

REPUBLIC OF VANUATU

BILL FOR THE QUARRY (AMENDMENT) ACT NO. OF 2016

Explanatory Note

This Bill amends the Quarry Act No.9 of 2013.

Item 1 amends section 1 by inserting in its correct alphabetical position a new defined term to be used in the Act.

Item 2 repeals the definition of ‘custom owner’ and substitutes it with a new definition of custom owner to have the same meaning as provided under Custom Land Management Act No. 33 of 2016.

Item 3 amends the definition of ‘quarry company’ to include any International Company operating under the public works department permit.

Item 4 amends paragraph 2(1)(g) by deleting the full-stop “.” and substitutes it with “; or” and new paragraphs 2(1)(h) and (i). The new paragraph (h) empowers the Commissioner, in consultation with the Director of Environment to impose ban on quarry activities in an area where quarry activity causes adverse environmental impacts on the natural environment. And paragraph (i) gives the Commissioner the power to investigate and provide information to the Police and the Public Prosecutor to prosecute any illegal operators that operates quarry activities.

Item 5 amends section 2 by adding at the end of that section a new subsection (7) to allow for the Commissioner to consult with the Advisory Board to prescribe the rate per volume of building minerals in the regulations. This amendment is necessary because a lot of building minerals in a quarrying area of interest might pose threat to the infrastructures or sometimes in a conservation site. Sometimes the quarry activities occur in coastal area which may result in permanent loss of land which may result in compensation claim against the Government or quarry company. All these factors will determine the rate per volume of building minerals by the Commissioner.

Item 6 amends paragraph 5(d) by inserting after that paragraph, a new paragraph 5(da). This paragraph expands the powers of the authorised officers to prospect for building minerals in a public works aggregates prospecting site.

Item 7 amends subsection 9(1) by inserting after that subsection, a new subsection 9(1A) to allow a custom owner or disputing custom owners to give approval to the Public

Works Department to explore building minerals on the land or on a custom land that is in dispute. Consent is required from the custom owners or disputed custom owners to secure an aggregate prospecting quarry permit.

Item 8 amends subsection 9(4) by deleting the words “or quarry company” and substituting it with “, disputing custom owner, quarry company or a person whom the custom owner or disputing custom owners have given consent. The effect of this amendment is to restrict the Commissioner from issuing an aggregate prospecting permit to the disputing custom owner, quarry company or a person whom the custom owner or disputing custom owners have given consent.

Item 9 amends paragraph 9(4)(c) by deleting the full-stop “.” and substituting it with “; or” because of the new paragraphs (d), (e) and (f). This amendment prohibits the Commissioner from issuing aggregate prospecting permits for areas that are conservation sites registered under the Environmental Protection and Conservation Act [CAP 283], or a site classified by the Minister under the Preservation of Sites and Artifacts Act [CAP 39] or a registered lease whose lease conditions does not include quarry activities.

Item 10 amends paragraph 10(3)(b) by deleting the words “subsection 21(4)” and substituting it with the words “subsection 19(4)” to correct the wrong referencing.

Item 11 amends section 12 by inserting after the word “quarry” the word “prospective” to mean that a quarry permit holder can also prospect for building minerals in a quarry prospective area.

Item 12 amends subsection 17(4) by deleting the word “person” and substituting it with the words “quarry company” providing that a quarry company must pay an application fee when applying for a quarry permit to undertake any occasional quarry.

Item 13 amends section 17 by adding at the end of that section, a new subsection 17(5) to clarify the intention of this section that an occasional quarry permit may be issued only to a quarry company.

Item 14 amends subsection 18(2) by deleting the words “under this Act subsection (” to correct the error made under this subsection.

Item 15 amends section 18 by adding at the end of this section, a new subsection 18(3) providing that the Commissioner must not issue a public works quarry permit to a Company who is constructing public infrastructure development under Government initiated project unless the Company has obtained the written consent of the of Director of the Public Works.

Item 16 amends paragraph 19(3)(b) by deleting the full-stop “.” and substituting it with “; or” and a new paragraph 19(3)(c). This new paragraph provides for additional information required to be included in the application when applying for a quarry permit.

Item 17 amends subsection 19(5) by inserting after that subsection, a new subsection 19(5A). Subsection (5A) empowers the Commissioner to impose general and special conditions for a quarry permit.

Item 18 amends paragraph 19(5)(b) by inserting before the word “at” the word “if” to correct the grammatical error in that provision.

Item 19 amends subparagraph 19(5)(b)(iii) by deleting the full-stop “.” and substituting it with “; or” and a new subparagraph 19(5)(b)(iv). This new subparagraph provides for the Commissioner not to issue a quarry permit if he or she is satisfied that the quarry activity will cause a significant adverse impact to the natural environment and pose a threat to the lives of people in the surrounding areas.

Item 20 amends section 22 by inserting after that section, sections 22A and 22B. Section 22A provides for the suspension of a quarry permit. The Commissioner may, by notice in writing, suspend the quarry permit if he or she is satisfied that the permit holder has failed to comply with a general or specific condition of the permit and also it is in the public interest to suspend the quarry permit. The notice must set out the reasons for the suspension and the period for the suspension. It must also specify the general or special condition that has been breached. If the quarry permit is suspended, the permit holder must cease operation until the suspension period ceases. Section 22B provides for the cancellation of a permit if the permit holder fails to comply with the notice issued under paragraph 22A(2)(c) or (3)(b).

