Ok Tedi Protection Order has been made; or
    - (ii) an Ok Tedi Emergency Authorisation has been given; or
    - (iii) an Ok Tedi Emergency Direction is given; or



## *Ok Tedi Environment Management*

(iv) an Ok Tedi Clean-Up Order is made, and the Director considers that an amendment to the Ok Tedi Permit is warranted as a result of the circumstances identified or confirmed as a result of the Order or Direction or Authorisation or arose out of measures taken to comply with the Order or Direction or Authorisation; or

(b) the Director considers that there is a need to change the permit for administrative reasons or to correct minor errors including, without limitation, to correct a minor error of a typographical nature or because the name of the permit holder has changed or is wrongly recorded on the permit; or

(c) the Director considers that the achievement of the objects of this Act requires increased or different reporting obligations to be met by the permit holder,

the Director may advise the permit holder by notice in writing of the amendment or amendments proposed by the Director and the notice shall state a period of time, not being less than one month, within which submissions may be made to the Director in relation to the proposed amendments.

(7) Within one year after the expiry of the period referred to in Subsection (6) and after considering any submissions received under that subsection, the Director may issue an amended Ok Tedi Permit and with effect from the date on which the amended permit is issued, the amended permit shall be the Ok Tedi Permit.

(8) If the permit holder fails to comply with a direction or requirement of the Director under this section, the permit holder is guilty of an offence.

Penalty: Upon conviction, a fine not exceeding K100,000.00.

### **17. NOTIFICATION, REFERRAL AND CONSULTATION REQUIREMENTS.**

(1) The Regulations may provide for notification, referral and consultation requirements in relation to applications to amend the Ok Tedi Permit.

(2) The requirements shall be -

(a) mandatory for applications for major amendments to the Ok Tedi Permit; and

(b) at the discretion of the Director for applications for minor amendments to the Ok Tedi Permit.

### **18. SUSPENSION OR CANCELLATION.**

(1) The Director may suspend or cancel the Ok Tedi Permit in accordance with this section.

(2) Where -

(a) the permit holder has been convicted of an offence against this Act in relation to an activity for which the Ok Tedi Permit was granted (other than an offence for which the maximum fine imposed under this Act on a person other than a Corporation committing the offence is K50,000.00 or less); or

(b) the permit holder has breached a condition of the Ok Tedi Permit; or

(c) the permit holder has failed to perform an obligation required by this Act in relation to the activity carried out under the Ok Tedi Permit, the Director may serve a notice on the permit holder requiring the permit holder to show cause within the stated time why the Ok Tedi Permit should not be suspended or cancelled.

(3) Where -

(a) a notice under Subsection (2) has been served on the permit holder; and

## *Ok Tedi Environment Management*

(b) the permit holder has failed to satisfy the Director that there are good reasons for the failure,  
the Director may suspend the Ok Tedi Permit for a stated period or cancel the permit.

(4) The Director shall inform the permit holder of the decision by written notice and state the reasons for the decision.

(5) The Regulation may make further provision for the circumstances in which the Ok Tedi Permit may be suspended or cancelled, and the procedures which apply to suspension and cancellation.

(6) If Subsection (2) applies, a reference in this section to the Ok Tedi Permit being suspended includes a reference to the Permit being partially suspended such that a certain activity or a part of an activity is prohibited for the period of the suspension while any other activity (or part thereof) which is not subject to the partial suspension may continue to be carried out.

### **19. OFFENCES IN RELATION TO PERMIT.**

(1) If the permit holder carries out an activity in relation to which the Ok Tedi Permit has been issued (otherwise than pursuant to or in accordance with an order or direction by the Director) while that Ok Tedi Permit is suspended or cancelled, the permit holder is guilty of an offence.

Penalty: Upon conviction, a fine not exceeding K20,000,000.00.

(2) If the permit holder breaches a condition of the Ok Tedi Permit, the permit holder is guilty of an offence.

Penalty: Upon conviction, a fine not exceeding K10,000,000.00.

### *Division 4. - Environmental impact assessment.*

### **20. ENVIRONMENTAL IMPACT ASSESSMENT.**

(1) An environmental impact assessment shall involve the following:

- (a) submission of an inception report in accordance with Section 21 setting out the proposed issues to be covered in the environmental impact statement; and
- (b) submission of an environmental impact statement in accordance with Section 22 setting out the environmental impacts which are likely to result from the carrying out of the activity; and
- (c) assessment and public review of the environmental impact statement in accordance with Sections 23 and 24; and
- (d) acceptance of the environmental impact statement by the Director in accordance with Section 25.

(2) Subject to this division, the Regulations may prescribe in further detail the process of preparing, submitting, assessing and approving an environmental impact assessment.

### **21. INCEPTION REPORT.**

(1) Prior to submitting an environmental impact statement, the permit holder shall submit an inception report listing the proposed issues to be covered by the environmental impact statement.

(2) The Director may issue operational procedures in the form of guidelines for the preparation of inception reports and an inception report shall comply with those guidelines.

## *Ok Tedi Environment Management*

(3) Where an inception report is lodged under Subsection (1), the Director shall enter into discussions with the permit holder concerning the proposed issues listed in an inception report with a view to achieving consensus on the proposed issues to be covered in the environmental impact statement.

### **22. ENVIRONMENTAL IMPACT STATEMENT.**

Subject to this Act, the operational procedures shall provide for the form, content, timing and procedures for the preparation and submission of an environmental impact statement.

### **23. ASSESSMENT.**

(1) On receipt of an environmental impact statement, the Director shall cause the statement to be assessed.

(2) Within 30 days after receipt of an environmental impact statement, the Director shall notify the permit holder in writing of the period the Director will require to assess the environmental impact statement and to decide whether or not to accept the environmental impact statement under Section 25.

(3) At any time during the period notified to the permit holder under Subsection (2), the Director may notify the permit holder in writing that the Director requires a further period, such period and the reasons necessitating such period to be specified in the notice, in which to assess and make a decision regarding the environmental impact statement.

(4) The Director, for the purposes of assessing a proposed activity under this section, may take all or any of the following actions:

- (a) require any person to provide the Director with such information as is specified in that requirement; and
- (b) call a conference of interested persons to discuss the application; and
- (c) require the permit holder to undertake further investigations; and
- (d) appoint a committee to conduct a public inquiry and report its findings to the Director; and
- (e) make such other inquiries as the Director thinks fit.

(5) In deciding whether or not to approve an environmental impact statement, the Director shall have regard to -

- (a) the objectives of this Act; and
- (b) the matters of national importance; and
- (c) the general environmental duty; and
- (d) the Ok Tedi Technical Standards and the Regulations; and
- (e) any relevant assessment, report, public submission or other information in relation to the proposed activity, the subject of the environmental impact statement; and
- (f) any information provided with the application; and
- (g) any serious or material environmental harm which is likely to result from the proposed activity; and
- (h) the character, resilience and beneficial values of the receiving environment.

