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CONTENTS • INHOUD

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
GENERAL NOTICE		
515 North West Roads Bill and North West Roads Agency Bill: For general comments.....	3	6528

GENERAL NOTICE

NOTICE 515 OF 2008

NORTH WEST PROVINCE

DEPARTMENT OF TRANSPORT, ROADS AND COMMUNITY SAFETY

I, **Phenye Frans Vilakazi**, Member of the Executive Council responsible for Transport, Roads and Community Safety in the North West Province hereby publish the North West Roads Bill and the North West Roads Agency Bill for general comments.

Comments should be submitted within 21 days from the date of publication of this notice to,

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PROVINCE OF THE NORTH WEST

ROADS BILL

(as submitted to the Provincial Legislature of the North West)

The English text is the official text of the Act)

(MEC FOR TRANSPORT, ROADS AND COMMUNITY SAFETY)

BILL

To provide for the planning, design, construction and maintenance of public roads; to provide for construction works; to provide for the erection of certain structures; to provide for the installation of services; to provide for water levels and stormwater; to provide for advertising on public roads; to provide for resting places for persons and livestock; to provide for the acquisition of and entry on land; to provide for the liability and indemnification of the Agency and claims procedure; to provide for the enforcement of the Act; to provide for certain prohibitions, offences and penalties; and to provide for all matters connected therewith.

CONTENTS

Section	Page
CHAPTER I: DEFINITIONS.....	4
1. Definitions.....	4
CHAPTER II: ROADS	8
PART A: EXISTING ROADS	
2. List of existing roads and allocation of responsibility	8
3. Register, classification and numbering of roads	9
4. Powers and functions of Agency.....	9
5. Definition.....	10
PART B: NEW ROADS	
7. Phases of establishing new road	10
8. Route determination.....	10
9. Determination and publication of route	11
10. Amendment of route after determination.....	11
11. Legal consequences of route determination.....	11
12. Preparation of basic planning	13
13. Notification of basic plan.....	14
14. Deviation from route.....	14
15. Amendment of basic plan after publication	15
16. Legal consequences of completed basic plan.....	15
17. Detail design of a road	16
PART C: POWERS AND FUNCTIONS RELATING TO PUBLIC ROADS	
18. Width of public roads.....	16
19. Declaration, deviation or closure of road.....	17
20. Application for closing, deviating or otherwise altering of certain roads	18

	PART D: GENERAL POWERS OF THE AGENCY RELATING TO THE CONSTRUCTION AND MAINTENANCE OF PUBLIC ROADS	
21.	Powers of Agency relating to construction and maintenance of public road.....	19
22.	Construction and maintenance of public roads on behalf of Agency.....	19
23.	Removal of materials from land and compensation.....	19
24.	Opening of fences and roads to quarries	20
25.	Undermined ground	21
	CHAPTER III: CONSTRUCTION WORKS.....	21
26.	Power of Agency with respect to construction works.....	21
27.	Agency may undertake construction works on unclassified roads	21
28.	Notice of undertaking construction.....	22
29.	Definition "of Construction works"	22
	CHAPTER IV: FENCES, GATES, MOTOR GRIDS, SERVICES AND OTHER STRUCTURES	23
30.	Fencing of public roads	23
31.	Fence, gate or motor grid necessitated by deviation	23
32.	Agency may order removal of fences, gates and motor grid.....	23
33.	Installation of services in, over, under or across a public road.....	24
34.	Structures adjacent to and on public roads	25
	CHAPTER V: WATER LEVELS AND STORMWATER	26
35.	Raising of water level	26
36.	Disposal of stormwater.....	27
	CHAPTER VI: ADVERTISING ON ROADS	27
37.	Prohibition of certain advertisements on or adjacent to public road	27
	CHAPTER VII: RESTING PLACES FOR PERSONS AND LIVESTOCK	28
38.	Declaration and de-declaration of resting place	28
39.	Impounding uncontrolled livestock.....	29
	CHAPTER VIII: LAND	29
40.	Power to acquire land.....	29
41.	Procedure for acquiring land.....	29
42.	Registration by Registrar of Deeds	30
43.	Compensation provided in form of land	30
44.	Effect of acquisition of land.....	31
45.	Circumstances under which MEC is under obligation to expropriate land	31
46.	Power of entry.....	31
47.	Compensation.....	31
	CHAPTER IX: LIABILITY AND INDEMNIFICATION OF AGENCY AND CLAIMS PROCEDURE	31
	31
48.	Exemption of certain persons from personal liability.....	31
49.	Limitation of liability of Agency in general	32
50.	Submission of claim	32

CHAPTER X: ENFORCEMENT OF THE ACT	32
51. Persons authorised to enforce this Act	32
52. Service of document or notice	33
53. Production of information.....	34
54. Enforcement of certain directives.....	34
55. Rectification of damage	35
56. Recovery of debts	35
57. Resolution of disputes between organs of state	35
58. Resolution of disputes between Agency and member of public.....	35
59. Compensation and payment of equitable relief	36
CHAPTER XI: PROHIBITIONS, OFFENCES AND PENALTIES	37
60. General prohibition relating to public road.....	37
61. Prohibition on trading on or adjacent to public road.....	38
62. Prohibition of certain acts in a resting place for persons or livestock	38
63. Prohibition in relation to livestock on public road.....	39
64. Offence in relation to freeways	39
65. Offences relating to fences, gates and motor grids	39
66. Offence relating to employment status.....	40
67. Offences in general	40
68. Penalties	40
CHAPTER XII: GENERAL.....	41
69. Regulations	41
70. Exemptions	41
71. State bound by this Act	41
72. Repeal and amendment of laws	42
73. Transitional provisions.....	42
74. Short title and commencement	44

CHAPTER I: DEFINITIONS

1. Definitions

In this Act, unless the context otherwise indicates -

"access" means any manner by which persons, vehicles or livestock enter or exit from any property onto a public road;

"access road" means a road other than a public road which affords access from a property to a public road;

"Agency" means the Roads Agency established under section 4 of the Roads Agency Act,

"authorised official" means a person referred to in section 51;

"acquire" means acquire as defined in the North West Land Administration Act, 2001, (Act No. 4 of 2001);

"close corporation" means a close corporation registered as such in terms of the Close Corporation Act, 1984 (Act No. 69 of 1984);

"company" means a company registered as such in terms of the Companies Act, 1973 (Act No. 61 of 1973);

"Constitution" means the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996);

"construct" means the provision of a combination of goods and services arranged for building, altering, repairing, maintaining and rehabilitating a road;

"Department" means the Provincial Department responsible for Roads;

"freeway" means a limited access road for the purpose of expediting the flow of traffic and which has been declared a freeway in terms of section 19 of this Act;

"Gazette" means the Gazette for the province;

"livestock" means any animals or birds which are bred, purchased, sold or retained as domestic animals;

"maintenance" means the combination of all technical and associated administrative actions during a road's service life to retain it in a state in which it can perform its required function;

"materials" means sand, stone, rock, gravel, clay, soil, tar, concrete and any other materials required for road construction and maintenance;

"MEC" means the member of the North West Executive Council whose portfolio includes responsibility for roads in the Province;

"municipality" means any local government contemplated in terms of Chapter 7 of the Constitution, the Local Government Transition Act, 1993 (Act 209 of 1993), the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), and any other applicable law;

"occupier" means, in relation to land, a person who is in actual occupation of the land and, if no person is in actual occupation thereof, any person who whether as owner, lessee, licensee or otherwise, has for the time being control of the land;

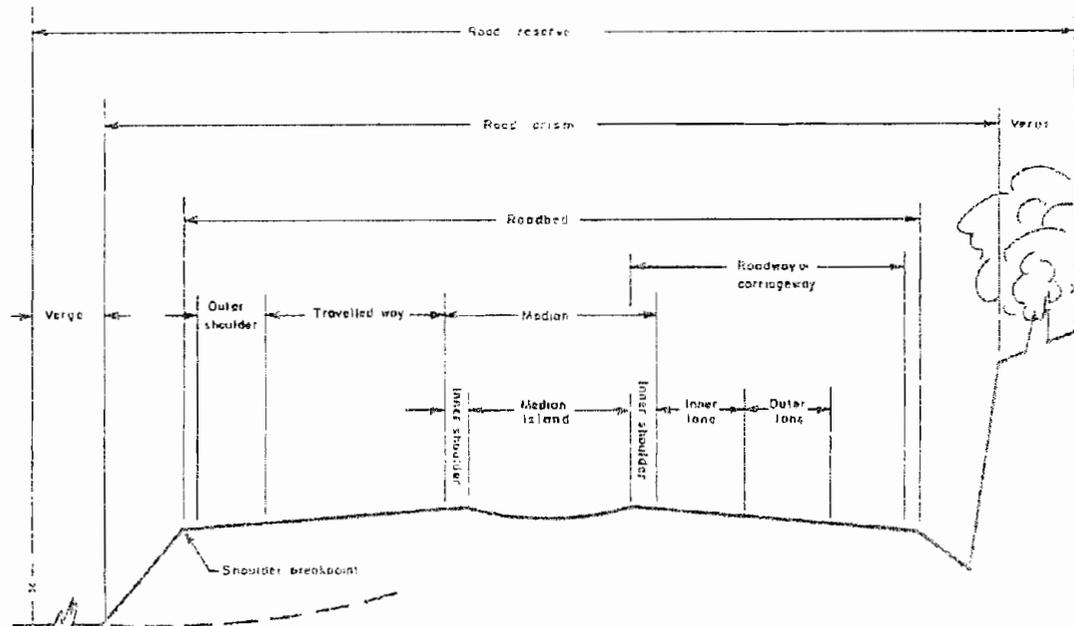
"prescribed" means prescribed by regulation;

"Province" means the North West Provincial Government;

"public road" means a road to which the public has access and includes the road and the road reserve;

"registrar of deeds" means a registrar of deeds appointed under the Deeds Registries Act, 1937 (Act 47 of 1937);

"road" means a right of way consisting of a cross section as depicted below 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 the case may be;



"road reserve" means the road plus the verge and includes any resting places declared in terms of section 38;

"Roads Agency Act,... means the Roads Agency Act, ..., (Act No.of 2007)

"this Act" includes any regulation promulgated by the MEC;

"services" means the basic services of water supply, sanitation, electricity or telecommunications infrastructure;

"structure" means any erection or other improvement, aboveground or underground, whether permanent or temporary and 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 thatched shelters, but does not include fences, motor grids or structures for services;

"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 intersection point;

"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 intersection point, where that natural ground level is cut into for the purpose of a road;

"township" means an area divided into erven or plots, whether with or without public open spaces, and into streets bounded by the erven, plots or open spaces and-

- (a) established or recognised as a township under any law; or
- (b) recognised by the MEC as a township for the purposes of this Act, to the extent so recognised;

"urban area" means an area consisting of-

- (a) a township mentioned in paragraph (a) of the definition of **"township"**, but excluding land in that area-
 - (i) which is commonage land; or
 - (ii) which is used or destined to be used mainly for farming or horticulture or the keeping of animals or is an agricultural holding as defined in section 7 of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919); or
 - (iii) which consists of any other open space which has not been developed or reserved for public purposes; or
- (b) a township mentioned in paragraph (b) of the definition of **"township"** which the MEC by notice in the *Gazette* has declared to be a urban area for the purposes of this Act.

