

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

ROADS BILL

(As read a First Time)

(Introduced by the Minister of Works and Transport)

[B. 5 - 2024]

BILL

To provide for the ownership and nature of ownership of roads; to provide for the establishment and powers of roads boards; to provide for the powers and duties of the Minister, the Roads Authority and local authorities in relation to roads; to provide for preliminary route identification, the proclamation, construction, management, control, maintenance and rehabilitation of roads; to provide for the control over actions within the road reserve; to provide for building restriction and advertising on roads; to provide for entry on land, encroachment on land, acquisition of land and for compensation for land; to provide for the liability and indemnification of the Roads Authority; to provide for the enforcement of the Act; to provide for appeals; and to provide for incidental matters.

(Introduced by the Minister of Works and Transport)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

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ARRANGEMENT OF SECTIONS
PART 1

INTRODUCTORY PROVISIONS

Definitions and interpretation

1. (1) In this Act, unless the context otherwise indicates –

“access” means any manner by which persons, vehicles or domesticated animals enter onto a road;

“advertisement” means any visible presentation of a word, name, letter, figure or object or an abbreviation of a word or name or of any sign or symbol or any light which is not intended solely for illumination or as a warning against any danger;

“authorised person” means a person referred to in section 54;

“bridge” includes a culvert and a concrete slab;

“building restriction road” means any road which the Roads Authority has in terms of section 38 determined to be a building restriction road and includes any road contemplated in subsection (2) of that section;

“centre line” means –

- (a) in respect of a road with one roadway, the centre line of that roadway; and
- (b) in respect of a road with more than one roadway, the median of the centre lines of those roadways;

“construct” means the provision of a combination of goods and services, arranged for building a road and where the context requires includes the altering, repairing, maintaining, deviating, upgrading or rehabilitating of a road, or anything in relation to that road;

“construction works” means any construction on or in the vicinity of a road;

“district” means the area for which a roads board has been established in terms of section 4 and which constitutes the area of jurisdiction of such roads board;

“district road” means a road proclaimed in terms of section 16;

“domesticated animal” means any amphibian, bird, fish, mammal or reptile which is in captivity or under the control of any person;

“egress” means any manner by which persons, vehicles or domesticated animals exit from a road;

“Commercial farm” means a piece of land registered as a farm or portion of a farm or lot registered in the deeds registry or state land and includes any area declared to be a game park or a nature reserve in terms of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975) and communal land as described in section 15 and Schedule 1 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002);

“farm road” means a road proclaimed in terms of section 16;

“freeway” means a road, or a section of a road, declared to be a freeway in terms of section 20 and which is designated as a freeway by an appropriate road traffic sign;

“government institution” means an office, ministry or an agency as defined in section 3(1) of the Public Service Act, 1995 (Act No. 13 of 1995) and an institution or body performing or exercising a public function or power under the Namibian Constitution or under any law of Namibia or a public enterprise declared under in section 2 of the Public Enterprise Governance Act, 2019 (Act No. 1 of 2019);

“intersection point reserve” means any point, declared to be an intersection point reserve in terms of section 21, where two or more roads intersect each other or where one or more roads join another road or roads;

“jackal proof fence” means a fence as defined in the standards issued under section 63;

“legitimate interest”, in relation to a minor road, means the need of an owner, lessee or occupier to obtain access to his or her farm or communal property, or the need to obtain access to that farm and communal property to visit the owner, lessee or occupier;

“lessee” means a person who has entered into a lease contract with the owner of land and who has obtained the right to occupy that land in terms of that contract;

“local authority area” means the area declared under section 3 of the Local Authorities Act, 1992 (Act No. 23 of 1992), to be a municipality, town or village, or deemed to be so declared and includes a settlement area declared under section 31 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“local authority council” means a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“main road” means a road proclaimed in terms of section 16;

“maintenance” means the combination of all technical and associated administrative actions during a road’s service life intended to retain it in a state in which it can perform its required function and includes the repair of and care for a road and each construction in the course thereof or which forms part thereof as well as any work or thing being connected with such repair;

“material” means sand, stone, rock, gravel, clay, soil and any other natural material to be removed from land and required for road construction;

“Minister” means the Minister responsible for works and transport;

“Ministry” means the ministry responsible administering works and transport affairs;

“minor road” means an unproclaimed road as contemplated in section 17;

“occupier” means in respect of land, a person who resides on such land with the permission of the owner or lessee thereof and who controls or apparently controls such land;

“owner”

- (a) in respect of land, the title deeds of which have been registered in the

deeds registry, means the person in whose name the title deeds is registered;
and

- (b) in respect of state land, means any lessee of such state land, whether or not the contract of lease by virtue of which he or she is in possession of the land has been registered in the deeds registry in terms of section 1 and 2 of the Deeds Registries Act (Act No. 47 of 1937);

“preliminary route” means the expression of the intent to construct a road connecting two or more geographical points;

“prescribed” means prescribed by regulations;

“private road” means an unproclaimed road to which the public has no access, unless otherwise authorised by law or having controlled access and which is indicated to be a private road by means of clearly shown notice boards erected at all entrances to such road;

“proclaimed road” means any road proclaimed in terms of section 16;

“regulations” means the regulations made under this Act;

“region” means the region in respect of which a regional council has been established in terms of section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“road” means a road as described in subsection (2);

“road reserve” means the full width of a road as depicted in the diagram contained in the definition of “road” and as contemplated in section 18;

“Roads Authority” means the Roads Authority established in terms of the Roads Authority Act, 1999 (Act No. 17 of 1999);

“Roads Authority Act” means Roads Authority Act, 1999 (Act No. 17 of 1999);

“roads board” mean a roads board established in terms of section 4;

“Road Traffic and Transport Act” means the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999);

“this Act” includes the regulations made under section 61, guidelines and standards issued under section 63;

“township” means a township as defined in section 1 of the Urban and Regional Planning Act;

“trunk road” means a road proclaimed in terms of section 16;

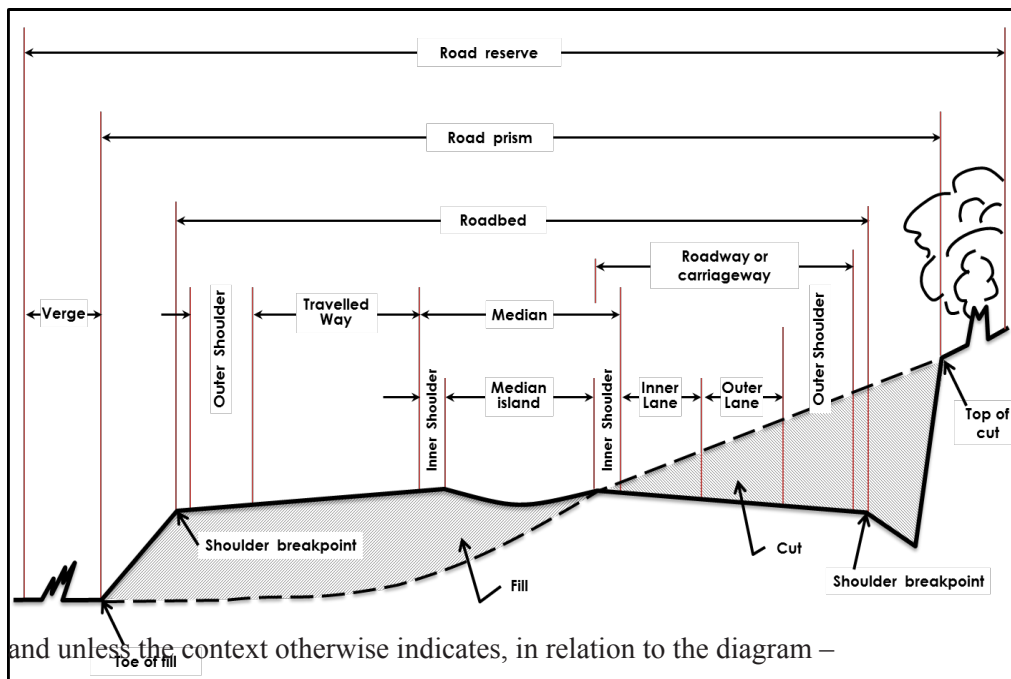
“urban area” urban area for the purpose of this Act, means that portion of a local authority area which has by actual survey been subdivided into erven of less than five hectares or which is surrounded by surveyed erven of less than five hectares and includes any adjacent road;

“Urban and Regional Planning Act” means the Urban and Regional Planning Act, 2018 (Act No. 5 of 2018);

“vehicle” means a vehicle as defined in section 1 of the Road Traffic and Transport Act.

(2) For the purpose of this Act, a reference to a road is a reference to a proclaimed road unless otherwise indicated.

(3) For purposes of this Act “road” means a right of way consisting of a cross section and extended by the longitudinal works bordered by the toe of fill on either side, the top of cut on either side, or the top of cut and the toe of fill as depicted in the following diagram:



“roadway” in respect of a road, means that portion of that road intended for vehicular traffic and includes the shoulders as depicted in the diagram;

“toe of fill” means the intersecting point of the fill with the natural ground level or with a structure erected for the purpose of creating that intersecting point as depicted in the diagram;

“top of cut” means the intersecting point of the cut with the natural ground level or with a structure erected for the purpose of creating that intersecting point, where that natural ground level is cut into for the purpose of a road as depicted in the diagram;

“verge” means that part of land that is bordered on one side by the road prism and on the other side by the boundary of the road reserve as determined in the proclamation of that road and as depicted in the diagram referred to in subsection (3).

(4) The diagram in the definition of “road” provides for multiple lanes but a road may consist of any number of lanes in accordance with its design.

(5) Subject to subsection (4) a road may or may not in accordance with its design include a median as contemplated in the diagram referred to in subsection (3).

PART 2
OWNERSHIP OF ROADS AND RESPONSIBILITIES OF ROADS AUTHORITY
AND LOCAL AUTHORITY COUNCILS

Ownership and nature of ownership of road

2. (1) The ownership and custodianship of every road in Namibia vests in the State except for a road which vests in the local authority area.

(2) Except as otherwise provided for by this Act, the proclamation of a road on land for the purpose of the construction of a road does not –

- (a) impose any liability on the owner of the road that the owner would not have if that owner was merely a person having the care, control and management (custodian) of the road;
- (b) affect the rights or liabilities of any person under any servitude or right of way;
- (c) affect any rights or liabilities of any person, including the State, with respect to minerals below the surface of the road;
- (d) constitute the owner of the road as an occupier or tenant of the land;
- (e) authorise the owner of the road to dispose of any interest, except for a servitude, in the land; and
- (f) prevent any lands that were previously considered to be adjoining lands from continuing to be so considered.

Functions of Roads Authority and local authorities

3. (1) Subject to subsection (4) and section 16 of the Roads Authority Act, the Roads Authority performs the management, supervision and control function in accordance with this Act and in relation to the national road network consisting of roads proclaimed in terms of Part 4 but excluding a proclaimed farm road.

(2) The Roads Authority may after consultation with a local authority council proclaim and construct a road within the local authority area of that local authority council.

(3) The Roads Authority may for the purpose of the execution of its powers and the performance of its duties, combine one or more district roads or parts of district roads.

(4) A local authority has, in relation to a trunk, main or district within its local authority area, the powers and duties –

- (a) given and imposed on the local authority by the Roads Authority by this Act; and
- (b) for which the local authority has agreed with the Roads Authority to take responsibility.