(6) The Director may, at any time before accepting the environmental impact statement, refer any issues raised during the assessment and public review of the environmental impact statement back to the permit holder and require the statement to be amended to address those issues.

**24. PUBLIC REVIEW AND SUBMISSIONS.**

(1) The Director shall cause an environmental impact statement submitted under this division to be made available for public review.

(2) For the purpose of the public review, the Director may give directions to the permit holder requiring the permit holder to -

- (a) submit a proposed program of public review for approval by the Director; and
- (b) provide copies of that information or statement to such public authorities and persons and members of the public as the Director determines; and
- (c) make a public presentation to persons who are likely to be affected by the carrying out of the activity.

(3) Where any information -

- (a) relating to a manufacturing or industrial process or trade secret used in carrying on or operating any particular undertaking or equipment; or
- (b) of a business or financial nature in relation to the proposed activity which is confidential to the permit holder,

is contained in any statement or report which is to be made available for public review under this section, the Director shall, before causing the statement or report to be made available for public review under Subsection (1), exclude the information from that statement or report.

**25. ACCEPTANCE OF ENVIRONMENTAL IMPACT STATEMENT.**

(1) Where the Director is satisfied that -

- (a) an environmental impact statement contains an adequate description of the nature and extent of physical and social environmental impacts which are likely to result from the carrying out of a proposed activity; and
- (b) all reasonable steps will be taken to minimise environmental harm which may result from the carrying out of the activity; and
- (c) the activity will be carried out in a manner which is consistent with the Act and the Ok Tedi Technical Standards,

the Director shall accept the statement.

(2) In the event that the Director is not satisfied as to all of the matters referred to in Subsection (1), the Director shall reject the statement.

(3) A decision by the Director under this section shall be in writing and in the case of a decision under Subsection (2), shall specify the reasons for the decision and the provisions of Section 29 shall apply to the decision.

(4) Where the Director has not made a decision under this section within the period notified under Section 23(2), as extended (if at all) under Section 23(3), the Director shall be deemed to have refused the environmental impact statement (and the provisions of Section 29 apply in relation to such deemed refusal).

**26. REFERRAL TO COUNCIL.**

Where the Director has accepted an environmental impact statement, the Director shall within 14 days after the date of acceptance, refer the environmental impact statement to the Council together with -

- (a) the Director's assessment report; and
- (b) any other report, public submission or other information,

in relation to the proposed activity.

## *Ok Tedi Environment Management*

### **27. COUNCIL'S RECOMMENDATION.**

(1) Subject to this section, where the Council has received a referral under Section 26, it shall consider the statement, assessment report and any public submissions, reports and other information on the proposed activity.

(2) Within 90 days after receiving the referral under Section 26, the Council shall either accept or refuse to accept the environmental impact statement.

(3) If the Council is satisfied that -

- (a) the environmental impact statement contains an adequate description of the nature and extent of physical, social and environmental impacts which are likely to result from the carrying out of the proposed activity; and
- (b) all reasonable steps will be taken to minimise environmental harm which may result from the carrying out of the activity; and
- (c) the activity will be carried out in a manner which is consistent with the Ok Tedi Technical Standards and the Regulations,

the Council shall accept the environmental impact statement and make a recommendation to the Minister to approve the proposed activity in principle and specify the conditions to which the proposed activity should be subject if it is approved.

(4) If the Council is not satisfied of the matters under Paragraphs (3)(a), (b) and (c), the Council shall refuse to accept the environmental impact statement and advise the permit holder to amend the statement and resubmit it to the Director.

(5) In making a recommendation to the Minister, the Council shall have regard to -

- (a) the objectives of the Act; and
- (b) the matters of national importance; and
- (c) the general environmental duty; and
- (d) any Ok Tedi Technical Standard; and
- (e) any relevant environmental impact statement; and
- (f) any assessment or report prepared at the request of the Director; and
- (g) any environmental harm which is likely to result from the proposed activity; and
- (h) the character, resilience and beneficial values of the receiving environment; and
- (i) any environmental improvement plan lodged by the permit holder; and
- (j) any public submission made, and views expressed at a presentation, hearing or conference; and
- (k) best practice environmental management for the activity in question; and
- (l) any relevant obligations under any international treaty, convention or instrument to which Papua New Guinea is a party; and
- (m) public interest in the proposed activity.

(6) The Regulations may prescribe criteria to be applied by the Council in making a recommendation to the Minister.

(7) A decision by the Council under this section shall be in writing and specify the reasons for the decision.

(8) Where the Council has refused to accept an environmental impact statement, the Council shall, on written application of the proponent, allow the proponent to make representations to the Council concerning the proposed activity.

## *Ok Tedi Environment Management*

(9) The Council shall consider any representations made under Subsection (8) and may review its decision.

(10) If the Council, on review of its decision in accordance with Subsection (9), decides to accept the environmental impact statement, the Council shall make a recommendation to the Minister to approve the proposed activity in principle and specify the conditions to which the proposed activity should be subject if it is approved.

### **28. MINISTER MAY GRANT APPROVAL IN PRINCIPLE.**

(1) Subject to this section, where the Minister has received a recommendation from the Council under Section 27 in relation to the proposed activity, the Minister shall within 28 days of such receipt, either -

- (a) issue an approval in principle for the activity; or
- (b) in any other circumstance, refuse to approve the activity.

(2) A decision of the Minister under Subsection (1)(a) or (b) shall be in writing and the Minister shall give reasons for the decision.

(3) Where the Minister refuses to approve the activity, the Minister shall immediately require the Council to appoint a committee to provide advice, in accordance with Section 24 of the *Environment Act 2000*.

(4) The Regulations may prescribe the form in which the Minister's decision shall be recorded and the process for making the decision available to the public.

### **29. REVIEW OF DIRECTOR'S DECISIONS.**

(1) If the permit holder is dissatisfied with a decision of the Director under this Act, in relation to an application made by the permit holder or in relation to an activity carried out by the permit holder, or in relation to a Protected Areas Program, a Technical Standard or a fee set by the Director, the permit holder may apply for a review of the decision by the Council.

(2) An application for review of a decision must be lodged with the Director within 21 days after the day on which the decision was notified to the permit holder or to the public and the operation of the decision of the Director may be suspended on receipt of the application until the review is determined.

(3) In determining an application for review under Subsection (1) -

- (a) the Council shall determine its own procedures; and
- (b) the Director shall be absent from consideration of the review; and
- (c) another member of the Council shall act as the temporary Chairperson during the absence of the Director and for the purposes of determining the review.