"verge" means that part of land that is bordered on one side by the road and on the other side by the boundary of the road reserve as determined in the notice published in terms of section 19.

CHAPTER II: ROADS

PART A: EXISTING ROADS

2. List of existing roads and allocation of responsibility

- (1) Within 12 months after the establishment of the Agency under section 4 of the Roads Agency Act, the Agency shall, in co-operation with the MEC, compile a list of existing roads in the Province.
- (2) After the compilation of the list referred to in subsection (1), the roads listed shall be evaluated against the criteria that is determined by the Agency under section 6(1) of Roads Agency Act, to enable a decision on the allocation or assumption of responsibility for a public road by the forum contemplated in section 6(2) of that Act.
- (3) The Agency shall in addition to the evaluation in terms of subsection (2), evaluate the list of existing public roads in terms of the road classification system developed under section 10(b) of the Roads Agency Act and decide on the classification of every road.
- (4) After the Agency has determined the criteria as contemplated in section 6 of the Roads Agency Act, and evaluated all the roads listed against those criteria, the Agency shall consult every municipality in the Province to reach agreement on the allocation of the responsibility of each road listed and evaluated in terms of this section.
- (5) After a decision on the classification of an existing public road has been made and agreement has been reached on the allocation or assumption of responsibility for the management of that road as contemplated in subsection 4 above, the Agency shall inform the MEC of the decision and the agreement.
- (6) The MEC shall, if he or she is satisfied, on receipt of the information submitted by the Agency, by notice in the Gazette –
 - (a) identify the relevant organ of state to which responsibility for the management of a particular road has been allocated in terms of subsection (4); and

- (b) in the case a local or provincial organ of state being allocated the responsibility for the management of a particular road, classify a road in accordance with the recommendation of the Agency in terms of this section;
 - (c) in the case of a public road that was before the commencement of this Act managed by the department, becoming the responsibility of either a municipality or the South African National Roads Agency, reclassify that road.
- (7) Where the responsibility for the management of a particular road is allocated to or assumed by an organ of state other than the Agency and that road is reclassified, it is deemed to be a road or street within the area of jurisdiction of the organ of state to which the responsibility has been allocated or by whom the responsibility has been assumed.
- (8) No compensation is payable to the owner of land encroached upon by any road or street for which the responsibility has been allocated or which has been reclassified in terms this section.

3. Register, classification and numbering of roads

- (1) The Agency shall compile a register as prescribed of all roads for which it is responsible, using the classification of roads referred to in section 10 of the Roads Agency Bill and allocate a number to each of the roads in accordance with the classification and numbering system contemplated in that section.
- (2) The register compiled in terms of subsection (1) shall be updated by the Agency whenever a declaration is published in terms of section 19 and the Agency shall make the list available for inspection by the public during office hours.

4. Powers and functions of Agency

The powers and functions granted to the Agency under this Act which relates to a public road are limited to those public roads which the Agency is responsible for in terms of this Act or the Roads Agency Bill or, notwithstanding section 2(7), which the Agency plans, designs, constructs, or maintains or on behalf of any other organ of state.

5. Definition of "existing road"

For the purpose of this Chapter "existing road" means all roads declared or deemed to be public roads under the Roads Ordinance, 1957, (Ordinance No. 22 of 1957) (Transvaal) the Roads Ordinance, 1976 (Ordinance No. 19 of 1976) (Cape) or the Bophuthatswana Roads Act, 1976, (Act No. 3 of 1976) or public roads situated on land acquired under the above-mentioned laws, that were listed as numbered roads by the Department before the commencement of this Act.

6. Presumption that an existing road be deemed a public road

A road that has not been classified and numbered and which has been in existence for a period exceeding 15 years is for the purpose of this Act deemed to be a public road if the existence of that road can be established from historical aerial photography.

PART B: NEW ROADS**7. Phases of establishing new road**

For the purposes of establishing a new public road, excluding an access road, the following processes shall be implemented:

- (a) determination of a route as contemplated in sections 8 to 11;
- (b) public consultation as prescribed;
- (c) basic planning of the road as contemplated in sections 12 to 16;
- (d) declaration of the road as contemplated in section 19;
- (e) detail design of the road as contemplated in section 17;
- (f) construction of the road.

8. Route determination

- (1) The Agency shall in relation to the need for a road identified in its strategic plan referred to in section 37 of the Roads Agency Act, identify a preliminary route for that road and compile a written report as prescribed containing, amongst others, recommendations with respect to the proposed preliminary route.
- (2) After identifying a preliminary route the Agency shall, in relation to that route, undertake the necessary environmental investigation in order to submit a scoping report and an environmental impact assessment report required in

terms of the National Environmental Management Act, in order to obtain an environmental authorisation from the competent authority contemplated in that Act.

- (3) On completion of the proposed preliminary route report the Agency shall initiate the prescribed procedural fairness process, which process should make provision for the inclusion of public participation process required and conducted in terms of regulations 28, 32 and 56 of the Environmental Impact Assessment Regulations, 2006, issued under the National Environmental Management Act, and any other public participation process which may be required under laws applicable in the Province.

9. Determination and publication of route

The Agency shall after due consideration of the comments received during the procedural fairness process, determine the route of the future public road by notice in the *Gazette*, by reference to the centre line thereof, and the notice shall contain the prescribed information.

10. Amendment of route after determination

If the Agency decides to alter a route that has been determined, the Agency shall consult with the affected parties in terms of the prescribed procedural fairness process and after the completion of that process, the Agency shall publish the alteration of the determined route by notice in the *Gazette*.

11. Legal consequences of route determination

- (1) After determination of a route in accordance with section 9, and in addition to the requirements of any other laws or town planning scheme, as the case may be, every application for –
 - (a) the establishment of a township;
 - (b) the subdivision of land;
 - (c) the approval of a building plan;
 - (d) a change of land use; or
 - (e) an authorisation required in terms of the in Environment Conservation Act, or the National Environmental Management Act,

shall be accompanied by a written specialist report in the manner and with the content as prescribed and compiled by person who is registered with one of the councils for the professions as defined in the Council for the Built Environment Act, or in terms of the Planning Profession Act, the Professional and Technical Surveyors' Act, or the Natural Scientific Professions Act, and who is suitably qualified and experienced.

- (2) The application and the specialist report referred to in subsection (1) above shall be forwarded to the Agency by the organ of state to which the application is made or the applicant, if he or she has obtained the consent from that organ of state and the applicant shall submit proof to the organ of state that he or she had submitted both the application and the specialist report to the Agency.
- (3) The Agency shall comment in writing on the application and the specialist report submitted to it in terms of subsection (2) above to the organ of state to which the application is made, within a period of 60 days after having received the application and the specialist report or such shorter period as may be required in terms of other laws applicable.
- (4) In addition to any other requirements of any other applicable law, an organ of state to which an application is made shall not grant that application without due consideration of the following matters –
 - (a) comments submitted to it by the Agency;
 - (b) findings of the specialist report;
 - (c) additional costs of the application, the granting of which may be incurred either directly or indirectly by the agency and the community concerned;
 - (d) extent to which the granting of the application promotes sustainable development which integrates transport planning and land use planning in view of transportation engineering requirements.
- (5) After reaching a decision on whether to grant an application or not, the organ of state concerned shall, within 14 days after reaching that decision, inform the Agency in writing of that decision and in the event of granting the application, shall furnish full reasons for its decision.
- (6) The Agency is entitled to appeal against the decision of the organ of state concerned in accordance with the dispute resolution process contained in section 57.

12. Preparation of a basic planning

- (1) After publication of the route in terms of section 9, the Agency shall prepare a basic plan for the future public road for –
 - (a) a distance of 200 metres measured from either side of the centre line of that route;
 - (b) a distance of 500 metres from the intersection of the centre line of that route with the centre line of –
 - (i) any other route published in terms of section 9;
 - (ii) a basic plan accepted by publication in terms of section 13; or
 - (iii) any other road.

- (2) The preparation of the basic plan shall take cognisance of -
 - (a) any property which will be directly affected by the basic plan, the interests of the registered owner and the holder of a registered right or tenure right in the property;
 - (b) any property which will be indirectly affected by the basic plan with regard to access to and from that property, existing or future services and the interests of the registered owner or holder of a registered right or tenure right in that property;
 - (c) the interests and functions of municipalities and service providers inasmuch as these may be directly or indirectly affected by the basic plan; and
 - (d) environmental management principles contemplated in the National Environmental Management Act.

- (3) After the preparation of the basic plan the Agency shall compile a written report of that plan as prescribed and undertake a further environmental investigation if the responsible organ of state requires such further investigation and give notice thereof in the *Gazette* for the purpose of the prescribed procedural fairness process.

- (4) The Agency shall initiate the prescribed procedural fairness process on completion of the report on the basic plan and a report on the environmental investigation referred to in subsection (3), if so required.