(5) A local authority that is responsible for the maintenance and control of a trunk, main or district road within its local authority area must, if that local authority intends to establish traffic control measures on a permanent basis, obtain the permission of the Roads Authority for establishing those permanent traffic control measures.

PART 3 ROAD BOARDS

Establishment of road boards

4. (1) The Minister may, after consultation with the Roads Authority, by notice in the *Gazette* –

- (a) establish a roads board and demarcate the area of that roads board outside the area of jurisdiction of a local authority;
- (b) increase, alter or diminish any area defined in terms of paragraph (a); or
- (c) dissolve or abolish any roads board established in terms of paragraph (a).

Constitution of road boards

5. (1) A roads board consists of the following five members –

- (a) one staff member representing the Roads Authority;
- (b) one staff member representing the Ministry;
- (c) two representatives of the community within that roads board's area nominated by the regional council; and
- (d) the regional officer responsible for planning employed by the regional council concerned and if the roads board's area extends over the boundaries of two or more regions, the regional officer responsible for planning of each such region,

appointed by the Minister on the recommendation of the Roads Authority.

(2) The staff member of the Ministry acts as the chairperson of a roads board.

(3) If the chairperson is unable to act as such during the period of tenure of a roads board, the roads board may from its members appoint an acting chairperson for that period and that acting chairperson has all the powers and duties of a chairperson.

(4) The persons to be appointed as members of a roads board in terms of subsection (1)(a) and (b) must have the necessary knowledge and expertise relating to the powers and functions of the roads board.

(5) The Roads Authority must perform the administrative functions of every roads board.

Powers and functions of roads board

6. (1) The functions of a roads board are to –
- (a) give assistance and advice to the Roads Authority or the Minister on all matters relating to roads within its area of jurisdiction;
 - (b) in general, perform all those duties which the Roads Authority or the Minister determines; and
 - (c) advise the Roads Authority and on request, the Minister, on any matter pertaining to the proclamation or construction of a road within the area which falls under the mandate of the roads board; and
- (2) A roads board may –
- (a) obtain and provide to the Roads Authority or the Minister all information which the Roads Authority or the Minister may require from it in connection with the application of this Act; and
 - (b) exercise such powers and perform functions imposed on or assigned to a roads board in terms of this Act.
- (3) A roads board must perform its functions with due regard to the road network plans as contemplated in section 15A of the Roads Authority Act.

Disqualification of member

7. A person does not qualify to be a member of a roads board, if that person –
- (a) is not a Namibian citizen or is not lawfully admitted for permanent residence in Namibia;
 - (b) is a member of Parliament, a regional council, a local authority council or of the Council of Traditional Leaders;
 - (c) has during the period of 10 years immediately preceding the date of commencement of this Act or at any time after that date, been convicted, whether in Namibia or elsewhere, of an offence and has been sentenced to imprisonment without the option of a fine;
 - (d) is an unrehabilitated insolvent;
 - (e) has under any law been declared to be of unsound mind or under legal disability; and
 - (f) holds an executive position in any political party.

Vacation of office, resignation, suspension and dismissal of member

8. (1) A member of a roads board vacates office –

- (a) if he or she becomes subject to the disqualifications as contemplated in section 7;
- (b) if he or she resigns as a member of a roads board as contemplated in subsection (2); or
- (c) if he or she is suspended or removed by the Minister as a roads board member in terms of subsection (3).

(2) A member of a roads board may resign from office by giving 30 days written notice of his or her intention to resign to the Minister.

(3) The Minister may remove a member of a roads board, from office if the Minister is satisfied that the member –

- (a) is incapable, by reason of physical or mental illness, of performing his or her functions as member of a roads board; or
- (b) is for any reason incapable of efficiently performing his or her functions as member of a roads board,

but the Minister must do so only after having afforded the member an opportunity to be heard.

(3) A member of a roads board holds office for a period of four years from the date of his or her appointment.

(4) If any member of a roads board ceases to be a member of a roads board during his or her term of office the Minister may appoint another person as his or her successor and that person holds office for the unexpired period of the term of office of the member whom he or she succeeds.

Meetings and decisions of roads board

9. (1) The first meeting of a new roads board appointed after the commencement of this Act, must be held at a time and place to be fixed by the Minister and every meeting after that meeting must be held at a time and place fixed by such board or, if authorised by such board, by the chairperson of such board.

(2) A quorum for a meeting of a roads board is three members having the right to vote, of whom one must be the chairperson.

(3) A member of a roads board who has a right to vote and who is present at a meeting of the board will have one vote, provided that in the case of equality of votes the chairperson has a casting vote in addition to his or her ordinary vote.

(4) The chairperson of a roads board may in his or her discretion allow any person to attend the proceedings of the roads board.

(5) The chairperson of a roads board may in his or her discretion allow any person having an interest in any matter under consideration by the roads board to state his or her interest in that matter to the roads board whether personally or represented by a duly authorised representative, provided that where a person is allowed to state his or her interest in a matter under consideration by a roads board and all other persons who

have an interest in that matter must be offered equal opportunities to state their interests in that matter to a roads board as well.

(6) A decision taken by a roads board or an act performed under the authority of a roads board is not invalid –

- (a) by reason only of a vacancy on a roads board; or
- (b) because a person who has become disqualified in terms of section 8 to sit as a member of a board sat as a member at the time when the decision was taken or the act was authorised,

if that decision was taken or the act was authorised in good faith by the requisite majority of the members of a roads board who were present at the time and entitled to vote as members.

Disclosure of interests

10. (1) A member of a roads board who has a direct or indirect interest –

- (a) in any matter pending before the roads board; or
- (b) which is likely to conflict with any matter that may be considered and decided on by a roads board,

must as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest before a meeting of a roads board.

(2) A member of a roads board may not, by reason of his or her office, be prohibited from contracting with the Roads Authority or a roads board either as seller, purchaser or otherwise, and a contract entered into by or on behalf of a roads board or the Roads Authority in which a member of a roads board has a direct or indirect interest, is not void.

(3) A member of a roads board who made the disclosure referred to in subsection (1), may not be present during or take part in the deliberations or a decision relating to the matter referred to in subsection (1).

(4) A disclosure by a member of a roads board under subsection (1), must be recorded in the minutes of the relevant meeting of a roads board.

(5) A member or an alternate member of a roads board who knowingly fails to comply with subsection (1) or (3) commits an offence and is on conviction liable to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Remuneration and allowances

11. (1) The remuneration and allowances payable to the members of a roads board must be determined by the Minister with the concurrence of the Minister responsible for finance.

(2) The Minister must pay members of the roads boards remuneration and allowances, for their services, as the Minister with the concurrence of the Minister responsible for finance may determine.

PART 4
ROADS

Register

12. (1) The Roads Authority must compile a register of the road network for which it is responsible in terms of section 16 of the Roads Authority Act.

(2) The Roads Authority must update the register compiled in terms of subsection (1) when any action is taken in relation to that road.

Route identification

13. (1) The Roads Authority must, if a route has been identified in the Road Master Plan referred to in section 15A of the Roads Authority Act, by notice in the *Gazette* indicate the route identification and the options for the route by way of line diagrams or interim coordinates.

(2) A road giving effect to a preliminary route identification must be constructed within 20 years from the date of publication of the notice referred to in subsection (1).

(3) If a road has not been proclaimed or constructed giving effect to a route determination within the period contemplated in subsection (2), that route determination becomes void on the anniversary date of the publication of the notice referred to in subsection (1).

Legal consequences of preliminary route identification

14. (1) After preliminary identification of a route and in relation to any road, in addition to the requirements of any other law or zoning scheme of a local authority the government institution to which the application is made for –

- (a) the establishment of a township;
- (b) the subdivision or consolidation of land;
- (c) the approval of a building plan in the case where that building will encroach on the building restriction area;
- (d) a licence in terms of the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992); or
- (e) an environmental clearance certificate referred to in section 32 of the Environmental Management Act, 2007 (Act No. 7 of 2007),

adjacent to a road, must forward every such application, to the Roads Authority, or in the case of a road managed by a local authority, to that local authority.

(2) If the application is forwarded by the applicant as contemplated in subsection (1), the applicant must submit proof to the government institution concerned that he or she has submitted the application to the Roads Authority.

(3) If an action, including a change in land use by any person or government institution does not necessitate an application as contemplated in subsection (1) but is

likely to impact the volume of traffic on a road, such person or government institution must notify the Roads Authority in writing of that activity or change in land use.

(4) The Roads Authority or the local authority concerned, must comment in writing on the application submitted to it in terms of subsection (1), within a period of 60 days after having received the application or such shorter period as may be required in terms of any other law.

(5) In addition to any other requirements of any other applicable law, a government institution to which an application contemplated in subsection (1) was made may not grant that application without due consideration of the following matters –

- (a) comments submitted to it by the Roads Authority; and
- (b) any additional costs which the granting of the application may cause the Roads Authority and the community concerned in relation to a road, either directly or indirectly, weighed against the advantage to the applicant and the community.

(6) After reaching a decision on whether to grant an application or not, the government institution concerned must, within 14 days after reaching that decision, inform the Roads Authority in writing of that decision and if the application is refused furnish full reasons for the decision.

(7) The Roads Authority may, if it does not agree with a decision taken by the government institution concerned as contemplated in subsection (6), refer a dispute with the government institution concerned to the Appeal Board in a manner set out in section 59.

(8) If the authorisation referred to in subsection (1) or an action that is likely to impact the volume of traffic on a road as contemplated in subsection (3), requires the Roads Authority to incur costs in relation to that road, the Roads Authority may require a contribution from the applicant referred to in subsection (1) or the person responsible for taking action as contemplated in subsection (3), for the action that impacts the traffic.

(9) If the person or government institution concerned and the Roads Authority cannot agree on the nature or amount of the contribution referred to in subsection (8), the aggrieved party may refer a dispute to the to the Appeal Board in a manner set out in section 59 for the determination on the nature or amount of the contribution referred to in subsection (8).

(10) If the nature or amount of contribution has been determined in terms of subsection (8) or (9), that contribution constitutes a liquidated debt to the Roads Authority and may be recovered in the manner prescribed by Chapter VIII of the Magistrates' Court Act, 1944 (Act No. 32 of 1944) or as contemplated in the rules made in terms of the High Court Act, 1990 (Act No. 16 of 1990).

Factors in planning road

15. The Roads Authority or a local authority must in the planning of a road consider the following:

- (a) the interests of the registered owner and the holder of a registered right or tenure right in that land in relation to any land which will be directly affected by the intended road;
- (b) any land which will be indirectly affected by the intended road with regard to access to and egress from that land, existing or future services and the interests of the registered owner or holder of a registered right or tenure right in that land;
- (c) the interests and functions of local authorities or regional councils and the providers of services in as much as these may be directly or indirectly affected by the intended road;
- (d) environmental management principles contemplated in section 3 of the Environmental Management Act, 2007 (Act No. 7 of 2007);
- (e) road safety design principles;
- (f) spatial planning and land use management as contemplated in the Urban and Regional Planning Act; and
- (g) infrastructure requirements for non-motorised transport.