Item 21 repeals section 52 and substitutes it with a new section 52. This new section provides for penalty notices to be served by the Commissioner for offences committed under the Act. Prosecution of offences may at times be a costly and timely process. The issuing of penalty notices to offender is a way of deterring persons from acting in contravention of the provisions of the Act. However, a penalty notice is a notice to the effect that, if the person served does not intend to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

Minister of Lands and Natural Resources



REPUBLIC OF VANUATU

**QUARRY (AMENDMENT)
ACT NO. OF 2016**

Arrangement of Sections

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REPUBLIC OF VANUATU

BILL FOR THE QUARRY (AMENDMENT) ACT NO. OF 2016

An Act to amend the Quarry Act No. 9 of 2013.

Be it enacted by the President and Parliament as follows-

1 Amendments

The Quarry Act No. 9 of 2013 is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF QUARRY ACT NO. 9 OF 2013

1 Section 1 (Interpretation)

Insert in its correct alphabetical position:

“**disputing custom owners** means any lineage, family, clan, tribe or other group who are disputing ownership of custom land. It also refers to disputes between declared custom owners;”

2 Section (definition of “custom owner”)

Repeal the definition, substitute

“**custom owner** has the same meaning as provided under the Custom Land Management Act No. 33 of 2013;”

3 Section 1 (definition of “quarry company”)

After “operations”, insert “or any International Company operating under the public works department permit.”

4 Paragraph 2(1)(g)

Delete “.”, substitute

“; or

(h) in consultation with the Director for Environmental Protection and Conservation, impose a ban on quarry activities in an area if the quarry activity causes any adverse environmental impact to the natural environment or poses a threat to the livelihood of people in the area;

(i) conduct investigations and provide the Police and the Public Prosecutor with information to prosecute any illegal operators that operates quarry activities.”

5 At the end of section 2

Add

“(7) The Commissioner may, after consulting the Quarry Advisory Board, by Regulation prescribe a minimum rate per volume of building minerals that may be extracted.”

6 After paragraph 5(d)

Insert

“(da) to prospect for building minerals in a Public Works Department aggregate prospecting site.”

7 After subsection 9(1)

Insert

“(1A) A custom owner or disputing custom owners may give approval to the Public Works Department to explore building materials on a custom land or on a custom land that is in dispute.”

8 Subsection 9(4)

Delete “or a quarry company”, substitute “, disputing custom owner, quarry company or a person with whom the custom owner (s) or disputing custom owners have given consent”

9 Paragraph 9(4)(c)

Delete “.”, substitute

“; or

(d) a community conservation area registered under the Environmental Protection and Conservation Act [CAP 283]; or

(e) a site classified by the Minister under section 2 of the Preservation of Sites and Artifacts Act [CAP 39]; or

(f) a registered lease whose lease conditions does not include quarry activities.”

10 Paragraph 10(3)(b)

Delete “subsection 21(4)”, substitute “subsection 19(4)”

11 Section 12

After “quarry”, insert “prospective”

12 Subsection 17(4)

Delete “person”, substitute “quarry company”

13 At the end of section 17

Add

“(5) To avoid doubt, an occasional quarry permit may be issued only to a quarry company.”

14 Subsection 18(2)

Delete “under this Act subsection (“

15 At the end of section 18

Add

“(3) The Commissioner must not issue a public works department quarry permit to a Company who is constructing public infrastructure developments under a Government initiated project, unless it has obtained the written consent of the Director of Public Works.”

16 Paragraph 19(3)(b)

Delete “.”, substitute

“; and

(c) an approved Preliminary Environmental Impact Assessment or an Environment Impact Assessment as required under the Environmental Protection and Conservation Act [CAP 283].”

17 After subsection 19(5)

Insert

“(5A) The Commissioner may impose general and special conditions for a quarry permit.”

18 Paragraph 19(5)(b)

Before “at”, insert “if”

19 Subparagraph 19(5)(b)(iii)

Delete “.”, substitute

“; or

(c) quarry activity that will cause significant adverse impacts to the natural environment, and pose a threat to the lives of people in the surrounding areas.”

20 After section 22

Insert

“22A Suspension of a quarry permit

(1) The Commissioner may, by notice in writing, suspend a quarry permit if the Commissioner is satisfied that:

- (a) the permit holder has failed to comply with a general or special condition of the permit; or
 - (b) it is in the public interest that the permit be suspended.
- (2) A notice issued under paragraph (1)(a) must:
- (a) set out the reasons for the suspension and the period for the suspension; and
 - (b) specify the general or special condition that has been breached; and
 - (c) direct the permit holder to comply with the general or special condition within a specified period.
- (3) A notice issued under paragraph (1)(b) must:
- (a) set out the reasons for the suspension and the period for the suspension; and
 - (b) direct the permit holder to resolve any dispute or remedy any damage caused by activities undertaken under that quarry permit, within a specified period.
- (4) To avoid doubt, if a quarry permit is suspended, the permit holder must cease any quarrying operation until the suspension ceases.

22B Cancellation of a permit

- (1) The Commissioner may cancel a quarry permit, if a permit holder fails to comply with a notice issued under paragraph 22A(2)(c) or (3)(b).
- (2) The Commissioner must within 3 days inform the permit holder in writing of the reasons for the cancellation of the quarry permit.
- (3) A permit holder must cease all quarry operations upon being informed of the cancellation by the Commissioner.”

21 Section 52

Repeal the section, substitute

“52 Penalty Notice

- (1) The Commissioner may serve a penalty notice if it appears to the Commissioner that a person has committed an offence under any provision of this Act or the Regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by the Court, the person may pay within a time and amount of penalty prescribed by the Regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment made under this section is not to be regarded as an admission of liability for the purpose of, or in any way affect or prejudice, any proceeding arising out of the same occurrence.
- (6) The Regulations may:
 - (a) specify the offence by referring to the provision creating the offence under this Act; and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the amount of penalty in this Act.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.”