13. Notification of basic plan

- (1) The agency shall on completion of the prescribed procedural fairness process and after due consideration of the comments received during that process, give notice in the *Gazette*, that the basic plan has been completed and the notice shall contain the prescribed information.
- (2) On the date of publication of the notice referred to in subsection (1), any notice published in terms of section 9 in respect of the route along or over which the basic plan has been completed, shall be deemed to have been revoked to the extent that the route along or over which the basic plan has been completed.
- (3) A notice in terms of this section is deemed to be a declaration in terms of section 19(1)(a).
- (4) In relation to land that is acquired by expropriation, a notice in terms of this section is deemed to be a notice of expropriation in terms of section 7 of the Expropriation Act.

14. Deviation from route

Despite the provisions of section 12(1), the route of the basic plan may deviate from a route published in terms of section 9, provided that where the basic plan deviates from such a route to the extent that-

- (a) only one of the road reserve boundaries of the basic plan falls outside the areas mentioned in section 12(1), the Agency may, before publication of the notice of completion of the basic plan referred to in section 13(2), decide not to amend the said route; or
- (b) both road reserve boundaries of the basic plan fall outside the areas mentioned in section 12(1), a route determination in terms of sections 8 and 9 shall be done to the extent that such road reserve boundaries of the basic plan fall outside those areas.

15. Amendment of basic plan after publication

- (1) A basic plan for a future public road in respect of which a notice has been published as contemplated in section 13, may be amended by the Agency, and in that event section 12 applies, with the necessary changes, provided that where such amendment deviates from the basic plan to the extent that both the road reserve boundaries of the amendment fall outside the road reserve boundaries of the basic plan, a route determination in terms of sections 8 and 9 shall first be done to the extent that such road reserve boundaries of the amended design so falls outside.
- (2) The power of the Agency to amend a basic plan may also be exercised on written application to the Agency by anyone who desires that such basic plan be amended and the application shall be accompanied by payment of a prescribed fee.

16. Legal consequences of completed basic plan

From the date of publication of the notice of completion of the basic plan referred to in section 13 and for a period of five years from the date of publication of notice -

- (a) no application for the establishment of a township, for the approval of a building plan, for subdivision of land, for any change of land use in terms of any law or town planning scheme or for an authorisation required in terms of the in Environment Conservation Act, or the National Environmental Management Act, may be granted-
 - (i) in respect of an area within the road reserve boundaries of the basic plan, provided that the Agency may, after consideration of a written application by the applicant, relax the provisions of this subsection in respect of an access road as the Agency may consider necessary, including-
 - (aa) a condition that the access road be substituted by another road or street serving the same purpose as the access road;
and

- (bb) a condition for amending the basic plan requiring the applicant to pay all or any of the costs incurred by the Agency in the process, in which case the provisions of section 19 relating to the closure of roads shall apply;
 - (ii) on the basis of future access to the public road to which the said basic plan relates, except on the basis of access provided for in the said basic plan, or amendment thereof on application in terms of section 15(2) or otherwise;
- (b) section 34 applies, with the necessary changes, to a building restriction area which exists in respect of the road reserve boundaries, as shown in the basic plan, inasmuch as these sections are applicable to building restriction areas; and
 - (c) no application for a change in land use in respect of a portion of land adjacent to the road reserve boundary of a basic plan in an urban area may be considered without the written comments of the Agency first having been obtained and considered in accordance with the applicable planning procedure by the organ of state empowered to grant changes in land use, and sections 11(5), (6) and 33 apply in such a case, with the necessary changes.

17. Detail design of a road

The detail design of a road shall be done in accordance with standards or guidelines published by the Agency in terms of section 8 of the Roads Agency Act, and before commencement of the construction of the road, the Agency shall undertake a basic assessment, if required in terms of the National Environmental Management Act.

PART C: POWERS AND FUNCTIONS RELATING TO PUBLIC ROADS

18. Width of public roads

- (1) The minimum permissible width of the road reserves of the different classes of public roads is as prescribed by the MEC, on recommendation of the Agency.
- (2) Notwithstanding the provisions of subsection (1), the MEC shall, on recommendation of the Agency, by notice in the *Gazette*, reduce or increase

the prescribed width of a particular public road or for a particular class of public road and amend or revoke such notice.

19. Declaration, deviation or closure of road

- (1) The Agency may, by notice in the *Gazette*, subject to subsections (2) and (3) -
 - (a) declare any road to be a public road or an access road;
 - (b) reclassify any existing public road;
 - (c) deviate any public road or any entrance to or exit therefrom;
 - (d) redefine any public road;
 - (e) close a public road temporarily or permanently in relation to any or all classes of traffic;
 - (f) declare any public road to be a freeway; or
 - (g) after consultation with the district municipality concerned, declare a public road within the Province to be a road within a building restriction area, and that notice shall embody a sketch plan of the deviation, if applicable.

- (2) Before publishing a notice in terms of subsection (1), the Agency shall ensure that it complies with the prescribed procedural fairness requirements.

- (3) The Agency may not declare a public road on land within a mining area as defined in the Minerals and Petroleum Resources Development or on land held by any person under a prospecting right or mining right registered in terms of the Mining Titles Registration Act, or on land in terms of which a mining permit or retention permit have been granted under the Minerals and Petroleum Resources Development Act, to be a public road, without the consent of the Minister responsible for mining.

- (4) A public road which was declared closed by the Agency in a notice published in terms of subsection (1)(e) may be used by the public until access to that road is prevented by the Agency by visible means.

- (5) The provincial government remains the owner of the land over which a road was constructed despite that road having been reclassified in terms of this section and the MEC remains the custodian of that land, unless the road is reclassified as a result of a municipality or the South African National Road Agency taking over responsibility for the management of that road.

20. Application for closing, deviating or otherwise altering of certain roads

- (1) The MEC shall by notice in the *Gazette* and on recommendation by the Agency, determine the classes of roads which may be closed, deviated or otherwise altered as contemplated in this section.
- (2) Any person who desires that a road be closed, deviated or otherwise altered shall apply, in the prescribed form, to the Agency in the manner provided for in this section.
- (3) On submission of the application referred to in subsection (1), the applicant shall pay the prescribed application fee and the prescribed fee for the erection, maintenance and removal of the notice boards by the Agency.
- (4) The prescribed fee for the erection, maintenance and removal of notice boards shall be calculated on a cost recovery basis.
- (5) The application form, number and type of notice boards, the information to be displayed on notice boards, the manner of erecting and location of notice boards, the period within which the notice boards shall be erected, the maintenance requirements of the notice boards and the removal of the notice boards, and any other matter relevant for the proper functioning of this section, shall be prescribed by the MEC, on recommendation by the Agency, in accordance with section 69.
- (6) On receipt of the application referred to in subsection (1), the Agency shall in the prescribed manner communicate the proposed closure, deviation or other alteration of a road to members of the public most likely to be materially and adversely affected by it.
- (7) If, on completion of the process contemplated in subsection (6), the Agency is of the opinion that the application should be granted, the Agency shall issue a notice to that effect in terms of section 19.

PART D: GENERAL POWERS OF THE AGENCY RELATING TO THE CONSTRUCTION AND MAINTENANCE OF PUBLIC ROADS

21. Powers of Agency relating to construction and maintenance of public road

The Agency may, in the exercise and performance of its powers and functions for the purposes of the construction and maintenance of a public road for which it is responsible in terms of section 4, do or authorise anything permitted or required in terms of this Act or other relevant legislation that is necessary or reasonable for that construction and maintenance of a public road.

22. Construction and maintenance of public roads on behalf of Agency

- (1) If a person, municipality or other organ of state, wishes to construct a public road in relation to a route determined in terms of sections 8 and 9 or undertake maintenance or any other work on a public road for which the Agency is responsible in terms of section 4, on a contractual basis, that person, municipality or other organ of state shall obtain written authorisation from the Agency prior to undertaking that construction, maintenance or other work.
- (2) A person, municipality or other organ of state undertaking construction of a public road, maintenance or other work on a public road as contemplated in subsection (1) above shall adhere to the standards published by the Agency in terms of section 8 of the Roads Agency Act.
- (3) The Agency, when granting authorisation under subsection (1) above shall specify the terms of reference and any payment for the construction, maintenance or other work.

23. Removal of materials from land and compensation

- (1) The Agency may search for and remove sand, stone, rock, gravel, clay, soil and any other materials for road construction and maintenance in or on land.
- (2) Before the Agency may remove sand, stone, rock, gravel, clay, soil and any other materials in or on land, from that land, it shall –

- (a) apply to the Minister of Minerals and Energy in terms of section 106 of the Minerals and Petroleum Resources Development Act, and
 - (b) submit an environmental management programme for approval to the Minister of Minerals and Energy in terms of section 39(4) of the Minerals and Petroleum Resources Development Act.
- (3) The owner or occupier of the land from which sand, stone, rock, gravel, clay, soil or any other materials are removed is entitled to compensation referred to in section 59, which compensation shall be paid by the Agency.
- (4) Where any damage is caused to cultivated land, a tree, fence, building or any other improvement as a result of the search undertaken in terms of this section, the owner or occupier of the land concerned is entitled to compensation referred to in section 59 which compensation shall be paid by the Agency.

24. Opening of fences and roads to quarries

- (1) The Agency may, after notice to the owner of the land concerned, for the purpose of removing sand, stone, rock, gravel, clay, soil and any other materials, make openings in fences and roads to quarries and other places.
- (2) When the Agency makes any openings in fences it shall close those openings effectively against trespassing or straying livestock during the entire duration of the removal of the sand, stone, rock, gravel, clay, soil and any other materials and shall restore the fence properly on the completion of the work.
- (3) If the Agency makes any quarry or other excavation in the course of the work which may be a source of danger it shall, on completion of the work, securely fence off, fill in, or otherwise make safe that quarry or other excavation.
- (4) Where any damage is caused to cultivated land, a tree, fence, building or any other improvement as a result of the exercise of a power in terms of this section, the owner or occupier of the land concerned is entitled to compensation referred to in section 59 which compensation shall be paid by the Agency.

25. Undermined ground

- (1) Where it becomes necessary in the interests of the public to deviate or reconstruct an existing public road owing to the fact that the ground has been undermined subsequent to the creation of that road, the Agency may instruct the mining company or other person responsible for such undermining to make safe that road in accordance with the requirements of the Minerals and Petroleum Resources Development Act.
- (2) Failing compliance with such instructions within a reasonable time, the Agency may undertake the work required and recover the cost from that mining company or other person.