Proclamation of road and related actions

16. (1) Subject to subsections (3) and (4), the Roads Authority may, after consultation with the Minister and after complying with the prescribed consultation process, by notice in the *Gazette* –

- (a) proclaim any road in a class specified in section 17;
- (b) reclassify any existing proclaimed road;
- (c) deviate any proclaimed road or any access to or egress;
- (d) de-proclaim any proclaimed road; or
- (e) after consultation with the local authority concerned, if any, declare a proclaimed road to be a road within a building restriction area as contemplated in section 35, and that notice must include a sketch plan.

(2) The Minister must prescribe the form and manner of the consultation process referred to in subsection (1).

(3) The sketch plan referred to in subsection (1)(g) must, except in the case of a farm road, contain geographic coordinates indicating the location of the road and other information required by the Roads Authority.

(4) The Roads Authority may not, without the consent of the Minister responsible for minerals and mining, proclaim a road –

- (a) on any land situated within a mining area as defined in;
- (b) on land held by any person under a prospecting or mining right in terms of; or

- (c) on land in terms of which a mining or retention permit has been granted under,

the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992).

(5) A person who has a direct interest in a farm, district or a road that is not proclaimed may in the prescribed manner apply to the relevant roads board for any action referred to in subsection (1) to be taken in relation to that road or to have that road closed.

(6) If after having followed the prescribed consultation process and an agreement with an owner, lessee or occupier of land over which a road is being proclaimed, cannot be reached in relation to that proclamation, the Roads Authority may request the Minister to, subject to the Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978), expropriate that part of the land concerned necessary for the proclamation and construction of that road.

(7) If the Minister has expropriated land in terms of subsection (6) the Minister, despite sections 10 and 11 of the Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978), must agree with the owner of the land concerned on the amount of compensation for that land, failing which, the matter may be referred to the Appeal Board in the manner set out in section 59 for determination of the amount of compensation.

(8) A board may, in the interest of the community within its area of jurisdiction, request the Roads Authority to take any action contemplated in subsection (1) or (4) in relation to a farm, district road that has not been proclaimed within that area.

(9) The Roads Authority may, on request by the Minister, in accordance with the National Development Plan issued in terms of the National Planning Commission Act, 2013 (Act No. 2 of 2013), in respect of any road take any action contemplated in subsection (1).

(10) The Minister must by notice in the *Gazette* notify an amendment of a class of a road which is amended or changed in terms of subsection (1).

(11) The power to take any action in terms of this section includes the power to amend or rescind that action.

(12) A person who is aggrieved by the proclamation of road or any action taken by the Roads Authority under this section, may appeal such decision or action taken in the form and manner set out in section 59.

Classification of proclaimed roads

17. (1) For purposes of this Act the Roads Authority must divide roads proclaimed under section 16 into the following classes:

- (a) roads that must be proclaimed:
- (i) trunk roads, which are roads that constitute the backbone of the national road network and which connect the national capital and the most important regional centres through the most frequented border crossings and major ports with neighbouring countries;

- (ii) main roads, which are roads that are of strategic importance for the development of a region;
 - (iii) district roads, which are roads that are of importance for the development of a district and includes a road that provides access to the road network; and
 - (iv) farm roads, are roads which provide farms or communal properties with access to the national road network,
- (b) roads that need not be proclaimed:
- (i) minor roads, which are roads –
 - (aa) without a road reserve which come into existence through usage;
 - (bb) that link two or more roads with each other, or which traverse the boundary or boundaries of two or more farms or places within communal land; or
 - (cc) that are used by persons who have a legitimate interest to use the road concerned; and
 - (ii) private roads, which are roads to which the public has no rightful access, and which are indicated to be a private road by means of clearly shown notice boards erected at all entrances to these roads.

Width of proclaimed road

18. (1) Subject to the provisions of subsections (2) to (4), the road reserve of a trunk, main or district road must be 60 metres wide.

(2) The Roads Authority may determine where the boundaries of the road reserve of a trunk, main or district road are situated but those boundaries may not be less than 15 metres to the centre line of that trunk, main or district road, measured at right angles with the centre line of that road.

(3) If the Roads Authority has not determined the boundaries of the road reserve of a trunk, main or district road, that road reserve boundary is 30 metres from each side of that trunk, main or district road, measured at right angles with the centre line of that road.

(4) If the Roads Authority exercises its powers to determine a road reserve of a width other than the width referred to in subsections (1) to (3) within a township, the Roads Authority must do so after consultation with the local authority concerned and taking cognisance of the principles and standards as contemplated in section 3 of the Urban and Regional Planning Act.

(5) Subject to the provisions of subsection (6) the road reserve of a farm road is 30 metres wide and the road reserve boundary on each side of that farm road is 15 metres from, and measured at right angles with, the centre line of that road.

(6) The Roads Authority may after the prescribed consultations, by notice in the *Gazette* increase the width of the road reserve of a proclaimed road or any part of that road reserve.

(7) The Roads Authority may after the prescribed consultations, by notice in the *Gazette* decrease the width of the road reserve of a proclaimed trunk, main or district road or any part of that road reserve, provided that the width of such road reserve may not be less than 30 metres.

(8) The roadway or travelled way as depicted in the diagram referred to in section 1(2), must be of the width determined in a guideline issued by the Roads Authority in terms of section 63.

(9) The Minister responsible for urban and rural development must in developing principles and standards as contemplated in section 3 of the Urban and Regional Planning Act and in consultation with the Minister and the Roads Authority –

- (a) determine the width of a road within a new township and the width of a road providing access to or egress from a township; and
- (b) consider the requirements of non-motorized transport.

Legal consequences of proclamation of farm road

19. (1) If a road has been proclaimed as a farm road –

- (a) a person has, subject to section 2, access to that road;
- (b) a person may, subject to section 41, trek livestock within the road reserve of that farm road;
- (c) a person may not close or deviate from that farm road without the permission of the Roads Authority as contemplated in section 16; and
- (d) the owner, lessee or occupier of a commercial farm or any person who has an interest in that road may maintain that road and contribute on a 50/50 part as contemplated in section 30(7) to the maintenance of such road.

(2) If that person treks livestock as contemplated in subsection (1)(b) and while doing so causes any damage to that road or the farm adjacent to the road reserve, he or she must pay for that damage in the prescribed form and manner.

Declaration of freeway

20. (1) The Roads Authority may after consultation with the Minister, by notice in the *Gazette* declare any road, whether situated in a local authority area or not, to be a freeway for the purpose of achieving high mobility and that freeway may only be accessed and exited at accesses and egresses specified by the Roads Authority.

(2) A road to be declared as a freeway in terms of subsection (1) must be declared in accordance with international standards or standards issued under section 63 by the Roads Authority.

(3) The Roads Authority may by notice in the *Gazette* declare any road to be a trunk road or any portion of any trunk road situated outside the area of a local authority to be a freeway or close or deviate any trunk road or any portion of any trunk road declared to be a freeway, or any access or exit.

(4) The power to take any action in terms of this section includes the power to amend or rescind that action.

(5) A person may not without authorisation from the Roads Authority enter upon or leave a freeway at any place other than an interchange.

(6) A person who contravenes or fails to comply with subsection (5) commits an offence and on conviction is liable to a fine not exceeding N\$10 000 or imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

Intersection point reserves

21. (1) The Roads Authority may subject to subsection (2) and (3) at any time by notice in the *Gazette* declare an intersection point which is situated outside the area of a local authority to be an intersection point reserve and determine the boundaries of such an intersection point reserve.

(2) An intersection point reserve forms part of the road reserve of the road adjacent to it.

(3) The Roads Authority may declare an intersection point reserve as contemplated in subsection (1), only after consultation with the owner, lessee or occupier of each portion of land –

- (a) which is registered as a separate unit in the deeds office; and
- (b) upon which the intersection point reserve, or any portion of that intersection point reserve, is or will be situated, unless the address of such owner, lessee or occupier is unknown to the Roads Authority.

(4) The Roads Authority may declare an intersection point which is situated within the area of local authority as an intersection point reserve only after consultation with the local authority concerned.

(5) The notice referred to in subsection (1) must state –

- (a) the number of a sketch-map on which the boundaries of that intersection point reserve are shown;
- (b) the time when and venue where the sketch-map can be inspected; and
- (c) any other information that the Roads Authority considers as necessary.

(6) The Roads Authority Committee may –

- (a) from time to time amend the boundaries of an intersection point reserve; or
- (b) at any time withdraw the declaration of an area as an intersection point reserve.

(7) Despite anything to the contrary contained in this Act any intersection point reserve must for the purposes of this Act be part of the road reserve of the proclaimed roads concerned on condition that whenever the width of the road reserve of any proclaimed road is increased as a result of the declaration of any area as an intersection point reserve no person is entitled to any compensation until such time as all roads which are contemplated within such intersection point reserve have been proclaimed and the Roads Authority has determined where the boundaries of the road reserves of such proclaimed road are situated.

(8) The power to take any action in terms of this section includes the power to amend or rescind that action.

Control of traffic on proclaimed roads at temporary closing or deviation of road

22. (1) Subject to subsection (2) the Roads Authority may close a road or portion of a road in relation to any or all classes of traffic and a notice of that closure and the deviation of a road necessitated by that closure must be published in the prescribed manner in the area where the road is located.

(2) In an emergency the Roads Authority may close a road by displaying the relevant road traffic signs prescribed in terms of the Road Traffic and Transport Act and must as soon as possible publish a notice of that closure in a newspaper circulating widely in Namibia.

(3) Subject to section 39, a road that was closed by the Roads Authority in terms of subsection (1) or (2) may be used by the public until access to that road is prevented by the Roads Authority by visible means.

Road safety audit

23. (1) The Roads Authority must periodically undertake a road safety audit at least for every trunk road in accordance with guidelines and international standards or standards issued in terms of section 63.

(2) If a new road is proclaimed and constructed and commissioned which excludes a farm road, the Roads Authority must undertake a road safety audit in relation to that proposed road, but in the case of a district road, a road safety impact assessment may be performed.

PART 5 CONSTRUCTION OF ROADS

Powers and duties of Roads Authority relating to construction of road

24. (1) The Roads Authority may for purposes of the construction of a road for which it is responsible in terms of section 3, in the exercise and performance of its powers and duties, do or authorise anything permitted or required in terms of this Act or which is prescribed in terms of any other law, and any other thing that is necessary or reasonable for the construction of that road.

(2) The Roads Authority may not construct a road that has not been planned for as contemplated in section 15A of the Roads Authority Act.

(3) Subject to subsection (2) a person, government institution or local authority may construct a road provided that –

- (a) permission from the Roads Authority is obtained, if the road to be constructed will become a trunk, main or district; and
- (b) the road is constructed in accordance with the conditions imposed by the Roads Authority or the road is constructed in terms of a contract with the Roads Authority.

(4) A person, government institution or local authority undertaking the construction on a road as contemplated in subsection (3), may perform the functions of the Roads Authority in terms of this Act in relation to the construction of that road, and must at all times be able to provide proof of the authorisation referred to in that subsection.

(5) A road must be constructed in accordance with international standards or standards issued by the Roads Authority under section 63.

(6) The Roads Authority may require a person, government institution or local authority referred to in subsection (4) to contribute to the construction of a road if that person, government institution or local authority uses or intends to use that road in a manner that exceeds the usage for which that road was designed.