(4) Where the permit holder is dissatisfied with a decision of the Council in relation to the review, the permit holder may appeal to the National Court on a question of law within 28 days of the Council's decision.

(5) The Regulations may prescribe -

- (a) the form in which an application for review shall be made; and
- (b) the information to accompany the application; and
- (c) requirements for service or notification of the review application; and
- (d) other matters related to the review.

**30. STAY OF OPERATION OF ORIGINAL DECISION.**

(1) Where an application is made for review of a decision, and the operation of the decision of the Director is not suspended in accordance with Section 29(2), the permit holder may apply to the National Court for a stay of operation of the decision.

(2) Where the Court is of the opinion that a stay of operation is necessary to preserve the effectiveness of the review, the Court may order that operation of the decision be stayed.

(3) A stay has effect for the period stated by the Court and may be subject to any conditions that the Court thinks fit.

(4) The period of a stay shall not extend past the time when the Council reviews the decision and any later period the Court may allow to enable the permit holder to appeal against the Council's decision in relation to the review.

**PART V. - ENVIRONMENTAL MANAGEMENT.**

**31. ENVIRONMENTAL AUDITS AND INVESTIGATIONS.**

(1) The Director may -

- (a) commission an environmental audit or investigation; or
- (b) approve the commissioning by the permit holder of an environmental audit or investigation,

in relation to an activity relating to the Ok Tedi Mine that the permit holder is carrying out or has carried out.

(2) Without limiting the generality of Subsection (1), an environmental audit or investigation may include all or any of the following:

- (a) an audit of compliance with this Act, a Regulation or the conditions of the Ok Tedi Permit; or
- (b) a review of the design and conduct of the environment management plan for the Ok Tedi Permit; or
- (c) identification of the cause of any actual or potential risk of serious or material environmental harm and the steps that must be taken to prevent, minimise or mitigate the harm; or
- (d) an investigation of an alleged or actual environmental incident; or
- (e) an investigation into a complaint of an environmental nature by a member of the public; or
- (f) an investigation into compliance with the Mine Closure Plan.

(3) An environmental audit or investigation shall be conducted by -

- (a) a suitably qualified officer carrying out the duties and performing the functions of an office under this Act or any other environmental law; or
- (b) an independent consultant with expertise in environmental audit or environmental investigation as appropriate, approved by the Director.

(4) The Director -

- (a) shall approve the terms of reference for the environmental audit or investigation; and
- (b) specify the time within which the environmental audit or environmental investigation is to be completed; and

## *Ok Tedi Environment Management*

- (c) in relation to an environmental investigation, any other terms and conditions for the conduct of the investigation which the Director considers necessary or desirable.
- (5) On receipt of an environmental audit or investigation, the Director may -
  - (a) accept the environmental audit or investigation; or
  - (b) reject the environmental audit or investigation; or
  - (c) return the environmental audit or investigation to the person who conducted it with a request for modifications.
- (6) If the permit holder fails to comply with a direction in relation to an environmental audit or investigation, the permit holder is guilty of an offence.

Penalty: Upon conviction, a fine not exceeding K100,000.00.

### **32. OK TEDI ENVIRONMENTAL IMPROVEMENT PLANS.**

(1) The Director may require the permit holder to submit an Ok Tedi Environmental Improvement Plan setting out the steps by which it is proposed that an activity carried out by the permit holder will achieve compliance with an Ok Tedi Technical Standard, the Ok Tedi Permit, the Mine Closure Plan, the Regulations or any other standard or requirement imposed under this Act.

(2) The Director may initiate the preparation of an Ok Tedi Environmental Improvement Plan setting out the steps by which it is proposed that an activity carried out by the permit holder will achieve compliance with an Ok Tedi Technical Standard, the Ok Tedi Permit, the Mine Closure Plan, the Regulations or other standard or requirement imposed under this Act.

- (3) Where the Director is satisfied that -
  - (a) a proposed Ok Tedi Environmental Improvement Plan will, if carried out, achieve compliance with all relevant Ok Tedi Technical Standards, the Mine Closure Plan, the Regulations and any other relevant standards or requirements imposed under this Act within a reasonable time; and
  - (b) the permit holder could reasonably be expected to carry out the plan; and
  - (c) the proposed Ok Tedi Environmental Improvement Plan clearly identifies what specific amendments are required (if any) to the Ok Tedi Permit arising from the Plan,

he may approve the plan, subject to any conditions.

(4) Where the Director is not satisfied with respect to the matters referred to in Subsection (2) in relation to the permit holder, the Director and the permit holder shall meet and discuss the terms of the relevant environmental improvement plan, and in conducting such discussions, the Director and the permit holder shall consider the terms of the relevant Ok Tedi Environmental Standard or Regulation or other standard or requirement under the Act as applicable.

(5) Where the Director initiates an Ok Tedi Environmental Improvement Plan under Subsection (1) and the plan has been completed, he shall provide a copy of the plan to the permit holder and shall state a period of time, not being less than one month, within which submissions may be made to the Director in relation to the Ok Tedi Environmental Improvement Plan.

(6) The Director shall receive and consider any submissions received within the period of time referred to in Subsection (5) together with any other relevant information in his possession and approve the Ok Tedi Environmental Improvement Plan or amend it and approve it in its amended form.



## *Ok Tedi Environment Management*

- (7) Subject to this section, the Regulations may prescribe -
- (a) the circumstances in which the Director may require the permit holder to lodge an environmental improvement plan; and
  - (b) the procedure for approval of an environmental improvement plan; and
  - (c) the provision of reports on the implementation of a plan; and
  - (d) payment of fees for approval of an environmental improvement plan; and
  - (e) the forms to be used in connection with the matters covered by this section; and
  - (f) fixing of offences in relation to environmental improvement plans and penalties not exceeding K25,000.00 and default penalties not exceeding K2,500.00.

(8) Nothing in this section affects the fixing of a requirement to submit for approval and carry out an environmental improvement plan as a condition of a permit under Section 13(5).

(9) Once an Ok Tedi Environmental Improvement Plan has been approved, the Director shall immediately amend the Ok Tedi Permit in the manner contemplated by Subsection (3)(c).

### **33. OK TEDI EMERGENCY AUTHORISATION.**

(1) Notwithstanding any requirements under this Act (including conditions attaching to the Ok Tedi Permit), the Director may give an Ok Tedi Emergency Authorisation authorising an action in relation to the Ok Tedi Mine which is likely to result in serious or material environmental harm where the Director is satisfied that -

- (a) it is necessary and reasonable to take the action because of an emergency; and
- (b) it is justified to take the action to protect life, property or the environment; and
- (c) there is no other practicable alternative to taking the action.

(2) An Ok Tedi Emergency Authorisation under Subsection (1) shall be in writing and subject to such terms and conditions as the Director considers appropriate.