CHAPTER III: CONSTRUCTION WORKS**26. Power of Agency with respect to construction works**

The Agency may undertake construction works on any public road or on any other land under its control.

27. Agency may undertake construction works on unclassified roads

The Agency may undertake construction works on a road that is not a classified road-

- (a) if, in the opinion of the Agency, it is necessary to do so in connection with construction works on an adjoining classified road;
- (b) if, in the opinion of the Agency, undertaking the construction work would be of benefit to classified roads in the vicinity of the road on which the work is being carried out;
- (c) if undertaking the construction works have been requested by, and is to be funded by, another person or organ of state; or
- (d) if the construction works undertaken by the Agency is funded by money appropriated by Parliament or the Legislature.

28. Notice of undertaking construction

- (1) Where the Agency intends to construct a road, excluding the repair or maintenance of a road, it shall inform the public timeously of that construction if it will substantially affect the flow and safety of traffic.
- (2) The Agency may for the purpose of construction works and subject to the provisions of the National Road Traffic Act, 1996 (Act No. 93 of 1996),
 - (a) close any public road or portion thereof temporarily to all traffic in order to carry out the proposed construction works; or
 - (b) close any public road or portion thereof temporarily or permanently to any specific class of traffic, and for that purpose it may deviate that public road.
- (3) The Agency shall serve a copy of the notice referred to in subsection (1) on the municipality within whose area of jurisdiction the construction works will be undertaken.
- (4) A notice ceases to be effective if the construction works to which it relates are not substantially started on or within 60 days from the date specified in the notice.
- (5) Where any damage is caused to an owner of land as a result of any deviation in terms of subsection (1), the owner is entitled to compensation in accordance with the provisions of section 59, which compensation shall be paid by the Agency.

29. Definition of "construction works"

For the purposes of this Chapter, "construction works" means any construction on or in the vicinity of a road for the purpose of facilitating the use of the road as such, the regulation of traffic on the road or the carriage of services across the road, but does not include routine maintenance works or the construction or maintenance of a traffic control facility, and "carry out construction works" includes carrying out any activity in connection with construction works.

CHAPTER IV: FENCES, GATES, MOTOR GRIDS, SERVICES AND OTHER STRUCTURES

30. Fencing of public roads

- (1) The Agency may, based on objective criteria prescribed by regulations, erect fencing adjacent to a public road.
- (2) The Agency shall, subject to the Fencing Act, maintain a fence erected as contemplated in subsection (1) above and the Agency may agree with the owner of the land adjacent to the road reserve concerned to maintain that fence and that agreement may include provisions in relation to the contributions by the Agency or the owner, as the case may be.

31. Fence, gate or motor grid necessitated by deviation

- (1) Gates or motor grids required in existing fences owing to deviations of roads or the construction of new roads by the Agency shall be provided and erected by the Agency, based on objective criteria prescribed by regulations, and shall be maintained in accordance with the provisions of section 30
- (2) When the construction of a new road or a deviation of an existing road necessitates the removal and re-erection of an existing fence, gate or motor grid, that removal and re-erection and the making of bypasses leading to that motor grid shall be undertaken at the expense of the Agency.

32. Agency may order removal of fences, gates and motor grid

- (1) The Agency may order the removal of fences, gates, motor grids or other enclosures or obstructions, if constructed contrary to the provisions of this Act or of the Fencing Act, or it may remove those fences, gates, motor grids or other enclosures or obstructions at the expense of the owner or other person responsible therefore.

- (2) For the purpose of preventing an obstruction on a public road or to ensure the safety of persons using the public road or to ensure the free flow of a watercourse that crosses a public road, the Agency may direct the owner or occupier of any land near that road –
 - (a) to alter a fence on the land; or
 - (b) to repair any such fence.
- (3) The directive may specify the manner in which or the standard to which and the period within which the directive shall be complied with.

33. Installation of services in, over, under or across a public road

- (1) After the publication of a notice contemplated in section 9 or 13, a service provider who wishes to construct a pipeline, electricity line or cable, a line or cable for telecommunication purposes, or any other structure adjacent to, on, over, under the areas described in section 12(1) or within the road reserve shall do so in accordance with an agreement with the Agency.
- (2) Services may, unless agreed to by the Agency, only be installed in the verge of a public road.
- (3) An agreement contemplated in subsection (1), shall provide for the responsibility to move the services in the case where a road is deviated, altered or closed and the responsibility for the cost in relation to moving those services.
- (4) Any person or service provider wishing to lay, construct, alter or add to any pipeline, electricity line or cable, line or cable for telecommunication purposes, or any other structure adjacent to, on, over or under a public road, over or under an existing public road shall do so at their own expense.
- (5) If the construction of a new public road or the deviation of an existing public road interferes with existing arrangements for the services outside the road reserve, the Agency shall to such extent as it considers adequate and in such manner as it considers suitable, at its own cost provide and maintain means for such services on, over, or under, across or adjacent to that new road or deviation.

- (6) If a service provider has lain, constructed, altered or added to any pipeline, electricity line or cable, or a line or cable for telecommunications purposes other than in agreement with the Agency, the Agency may in the manner prescribed remove that pipeline, electricity line or cable or that line or cable for telecommunications purposes at the expense of the service provider concerned.

34. Structures adjacent to and on public roads

- (1) A person may not, without the prior written authorisation of the Agency, 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 public road so as to encroach on that road.
- (2) If the Agency has declared a road to be a building restriction road, erecting structures in an area consisting of land –
- (a) situated in an urban area alongside a public road within a distance of 16 metres from the centre line of the road in question;
 - (b) situated alongside a public road within a distance of 95 metres from the centre line of the road in question; or
 - (c) situated within a distance of 500 metres from a point of intersection of a public road and any other road, or of a public road and a railway line, is prohibited unless in accordance with the prior written consent of the Agency and on the conditions determined by the Agency.
- (3) If the Agency grants authorisation to construct a structure or imposes an obligation to remove a structure as a condition imposed under subsections (1) or (2), the registrar of deeds shall, upon the written request of the Agency, endorse the authorisation or obligation on the title deed of the land in question and in the appropriate registers in the office of the registrar of deeds and the cost in connection with the registration or endorsement shall be paid by the person to whom the authorisation or obligation has been granted or imposed on.
- (4) A person, who without the authorisation required under subsection (1) above or contrary to the terms and conditions of the authorisation, constructs any structure or other thing, or grants permission therefore, shall, if the Agency has by notice in writing directed him or her to do so, remove the structure,

alteration or addition within the period stated in the notice which may not be less than 14 days.

(5) Subject to subsection (6), the Agency may remove a structure, alteration or addition for which the Agency has by notice in terms of subsection (3) above directed the removal and which has not been removed within the period stated in the notice.

(6) If a hazardous or dangerous situation requiring urgent action arises in the public interest, the Agency may, without first directing its removal under subsection (3), remove any structure, alteration or addition which has been constructed adjacent to, on, over or below the surface of a public road without the authorisation prescribed in terms of subsection (1) or (2) above or contrary to

the

terms and conditions of any authorisation.

(7) Notwithstanding anything to the contrary in any other law, the Agency may remove or relocate any structure constructed, on or over or below the surface of a public road or other land situated within 16 metres from a public road before the commencement of this Act or before the date on which the public road at issue is classified in terms of section 3.

(8) The Agency may recover the cost of any removal or relocation contemplated in this section from the appropriate person or body.

CHAPTER V: WATER LEVELS AND STORMWATER

35. Raising of water level

(1) A person may not cause the level of the water of a river, stream, spruit, stormwater drainage or other watercourse to rise so as to interfere with the use of a public road, bridge or drift unless he or she has obtained written authorisation from the Agency in the prescribed manner.

(2) The Agency may grant authorisation subject to such conditions it considers necessary and that authorisation may be withdrawn.

- (3) Where a new township is established and the establishment of that township necessitates any alterations to an existing public road, the person or organ of state responsible for the establishment of the township shall contribute to the alteration of that road as agreed with the Agency.

36. Disposal of stormwater

- (1) The Agency may dispose of stormwater in the prescribed manner and under the prescribed conditions.
- (2) Where the disposal of stormwater requires diversion onto land adjacent to a public road and an agreement cannot be reached with the owner of land to so divert stormwater, the Agency may –
 - (a) in accordance with the provisions of Chapter VIII acquire such portion of the land concerned as it considers necessary for that purpose; or
 - (b) by notice in the *Gazette* acquire a right in the land concerned so as to divert stormwater to a public stream or natural water course leading to a public stream.
- (3) Where the Agency acquires a right in terms of subsection (2)(b) above –
 - (a) the registrar of deeds shall register such right on the title deed of the land concerned;
 - (b) the owner is entitled to compensation referred to in section 59 which compensation shall be paid by the Agency.

CHAPTER VI: ADVERTISING ON ROADS

37. Prohibition of certain advertisements on or adjacent to public road

- (1) Subject to subsection (2) a person may not display an advertisement on a public road or permit it to be displayed unless in the prescribed manner.
- (2) A person who displays an advertisement or permits it to be displayed contrary

to the provisions of subsection (1) above shall, if the Agency has, by notice in writing, directed the 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 Agency may remove any advertisement which the Agency has by notice under subsection (1) above directed to be removed and which has not been removed within the period stated in the notice, and recover the cost of removal from the person who displayed the advertisement or permitted its display.
- (4) For purposes of this section, unless the contrary is proved-
 - (a) an advertisement is deemed to be displayed-
 - (i) by the person who erected it or otherwise caused it to appear; or
 - (ii) in the case of any advertisement relating to a product or article produced or manufactured by a particular person, or to a service rendered by a particular person, or to a business, undertaking or place owned by a particular person, by that person;
 - (b) an advertisement which is within 500 metres of and visible from a public road is deemed to have been displayed after the commencement of this Act; and
 - (c) a person who owns or occupies land whereon an advertisement has been erected in contravention of this Act or regulations hereunder is deemed to have erected the advertisement or permitted its erection.