(7) If a new township is established or a structure is erected and the establishment of that township or the erection of that structure requires any alterations to an existing road or requires access and egress to or from that existing road, the person or government institution or local authority responsible for the establishment of the township or the erection of that structure must contribute to or pay in full for the alteration of that road or the construction of the access and egress to or from that road as agreed with the Roads Authority.

(8) Despite section 19, the Roads Authority may in the prescribed manner, contribute to the maintenance of a farm road that has been proclaimed under section 16, but that contribution may not exceed 50 percent of the total cost of a maintenance project.

(9) The Roads Authority may, if there are no other option available erect temporary dwellings for road workers and their families on private land and if necessary erect places of storage for their equipment and material at a place on that private land agreed with the owner, lessee or occupier of the commercial farm or if such agreement fails on any place determined by the Roads Authority.

(10) The Roads Authority may, at a market related tariff agreed with the owner, lessee or occupier of the commercial farm concerned, take water or take measures for obtaining water where the construction of a road so demands.

(11) Despite subsection (10) water may not be taken from any artificial dam, well or borehole without the consent of the owner, lessee or occupier of the commercial farm concerned, except if that dam, well or borehole has been provided by the Roads Authority for the purpose of the construction of the road.

(12) The Roads Authority may with the consent of the owner, lessee or occupier of commercial farm concerned, take firewood for the use of road workers and

their families and may for that purpose cut down trees or brushwood and those trees and brushwood that were cut down and which had not been used for firewood that belong to the owner, lessee or occupier of the commercial farm concerned.

(13) No compensation is payable for the erection of a temporary dwelling or the taking of firewood or brushwood contemplated in subsection (9) or (12), provided that the land affected by that temporary dwelling is restored as closely as possible to its original condition and that firewood is not taken in quantities that will affect the sustainability of any tree on the land affected.

(14) Despite subsection (13), if an owner, a lessee or occupier of commercial farm is likely to suffer damage or loss as result of the actions taken by the Road Authority in terms subsection (9) or (12), the Roads Authority may pay for such damage or loss.

(15) If an owner, a lessee or occupier of commercial farm, after having been requested to erect a dwellings, obtain water and take firewood in terms of subsection (9),(10) or (12) by the Roads Authority and such an owner, lessee or occupier refuses, the Roads Authority may without the consent of such owner erect a dwellings, obtain water and take firewood.

(16) A person may not, without the prior written authorisation of the Roads Authority, which authorisation may be conditional or unconditional, construct any structure or permit the construction of any structure on, over or below the surface of a road so as to encroach on that road.

(17) A person who contravenes or fails to comply with subsection (16) commits an offence and on conviction is liable to a fine not exceeding N\$50 000 or imprisonment for a term not exceeding five years, or to both such fine and such imprisonment.

Ferry boat services

25. (1) The Ministry may establish a ferry boat service across a river and construct anchorages and landings and the necessary approaches both within and beyond the road limits, inclusive of any structure adjacent to it.

(2) The Ministry may –

- (a) charge a ferry boat service tariff to the users of that ferry boat service and may enter into contracts for the construction and maintenance, the hiring and the letting of ferry boats on such conditions regarding tariffs as he may think fit; and
- (b) may enter into an agreement with the authorities responsible for roads of neighbouring countries with regards to the construction, maintenance and management of a ferry boat services across a river that constitutes the border between Namibia and that other country.

Removal of material from land

26. (1) For the purpose of the construction, maintenance or repair of a proclaimed road the Roads Authority may, subject to subsection (3), through its representative, employee or contractor enter upon any land with any vehicle, tool, or material and after the expiry of a period of 14 days after a written notice of its intention to do so –

- (a) has been given to the owner, occupier or lessee of the commercial farm concerned;
- (b) has been sent to the last known address of such owner, lessee or occupier by of the commercial farm concerned registered post; or
- (c) has been left at a conspicuous place on such commercial farm,

without any compensation to the owner, lessee or occupier of the commercial farm, remove any material which may be necessary for such construction, maintenance or repair from such land or process it on such land and remove it from such land and for this purpose it may build and maintain any access roads which it may consider necessary.

(2) Despite subsection (1), –

(a) nothing may be removed –

(i) from any garden or other land usually cultivated;

(ii) within 250 metres of any house; or

(iii) within 50 metres of any cattle, sheep, goats and horse kraal;

(b) every excavation, including an excavation for a sample and an experimental pit, must as soon as possible be filled up or fenced off or must otherwise be made safe for human beings and animals to the satisfaction of the owner, lessee or occupier of such commercial farm or in the manner directed by the Roads Authority;

(c) any road provided for this purpose must be ripped up in such a way that it cannot be washed away if the owner, lessee or occupier so desire.

(3) The Roads Authority representative, officer or contractor must, in exercising the powers granted under this section take every care to prevent damage, injury, loss or inconvenience to the owner, lessee or occupier of the concerned land.

(4) The Roads Authority may, exercise the powers granted under this section, after consultation with a local authority concerned, only in the local authority area of such local authority.

(5) If material for road construction is found on land referred to in subsection (1), the Roads Authority may use that material and no compensation is payable for such use of material unless the owner, lessee or occupier of a commercial farm who suffered the loss or damage is able to prove such loss or damage.

(6) If there is a dispute on the loss or damage suffered by the owner, lessee or occupier of a commercial farm due to any action taken or decision made under this section such owner, lessee or occupier may refer the dispute to the Appeal Board in a manner set out in section 59 for determination of the amount of compensation.

Undermined ground

27. (1) If after an inspection it becomes necessary to deviate or reconstruct an existing proclaimed road owing to the fact that the ground has been

undermined subsequent to the construction of that road, the Roads Authority may instruct a mining company or person or government institution responsible for such undermining to deviate or reconstruct that road.

(2) If a mining company fails to comply with an instruction referred to in subsection (1) within a reasonable time, the Roads Authority may undertake the construction works required and recover the cost of such works from that mining company, person or government institution.

Maintenance of farm road and construction works on unproclaimed road

28. (1) The Roads Authority may in addition to a direction contemplated in section 16(4) of the Roads Authority Act, undertake construction works on a road that is not a proclaimed road if, in the opinion of the Roads Authority –

- (a) it is necessary to undertake construction works on an adjoining proclaimed road; or
- (b) undertaking the construction works would be of benefit to proclaimed roads in the surrounding area of the road on which the construction works is being carried out.

(2) The Roads Authority is not responsible for the maintenance of a road that was constructed in terms of subsection (1).

(3) If an owner, a lessee or an occupier of a commercial farm wants a farm road or a portion of a road constructed in accordance with subsection (1), to be improved, repaired, or graded he or she may apply to the roads board in the district in which that farm road or portion of it is situated for the required improvements or repairs and contribute 50 percent of the cost as contemplated in section 30(8) to such improvements and repairs.

(4) A roads board must request the Roads Authority to estimate the cost of the improvements or repairs referred to in subsection (3) and inform the owner, lessee or occupier of the concerned commercial farm.

(5) If an owner, a lessee or an occupier of a commercial farm provides documentary proof to the roads board that he or she has contributed half of the estimated cost of such improvements and repairs and have supplied a written undertaking to the satisfaction of the board to pay half of the ultimate actual cost of such improvements and repairs calculated at a tariff determined by the Roads Authority from time to time, the board may approve the improvements or repairs desired to be done.

(6) If an owner, lessee or occupier of a commercial farm intends to improve or repair a farm road or any portion of it himself or herself and requires the Minister to make a contribution to the cost of the improvements or repairs, he or she must, before that work is done, apply to the Minister for the contribution desired.

(7) An application contemplated in subsection (6) must be made through the Roads Authority, and after the cost of those improvements or repairs have been estimated by the Roads Authority, the application must be submitted to the Minister who may approve or not approve the application.

(8) If the application contemplated in subsection (6) is approved, the owner, lessee or occupier of a commercial farm must be informed of the estimated cost

and if they complete the improvements or repairs to which the application relates to the satisfaction of the Roads Authority, the Minister may, upon submission of documentary proof of the cost incurred in making such improvements or repairs, consent to contribute up to half of the actual cost of the improvements.

Notice of undertaking construction

29. (1) If the construction of a road will affect the flow and safety of traffic, the Roads Authority must in the prescribed manner notify the public of the date that construction of the road will start.

(2) For the purpose of construction works and subject to the regulations relating to road traffic signs promulgated under the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999), the Roads Authority may close or deviate any road or portion of such road temporarily or permanently to all traffic or to a specific class of traffic.

(3) The Roads Authority must serve a copy of the notice referred to in subsection (1) on the local authority within the local authority area where the construction will be undertaken.

(4) A notice referred to in subsection (3) ceases to be effective if the construction to which it relates has not started within the prescribed period in the notice.

PART 6 FENCES, GATES, MOTOR GRIDS

Fencing of trunk, main and district road

30. (1) For the purpose of this section, “fence” includes a swing gate or motor grid gate.

(2) The Roads Authority or the Minister may, in the prescribed manner, for trunk, main or district road in communal land, erect fencing on either side of a trunk, main or district road, or across that road.

(3) A fence erected in terms of subsection (2) or (5), must be erected in accordance with the regulations made under section 61, guidelines and international standards or standards issued by the Roads Authority under section 63.

(4) The owner, lessee or occupier of a commercial farm or occupier of communal land must maintain a fence erected in terms of subsection (2) in accordance with the regulations made under section 61, guidelines and international standards or standards issued by the Roads Authority under section 63.

(5) The Roads Authority may by notice in the *Gazette* make it compulsory to fence off a trunk, main or district road.

(6) The Roads Authority or the owner, lessee or occupier of a commercial farm may, in the prescribed manner, for a trunk, main or district road on a commercial farm, erect fencing on either side of a trunk, main or district road, or across that road.

(7) The Roads Authority or the owner, lessee or occupier of a commercial farm must maintain a fence erected in terms of subsection (2) or section 30(5) in accordance with regulations made under section 61, guidelines and international standards or standards issued by the Roads Authority under section 63.

(8) The Roads Authority and the owner, lessee or occupier of a commercial farm must contribute 50 percent of the cost of the maintenance of a fence erected in terms of subsection (2).

Conversion and improvement of fences

31. (1) The Roads Authority may improve or rehabilitate a fence contemplated in this part.

(2) The owner, lessee or occupier of a commercial farm or communal land may in the prescribed manner apply to the Roads Authority for the conversion of an existing fence into jackal-proof fence and may agree to pay in full or in part for that conversion or upgrade.

Contribution by owner, lessee or occupier

32. (1) If an owner, lessee or occupier of a commercial farm has not maintained a fence as contemplated in section 30(7), the Roads Authority may maintain such fence and require from the owner, lessee or occupier of the commercial farm across which the fence has been erected to contribute to the maintenance of that fence.

(2) The Roads Authority must provide either a monetary contribution, skills or labour through a contractor to any action contemplated in this part in accordance with a guideline issued by the Roads Authority.

PART 7 WATER LEVELS AND STORMWATER

Water courses over or under proclaimed roads

33. A person wishing to lead water over or under a proclaimed road, must do so at his own expense after having obtained the approval of the Roads Authority, which may determine the type of culvert or other conduit to be used and the conditions on which it will be permitted.

Raising of water level

34. (1) A person may not cause the level of the water of a river, stream, stormwater drainage or other watercourse to rise in order to interfere with the use of a road, bridge or drift unless he or she has obtained written authorisation from the Roads Authority in the approved form and manner.