### **34. DATA COLLECTION.**

(1) The Director may, and where the Director considers it necessary shall, arrange for the collection and storage of information and the compilation of related information and details concerning the environment or any element or segment of the environment.

(2) Subject to Subsection (3), the Director may, by written notice, require any person to provide any information within that person's possession relating to an activity referred to in Section 12 or research carried out by such person that the Director considers relevant for the purposes of Subsection (1) or as prescribed by the Regulations.

- (3) A notice under Subsection (2) may not require the provision of -
- (a) any confidential information relating to a manufacturing process or trade secret used in carrying on or operating any particular undertaking or equipment; or
  - (b) any confidential business or financial information; or
  - (c) any information which is the subject of conditions relating to confidentiality under any other contract, permit, approval, tenement or licence.

(4) It is a defence to a prosecution for failure to comply with a notice under Subsection (2) if the person to whom the notice is directed satisfies the Court on the balance of probabilities that the person believed on reasonable grounds that the information sought by the notice was confidential information within the meaning of Subsection (3).

(5) A person, who fails to comply with a notice under Subsection (2) within the time specified in the notice, is guilty of an offence.

## *Ok Tedi Environment Management*

Penalty: Upon conviction, a fine not exceeding K20,000.00.  
Default penalty: Upon conviction a fine prescribed not exceeding K2,000.00.

- (6) A person may, on payment of the prescribed fee -
- (a) inspect and make copies of entries; or
  - (b) receive from the Director a copy of information and details contained in the collection referred to in Subsection (1), other than entries, information or details which relate to confidential information or information which a person would reasonably consider to be confidential.

### **PART VI. - FINANCIAL PROVISIONS.**

#### **35. MISCELLANEOUS CHARGES.**

The Director may fix fees in relation to any matter or thing required to be done or provided by the Director under this Act, including but not limited to the provision of any report, document, environment impact statement, the Ok Tedi Permit or other information.

### **PART VII. - ENFORCEMENT.**

#### *Division 1. - Orders and directions.*

#### **36. OK TEDI ENVIRONMENT PROTECTION ORDERS.**

(1) Where the Director is satisfied that a process, activity or use in relation to the Ok Tedi Mine that is being carried on, or is proposed to be carried on -

- (a) has caused or is likely to cause serious or material environmental harm (subject to Section 13(3)); or
- (b) constitutes or is likely to constitute a breach of this Act, a Regulation or a mandatory provision of an Ok Tedi Technical Standard; or
- (c) has caused or is likely to cause a failure to comply with -
  - (i) a Regulation; or
  - (ii) an Ok Tedi Technical Standard; or
  - (iii) the Environment Management Plan; or
  - (iv) a condition of the Ok Tedi Permit; or
  - (v) the Mine Closure Plan,

the Director may issue an Ok Tedi Environment Protection Order for any or all of the purposes referred to in Subsection (2).

(2) The purposes are -

- (a) restraining or preventing the commission of an offence; or
- (b) securing compliance with -
  - (i) the general environmental duty; or
  - (ii) an Ok Tedi Technical Standard; or
  - (iii) the Ok Tedi Environment Management Plan; or
  - (iv) the Mine Closure Plan; or
  - (v) any other requirement under this Act; or
  - (vi) a condition of the Ok Tedi Permit.

(3) An Ok Tedi Environment Protection Order shall be in the form of a written notice -

- (a) addressed to the permit holder; and
- (b) stating the purpose for which the Order is issued, and specifying the serious or material environmental harm which it is aimed at minimising; and

## *Ok Tedi Environment Management*

- (c) where the notice relates to a provision of this Act, a Regulation, the Ok Tedi Permit, the Mine Closure Plan or the Ok Tedi Environment Management Plan specifying the relevant provision of any or all of them; and
  - (d) served on the permit holder.
- (4) An Ok Tedi Environment Protection Order may impose any reasonable requirement required for the purpose of securing compliance with the Order including requirements that the permit holder -
- (a) discontinue or not commence a specified activity, process or use either indefinitely or for a specified period or until further notice from the Director; or
  - (b) take specified action, including but not limited to the installation, alteration, maintenance, or operation of any apparatus, plan or structures as may be specified in the Order; or
  - (c) not carry out a specified activity, process or use except at certain times or on certain conditions, or in a manner specified in the Order; or
  - (d) supply to the Director, plans specifications and other information as is specified in the order showing how the process, activity or use will be carried out, modified or controlled; or
  - (e) comply with -
    - (i) any relevant provision of a Regulation, the Mine Closure Plan or an Ok Tedi Technical Standard; or
    - (ii) any condition of the Ok Tedi Permit; or
  - (f) provide monitoring equipment and carry out a monitoring program as specified in the Order; or
  - (g) comply with any requirement specified for the purpose of enforcing an environmental improvement plan.
- (5) The Director may, by written notice, vary or revoke an Ok Tedi Environment Protection Order.
- (6) The permit holder to whom an Ok Tedi Environment Protection Order is issued shall comply with the Order.
- (7) The Director shall not issue an Ok Tedi Environment Protection Order in relation to an activity carried out under the Ok Tedi Permit, to the permit holder carrying out the activity in accordance with the terms and conditions of the Ok Tedi Permit or this Act.

### **37. OFFENCE OF FAILING TO COMPLY WITH OK TEDI ENVIRONMENT PROTECTION ORDER.**

If the permit holder fails to comply with an Ok Tedi Environment Protection Order issued under Section 36, the permit holder is guilty of an offence.

Penalty: Upon conviction - A fine not exceeding K250,000.00.

### **38. OK TEDI CLEAN-UP ORDER.**

- (1) Where the Director is satisfied that an act or omission by the permit holder in relation to the Ok Tedi Mine has caused serious or material environmental harm and is a contravention of -
- (a) this Act; or
  - (b) an Ok Tedi Technical Standard; or
  - (c) an Ok Tedi Environment Protection Order; or
  - (d) an Ok Tedi Emergency Direction; or

## *Ok Tedi Environment Management*

- (e) the Mine Closure Plan; or
- (f) the Regulations; or
- (g) a condition of the Ok Tedi Permit,

the Director may issue an Ok Tedi Clean-up Order under which officers or other persons authorised by the Director shall take specified action to minimise or restore any resulting environmental damage.

- (2) An Ok Tedi Clean-up Order shall -
  - (a) be in writing; and
  - (b) specify the contravention alleged to have caused the serious or material environmental harm; and
  - (c) include authorisation for action to be taken to prevent or mitigate further serious or material environmental harm.

(3) An Ok Tedi Clean-up Order must be served on the permit holder as soon as practicable after it has been issued.

(4) The permit holder served with an Ok Tedi Clean-up Order shall take all reasonable steps to comply with the requirements of the Order.