CHAPTER VII: RESTING PLACES FOR PERSONS AND LIVESTOCK

38. Declaration and Reclassification of resting place

- (1) The Agency may, by notice in the *Gazette*, declare that a property adjacent to a public road is or ceases to be a resting place for persons or livestock, and in that notice determine the size of that resting place, and may amend the size or alter the location of a declared resting place for persons or livestock.
- (2) A notice referred to in subsection (1) above shall contain the prescribed information.

- (3) The Agency may not publish the notice referred to in subsection (1) above unless it is satisfied that the land taken up by that resting place for persons or livestock, is shown on a plan which is available for inspection at the offices of the Agency or that such land has been demarcated by the erection of beacons or any other suitable means.
- (4) The MEC shall prescribe the manner of control over and improvement in a resting place for persons or livestock.

39. Impounding uncontrolled livestock

The Agency may remove uncontrolled livestock from a public road or a road reserve and impound that livestock under any applicable law, or where that livestock cause an immediate danger to the traffic on that public road or caused an accident on that public road, subject to the provisions of any other law dispose of that livestock in the prescribed manner, including killing it.

CHAPTER VIII: LAND

PART A: ACQUISITION AND DISPOSAL

40. Power to acquire land

The MEC may, on recommendation of the Agency, and subject to the North West Land Administration Act, and in accordance with any environmental planning instrument or development planning instrument, acquire land for the purposes of establishment, control, administration or management of a public road.

41. Procedure for acquiring land

- (1) If the Agency identifies land for acquisition, the Agency shall, in consultation with the MEC –
 - (a) by notice in the *Gazette* make known the intention to acquire that land;
 - (b) negotiate in good faith with the owner of that land to acquire the land.
- (2) If an agreement in relation to for acquisition of the land concerned cannot be reached, the matter may be referred to-

- (a) a registered professional valuer to determine the market value of the land concerned where the disagreement relates to price; or
 - (b) a mediator who is registered with the Arbitration Foundation of South Africa, and who has proven expertise on land matters where the disagreement relates to the market value determined in terms of paragraph (a), or any other reason.
- (3) The Agency is responsible for any cost incurred as a result of any action taken in terms of subsection (2) above.
- (4) If after mediation, an agreement can still not be reached, the Agency may recommend to the MEC that the land concerned be expropriated as contemplated in Expropriation Act.

42. Registration by Registrar of Deeds

The Agency shall notify the Registrar of Deeds of any land acquired in terms of this Act and the Registrar shall update the registry of deeds accordingly, reflecting the North West Provincial Government as the owner of that land.

43. Compensation provided in form of land

- (1) The purchase price in the case of an agreement or the compensation in the case of expropriation may be in the form of land.
- (2) A person to whom the purchase price is paid or compensation is provided in the form of land, is to be treated as having 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 the person's claim.
- (3) No transfer duty is payable under the Deeds Registries Act, in respect of the conveyance or transfer of any such land.

44. Effect of acquisition of land

On the acquisition of land under this Chapter, the land vests in the North West Provincial Government in accordance with the Expropriation Act.

45. Circumstances under which MEC is under obligation to expropriate land

If any land is or will be divided by a road in a manner that the land or any part of it is or will be useless to the owner, the MEC shall expropriate the land or the part of the land in question.

PART B: ENTRY ON LAND

46. Power of entry

For the purposes of this Act, an authorised person may enter any land in the prescribed manner and on the prescribed conditions.

47. Compensation

A person, who has suffered damages as a result of the exercise of any function under this Part, is entitled to be compensated by the Agency in accordance with section 59.

CHAPTER IX: LIABILITY AND INDEMNIFICATION OF AGENCY AND CLAIMS PROCEDURE

48. Exemption of certain persons from personal liability

A staff member of the Agency, or a person authorised by the Agency, does not incur any liability for anything done in terms of this Act if it was done in good faith for the purpose of executing this Act.

49. Limitation of liability of Agency in general

The Agency is not liable for any claim or damages arising from the existence, construction, use or maintenance of any public road, except where the loss or damage was caused by the wilful or negligent act or omission by a staff member of the Agency or a person authorised by the Agency to perform any function on its behalf.

50. Submission of claim

- (1) Any claim arising from the existence, construction, use or maintenance of any public road for which the Agency is responsible as determined in accordance with section 2, shall be submitted to the Agency.
- (2) Any claim received by the Agency in terms of subsection (1) above shall be heard by the Agency in the prescribed manner.

CHAPTER X: ENFORCEMENT OF ACT**51. Persons authorised to enforce this Act**

Any

- (a) official in the employ of the department;
- (b) staff member of the Agency,
- (c) person authorised by the Agency;
- (d) traffic officer appointed in terms of section 3 of the North West Road Traffic Act, 1997 or section 3A of the National Road Traffic Act, 1996;
- (e) a member of the national or a municipal police service appointed in terms of the South African Police Service Act, 1995,

is authorised to enforce the provisions of this Act but in the case of a person authorised by the Agency, the Agency shall in writing determine the extent to which that person is authorised to enforce this Chapter.

52. Service of document or notice

- (1) Any document or notice that is authorised or required by or under this Act to be given to or served on any person, other than a company or close corporation, may be given or served –
 - (a) personally to or on that person;
 - (b) by means of a letter addressed to that person and sent by registered post to the last known place of business or residence of that person;
 - (c) by means of a letter addressed to that person and left at that person's last known place of residence with a person who appears to be of or above the age of 16 years and to reside at that address.

- (2) Any document or notice that is authorised or required by or under this Act to be given to or served on any company or close corporation may be given or served:
 - (a) by means of a letter addressed to that company or close corporation and sent by registered post to the address of any of its registered offices; or
 - (b) by means of a letter addressed to that company or close corporation and left at the address of any of that company's or close corporation's registered offices with a person who appears to be of or above the age of 16 years and to be employed at that address.

- (3) Without limiting the generality of subsections (1) and (2) above, any notice that is authorised or required by or under this Act to be given to or served on the owner or occupier of land –
 - (a) may be given or served by means of a letter addressed to the owner or occupier and affixed to some conspicuous part of the land; or
 - (b) if the whereabouts of the owner are not known, by publication of that notice in the *Gazette* and in at least one newspaper circulating in the district in which that land is situated.

- (4) Any direction or notice that is required to be served on the owner or occupier of land is taken to be duly served if, where there is more than one owner or occupier, it is served on any one of the owners or occupiers.

- (5) If provision is made by or under this Act for the serving or lodging of a notice or other document with a municipality or other organ of state, it is sufficient if the

notice or other document is sent by registered post to, or lodged at, an office of that municipality or other organ of state.

53. Production of information

- (1) The Agency may request any person, a municipality or other organ of state to provide information relevant to the administration of this Act, within the period specified in that request.
- (2) If a person authorised in terms of section 51 suspects on reasonable grounds that the owner or occupier of land or any other person has committed an offence under this Act, that person may, subject to section 35(1)(b) of the Constitution, require the owner, occupier or person to provide, either verbally or by a signed statement, any information required by him or her, including –
 - (a) such documents as are in the owner's, occupier's or other person's possession or control; and
 - (b) such other information relevant to the suspected offence.

54. Enforcement of certain directives

- (1) A directive given under this Act shall be in writing, and may be given or served as required in terms of section 52 and may be varied or revoked by a further directive in writing so given or served.
- (2) A directive may be given verbally in cases of emergency.
- (3) The Agency may take such action as is necessary to give effect to a directive under this Act if the directive is not complied with in accordance with its terms and conditions.
- (4) The costs incurred by the Agency in taking action under this section are recoverable from the person to whom the directive was given, as a debt, in a court of competent jurisdiction.
- (5) Nothing in this section authorises the Agency to recover an amount greater than that necessary to give effect to the directive.

55. Rectification of damage

- (1) The Agency may before or after or instead of prosecuting a person for a contravention of this Act and after giving the person reasonable notice of its intention to do so, take such action as is necessary to rectify the contravention.
- (2) The costs incurred by the Agency in taking any such action are recoverable from that person, as a debt, in a court of competent jurisdiction.

56. Recovery of debts

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

57. Resolution of disputes between organs of state

Any dispute which may arise between the MEC and the Agency, the MEC and a municipality or other organ of state or the Agency and a municipality or other organ of state, shall be resolved in accordance with the provisions of the Intergovernmental Relations Framework Act.

58. Resolution of disputes between Agency and member of public

- (1) Any member of the public who made a submission to the Agency with respect to any action taken by the Agency in terms of this Act, and who is aggrieved by the decision of the Agency in connection with that action, may appeal, on payment of the prescribed fee, to the MEC in the prescribed manner against that decision.
- (2) An appeal shall be in writing specifying the grounds of appeal and shall be served on the MEC not later than 30 days after the Agency has announced that it has decided to proceed with the proposed action, and a copy of the appeal shall be served on the Agency within that same period.
- (3) The MEC shall convene a hearing within 60 days after receiving the appeal.

- (4) The constitution of the panel hearing an appeal, the procedural and evidentiary requirements for the hearing and any other requirements which may be necessary for the hearing of appeals shall be prescribed.
- (5) After hearing the appeal, the MEC may confirm, vary or set aside the decision of the appeal.

59. Compensation and payment of equitable relief

- (1) The amount of compensation for -
 - (a) damage caused as a result of any action taken under this Act or as a result of the exercise of any power under this Act;
 - (b) the removal of any materials under this Act;
 - (c) acquisition of land or property for public purposes or in the public interest;
 - (d) expropriation of land for a public road,

shall be agreed upon by the Agency and the affected person and where the parties have failed to agree on the amount for compensation in the case of acquisition and expropriation as contemplated in with paragraphs (c) and (d) above, the compensation shall be determined in accordance with the Expropriation Act.

- (2) Where the MEC is of the opinion that serious damages have or will be incurred by the exercise of any power of expropriation, the MEC may in his or her discretion authorise payment by way of equitable relief where no payment or compensation is claimable.
- (3) If it is necessary for the achievement of the purposes of this Act, the MEC may, in accordance with section 25 (2) and (3) of the Constitution, expropriate any land or any right therein and pay compensation in respect thereof.
- (4) Sections 6, 7 and 9 (1) of the Expropriation Act, shall apply to any expropriation in terms of this Act, excluding expropriation of the road reserve through the declaration of a road as contemplated in section 19(1) and any references in the sections concerned to the word 'Minister' shall be construed as a reference to the word 'MEC' as defined in this Act.