(2) The Roads Authority may grant authorisation to the person contemplated in subsection (1) to act as contemplated in that subsection, subject to such conditions as it considers necessary and that authorisation may be withdrawn if the applicant does not comply with such conditions imposed.

(3) A person may not erect a dam that may pose a potential danger to a road.

(4) If due to any action the run-off onto a road increases to such an extent that the capacity of a culvert or other drainage structure needs to be increased, the Roads Authority may require the person responsible for that run-off to contribute or to pay in full the cost for increasing that capacity.

(5) If there is no person that can be held responsible for a run-off of water as contemplated in subsection (4), the relevant authority must pay for the costs for the increased capacity.

Disposal of stormwater

35. (1) The Roads Authority may, in consultation with the owner, lessee or occupier of a commercial farm, divert storm water from or under any proclaimed roads onto such farm land, provided no buildings, orchards, gardens or other improvements have been erected or laid out on such land and the Roads Authority will not be liable for any damage caused by the diversion of such storm water.

(2) The Roads Authority may, in consultation with the owner, lessee or occupier of a commercial farm, erect, lay out and maintain, outside proclaimed roads, retaining walls or other structures which it may consider necessary for the diversion of water onto such land, provided that no buildings, orchards or gardens or other improvements are erected or laid out on such land and the Roads Authority will not be liable for damage caused by the diversion of such water.

(3) If it becomes necessary to divert water onto land on which buildings, orchards, gardens or other improvements have been erected or laid out and damage is caused by such diversion the Roads Authority is liable to the owner, lessee or occupier of the commercial farm, for damages, the amount of which will be determined by agreement between the parties, or failing which, the matter may be referred to the Appeal Board in the manner set out in section 59 for the determination of the amount of compensation.

Construction and maintenance of bridges and crossings

36. The Roads Authority is not responsible for the construction or maintenance of bridges or crossings of any kind, over drains or water courses outside such roads, which have been made for the diversion of storm water or otherwise for the protection of proclaimed roads.

PART 8

BUILDING RESTRICTION AND ADVERTISING ON ROADS

Definition of structure

37. For the purposes of this part, “structure” means anything made, manufactured or assembled and erected above or under the ground, whether permanent or temporary, irrespective of its nature or size, including but not limited to advertisements, enclosures, driveways, garden walls, golf course fairways, loading areas, parking areas, patios, signs, swimming pools, tennis courts or thatch shelters, but does not include fences, motor grids, swing gates, entrance gates or structures for services.

Building restriction or structure adjacent to and on road

38. (1) The Roads Authority may, after consultation with the Minister, by notice in the *Gazette* declare a road to be a building restriction road and that road is subject to the restrictions contemplated in subsection (6).

(2) A building restriction declared under subsection (1) may be imposed on a road in the interest of road safety or for urban and regional planning purposes.

(3) If a road has been proclaimed a trunk or a main road, that road is deemed to have been declared a building restriction road under subsection (1).

(4) Subject to the regulations relating to road traffic signs promulgated under the Road Traffic and Transport Act, the Roads Authority must at the start and at the end of a building restriction road display a road traffic sign indicating that the road concerned is a building restriction road.

- (5) A person may not erect a structure in an area consisting of land –
- (a) situated in a township area alongside a road within a distance of 45 metres from the centre line of a road;
 - (b) situated outside of a township area alongside a road within a distance of 100 metres from the centre line of a road; or
 - (c) situated within a distance of 500 metres from a point of intersection of a road and any other road, or of a road and a railway line,

if that road has been declared by the Roads Authority as a building restriction road, or if that road is deemed to be a building restriction road as contemplated in subsection (3), unless prior written authorisation to erect such structure is granted together with any conditions determined by the Roads Authority.

- (6) The Roads Authority may by notice in writing direct –
- (a) a person who erects a structure without the authorisation required under section 24(16) or subsection (5);
 - (b) a person who erects a structure contrary to the terms and conditions of the authorisation granted in terms of subsection (5); or
 - (c) a local authority, regional council or the owner, lessee or occupier of that commercial farm, who alters or adds, or grants permission to erect a structure,

to remove that structure, alteration or addition within the prescribed period.

(7) Subject to subsection (6) the Roads Authority may remove, alter or add to a structure referred to in subsection (5), which has not been removed within the period stated in the notice referred to in subsection (6) and recover any costs of such removal.

(8) The Roads Authority may, if a dangerous situation arises, remove any structure, alteration or addition which has been constructed –

- (a) adjacent to, on, over or below the surface of a road;
- (b) without the authorisation referred to in section 24(16) or subsection (5); or
- (c) contrary to the terms and conditions of any authorisation.

(9) The Roads Authority may detach or remove a structure, alteration or addition contemplated in subsection (5) and lay that structure down in the road reserve,

if it cannot find the person who erected, alerted or added to a structure contemplated in that subsection.

(10) If, after 14 days, the person responsible for the erection, alteration or addition of that structure does not detach that structure, alteration or addition, the Roads Authority may dispose of it as the Roads Authority considers appropriate.

(11) The Roads Authority is not liable for any damage resulting from an action taken in terms of subsection (7), (8) or (9).

(12) The Roads Authority may recover the cost of any removal or relocation of a structure from the person or institution who erected, alerted or added to a structure as contemplated in this section.

Prohibition of advertisement on or visible from road

39. (1) Subject to subsection (2) a person may not display an advertisement on a road or visible from a road or permit it to be so displayed unless in accordance with regulations made under section 61, guidelines and international standards or standards issued under section 63.

(2) A person who displays an advertisement or permit it to be displayed contrary to the provisions of subsection (1) must, if the Roads Authority has, by notice in writing, directed that person to do so, remove the advertisement within the period stated in the notice which period may not be less than 14 days.

(3) The Roads Authority may remove any advertisement which it has directed to be removed in terms of subsection (2) and which has not been removed within the period stated in the notice and recover the cost of such removal from the person who displayed or authorised the display of that advertisement.

(4) For the purposes of this section -

(a) a person who has erected or otherwise caused the display of an advertisement or who has renovated or repaired it, and any person who is entitled to remove it, is considered to display that advertisement while and whenever it is visible from a public road; and

(b) the owner, lessee or occupier of a commercial farm on whose land an advertisement which is visible from a public road, is being displayed, or on which such an advertisement is placed or which has been renovated or repaired, in contravention of this Act is considered to have erected that advertisement or permitted its erection.

(5) An advertisement which is within 500 metres of and visible from the center line of a road is considered to have been displayed after the commencement of this Act.

PART 9 DOMESTICATED ANIMALS

Uncontrolled and domesticated animals

40. (1) For the purpose of this section, an “uncontrolled domesticated animal” means a domesticated animal grazing, walking or found on a public road without supervision by a herder.

(2) An authorised person or a person authorised by the Minister responsible for agriculture or the Minister responsible for the environment, may remove uncontrolled animals from a road reserve.

(3) If the animal referred to in subsection (1) poses an immediate and extreme danger to the traffic on that road or caused an accident on a road, a traffic officer or road transport inspector, a person authorised by the Minister responsible for agriculture or the Minister responsible for the environment may subject to section 22 of the Animal Health Act, 2011 (Act No. 1 of 2011) and provisions of any other law regulating the disposal of stray animals dispose of such animal.

(4) Despite subsection (2), a traffic officer, road transport inspector, or a person authorised by the Minister responsible for agriculture or the Minister responsible for the environment, may in the case where a stray animal poses an immediate danger to persons, put that animal down.

Actions in relation to domesticated animal in road reserve

41. (1) Subject to section 40, the Minister may prescribe the manner in which any domesticated animal is allowed to be in the road reserve and the powers and duties of any person or authority in relation to domesticated animals in the road reserve.

(2) Despite subsection (1) a person who needs to trek with livestock in or across a road reserve must, subject to the regulations made under the Animal Health Act, 2011 (Act No.1 of 2011), obtain permission from the Chief Veterinary Officer to trek within that road reserve and that permission is subject to the provisions of that Act.

(3) The Chief Veterinary Officer must consult the Roads Authority before granting permission referred to in subsection (2) to a person to trek in or across a road reserve.

(4) A person trekking with livestock must trek in accordance with regulations made and published under the Road Traffic and Transport Act.

PART 10 COMPENSATION

Limitation of compensation

42. Compensation for the excavation of sand or gravel to construct a road is limited to the provisions of this Part and a person is not entitled to any compensation for the excavation of sand or gravel for road construction or maintenance, except if that person has suffered loss or damages from the excavation of such sand or gravel.

Compensation for encroachment on land

43. (1) A person, who has suffered loss or damage as a result of the exercise of any function by or on behalf of the Roads Authority, the Minister or a local authority under this Act, is entitled to be compensated by the Roads Authority, Minister or the local authority concerned in relation to –

- (a) communal land, in accordance with the Compensation Policy Guidelines for Communal Land approved by Cabinet; and

- (b) commercial land, in accordance with the Compensation Policy Guidelines for Roads compiled by the Roads Authority and approved by the Cabinet.

(2) A person, who has suffered damage or loss in an urban area as a result of the exercise of any function by or on behalf of the Roads Authority or a local authority under this Act, is entitled to be compensated by the state in accordance with a market related valuation.

(3) The Roads Authority, Minister or local authority may, authorise the payment of an amount by way of equitable relief if no payment or compensation is claimable.

(4) If any direct loss or damage is caused to any improvements on land in the course of –

- (a) opening of a road;
- (b) construction of a road;
- (c) maintenance or widening of a proclaimed road;
- (d) diversion for stormwater from a road; or
- (e) the establishment of a ferry boat service,

by or on behalf of the Roads Authority or the Ministry, the owner of the land concerned is entitled to damages, the amount of which must be determined in accordance with subsection (6).

(5) Despite subsection (1), if a new trunk, main or district road is proclaimed in terms of section 16, where no such road previously existed or if a trunk, main or district road is re-opened –

- (a) across a portion of land within an urban area which is registered as a separate unit in the deed registry; or
- (b) across a commercial farm of 50 hectares or smaller,

the owner of the land across which that road has been proclaimed or reopened, over and above any damages to which he or she is entitled in terms of that subsection, is entitled to compensation for the land covered by that road.

(6) Despite subsection (1), if the width of the road reserve of a road has been increased in terms of section 18(6), the owner of the land on which that road has been increased, over and above any damages to which he or she is entitled to in terms of that subsection, is entitled to compensation for the land covered by such an increase of the width of the road reserve.

(7) If during the course of the construction of a trunk, main or district road, land remains on both sides or on one side of that road –

- (a) the area of which is smaller than the area of the land taken up by that road and that land is of no use to the owner;

- (b) on which the owner is in terms of the provisions of any law prohibited from erecting any buildings; or
- (c) to which no access may be given,

the owner of the land concerned may require the Roads Authority to increase the width of the road reserve of that road in such a way that it includes that remaining land, in which case the Roads Authority must widen the road reserve, and the owner of the land concerned, in addition to any damages to which he or she is entitled in terms of subsection (1), is entitled to compensation for the remaining land that was added to the road reserve.

(8) The amount of compensation to which the owner of land is entitled to in terms of this section must be determined in accordance with the Compensation Policy Guidelines and market related value referred to in subsection (1) and (2) and agreed on by both parties, or failing which, the matter may be referred to the Appeal Board in a manner set out in section 59.