(5) The Director may, by notice in writing, vary or revoke an Ok Tedi Clean-up Order.

- (6) An Ok Tedi Clean-up Order may authorise an authorised officer to -
  - (a) enter premises, other than a residence, without a warrant; and
  - (b) seize evidence of the commission of an offence.

(7) The Director shall not issue an Ok Tedi Clean-up Order, in relation to serious or material environmental harm, to the permit holder who caused such serious or material environmental harm by carrying out an activity in accordance with the terms and conditions of the Ok Tedi Permit or this Act.

### **39. OFFENCE OF FAILING TO COMPLY WITH OK TEDI CLEAN-UP ORDER.**

If the permit holder fails to comply with an Ok Tedi Clean-up Order issued under Section 38, the permit holder is guilty of an offence.

Penalty: Upon conviction - a fine not exceeding K250,000.00.

### **40. RECOVERY OF COSTS.**

(1) Where the requirements of an Ok Tedi Clean-up Order are not complied with, the Director may take any action required by the Order.

(2) Where the permit holder has failed to take action to comply with an Ok Tedi Clean-up Order, and the Director has taken action under Subsection (1), the Director may recover the reasonable costs and expenses incurred in taking that action from the permit holder for failing to comply with the Order.

(3) Costs recoverable under this section are a civil debt due to the Authority and an action may be instituted to recover the debt.

## *Ok Tedi Environment Management*

(4) The Director shall notify the permit holder who is liable to pay an amount under this section of the amount that is due and fix a date for payment not being less than 28 days after the day on which the notice is given, and where the amount is not paid by that date, the permit holder is liable to pay interest at the prescribed rate per annum on the amount which is unpaid.

### **41. EMERGENCY DIRECTION.**

(1) The Director or an authorised officer may orally issue an Ok Tedi Emergency Direction where he is of the opinion that urgent action is required -

- (a) to prevent serious or material environmental harm reasonably likely to be caused by an act or omission in relation to the Ok Tedi Mine; or
- (b) to minimise serious or material environmental harm caused by an act or omission in relation to the Ok Tedi Mine.

(2) An Ok Tedi Emergency Direction shall take effect for a period of 72 hours and, unless it is earlier confirmed by an Ok Tedi Environment Protection Order, the Ok Tedi Emergency Direction shall immediately lapse after expiry of that period.

(3) An Ok Tedi Emergency Direction that is issued orally shall be reduced to writing and recorded in the register within 72 hours.

### **42. OFFENCE OF FAILING TO COMPLY WITH EMERGENCY DIRECTION.**

If the permit holder fails to comply with an Ok Tedi Emergency Direction issued under Section 41, the permit holder is guilty of an offence.

Penalty: Upon conviction - A fine not exceeding K100,000.00

### **43. REQUIREMENT FOR INFORMATION.**

(1) The Director or an authorised officer may give a written notice requiring the permit holder to provide to the Director for inspection any documents, reports, books, plans, maps or other records (including monitoring records) relating to -

- (a) information required to be kept in accordance with this Act, the Mine Closure Plan or the conditions of a permit; or
- (b) the carrying out of any activity which is likely to cause material or serious environmental harm; or
- (c) the presence on or release of any contaminant from or at any premises or site; or
- (d) the emission of noise.

(2) A notice under Subsection (1) shall -

- (a) be in a form fixed by the Director; and
- (b) state the information that is required; and
- (c) state the time within which the information is to be provided; and
- (d) state why the information is required; and
- (e) state the procedure by which review of or appeal from the notice may be made.

(3) A notice may be given to the permit holder if the Director believes on reasonable grounds that they have knowledge of a matter or have possession or control of a document dealing with a matter, for which the information is required.

(4) If the permit holder fails to comply with a request under Subsection (1) within a reasonable time, the permit holder is guilty of an offence.

Penalty: Upon conviction - a fine not exceeding K100,000.00.

**44. REVIEW.**

(1) The permit holder when served with -  
(a) an Ok Tedi Environment Protection Order; or  
(b) an Ok Tedi Clean-up Order; or  
(c) a notice to provide information under Section 43,  
may apply for review of the decision under Section 29 and shall have the right to appeal to the National Court as referred to in Section 29(4).

(2) Where an application for review is made under Section 29, the permit holder may apply to the Court for a stay of operation of the decision under Section 30.

*Division 2. - Offences.*

**45. OFFENCE OF INTERFERING WITH MONITORING EQUIPMENT.**

A person who interferes with monitoring equipment used under this Act, is guilty of an offence.

Penalty: Upon conviction, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

**46. GENERAL DEFENCE.**

(1) It is a defence to any offence against this Act or the Regulations for the person charged to prove that -

- (a) the action to which the charge relates occurred in an emergency to prevent danger to life or limb other than an emergency arising from the negligent act or omission of the person charged; and
- (b) as soon as reasonably practicable, after that action, the person notified the Director, in writing of the particulars of the action and the reasons for which it was taken.

(2) A person who intends to rely on this defence may only do so where the person notifies the Director, in writing of his intention to do so within seven days of service of the proceedings relating to the charge.

**47. NOTICE OF DEFENCE TO CHARGE OF UNLAWFUL ENVIRONMENTAL HARM.**

(1) A person who intends to rely on the defence set out in Section 46(2), shall give written notice of intention to the Director at least 14 days prior to the day on which the charge is heard.

(2) A person who fails to comply with Subsection (1), shall not be permitted to rely on the defence at trial.

**48. LIABILITY OF PERMIT HOLDER.**

The permit holder is not liable to a penalty under this Act with respect to any act which causes or might reasonably be expected to cause environmental harm where the permit holder proves that the permit holder complied with -

- (a) the conditions attaching to the Ok Tedi Permit authorising the act or acts which are the subject of the charge; or
- (b) the requirements of any Ok Tedi Environment Protection Order, Ok Tedi Clean-up Order, Ok Tedi Emergency Authorisation or Ok Tedi Emergency Direction relating to the act or acts which are the subject of the charge.

## *Ok Tedi Environment Management*

### **49. OFFENCES IN RELATION TO PROVISION OF INFORMATION.**

A person who knowingly gives any information that is false or misleading in any material particular in connection with -

- (a) an application for an amendment to the Ok Tedi Permit or any information provided in connection with an application for an amendment to the Ok Tedi Permit; or
- (b) an application for variation, amendment, renewal, transfer or surrender of the Ok Tedi Permit; or
- (c) any report or other information required to be provided to the Director under this Act or a provision of the Ok Tedi Permit; or
- (d) an inception report or environmental impact statement; or
- (e) a submission or representation made in the course of public review of an environmental impact statement or a permit application; or
- (f) a submission to the Council; or
- (g) an application for approval of an Ok Tedi Environmental Improvement Plan; or
- (h) an environmental audit or investigation; or
- (i) a representation to the Director giving reasons why the Ok Tedi Permit should not be cancelled or suspended; or
- (j) any other information required to be provided under this Act,

is guilty of an offence.