CHAPTER XI: PROHIBITIONS, OFFENCES AND PENALTIES**60. General prohibition relating to public road**

- (1) It is an offence to, without authorisation by the Agency in terms of subsection
- (2) or contrary to the terms and conditions of that authorisation –
- (a) close or deviate any public road;
 - (b) encroach on any public road by constructing a fence, gate, motor grid, other structure or other obstacle adjacent to, on, over or under such road;
 - (c) leave or place any obstructions on a public road which may be dangerous to traffic or other road users;
 - (d) leave or place or throw any garbage, earthenware, glass, tins, nails, pieces of metal, timber, tree stumps, boulders or stones or any other material on any roadway or road reserve;
 - (e) abandon any vehicle or part thereof on a roadway or in the road reserve;
 - (f) subject to section 30 of the National Environmental Management Act, spill any fuel or other chemical material or gas on any road surface, calculated to damage such road or endanger traffic on the road;
 - (g) dig up, remove or alter in any way the soil, surface, gravel, cuttings, banks or drains of any public road;
 - (h) construct, place or exhibit any board, notice, framework, scaffolding or other device by means of which an advertisement of any kind could be displayed adjacent to, in, above or on any public road unless in accordance with this Act;
 - (i) paint or affix any figure, letter, drawing, sign, symbol or other like object on a public road unless in accordance with this Act or the National Road Traffic Act;
 - (j) in any other way than contemplated in paragraphs (a) to (i) damage the road surface; or
 - (k) spill or allow irrigation water to be spilled on a road or into any storm water structure.
- (2) The Agency may authorise, in writing, under such conditions as it may determine or as may be prescribed, including a condition providing for the payment of fees, and during such period as the authorisation may permit, the undertaking of an act prohibited under subsection (1) above if the Agency is satisfied that no damage to the public road or prejudice to the public can result therefrom.

- (3) The Agency may at any time withdraw any authorisation granted by it in terms of subsection (2) above.

61. Prohibition of trading on or adjacent to public road

- (1) A person may not, without the written authorisation of the Agency, or contrary to the terms and conditions of that authorisation or except upon premises approved by the Agency, carry on any trade, deliver pursuant to a sale, offer or manufacture for sale any goods on a public road or within 16 metres of the boundary of the public road where the carrying on of the trade, delivering, offering, or manufacturing for sale would constitute a safety hazard on a public road.
- (2) An Official referred to in section 51 may require a person suspected on reasonable grounds of contravening the provisions of subsection (1) above to produce written authorisation, as contemplated in that subsection, failing which the authorised official:
- (a) shall request the person concerned to provide his or her full name, identity number and residential address, including any telephone or other contact information and any other relevant documentation to confirm the information; and
 - (b) shall order that person to remove all articles reasonably related to the contravention of subsection (1) above, including any structure, tent, vehicle, instrument or other object related to the commission of the offence; or
 - (c) seize all articles contemplated in subparagraph (b) in accordance with the Criminal Procedure Act;

62. Prohibition of certain acts in resting place for persons or livestock

- (1) It is an offence to -
- (a) use any resting place without the written authorisation of the Agency for persons or livestock for any purpose other than that prescribed;
 - (b) bring any vehicle or any instrument on a resting place for persons or livestock unless such vehicle is used for the conveyance or trekking or driving of livestock on a public road or unless such vehicle or implement is necessary for the care of such livestock in the resting place for livestock;
 - (c) remain for longer than twenty-four consecutive hours with or without livestock in a resting place for persons or livestock unless that person is

- road;
- (b) attach to a gate on a public road any spikes or anything else which may cause injury to persons or animals or damage to property;
- (c) use a motor grid in any manner other than for the passage of a permitted vehicle; or
- (d) willfully damage or remove a fence, gate or motor grid.

66. Offence relating to employment status

It is an offence for a person to falsely hold himself or herself out to be an employee, agent or contractor of the Agency or the Department for the purpose of assuming any right or prerogative in terms of this Act.

67. Offences in general

It is an offence for any person to -

- (a) fail or refuse to comply with any notice served under this Act;
- (b) wilfully obstruct, resist or hinder any official or authorised person in the lawful exercise of any power conferred under this Act;
- (c) move, remove, damage or destroy any peg, beacon or other means of identification placed on, in, over or under or attached to land for the purposes of this Act by or on behalf of the Agency;
- (d) wilfully furnish false or misleading information in any statement which is required by virtue of this Act to the MEC or the Agency; or
- (e) refuse to or fail to comply with a directive given by the Agency or an authorised person.

68. Penalties

- (1) A person guilty of an offence under this Act is liable for a fine or imprisonment not exceeding five years, or to both a fine and imprisonment.
- (2) The provisions of subsection (1) above does not preclude the Agency from recovering the full amount of all costs incurred by the Agency in the execution of any work necessary to restore the public road concerned to its former state less the amount of any fine paid in terms of that subsection, from any person liable therefor.

CHAPTER XII: GENERAL

69. Regulations

- (1) The MEC may, by notice in the *Gazette*, make regulations not inconsistent with this Act with regard to any matter that is required or permitted to be prescribed in terms of this Act or in relation to any power granted or function or duty imposed by this Act.
- (2) The MEC shall publish a draft of the proposed regulation in the *Gazette* 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.
- (3) The MEC may amend the draft regulations, as a result of any comments received, and may, may not publish any amendments effected to the regulations as a result of comments from the public.
- (4) The MEC may publish any regulation without consultation as contemplated in subsection (2), if circumstances necessitate the immediate publication of a regulation, and if the MEC is of the opinion that such immediate publication will not adversely affect the public.

70. Exemptions

- (1) The MEC may, if reasonable grounds exist, exempt the Agency, other organ of state or any person from any provision of this Act.
- (2) The MEC may if reasonable grounds exist, extend any period of time prescribed in relation to anything provided for in this Act

71. State bound by Act

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

72. Repeal and amendment of laws

The laws referred to in the second column of the Schedule is hereby amended or repealed to the extent indicated in the third column of the Schedule.

73. Transitional provisions

- (1) Until the establishment of the Agency, all the powers and functions of the agency referred to in this Act shall be exercised and performed by the Department.
- (2) Any road which had been proclaimed and declared a main road, provincial road, district road, divisional road, trunk road, minor road, public path or local road under the Roads Ordinance, 1957 (Transvaal), the Roads Ordinance, 1976 (Cape) or the Bophuthatswana Roads Act, 1976 shall be deemed to be so proclaimed and declared for the purposes of this Act until such time as the responsibility for these roads has been allocated or assumed as contemplated in section 4.
- (3) An access road declared as such in terms of the of Roads Ordinance, 1957 (Transvaal) the Roads Ordinance, 1976 (Cape) or the Bophuthatswana Roads Act, 1976 shall be deemed to be an access road declared under this Act.
- (4) Notwithstanding anything to the contrary in this Act, all roads, fences, motor grids, services and other structures constructed in accordance with and not contrary to any law repealed by this Act, is deemed to have been lawfully constructed under this Act and shall be administered in terms of this Act.
- (5) Any advertisement that has been erected within 500 metres from a public road at the commencement of this Act, shall comply with section 37(1) and if that advertisement does not so comply, the person responsible for the erection of that advertisement shall apply to the Agency for permission to display that advertisement until it can be altered or moved in compliance of section 37(1).
- (6) The Agency may determine that the advertisement referred to in subsection (5), may be displayed contrary to section 37(1) for a period not exceeding three months, or that it shall be removed in accordance with section 37.
- (7) Proclamations, notices, regulations, permissions, authorisations and consents 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

- (8) An expropriation commenced or proceedings for the determination of compensation instituted before the commencement of this Act in terms of any law repealed by this Act shall be concluded as if this Act had not been promulgated, but parties may agree to proceed with such expropriation or proceedings in accordance with the provisions of this Act.
- (9) An application submitted for an authorisation, consent or permission in terms of any law repealed by this Act shall be concluded in terms of this Act, where appropriate.
- (10) Any claim submitted or appeal lodged in terms of any law repealed by this Act shall proceed as if this Act has not been promulgated but the parties may agree to proceed with such claim or appeal in accordance with the provisions of this Act.
- (11) Any outspan, rest camps and rest places or stock camp which has been declared, defined, beaconed off or otherwise demarcated as such in terms of the provisions of the Roads Ordinance, 1957 (Transvaal) the Roads Ordinance, 1976 (Cape) or the Bophuthatswana Roads Act, 1976,, shall be deemed to be a resting place for persons or livestock declared as such in terms of the provisions of Chapter VII.
- (12) Until the organ of state responsible for the management of a specific public road has been identified as contemplated in section 2, the organ of state that was responsible for the management of that road at the commencement of this Act, remains responsible for its management.
- (13) If a person, municipality or other organ of state, has at the commencement of this Act initiated the construction of a public road or started with work to undertake maintenance or any other work on a public road for which the Agency is responsible at the commencement of this Act, on an agency or any other basis, that person, municipality or other organ of state shall inform the Agency of that construction, maintenance or other work and as far as possible complete it in conformity with the requirements of this Act.

74. Short title and commencement

- (1) This Act is called the North West Roads Act, 2008 and commences on a date to be determined by the MEC 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 MEC for this purpose.

SCHEDULE

21 of 1940	Advertising on Roads and Ribbon Development Act, 1940	The whole.
22 of 1957	Roads Ordinance, 1957 (Transvaal)	The whole
19 of 1976	Roads Ordinance, 1976	The Whole
3 of 1976	Bophuthatswana Roads Act	The Whole

PROVINCE OF THE NORTH WEST

ROADS AGENCY BILL

(as submitted to the Provincial Legislature of the North West)

The English text is the official text of the Act)

(MEC FOR ROADS AND TRANSPORT)

[B —2007]

ISBN

ACT

To provide for the establishment of a roads agency as a public entity with legal persona; to provide for the relationship between the MEC and the Agency; to provide for the powers, functions, governance and financial management of the Agency; and to provide for ancillary matters.