Compensation provided in form of land

44. (1) If the Minister, the Roads Authority or a local authority acquires land through purchase or expropriation, the compensation for that land may be in the form of other land of similar value.

(2) A person to whom the purchase price is paid, or compensation is provided in the form of land, is considered to have been fully compensated if the land has a market value –

- (a) equal to or greater than the amount of compensation that would otherwise have been provided in the form of money; or
- (b) less than the amount of compensation that would otherwise have been provided in the form of money, but the person has agreed to accept the land in full satisfaction of that person's claim.

(3) Transfer duty payable under the Deeds Registry Act, 1937 (Act No. 47 of 1937) is not payable in respect of the conveyance or transfer of any land in terms of this section.

Limitation of liability

45. (1) A person authorised by the Minister, Roads Authority, a local authority or a roads board is not liable for any claim for damages arising from the existence, construction or use of any road, except where the loss or damage was caused by the intentional or negligent act or omission by a staff member of the Ministry, Roads Authority, a local authority, a roads board or a person authorised by the Minister, Roads Authority or a local authority or a roads board to perform any function on its behalf.

(2) The Minister, Roads Authority, a local authority, a roads board or a person authorised by the Minister, the Roads Authority, a local authority or a roads board is not liable for any claim in relation to a commercial farm road.

(3) The Minister, Roads Authority, a local authority, a roads board or a person authorised by the Minister, the Roads Authority, a local authority or a roads

board is not liable for any claim resulting from the illegal action of a person that results in damage to him or herself.

(4) The Minister or the Roads Authority is not liable for the maintenance or for any damage to anything constructed in terms of section 50 along, across, above or under a road.

(5) The Roads Authority may recover the full amount of all costs incurred by it in the execution of any work necessary to restore any road concerned to its former state from any person who caused any damage to a road or road reserve.

Submission of claims

46. (1) A claim arising from the existence, construction or use of any road for which the Roads Authority or a local authority is responsible, excluding a claim in terms of a contract, must be submitted to the Roads Authority or the local authority concerned.

(2) The Road Authority or a local authority must evaluate a claim received in terms of subsection (1).

(3) The Roads Authority or the local authority concerned must decide on any claim submitted in terms of subsection (1) within a period of three months.

(4) If a person who has submitted a claim in terms of subsection (1) is not satisfied with the decision of the Roads Authority or the local authority concerned, he or she may appeal that decision in a manner set out in section 59.

PART 11

PROHIBITIONS, AUTHORISATIONS, OFFENCES AND PENALTIES

General prohibition relating to roads

47. (1) A person or government institution may not, without authorisation by the Roads Authority as contemplated in subsection (2) or contrary to the terms and conditions of that authorisation –

- (a) erect a structure within the road reserve, including a memorial cross;
- (b) encroach on any road by constructing a fence, gate, motor grid, services, other structure or other obstacle adjacent to, on, over or under that road;
- (c) settle or live within the road reserve;
- (d) remain in the road reserve;
- (e) leave or place any obstruction or any material on a road;
- (f) abandon a vehicle or any part of a vehicle on a road;
- (g) subject to the Environmental Management Act, 2007 (Act No.7 of 2007) spill any fuel or other chemical material or gas on any road surface;

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- (h) damage a road or endanger traffic on a road;
 - (i) dig up or alter in any way the soil, surface, gravel, cuttings, banks or drains on any road;
 - (j) place or exhibit any board, notice, framework, scaffolding or other device by means of which an advertisement of any kind adjacent to, in, above or on any road construct unless in accordance with this Act;
 - (k) paint or affix any figure, letter, drawing, sign, symbol or other like object on a road or on any roadside furniture, unless in accordance with this Act or the Road Traffic and Transport Act;
 - (l) damage the road surface in any other way than contemplated in this section;
 - (m) spill or allow irrigation water to be spilled onto a road or into any storm water structure;
 - (n) move, remove, damage or destroy any referencing point for surveying placed on, in, over or under or attached to land for the purposes of this Act by or on behalf of the Roads Authority;
 - (o) remove any soil or other material from the road reserve unless with the permission of the Roads Authority;
 - (p) intentionally obstruct, resist or hinder any official or authorised person in the lawful exercise of any power conferred under this Act;
 - (q) intentionally furnish false or misleading information in any statement which is required by a section in this Act;
 - (r) carry on any trade, deliver pursuant to a sale, offer or manufacture for sale any goods on a road; or
 - (s) make use of any vehicle fitted with metal tracks on any tarred proclaimed road; or
 - (t) dig out any bogged down vehicle on any proclaimed road unless he repairs the road to the best of his ability immediately thereafter.

(2) The Roads Authority may in writing authorise for a period and under such conditions as it may determine or as may be prescribed, including a condition providing for the payment of fees, the undertaking of an act prohibited under subsection (1), if the Roads Authority is satisfied that no damage to the road or prejudice to the public may result from such an act.

(3) The Roads Authority may withdraw any authorisation granted by it in terms of subsection (1) or (2).

(4) The Roads Authority may –

- (a) instruct a person who contravenes subsection (1) to, within 14 days, remove or destroy the vehicle or other article used and if he or she

fails to comply with that directive, the Roads Authority may cause that vehicle or article to be removed or destroyed and may recover from that person the cost of the removal or destruction;

- (b) instruct the person who has taken any action prohibited in terms subsection (1) to rectify any damage caused by his or her action at his or her own cost; or
- (c) rectify any damage caused by a person who contravenes subsection (1) and recover the cost of such rectification from that person and that cost constitutes a liquidated debt to the Roads Authority which is recoverable in any competent court.

(5) A person who contravenes or fails to comply with instructions given under subsection (1), (4)(a) or (b) commits an offence and on conviction is liable to a fine not exceeding N\$50 000 or imprisonment for a term not exceeding five years, or to both such fine and such imprisonment.

Prohibition in relation to rail, track, wire, subway or culvert

48. (1) Despite any other law to the contrary, a person may not construct –

- (a) a railway, tramway, trolley or cocopan line or track across a road;
- (b) a bridge across or a subway under a road; or
- (c) electric cables, telecommunication cables or other wires, cables or a pipeline along, across or under a road,

without the permission of the Roads Authority.

(2) Subject to subsection (3) the Roads Authority may only permit the construction of electric cables, telecommunication cables or other wires, cables or a pipeline along, across or under a road as contemplated in subsection (1)(c), within five metres from the boundary of the road on either side of that road.

(3) The Roads Authority may issue guidelines in accordance with which an authorisation for the construction of electric cables, telecommunication cables or other wires, cables or a pipeline along, across or under a road as contemplated in subsection (1)(c) must be given.

(4) If a person or government institution has not complied with the guidelines referred to in subsection (3), the Roads Authority may order that person or government institution to remove the construction contemplated in subsection (1)(c) or to re-construct it in accordance with the guidelines referred to in subsection (3).

(5) The Roads Authority, the Minister or a local authority may not be held liable for any damage to services infrastructure erected in contradiction to this Act that has been damaged due to the construction or maintenance of a road.

(6) Electric lines may not be constructed within a road reserve.

(7) The Roads Authority may without notice remove any object constructed or built contrary to the provisions of subsection (1), or have such thing

removed and may recover the costs of such removal from the person or government institution who constructed or built that object.

(8) A person or institution who contravenes or fails to comply with subsection (1), (4) or (6) commits an offence and on conviction is liable to a fine not exceeding N\$50 000 or imprisonment for a term not exceeding five years, or to both such fine and such imprisonment.

Prohibitions in relation to farm or minor road

49. (1) A person may not –
- (a) in the case of a farm road, damage the road reserve or any farm or communal land adjacent to that road or a property of the owner, lessee or occupier of that commercial farm or communal land;
 - (b) in the case of a farm road or a minor road, disturb, harm or damage any domesticated animals or property of the owner, lessee or occupier of that commercial farm or communal land;
 - (c) obstruct or deviate a farm road without the authorisation of the Roads Authority; or
 - (d) obstruct or deviate a minor road without obtaining the authorisation of the relevant roads board.
- (2) A person may in the prescribed form and manner apply to the Roads Authority for authorisation contemplated in subsection 1(c) or (d).
- (3) The owner, occupier or lessee of a commercial farm or communal land which is traversed by a minor road is not obliged to give access to that road to a person who does not have a legitimate interest in using that road.

(4) A person who contravenes or fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$50 000 or imprisonment for a term not exceeding five years, or to both such fine and such imprisonment.

Prohibition on living, squatting, farming or allowing grazing in road reserve

50. (1) A person may not allow any domesticated animal to graze or be within the road reserve unless allowed under the prescribed conditions.

- (2) A person may not live or squat within the road reserve or cause another person to live or squat in the road reserve.
- (3) A person may not undertake any farming related activity within the road reserve.
- (4) If a person fails to comply with subsection (3), the Roads Authority may –
 - (a) remove any structure as contemplated in section 38(8), whether or not the road concerned has been declared a building restriction road;

- (b) dispose of the animals, if any, as contemplated in section 40;
- (c) require a person to take care of the animals concerned upon payment of an agreed amount as compensation, subject to the prescribed time frames and conditions; or
- (d) cause the person concerned to be taken into custody.

(5) A person who contravenes or fails to comply with subsection (1), (2), (3) or (4) commits an offence and on conviction is liable to a fine not exceeding N\$50 000 or imprisonment for a term not exceeding five years, or to both such fine and such imprisonment.

Prohibition in relation to access to road

51. (1) A person may not, except with the authorisation of the Roads Authority, construct any access to a road, or gain access to a road other than by way of an access or egress constructed in accordance with the terms and conditions specified in that authorisation.

Prohibition relating to fences, gates, motor grid gates

52. (1) A person may not –

- (a) place or retain on a road any gate which does not swing freely over such road;
- (b) attach to a gate on a road any spikes or anything else which may cause injury to persons or animals or damage to property;
- (c) use a motor grid gate in any manner other than for the passage of a permitted vehicle; or
- (d) intentional damage or remove a fence, gate or motor grid.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$ 50 000 or imprisonment for a term not exceeding five years, or to both such fine and such imprisonment.

Prohibition relating to employment status

53. (1) A person may not falsely hold him or herself out to be an employee, agent or contractor of the Roads Authority, a local authority, a Ministry or a roads board for the purpose of assuming any right or prerogative in terms of this Act.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$10 000 or imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

PART 12
ENFORCEMENT

Persons authorised to enforce Act

54. (1) The following persons may be authorised by the relevant functionary to enforce the provisions of this Act:

- (a) an official in the employment of the Ministry designated by the Minister;
- (b) a staff member of a local authority nominated by the local authority council and appointed by the Minister;
- (c) a staff member of the Roads Authority nominated by the Chief Executive Officer of the Roads Authority and appointed by the Minister;
- (d) any other official authorised by the Roads Authority and appointed by the Minister; or
- (e) a traffic officer or road transport inspector appointed in terms of section 11 of the Road Traffic and Transport Act.

(2) The persons authorised to enforce the provisions of this Act in terms of subsection (1) must at all times when performing his or her duties keep his or her identification card in his or her possession and display it in a manner that is visible to the public.

(3) The Minister may prescribe further functions to be carried out by the person appointed in terms of subsection (1).