Penalty: Where the person convicted of an offence is -

- (a) a corporation - a fine not exceeding K100,000.00; and
- (b) other than a corporation - a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

### **50. GENERAL PENALTY.**

A person who fails to comply with a requirement under this Act applicable to him in respect of which a specific penalty is not provided, is guilty of an offence.

Penalty: Upon conviction, a fine not exceeding K50,000.00.

### **51. CONTINUING OFFENCES.**

Subject to this Act, where an offence against a provision of this Act, a mandatory provision of an environment policy or the Regulation is committed by the permit holder by reason of a continuing act or omission, the permit holder is liable to -

- (a) the penalty provided in respect of that offence; and
- (b) the additional penalty for each day on which the act or omission continues of an amount provided for that offence or, where no additional penalty is provided, an additional penalty of not more than one-fifth of the maximum penalty for that offence.

### **52. PROOF OF INTENTION.**

Subject to any express provision in this Act to the contrary, it shall not be necessary to prove any intention or other state of mind in order to establish the commission of an offence against this Act.

### *Division 3. - Appointment and powers of authorised officers.*

### **53. APPOINTMENT OF ANALYSTS AND AUTHORISED OFFICERS.**

- (1) The Director may by notice in the National Gazette appoint -
  - (a) an appropriately qualified officer of the National Public Service; or
  - (b) an appropriately qualified employee of the Authority; or

## *Ok Tedi Environment Management*

(c) a person engaged by Conservation and Environment Protection Authority to carry out any services on behalf of or for the purposes of Conservation and Environment Protection Authority,  
to be an authorised officer for the purposes of the Act and may, in writing, revoke any such appointment.

(2) An appointment under Subsection (1), may specify limitations on the powers of the authorised officer or analyst with respect to particular classes of activity or particular provisions of this Act.

(3) The Director shall, in making an appointment under Subsection (1) and fixing any limitations on the powers of the authorised officer or analyst, ensure that the person has the necessary expertise or experience to carry out the duties which will be required of that person.

(4) The Director shall provide each authorised officer with a written identity card identifying that authorised officer and the authorised officer shall produce that identity card to any person on demand when the authorised officer is carrying out or is about to carry out any of his powers under this Act.

(5) The Regulation may prescribe matters in relation to the appointment of authorised officers, including -

- (a) qualifications for appointment of authorised officers and analysts to carry out particular duties; and
- (b) any restrictions on the powers of authorised officers and analysts; and
- (c) procedures for the issue of identity cards and withdrawal of authorised officer's powers.

### **54. PROTECTION OF DIRECTOR, AUTHORISED OFFICERS, ETC., FROM LIABILITY.**

The Director, a person acting under his direction or delegation, an authorised officer, or analyst does not incur any civil liability for anything done or omitted to be done honestly and without negligence in the course of exercising his powers or carrying out his duties and functions under this Act.

### **55. POWERS OF AUTHORISED OFFICERS.**

(1) Subject to this Act, an authorised officer may at any time enter upon and inspect any premises on which any activity in relation to the Ok Tedi Mine is being carried out -

- (a) at which he believes on reasonable grounds that any unlawful environmental harm is occurring; or
- (b) from which he believes on reasonable grounds, that environmental contaminants are being released or on which he believes on reasonable grounds, contaminants are being deposited, stored or kept in contravention of this Act; or
- (c) from which unreasonable levels of noises are being emitted.

(2) Where the premises referred to in Subsection (1), consist of a private dwelling-house, an authorised officer shall not enter other than at a reasonable time unless he has previously obtained the permission of the owner or occupier of the private dwelling-house, or under a search warrant obtained under the *Search Act* (Chapter 341).



## *Ok Tedi Environment Management*

(3) Where the premises referred to in Subsection (1), consist of a place where commercial activities are being conducted, an authorised officer shall not enter without providing reasonable notice to the permit holder carrying out the activities unless the Director determines that, in all the circumstances, it is inappropriate to give notice.

- (4) An authorised officer exercising his power under Subsection (1) may -
- (a) examine and inspect any machinery, equipment or works used for or in connection with the industry or trade or the release of contaminants or emission of noise; and
  - (b) take and remove samples of any material that is being or likely to be, or is of a kind that is, used in connection with the industry or trade conducted on the premises, or which he believes to contain a contaminant; and
  - (c) take and remove samples and examine and test any samples to ascertain whether any of the provisions of or requirements made under this Act, or the Regulation, or the conditions, limitations or restrictions of any permit, are being complied with; and
  - (d) make such measurements and tests, and take such photographs, as he considers necessary for the purposes of carrying out his duties and functions under this Act; and
  - (e) seize evidence, including any records or documents relating to the exercise of the power under Subsection (1) in which case the authorised officer shall provide the owner or occupier with a reasonable opportunity to obtain copies of any records, documents or other evidence seized.

### **56. POWER TO REQUIRE NAME AND ADDRESS.**

(1) An authorised officer may require a person to state the person's name and address where the authorised officer -

- (a) finds the person committing an offence against the Act; or
- (b) has reasonable grounds to suspect that the person has committed an offence against the Act.

(2) A person, who fails to comply with a request by an authorised officer under Subsection (1), is guilty of an offence unless the person has a reasonable excuse.

Penalty: Upon conviction, a fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

### **57. POWER TO REQUIRE ANSWERS TO QUESTIONS.**

(1) Where an authorised officer has reasonable grounds to believe that -

- (a) an offence against the Act has been committed; and
- (b) a person may be able to give information about the offence,

the authorised officer may require the person to answer questions about the offence.

(2) A person, who fails to comply with a requirement by an authorised officer under Subsection (1), is guilty of an offence unless the person has a reasonable excuse.

Penalty: Upon conviction, a fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

### **58. OFFENCES IN RELATION TO AUTHORISED OFFICERS.**

A person who -

- (a) hinders or obstructs an authorised officer in the execution of his duties; or
- (b) fails to comply with a lawful requirement made by an authorised officer; or

## *Ok Tedi Environment Management*

- (c) refuses an authorised officer entry to premises which the authorised officer may lawfully enter; or
  - (d) impersonates an authorised officer,
- is guilty of an offence.

Penalty: Upon conviction, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

### *Division 4. - Proceedings.*

#### **59. INSTITUTION OF PROCEEDINGS.**

- (1) An offence against this Act shall be prosecuted -
  - (a) in the District Court where the offence provides for a maximum monetary penalty of K20,000.00 or less in the case of a person other than a Corporation; or
  - (b) before a Principal Magistrate where the offence provides for a maximum monetary penalty, in the case of a person other than a Corporation, of K50,000.00; or
  - (c) in the National Court in any other case.