CONTENTS

Section	Page
CHAPTER I: DEFINITIONS, OBJECTIVES AND CUSTODIANSHIP	4
1. Definitions	4
2. Objectives of Agency	5
3. Custodianship of public roads.....	5
CHAPTER 2: ESTABLISHMENT AND POWERS AND FUNCTIONS OF AGENCY	6
4. Establishment of North West Roads Agency.....	6
5. Management functions of Agency	6
6. Responsibility for public roads	7
7. Toll roads	7
8. Standards and guidelines	8
9. Performance of function on behalf of person, municipality or other organ of state	9
10. General powers.....	9
11. Advisory and technical bodies	11
CHAPTER 3: DEPARTMENTAL OVERSIGHT AND EXECUTIVE AUTHORITY	12
12. Executive authority.....	12
13. Investigations	12
14. Information	13
15. Instructions.....	13
16. Regulations	13
17. Delegation by MEC	14
18. Exemption and extension.....	14
CHAPTER 4: GOVERNANCE OF AGENCY	14
19. Role of Agency.....	14
20. Constitution of board	15
21. Nomination procedure.....	15

22.	Disqualification from appointment as member of board, vacation of and removal from office.....	16
23.	Appointment of member to vacant seat.....	18
24.	Chairperson and deputy chairperson.....	19
25.	Term of office.....	19
26.	Decisions of board.....	20
27.	Meetings of board.....	20
28.	Duties of board.....	21
29.	Executive management and staff.....	22
30.	Committees.....	22
31.	Executive Committee.....	23
32.	Delegations by board.....	24
CHAPTER 5: FUNDING, STRATEGIC AND FINANCIAL MANAGEMENT OF AGENCY.....		25
33.	Financial year.....	25
34.	Funding.....	25
35.	Submission of annual budget and strategic plan.....	25
36.	Financial management, financial statements and annual report.....	25
37.	Contents of strategic plan.....	25
CHAPTER 6: GENERAL PROVISIONS.....		27
38.	Transfer duty and stamp duty.....	27
39.	Indemnity.....	27
40.	Procedural fairness.....	27
41.	Offences.....	28
42.	Repeal and amendment of laws.....	28
43.	Transitional provisions.....	28
44.	Short title and commencement.....	30
SCHEDULE.....		31

CHAPTER I: DEFINITIONS, OBJECTIVES AND CUSTODIANSHIP

1. Definitions

In this Act, unless the context otherwise indicates-

“**Agency**” means the North West Roads Agency, established under section 4;

“**best practice**” means a desirable process, procedure, method or system;

“**board**” means the North West Roads Agency Board appointed in terms of section 21;

“**department**” means the Department of Roads, Transport and Community Safety;

“**ensure**” means to take all reasonably necessary and expedient steps in order to achieve the purpose, objective or intention of this Act or a provision of this Act;

“**Gazette**” means the Provincial Gazette;

“**MEC**” means the Member of the Executive Council of the North West Province responsible for roads and the Agency;

“**organ of state**” has the meaning assigned to it in section 239 of the Constitution of the Republic of South Africa, 1996;

“**prescribed**” means prescribed by regulation;

“**Province**” means the North West Province;

“**Public Finance Management Act, 1999**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**road**” means a public road as defined in section 1 of the of the Roads Act, 2007, and includes the road reserve as defined in that Act;

“**road network**” means the public road network within the boundaries of the Province; and

“**road safety**” means integrated planning for the purpose of providing a safe road network, public information and education;

“**Roads Act, 2007**” means the Roads Act, 2007, (Act No. of 2007); and

“**this Act**” includes any regulations promulgated by the MEC under section 16 and any standards published by the Agency in terms of section 8.

2. Objectives of Agency

The objectives of the Agency are to manage the road network and road safety in the Province -

- (a) in accordance with the principles enshrined in section 195 of the Constitution and any legislation regulating good governance and public service delivery;
- (b) in a manner that will provide a road network that will promote economic growth and minimise transport cost to the economy in the Province, (hereafter called the “economic network”);
- (c) in a manner that will provide progressive realisation of equitable road access to all communities within the Province (hereafter called the “social network”);
- (d) in accordance with the principles of immovable asset management as contemplated in the Government Immovable Asset Management Act, 2007;
- (e) so as to minimise the effect of the road network on the environment;
- (f) so as to limit the use of energy;
- (g) so as to provide a safe road traffic environment; and
- (h) in conformity with the development planning initiatives of the Province; and
- (i) in compliance with standards and guidelines identified in terms of section 8.

3. Custodianship of public roads

The custodianship of public roads within the Province and for which responsibility has been allocated to the Agency in terms of section 2 of the Roads Act, 2007 or a new road which is declared as a public road in terms of section 19 of the Roads Act, 2007, vests in the MEC.

CHAPTER 2: ESTABLISHMENT AND POWERS AND FUNCTIONS OF AGENCY

4. Establishment of North West Roads Agency

The North West Roads Agency is hereby established as a juristic person and is a public entity as contemplated in section 48(1)(d) of the Public Finance Management Act, 1999.

5. Management functions of Agency

(1) The Agency must ensure the provision of a safe and efficient road network and for that purpose it must manage the planning, design, construction and maintenance of public roads for which responsibility has been allocated to it in terms of section 2 of the Roads Act, 2007, in accordance with its objectives.

(2) The Agency must implement a roads management system, which must at least provide for the planning, design, construction and maintenance of public roads for which responsibility has been allocated to it in terms of section 2 of the Roads Act, 2007.

(3) The Agency must manage road safety in the Province.

(4) For the purpose of subsection (3), the Agency must establish an integrated road safety management system that facilitates the determination and monitoring of road traffic safety goals for the Province in respect of road design and construction, traffic safety education and subject to the Road Traffic Management Corporation Act, 1999 (Act No. 20 of 1999), traffic law enforcement and road traffic offence adjudication.

6. Responsibility for public roads

(1) The Agency must, within the first two years of its establishment, determine criteria in accordance with which a decision may be taken as to which organ of state will be responsible for the planning, design, construction and maintenance of a particular road.

(2) The criteria referred to in subsection (1) must be determined by a forum consisting of the MEC, the Agency, representatives of the municipalities in the Province and the South African National Roads Agency.

(3) Whenever a new public road is contemplated, it must be done in accordance with the integrated development plan for the area concerned and the responsibility for that public road must be allocated to or assumed by an organ of state in accordance with the criteria determined in terms of subsection (1).

(4) The responsibility for the management of public road may be shared by different organs of state in any manner agreed by them.

7. Toll roads

(1) The Agency may, in accordance with the strategic plan and with the approval of the MEC, by notice in the *Gazette*, declare any public road or part thereof within the Province to be a toll road.

(2) The Agency may, with the approval of the MEC, by notice in the *Gazette*, impose a toll for the use of a toll road in accordance with the strategic plan and budget of the Agency.

(3) The MEC may, after consultation with the Agency, make regulations in connection with-

- (a) collection of toll fees;
- (b) rebate of toll fees;
- (c) exemption from the payment of toll fees;
- (d) periods of time during which tolls fees are levied;
- (e) the places where tolls are levied;
- (f) the categories of vehicles in relation to which tolls are levied.

- (4) Different toll fees may be imposed in for-
- (a) different toll roads;
 - (b) different categories of motor vehicles;
 - (c) different categories of road users;
 - (d) different times of the day.

(5) The Agency must, in accordance with section 40, consult with the municipalities and the public that are affected by the declaration of a toll road in terms of this section.

(6) Any toll imposed in terms of this section constitutes a debt to the Agency and may be collected by the Agency in a court of competent jurisdiction.

(7) Where the Agency has in terms of section 10(p) appointed a service provider to perform any function in terms of this section on its behalf, that service provider is authorised to collect the toll imposed in terms of this section.

8. Standards and guidelines

(1) The Agency may identify best practices or standards that may serve as technical standards for road planning, design, construction and maintenance.

(2) The Agency must, by notice in the *Gazette*, publish the standards identified in terms of subsection (1) as a standard to be applied within the Province.

(3) The Agency may, by notice in the *Gazette*, publish guidelines in relation to the execution of any function in terms of this Act or the Roads Act, 2007.

(4) A standard published by the Agency in terms of this Act is compulsory and the Agency may incorporate any guideline issued in terms of this Act or any best practice or part thereof into that standard, but if that guideline or best practice is not incorporated into a standard, it is not compulsory and serves only as a guideline.

9. Performance of function on behalf of person, municipality or other organ of state

(1) The Agency may, at the request of any person, municipality or other organ of state, perform any function in relation to a road on behalf of that person, municipality or other organ of state or assist the person, municipality or other organ of state in the performance of the function or perform that function jointly with the person, municipality or other organ of state.

(2) The Agency may charge a fee for the performance of any function on behalf of any person or organ of state.

10. General powers

The Agency -

- (a) may determine the conditions of employment of and remuneration and allowances payable to any member of a technical or advisory body that it appoints, the Chief Executive Officer and staff members;
- (b) must in respect of the display of road traffic signs on any public road for which responsibility has been allocated to it in terms of section 2 of the Roads Act, 2007, perform the functions allocated to the MEC in section 56 of the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (c) must develop a road classification and numbering system for public roads within the Province in cooperation with the MEC, the municipalities and the national Department of Transport;
- (d) must, for the purpose of the integrated road safety management system, establish a road safety forum consisting of representatives of the Agency, the Department, the municipalities, the National Department of Transport and the Department of Justice, the North West Department of Education.
- (e) may undertake such functions in relation to promoting road safety and undertaking road safety education in the Province as allocated to it by the MEC;
- (f) may recommend road safety policies to the MEC, based on research and the state of road safety in the Province;
- (g) may advise the MEC about any matter relating to any road within the Province;
- (h) may recommend to the MEC the introduction of legislation for roads, road traffic or road safety;
- (i) must decide on the location of its head office;

- (j) may liaise with councils or associations of professional persons performing work with regard to national roads in the Republic, public roads in the Province or similar roads elsewhere;
- (k) may liaise and exchange information, knowledge and expertise with the agencies or organs of state entrusted with control over or law enforcement on roads of a national, provincial or international character in other countries, and may participate in the conferences, seminars and workshops of those agencies or organs of state and in the activities of any multinational or international association of those agencies or organs of state;
- (l) may grant a bursary, loan or subsidy to any person for study or research in any subject or field in connection with roads, or grant a subsidy to any institution or body engaged in research of that nature, if the study or research, in the Agency's opinion, will assist it in achieving its objects and performing its functions in terms of this Act or will contribute to efficiency or economy within the Agency;
- (m) may print, circulate, sell, publish and distribute any publication relating to Agency and its powers and functions;
- (n) may insure against any risk, loss or damage connected with the exercise of its powers or the performance of its functions in terms of this Act;
- (o) may acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
- (p) may obtain the services of any person, including any organ of state or institution, to perform any specific act or function on its behalf;
- (q) must establish an information, communication and technology centre;
- (r) must open and operate its own bank account;
- (s) may institute or defend any legal action in its own name;
- (t) may exercise any power and perform any function conferred or imposed on the Agency elsewhere by or in terms of this Act or by any other Act of Parliament or the North West Provincial Legislature;
- (u) may levy any fees for any function that it performs or power that it exercises;
- (v) may authorise any person to perform a function in terms of this Act or the Roads Act, 2007; and
- (w) may do anything that is necessary for or incidental to the exercise of any of its functions or the performance of any of its powers.