(4) The Minister, Roads Authority or a local authority must in writing determine the extent to which a person referred to in subsection (1)(b),(c) and (d) is authorised to enforce this Act.

Production of information

55. The Roads Authority may request a person, a local authority or a government institution to provide information relevant to the administration of this Act in the prescribed form and manner.

Directives issued by Minister and Road Authority

56. (1) The Minister may issue a directive to the Roads Authority, local authority or government institution on any matter covered under this Act and the Roads Authority, local authority or government institution must comply with such directive.

(2) The Roads Authority may for purposes of this Act and in the performance of its supervisory or regulatory functions or powers in terms of this Act issue a directive on any matter covered under this Act to any person and that person must comply with such directive.

(3) A directive issued under subsection (1) and (2) by the Minister or the Roads Authority or any person authorised by the Minister or the Roads Authority must be in writing and may be varied or revoked by a further directive in writing so given or served.

(4) A directive may be given verbally in case of an emergency.

(5) The Roads Authority may take the necessary action to give effect to a directive issued under subsection (2) if the directive is not complied with in accordance with the terms and conditions specified in that directive.

(6) The Roads Authority may recover the costs it incurred by taking action referred to in subsection (5), as a liquidated debt from the person to whom the directive was given in a court of competent jurisdiction.

(7) Nothing in this section authorises the Roads Authority to recover an amount greater than that necessary to give effect to the directive.

Rectification of damage

57. (1) The Roads Authority may whether a prosecution is instituted or not –

- (a) claim damages from a person who contravenes this Act, after having given that person reasonable notice of its intention to do so;
- (b) take such necessary action to rectify the consequences of that contravention; and
- (c) recover any costs incurred by it in taking such necessary action from a person who contravenes this Act.

Powers to enter onto land

58. (1) For the purposes of this Act, an authorised person referred to in section 54 may in the exercise or execution of the powers or duties granted to him or her imposed under this Act, at any time enter onto any land without a warrant or prior notice to the owner, lessee or occupier of land.

(2) An authorised person may take any action referred to subsection (1) in respect of land or part of land under investigation , only if –

- (a) authorised to do so by a warrant issued under subsection (4);
- (b) there are reasonable grounds for the authorised person to believe that –
 - (i) the delay in obtaining a warrant would prejudice the object of the investigation, or failure to act immediately may prejudice securing information and items relating to the land under investigation; and
 - (ii) a warrant will be issued under subsection (4) if the authorised person or the Roads Authority applies for such warrant; or

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- (c) consent to such actions has been given by –
- (i) the person lawfully in control of any land or lawfully in possession or having custody of information or other items relating to the land under investigation; or
 - (ii) a person with the power to give such consent.

(3) On application by an authorised person, a judge or magistrate in chambers having jurisdiction in the area where the land in question is located may issue a warrant referred to in subsection (4).

(4) A warrant may only be issued pursuant to subsection (3) if it appears from information given under oath that there is reason to believe that information or items relating to the land under investigation is kept on the land concerned.

(5) In carrying out an investigation an authorised person may –

(a) if the authorised person is of the opinion that any individual who is or was a employee of the of the owner, lessee or occupier of land under investigation is in possession of or has under his or her control any information or item relating to the land under investigation, summon that individual to –

- (i) produce the information or item or provide such information or item; or
- (ii) appear at a time and place specified in the summons, to be examined or to produce such information or item relating to the land under investigation; or

(b) examine any individual referred to in paragraph (a) and examine or retain, against the issue of a receipt, any information or item relating to the land under investigation.

(6) The authorised person may be requested by the owner, lessee or occupier of the land concerned, to provide to him or her with the proof of authorisation.

(7) The owner, lessee or occupier of land under investigation pursuant to this section, or the authorised representative of such person may, during business hours, examine and make extracts from any information or item seized pursuant to subsection (2),(4) or (5), under the supervision of an authorised person or the Roads Authority.

(8) If it transpires during or after an investigation conducted under this section that information or an item obtained pursuant to subsection (2),(4) or (5), has no relation to the land under investigation, the authorised person may release such document or item to its rightful owner.

(9) In so far as this section provides for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution, in that it authorises interference with the privacy of a person's home, correspondence or communication, that limitation is enacted upon the authority of Sub-Article (2) of that Article.

PART 13
APPEALS

Right of appeal

59. (1) Any person who is aggrieved by any decision taken by –
- (a) the Roads Authority in terms of section 14(7) or (9), 16(7) or (12), 26(6), 35(3), 43(8), 46(4), 47(1), 48(1) or 49(2), in the performance of its supervisory or regulatory functions or powers in terms of this Act; or
 - (b) a local authority in terms of section 43(8), or 46(4) in performance of its functions or powers in terms of this Act;

may appeal against that decision to the Appeal Board in a manner set out in this section.

(2) An appeal must be lodged within the prescribed period after the delivery of the decision of the Roads Authority, a local authority or a government institution, in the prescribed manner, and on payment of the prescribed fees.

(3) An appeal under subsection (1) takes place on the date, at the place and time determined by the Appeal Board.

(4) An appeal is decided on the affidavits and supporting documents presented to the Appeal Board by the parties to the appeal.

- (5) Despite the provisions of subsection (4), the Appeal Board may –
- (a) summon any person who, in its opinion, may be able to give information for the purposes of deciding the appeal or who it believes has in his, her or its possession, custody or control of any document which has any bearing upon the decision under appeal, to appear before it on a date, time and place specified in the summons, to be questioned or to produce any relevant document and retain for examination any document so produced;
 - (b) administer an oath to or accept an affirmation from any person called as a witness at an appeal hearing; and
 - (c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his or her possession, custody or control.

(6) All members of the Appeal Board constitute a quorum of the Appeal Board.

(7) Proceedings before the Appeal Board are to be conducted as informally and expeditiously and in accordance with the rules made under subsection (18) and the requirements of natural justice.

(8) A hearing before the Appeal Board may be held *in camera* at the request of any party if the party establishes to the satisfaction of the Appeal Board that the circumstances of the case so require.

(9) The Appeal Board must exercise its jurisdiction under this Act as if it were a magistrates' court established in terms of the Magistrates' Courts Act, 1944 (Act No.

32 of 1944) and the Appeal Board has the same powers, privileges and immunities available to a magistrate's court in a civil matter.

(10) An appellant or respondent to an appeal is entitled to be represented at an appeal by a legal practitioner or any person of his or her choice.

(11) The Appeal Board may –

(a) confirm, set aside or vary a decision of the Roads Authority, a local authority or a government institution; or

(b) refer a matter back for consideration or reconsideration by the Roads Authority, a local authority or a government institution in accordance with the directions of the Appeal Board.

(12) The decision of a majority of the members of the Appeal Board constitutes the decision of the Appeal Board.

(13) The decision of the Appeal Board must be in writing, and a copy of such must be made available to the parties to the appeal.

(14) If the Appeal Board sets aside any decision of the Roads Authority, a local authority or a government institution, the fees contemplated in subsection (2) paid by the appellant in respect of the appeal in question must be refunded to the appellant.

(15) If the Appeal Board varies any such decision, it may direct that the whole or any part of such fees be refunded to the appellant.

(16) Subject to subsection (18), a decision of the Appeal Board may, in the manner prescribed, be taken on appeal to the High Court as if it were a decision of a magistrate's court in a civil matter.

(17) The launching of appeal proceedings in terms of subsection (16) does not suspend the operation or execution of a decision, unless the High Court directs otherwise.

(18) The Minister, with the concurrence of the Appeal Board, may make rules relating to –

(a) the manner of lodging appeals to the Appeal Board and the period within which the appeals must be lodged, including condonations for lodging of appeals outside the time limits;

(b) the conduct of proceedings before the Appeal Board and the procedures to be followed by the Appeal Board, including matters relating to condonation for non-compliance with the rules and the admissibility of evidence;

(c) witnesses, including payment of expenses and costs incurred by witnesses, offences by or relating to witnesses and other matters relating to witnesses;

(d) sittings of the Appeal Board;

- (e) the integrity of the Appeal Board and measures that are necessary or expedient to prevent the Appeal Board or a member of the Appeal Board from being insulted, disparaged or belittled or to prevent the proceedings or findings of the Appeal Board from being prejudiced, influenced or anticipated;
- (f) the fees payable by the appellant and situations in which the fees are refundable; and
- (g) any other matter which the Minister considers necessary to ensure effective and expeditious resolution of matters before the Appeal Board.

(19) The rules made under subsection (18) may create offences for contraventions or failure to comply with any provision thereof, and prescribe a penalty or a fine not exceeding N\$50 000 or imprisonment for period not exceeding five years, or both such fine and imprisonment.

Appeal Board

60. (1) There is established an Appeal Board to hear and determine appeals made to it in terms of this Act.

(2) The Appeal Board consists of five members appointed by the Minister who must include –

- (a) one person who has a degree in law and with at least 10 years' experience, who is the chairperson; and
- (b) four other persons who have appropriate and relevant qualification, expertise and experience in, finance or transport economics, civil engineering and land management.

(3) The Appeal Board may invite any person who has expert knowledge of a matter before the Appeal Board for determination to attend a meeting of the Appeal Board and to take part in discussions in relation to that matter, but such person may not vote at meetings of the Appeal Board.

(4) If before or during the consideration of any appeal it transpires that any member of the Appeal Board has any direct or indirect personal or financial interest in the outcome of that appeal, the member must declare his or her interest and recuse himself or herself and must be replaced by another person appointed by the Minister.

(5) A member of the Appeal Board may be paid from funds appropriated from parliament, such remuneration and allowances as the Minister in concurrence with the responsible Minister for finance may prescribe.

(6) The Ministry is responsible for the administrative support of the Appeal Board and expenditure incurred in that regard must be defrayed from funds appropriated from parliament.

(7) Any person who contravenes or fails to comply with subsection (4) commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

PART 14
GENERAL

Regulations

- 61.** (1) The Minister may, make regulations in relation to –
- (a) any matter which in terms of this Act is required or permitted to be prescribed by regulation;
 - (b) the timelines for the exercise of powers and performance functions;
 - (c) any matter that is required for the better execution or in relation to any power granted or function or duty imposed by this Act, including road construction contracts, appeals made under this Act or such disputes regarding access to a road;
 - (d) the powers, duties and functions of a roads boards established in terms of section 3;
 - (e) powers and functions of an authorised persons;
 - (f) the control, management and operation of ferry boats and ferry boat services;
 - (g) service of documents and notice;
 - (h) the protection from damage or interference of property belonging to the State, Roads Authority, or a local authority, or works, including trees, boreholes, wells and improvements within the road reserve of, under or over, proclaimed roads;
 - (i) the junction of unproclaimed roads with proclaimed roads and control of such roads; or
 - (j) fences on road reserve boundaries or across road reserves and motor grid gates.
- (2) The Minister may prescribe any procedure, conduct or matter relating to an appeal made under this Act.
- (3) The Minister must, before making any regulation under subsection (1), publish a draft of the proposed regulations in the *Gazette* or where the Minister considers it necessary in a manner he or she considers appropriate together with a notice calling on interested persons to comment, in writing, within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.
- (4) If the Minister alters the draft regulations, as a result of any comment received, he or she need not publish such altered regulations before promulgating the regulations.
- (5) The Minister may publish any regulation without consultation as contemplated in subsection (3), if circumstances necessitate the immediate publication of a regulation, and if the Minister is of the opinion that such immediate publication will not adversely affect the public.