(2) The Director or an authorised officer may, after consultation with the Public Prosecutor, lay an information and institute prosecutions for offences under this Act.

#### **60. SERVICE.**

The service of an order, notice or other document under this Act shall be effected by serving or posting it to the permit holder's registered office.

#### **61. LIABILITY OF CORPORATE OFFICERS.**

- (1) In this section, "executive officer" means a person who is -
  - (a) a member of the governing body of a Corporation; or
  - (b) a senior manager of the Corporation responsible for those activities of the Corporation which are governed by this Act.

(2) A Corporation's executive officers and directors shall ensure that the Corporation complies with this Act.

(3) Where a Corporation commits an offence against a provision of this Act, each director and executive officer of the Corporation who has -

- (a) aided, abetted, counselled or procured the contravention; or
  - (b) been knowingly concerned in, or party to, the contravention,
- is also, subject to Subsection (4), guilty of an offence of failing to ensure the Corporation is complying with this Act.

(4) It is a defence to a charge under Subsection (1) for an executive officer or director to prove that -

- (a) he was not in a position to influence and control the conduct of the Corporation in relation to the offence; or
- (b) if the person was in a position to influence and control the conduct of the Corporation in relation to the offence, the person took reasonable steps to attempt to ensure the Corporation complied with the provision.

#### **62. EVIDENCE.**

- (1) This section applies to any proceeding under this Act.

## *Ok Tedi Environment Management*

(2) If a person who is an -  
(a) authorised officer makes a technical assessment for the purposes of this Act or who records monitoring data or other technical information; or  
(b) analyst conducts an analysis for the purposes of this Act,  
the person shall prepare, sign and date a certificate, report or statement of his analysis, assessment or recording and deliver it to the Director.

(3) In any proceedings, a certificate executed by the Director certifying a matter relating to -  
(a) a permit issued under this Act; or  
(b) the appointment or non-appointment of a person; or  
(c) a delegation of powers or functions under this Act (other than a delegation of powers or functions by the Minister); or  
(d) a notice, order, requirement, direction, declaration or determination of the Director;  
or  
(e) any other decision of the Director; or  
(f) the receipt or non-receipt of any notice, report or other information required to be provided to the Director under this Act,  
constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(4) In any proceedings, an extract of the Register certified by the Director and containing -  
(a) a decision or approval of the Minister; or  
(b) a recommendation, referral or decision of the Council,  
constitutes proof, in the absence of proof to the contrary, of the decision, approval, recommendation as the case may be.

(5) In any proceedings under this Act where a party intends to rely on the contents of a certificate of analysis, or an authorised officer's report or statement, the party shall serve on the person against whom the proceedings are to be brought, with and in the same manner as the summons relevant to that action, a copy of the certificate, report or statement, as the case may be.

(6) Where in any proceedings for an offence against this Act, a certificate of analysis or authorised officer's report or statement has been served in accordance with Subsection (5), that certificate, report or statement, as the case may be, shall be admissible in evidence, unless the defendant, not later than five days immediately before the date set down for the hearing, serves notice in writing upon the informant or prosecutor that the defendant requires that analyst or authorised officer to be called to give evidence.

(7) A certificate, report or statement admitted in evidence under this section is sufficient evidence of the matters contained therein.

(8) Any instrument, equipment or installation that is used by an authorised officer or analyst is taken to be accurate in the absence of evidence to the contrary.

(9) In a proceeding in which the Director applies to recover the costs and expenses incurred by it, a certificate by the Director stating that stated costs and expenses were incurred and the way and purpose for which they were incurred is evidence of the matters stated.

### **63. FORFEITURE OF ITEMS ON CONVICTION.**

(1) Subject to Subsection (2), where a Court convicts a person of an offence under this Act, the Court may, in addition to imposing the penalty prescribed, order the forfeiture of any property including machinery or equipment retained as evidence and the forfeited thing becomes the property of the Authority and may be retained, leased or sold by tender by the Authority.

## *Ok Tedi Environment Management*

(2) A Court shall not order the forfeiture of any property unless it has first made reasonable enquiries to ascertain the ownership of any property retained as evidence and shall not order the forfeiture of that property unless it is satisfied that -

- (a) the owner of the property cannot be found; or
- (b) the person convicted is the owner of the property and it was used in the commission of the offence.

### **64. COURT MAY ORDER ACTION TO MINIMISE ENVIRONMENTAL HARM.**

(1) Where the permit holder is convicted of an offence against this Act, the Court by which it is convicted may, in addition to imposing a penalty for the offence, order that the permit holder so convicted take such action within such time as the Court specifies to prevent the continuation or recurrence of the offence.

(2) The Court by which the order under Subsection (1) was made, may revoke or vary that order on an application by either party to the action.

(3) The permit holder who fails to comply with an order made or varied under this section, is guilty of an offence.

Penalty: Upon conviction, a fine not exceeding K250,000.00.

## **PART VIII. - MISCELLANEOUS.**

### **65. REGISTER.**

(1) The Director shall keep a register containing a copy of all notifications, applications for an amendment, decisions and approvals taken under this Act including but not limited to -

- (a) each notice to undertake environmental impact assessment served under Subsection 16(4); and
- (b) each inception report and environmental impact statement submitted under Sections 21 and 22; and
- (c) each direction given by the Director in relation to a program of public review of an environmental impact statement under Section 24; and
- (d) each representation and submission received in response to public review of an environmental impact statement; and
- (e) each assessment of an environmental impact statement undertaken by the Director (but not including any confidential information withheld from public review by the Director under Section 24) or decision of the Director under Section 25; and
- (f) each referral of an environmental impact assessment to the Council under Section 26; and
- (g) each Council recommendation under Section 27 in relation to a proposed activity; and
- (h) each approval in principle, or refusal to approve an activity by the Minister, under Section 28; and
- (i) such information as the Director considers appropriate in relation to the Ok Tedi Permit, including each application for an amendment to the Ok Tedi Permit, each application for transfer, renewal or surrender of the Ok Tedi Permit and a copy of the Ok Tedi Permit and the conditions endorsed on it; and
- (j) each decision by the Council in relation to an application for review of a decision by the Director under Section 29; and
- (k) each decision by the Director in relation to suspension or cancellation of the Ok Tedi Permit under Section 18; and