(6) The Minister may incorporate into any regulation any standard publication contemplated in subsection (7), by mere reference to the number, title and year of issue of that standard publication or any other particulars by which it is sufficiently identified.

(7) For the purposes of subsection (6) “standard publication” means any code of practice, specification, standard or standard method published or issued by any bureau, body, organisation or authority established with the object of promoting standardisation, whether in Namibia or elsewhere and which Namibia is authorised to apply by virtue of any agreement between the Namibian Standards Institute and that bureau, body, organisation or authority, or between the government of Namibia and that bureau, body, organisation or authority or between the Minister and that bureau, body, organisation or authority.

(8) The Regulations incorporating any standard publication in terms of subsection (6) must state the place at and times during which a copy of the standard publication is available for inspection.

Fees

62. (1) The Roads Authority may with the concurrence of the Minister by notice in the *Gazette* determine a fee payable in relation to any application.

(2) Any money that is owed to the Roads Authority or any fees that have not been paid in terms of this Act may be recovered, as a liquidated debt, by the Roads Authority in a court of competent jurisdiction.

Guidelines, manuals and standards

63. (1) The Roads Authority may issue guidelines, manuals or standards.

(2) The Roads Authority must when issuing a guideline, manual or standard as contemplated in subsection (1) take due cognisance of regional agreements relating to the issue on which the guidelines, manuals or standards is being issued.

(3) A guideline, manual or standard issued in terms of this Act must be made available on the official website of the Roads Authority.

Experimental projects

64. (1) The Minister or the Roads Authority may initiate an experimental project in relation to a road and the Roads Authority may determine standards that contradict this Act for the purpose of that experimental project.

(2) The standards referred to in subsection (1) may apply to a specific area or groups of persons affected by the experimental project.

(3) The standards contemplated in this section may not exceed the lifecycle of the experimental project.

Exemptions

65. (1) The Minister may, if reasonable grounds exist, exempt the Roads Authority from any provision of this Act.

(2) The Roads Authority may with the concurrence of the Minister, if reasonable grounds exist, exempt a government institution or any person from any provision of this Act.

(3) The Roads Authority may with the concurrence of the Minister, if reasonable grounds exist, extend any time period prescribed in relation to anything provided for in this Act.

(4) The Minister and Roads Authority must when making an exemption referred to in subsection (1), (2) and (3) consider whether –

- (a) the granting of the exemption is likely to impact negatively on the interests of the general public;
- (b) the granting of the exemption is for the benefit of the general public and not aimed at a particular individual; and
- (c) the exemption would not defeat the objects of the Act.

Repeal and amendment of laws

66. (1) Subject to the provisions of subsection (3), the laws referred to in column 2 of Schedule 1 are repealed to the extent set out in column 3 of that Schedule.

(2) Subject to the provisions of subsection (3), the laws referred to in column 2 of Schedule 2 are amended to the extent set out in column 3 of that Schedule.

(3) Proclamations, notices, regulations and authorisations issued under any law repealed by this Act, remain in force until repealed, withdrawn or amended under this Act, unless inconsistent with the provisions of this Act.

Transitional provisions

67. (1) Any application submitted or pending at a board, Roads Authority, local authority, or the Minister in terms of the laws repealed by section 66 and not finalised immediately before the commencement date, must from that date be dealt with by the relevant functionary as if those laws were not repealed.

(2) A member of a roads board who was appointed to be a member of that Board in terms of the Roads Ordinance, 1972 (Ordinance No. 17 of 1972) is, despite anything to the contrary in this Act, deemed to qualify under section 5 of this Act to be a member of a roads board and to have been appointed in terms of section 4 of this Act until the expiry of his or her term of office.

(3) A roads board appointed in terms of the Roads Ordinance, 1972 (Ordinance No. 17 of 1972) and in operation before the commencement date, is deemed to have been established in terms of section 4 of this Act and must remain in operation until the expiry of its term of office.

(4) Any contract entered into before the commencement of this Act may, despite anything to the contrary in this Act, be finalised in terms of the Roads Ordinance, 1972, as if that law has not been repealed but the parties to the contract may agree to review that contract in terms of this Act and that review does not constitute the novation of that contract.

(5) Despite subsection (4), any contract relating to the construction of services in the road reserve must be reviewed by the parties to the contract with the purpose to construct those services in a manner provided for in the guidelines issued under section 63.

(6) Despite subsections (4),(5) and (7), any services constructed before the commencement of this Act, is deemed to comply with the provisions of this Act.

(7) Any advertisement that has been erected within 500 metres from a road at the commencement of this Act, must comply with Part 9 and if that advertisement does not so comply, the person responsible for the erection of that advertisement must apply to the Roads Authority for permission to display that advertisement until it can be altered or moved in compliance of section 39.

(8) The Roads Authority may determine that the advertisement referred to in subsection (7), may be displayed contrary to section 39 for a period not exceeding three months, or that it must be removed in accordance with that section.

(9) If a person referred to in subsection (7) has not within three months after the commencement of this Act, applied in terms of that subsection to the Roads Authority for permission to display that advertisement, the Roads Authority may remove the advertisement concerned without incurring any liability towards the person who erected that advertisement.

(10) An application submitted for an authorisation, consent or permission in terms of any Act repealed by this Act must be finalised in terms of the repealed Act.

(11) Any negotiation for compensation that has not been finalised at the date of commencement of this Act must be finalised in terms of the repealed Act.

(12) Any claim submitted, dispute declared, or appeal lodged in terms of any law repealed by this Act must proceed as if those laws were not repealed, but the parties may agree to proceed with that claim, dispute or appeal in accordance with the provisions of this Act.

(13) If a person, local authority or other government institution, has at the time of commencement of this Act initiated the construction of a road or any other work on a road for which the Roads Authority is responsible, that person, local authority council or government institution must inform the Roads Authority of that construction or other work and as far as possible complete it in conformity with the requirements of this Act.

(14) Despite anything to the contrary in any other law, the Roads Authority may remove or relocate any structure erected, on or over or below the surface of a building restriction road or other land situated within 45 or 100 metres from the centre line of a building restriction road, before the commencement of this Act or before the date on which the building restriction road which is at issue is declared in terms of section 38.

(15) Any road proclaimed before the commencement of this Act but which has not yet been constructed, is deemed to have been proclaimed on the date of the commencement of this Act.

(16) A road which has been constructed and proclaimed in terms of the Roads Ordinance, 1972 (Ordinance No. 17 of 1972) and which is in existence on the commencement of this Act, is regarded to be a road constructed and proclaimed in terms of this Act.

(17) Despite anything to the contrary in this Act and until a date determined by the Minister by notice in the *Gazette*, a fence situated next to a road on communal land is deemed to comply with the requirements of this Act in relation to fencing, but if a new fence is erected next to a road on communal land, it must comply with the requirements of this Act.

(18) Despite the provisions of this Act, a road constructed or deemed to have been constructed in terms of the Roads Ordinance, 1972 (Ordinance No. 17 of 1972) is deemed to have been constructed in terms of this Act.

Act binds State

68. The state is bound by this Act except to the extent to which this Act otherwise provides.

Short title and commencement

69. (1) This Act is called the Roads Act, 2024 and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be so determined in respect of different provisions of this Act, and the dates so determined may differ in respect of different classes of roads or areas determined by the Minister for this purpose.

SCHEDULE 1 LAWS REPEALED

No. and year	Title	Extent of Repeal
Ordinance 17 of 1972	Roads Ordinance 1972	The whole
Ordinance 16 of 1973	Roads Amendment Ordinance, 1973	The whole
Ordinance 22 of 1973	Roads Further Amendment Ordinance, 1973	The whole
Ordinance 10 of 1974	Roads Amendment Ordinance, 1974	The whole
Ordinance 18 of 1975	Roads Amendment Ordinance, 1974	The whole
Ordinance 6 of 1980	Roads Amendment Ordinance, 1974	The whole
Act 13 of 1986	Roads Amendment Act, 1974	The whole
Act 3 of 1993	Roads Amendment Act, 1993	The whole

SCHEDULE 2
LAWS AMENDED

No. and year	Title	Amendment
Act 17 of 1999	Roads Authority Act, 1999	<p>(a) The substitution in section 1 of the definition of “national road network” of the following definition:</p> <p>“national road network” means the road network consisting of every trunk road, main road and district road proclaimed in terms of PART 4 of the Roads [Ordinance] Act, 2024, <u>(Act No xx of 2024)</u>;</p> <p>(b) the deletion of the definition of “Roads Ordinance”;</p> <p>(c) The substitution for the heading of Part III of the Act of the following heading:</p> <p>“PLANNING FOR AND MANAGEMENT OF THE ROAD NETWORK”;</p> <p>(d) The insertion of the following section after section 15 of the Act:</p> <p><u>“15A Strategic planning for road network</u></p> <p><u>(1) The Authority must every five years compile a road master plan for the road network that provides for the twenty years following that plan and that plan must consist of a master plan for each region of the country taking into account integrated land use planning.</u></p> <p><u>(2) The Minister must every five years after consultation with the Regional Councils, compile a road master plan in relation to a developmental road network for a road network that will facilitate development as contemplated in the National Planning Commission Act, 2013 (Act No.2 of 2013) and which relates to the twenty years following that plan, and that master plan must consist of a master plan for each region of the country, also taking into account integrated land use planning.</u></p> <p><u>(3) The master plans referred to in subsections (1) and (2) must be combined into a single road master plan, which must be submitted to the National Planning Commission for inclusion in the National Development Plan as contemplated in the National Planning Commission Act, 2013 (Act No.2 of 2013).</u></p> <p><u>(4) A road constructed in terms of the master plan for a developmental road network compiled by the Minister, is not funded by the Road Fund.</u></p> <p><u>(5) The Minister may request the Authority to compile the developmental road master plan on his or her behalf.</u></p> <p><u>(5) The Minister may request the Authority to compile the developmental road master plan on his or her behalf.</u></p> <p><u>(6) The road master plan may be amended on an annual basis.</u></p> <p><u>(7) A road may not be proclaimed or constructed unless in accordance with the road master plan or in exceptional circumstances.</u></p> <p><u>(8) A road that is proclaimed under exceptional circumstances and which does not form part of the road master plan must be included in that plan as soon as the road has been proclaimed.</u></p>

		<p><u>(9) A road may only be proclaimed under exceptional circumstances if the finds to construct that road are provided to the Roads Authority and the Roads Authority has the capacity to undertake the construction of that road.</u></p> <p><u>Amendment of Section 16 of the Roads Authority Act, 1999 (Act No. 17 of 1999)</u></p> <p>(e) the amendment of subsection (4) of section 16 by the substitution of the following subsection:</p> <p><u>Subject to Section 15A</u>, the Minister, after consultation with the Authority, <u>and subject to this Act and the Roads Act, 2024 (Act xx of 2024)</u> may give the Authority a written directive to undertake any road project, programme or anything relating to roads which the Minister considers necessary in the national interest for improving accessibility to or within any area in Namibia, and the Authority must comply with a directive so given, but subject to the funding of such project, programme or directive from moneys made available either through an appropriation by Parliament or any other source as may be agreed upon by the Minister, the Authority and the Administration.</p> <p>(f) The deletion of subsection (6) of section 16.</p>
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