## *Ok Tedi Environment Management*

- (l) each direction by the Director in relation to conduct or commissioning of an environmental audit or investigation; and
  - (m) each Ok Tedi Environmental Improvement Plan approved by the Director under Section 32; and
  - (n) each monitoring and management report submitted by the permit holder under the conditions of the Ok Tedi Permit; and
  - (o) each Ok Tedi Emergency Authorization issued by the Director under Section 33; and
  - (p) each Ok Tedi Environmental Protection Order, Ok Tedi Clean-up Order and Ok Tedi Emergency Direction issued; and
  - (q) each requirement for information under Section 43; and
  - (r) copies of information for offences against this Act, in connection with every proposed activity; and
  - (s) the Mine Closure Plan and any amendments or revisions to the Plan.
- (2) The register shall be made available for inspection by any person at all reasonable times.
- (3) Any person may be entitled to search for, request and obtain copies of any entry in the register subject to payment of fees fixed by the Director under Section 35.
- (4) The production of a copy or an extract from the register, certified by the Director to be a true copy of the register or a true extract from the register, is evidence of the matters contained in it.
- (5) Notwithstanding the provisions of this Act, where the Director is of the opinion that -
- (a) information or data contained in an environmental impact statement; or
  - (b) the assessment of an environmental impact statement,
- is of a nature that it is in the public interest that it should not be divulged, the Director may withhold any part of that environmental impact statement or assessment from public inspection.
- (6) Where the Director withholds any information under Subsection (5), the document or statement from which the information has been withheld shall be endorsed with a notice that the Director has exercised his power under that subsection and the reason for that exercise.
- (7) A person, who discloses or uses any information provided under this Act, for purposes other than in accordance with this Act, is guilty of an offence.

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

### **66. OPERATIONAL PROCEDURES.**

The Director may issue operational procedures consistent with this Act for the purposes of achieving the objectives of this Act, including but not limited to -

- (a) setting out the form in which any information is to be provided, notification given or application made; and
- (b) setting out the procedure for making any decision required to be made by the Director under this Act, an Ok Tedi Technical Standard or the Regulations.

### **67. OK TEDI TECHNICAL STANDARDS.**

(1) An Ok Tedi Technical Standard may be established in accordance with this section in respect of all or any of the following matters:

- (a) a contaminant; and
- (b) an industry or activity; and

## *Ok Tedi Environment Management*

- (c) a technology or process; and
  - (d) a beneficial value; and
  - (e) waste management or minimisation; and
  - (f) noise; and
  - (g) decommissioning and rehabilitation requirements.
- (2) An Ok Tedi Technical Standard may do all or any of the following:
- (a) state objectives to be achieved and maintained; or
  - (b) state the indicators, parameters, factors or criteria to be used in measuring or deciding any quality or condition of environment; or
  - (c) state ways of achieving compliance with general environmental duties or any activity that causes or is likely to cause environmental harm; or
  - (d) establish a program by which the stated objectives are to be achieved and maintained including -
    - (i) the qualities and maximum quantities of any contaminant permitted to be released into the environment; or
    - (ii) the minimum standards to be complied with in installation or operation of vehicles, plant or equipment for control of contaminants or noise or odour from stated sources or places; or
    - (iii) measures designed to protect the environment or minimise the possibility of environmental harm;
  - (e) provide for program performance assessment procedures; or
  - (f) make different provisions according to the matter, location or circumstances to which they are expressed to apply; or
  - (g) specify the activities to which the Technical Standard applies; or
  - (h) specify the extent to which the Technical Standard will or may affect the permit holder.
- (3) Where a new Ok Tedi Technical Standard or an amendment to an Ok Tedi Technical Standard is proposed, the Director shall give notice that a new Ok Tedi Technical Standard or that an amendment to an existing Ok Tedi Technical Standard is proposed to relevant government agencies and to the permit holder.
- (4) The Director shall prepare a draft Ok Tedi Technical Standard or draft an amendment to an Ok Tedi Technical Standard as applicable and -
- (a) shall give notice of the draft Ok Tedi Technical Standard or amendment -
    - (i) in the National Gazette; and
    - (ii) in a national or local newspaper that is distributed regularly throughout the country; and
    - (iii) to relevant government agencies; and
    - (iv) to the permit holder; and
  - (b) may give such other notice to such other persons, agencies, groups or representative bodies as the Director considers appropriate, and in each case the notice shall state a period of time (not being less than one month) within which submissions may be made to the Director; and
  - (c) publish the draft Ok Tedi Technical Standard or amendment to an Ok Tedi Technical Standard on the Authority's website.
- (5) The Director shall receive and consider any submissions received within the period of time referred to in Subsection (4), together with any other relevant information in his possession and may recommend to the Minister that the draft Ok Tedi Technical Standard be approved or that it be amended and approved in its amended form.

## *Ok Tedi Environment Management*

(6) The Minister may, by notice in the National Gazette, and in accordance with a recommendation by the Director under Subsection (5), establish an Ok Tedi Technical Standard.

(7) Where an Ok Tedi Technical Standard has been established in respect of which a notice was given under Subsection (4), the Director shall -

- (a) issue to the permit holder a notice setting out or containing a draft amendment to the Ok Tedi Permit which, in the Director's opinion, is necessary to comply with or meet the Ok Tedi Technical Standard; and
- (b) state in the notice, a period of time within which submissions may be received; and
- (c) after the end of the period referred to in Subparagraph (ii), reissue the regard to the submissions, if any, received under that subparagraph; and
- (d) require the permit holder to submit an Ok Tedi Environmental Improvement Plan under Section 32(1) or initiate the preparation of an Ok Tedi Environmental Improvement Plan under Section 32(2).

(8) This section is subject to Section 13(3).

### **68. REGULATIONS.**

The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for -

- (a) giving effect to any international convention to which the State is a party or agreement between the State and any country or countries relating to the control of contaminants and the protection of the environment; and
- (b) the registration of contaminants and hazardous contaminants and the removal from the register of such contaminants; and
- (c) requiring payment of a deposit at the time of purchase of any material packaged or contained in any class of packaging or container and regulating the amounts, terms and conditions of deposits; and
- (d) providing for the delegation of power to Provincial Governments and Local-level Governments to make laws or rules consistent with this Act, to deal with noise and other environmental harm in their respective areas; and
- (e) making provision for officers of other governmental authorities including Provincial Governments and Local-level Governments to enforce provisions of this Act in relation to noise and other environmental harm; and
- (f) the establishment, operation and management of funds for purposes connected with this Act; and
- (g) prescribing penalties of fines not exceeding K100,000.00 for offences against the Regulations.

*Ok Tedi Environment Management*

I hereby certify that the above is a fair print of the *Ok Tedi Environment Management Act 2019* which has been made by the National Parliament.

  
Acting Clerk of the National Parliament.

13 FEB 2020

I hereby certify that the *Ok Tedi Environment Management Act 2019* was made by the National Parliament on 30 January 2019 by an absolute majority in accordance with the *Constitution*.

  
Speaker of the National Parliament.

13 FEB 2020