11. Advisory and technical bodies

(1) The Agency may establish and disestablish advisory and technical bodies, including but not limited to-

- (a) advisory committees;
- (b) boards;
- (c) fora; and
- (d) other committees and advisory groups.

(2) When establishing an advisory or technical body contemplated in subsection (1), the Agency must-

- (a) determine the number of members and the manner in which the members must be selected and appointed;
- (b) fix the duration of the appointments and all appointments for more than one year in duration must be made on a rotating basis to ensure continuity; and
- (c) specify the terms of reference and the duration of that body.

(3) When establishing a board under subsection (1)(b), the duration of which is anticipated to be more than one year, the Agency must invite nominations for board membership through the media and any other form of communication considered necessary by the Agency.

(4) Notwithstanding the provisions of subsection (3), the Agency may, on good cause shown, at any time terminate the appointment of a member of a body established in terms of subsection (1).

(5) The Agency may determine the basis on which members of the bodies contemplated in subsection (1) may be remunerated and different bases may be determined for different bodies, members and classes of members.

(6) The requirements for membership and operational procedures of an advisory or technical body are as prescribed.

CHAPTER 3: DEPARTMENTAL OVERSIGHT AND EXECUTIVE AUTHORITY

12. Executive authority

(1) The MEC is the executive authority for the Agency as contemplated in the Public Finance Management Act, 1999.

(2) The MEC -

- (a) must determine the remuneration of the board in consultation with the Member of the Executive Council responsible for Finance;
- (b) must establish and maintain clear channels of communication between him or her and the board;
- (c) must monitor and annually review the performance of the Agency;
- (d) must every third year, facilitate the review of the Agency's performance in relation to its objectives, by an external evaluation panel drawn from the public and the private sector and comprising at least-
 - (i) registered professional engineers, specializing in road infrastructure planning, design, and construction; and
 - (ii) an expert in public entity management;
- (e) may, if the performance of the Agency is found lacking, intervene by introducing corrective measures that he or she considers necessary.

13. Investigations

(1) The MEC may, at any time, request the Agency to investigate any matter he or she considers necessary against payment by the department.

(2) The MEC may, at any time, investigate the affairs or financial position of the Agency and may recover from the Agency reasonable costs incurred as a result of an investigation.

14. Information

The Agency must provide the MEC with access to any information as may be reasonably requested by the MEC.

15. Instructions

(1) The MEC may instruct the Agency to construct a public road or undertake any work in relation to a public road that has not been identified in the strategic plan of the Agency or provided for in the budget of the Agency in terms of section 35.

(2) If the MEC instructs the Agency in terms of subsection (1), the MEC must fund the construction or other work required to carry out that instruction from funds appropriated by the MEC for that purpose.

(3) The MEC must pursuant to an instruction in terms of this section, indemnify the Agency against all claims which are not related to work undertaken or performed by the Agency or which are not as a result of the wilful or negligent action or omission on the part of the Agency.

16. Regulations

(1) The MEC may, by notice in the *Gazette*, make regulations not inconsistent with this Act regarding-

- (a) any matter that is required or permitted to be prescribed in terms of this Act;
- (b) any matter relating to the functioning of the Agency or the board that is necessary to ensure the Agency's efficiency or to promote good order; and
- (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Before the MEC makes any regulation under this section, he or she must publish a draft of the proposed regulation in the *Gazette* 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.

(3) If the MEC alters the draft regulations, as a result of any comment received, he or she need not publish those alterations before making the regulations.

(4) The MEC may publish any regulation without consultation as contemplated in subsection (2), if circumstances necessitate the immediate publication of a regulation, and if the MEC is of the opinion that such immediate publication will not adversely affect the public.

17. Delegation by MEC

The MEC may delegate any powers granted to him or her by this Act in accordance with the North West Delegation of Powers Act, 1994 (Act no. 20 of 1994) and in addition to the powers contemplated in section 5 of that Act, the MEC may not delegate the power to appoint a member of the board.

18. Exemption and extension

(1) The MEC may, if reasonable grounds exist, exempt the Agency, other organ of state or any person from any provision of this Act.

(2) The MEC may, if reasonable grounds exist, extend any period of time required in relation to anything provided for in this Act.

CHAPTER 4: GOVERNANCE OF AGENCY

19. Role of Agency

(1) The Agency is an independent body and must act independently and in accordance with its mandate.

(2) The Agency is accountable to the MEC to the extent set out in this Act and the Public Finance Management Act, 1999.

(3) The Agency is managed by a board that -

- (a) gives strategic direction to the Agency;
- (b) is the accounting authority as contemplated in section 49 of the Public Finance Management Act, 1999;
- (c) is responsible for the performance of the Agency;
- (d) is accountable to the MEC for the performance of the Agency; and
- (e) is supported by a chief executive officer and other employees.

(4) The Agency communicates with the MEC through the chairperson of the board.

20. Constitution of board

(1) The board of the Agency consists of not less than nine and not more than 13 members appointed by the MEC from nominations received as contemplated in section 21.

(2) The MEC must appoint the members of the board from the following constituencies:

- (a) the mining industry;
- (b) local government;
- (c) the department;
- (d) agriculture;
- (e) the business and industrial community;
- (f) National and Provincial Treasury; and
- (g) the South African National Roads Agency.

21. Nomination procedure

(1) At the end of every term of office of a board, the current board must invite nominations for persons to be appointed to the board in the manner determined by it, from the constituencies referred to in section 20.

(2) The invitation for nominations referred to in subsection (1) must provide for nominations to be submitted within 60 days from the date of the invitation or the date of publication of the notice.

(3) On receipt of any nomination, the board must, within 30 days from the expiry date specified in the invitations or the notice, evaluate the nominations and submit its recommendations to the MEC.

- (4) When evaluating the nominations the board must take into consideration—
- (a) the nominee's knowledge and experience of the constituency that he or she is appointed from;
 - (b) the Agency's service delivery objectives.

(5) The MEC must, as soon as is practicable after the receipt of the recommendations from the board, appoint new members to the board.

(6) If no, insufficient or unsuitable nominations are received within the period specified in the invitations or the notice, the board must inform the MEC thereof in its submission referred to in subsection (3), and the MEC may, after consultation with the board, appoint to the board the required number of persons who, but for the fact that they were not nominated in terms of the procedure contemplated in this section, qualify to be appointed in terms of this Act.

(7) The MEC must, as soon as practicable after the appointment of the members of the board, publish by notice in the *Gazette*—

- (a) the name of every person appointed;
- (b) the date from which the appointment takes effect; and
- (c) the term of office referred to in section 25.

22. Disqualification from appointment as member of board, vacation of and removal from office

- (1) A person may not be appointed as a member of the board if that person—
- (a) is not a South African citizen or a permanent resident who is ordinarily resident in the Republic;
 - (b) is an unrehabilitated insolvent;

- (c) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 1973 (Act 61 of 1973), or of contravening this Act or the Roads Act, 2007;
- (d) has been convicted of any offence not mentioned in subparagraph (c), other than an offence committed prior to 27 April 1994 associated with political objectives, to imprisonment without the option of a fine;
- (e) subject to subsection (2), has been convicted of an offence in a foreign country and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
- (f) has, as a result of improper conduct, been removed from an office of trust.

(2) For the purposes of subsection (1)(d), the MEC must take cognisance of the prevailing circumstances in the foreign country relating to a conviction.

- (3) A member of the board must vacate his or her office if he or she-
- (a) resigns by written notice addressed to the MEC and copied to the chief executive officer of the Agency;
 - (b) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
 - (c) has, without leave of the board, been absent from more than two consecutive meetings of the board;
 - (d) becomes insolvent during his or her term of office;
 - (e) ceases to be representative of his or her constituency;
 - (f) ceases to be permanently resident in the Republic; or
 - (g) is removed from office in terms of subsection (1)(c), (d), (e) or (4).

(4) The MEC may, notwithstanding section 25(2) and subject to the Promotion of Administrative Justice Act, 2000, (Act No. 3 of 2000), remove a board member from office on account of misconduct or inability to perform his or her duties efficiently.

23. Appointment of member to vacant seat

(1) When a seat on the board becomes vacant as contemplated in section 20(3), or if a board member dies before the expiration of his or her term of office, the board must as soon as is practicable after the seat becomes vacant –

- (a) inform the MEC that the seat has become vacant;
- (b) in the manner determined by the board, request the constituency that was represented by the member who vacated office or died, to provide nominations for a representative to be appointed to the vacant seat; and
- (c) after receipt of any nomination as contemplated in paragraph (a), evaluate it in accordance with the factors referred to in section 21(4) and submit its recommendations to the MEC.

(2) The MEC must, as soon as is practicable after the receipt of the recommendations of the board, appoint a person to the vacant seat on the board.

(3) If no, insufficient or unsuitable nominations are received as contemplated in subsection (1), the board must inform the MEC thereof in its submission referred to in subsection (1)(c), and the MEC may, after consultation with the board, appoint to the vacant seat on the board any person who, but for the fact that he or she was not nominated in terms of the procedure contemplated in subsection (1), qualify to be appointed in terms of this Act.

(4) The board must, as soon as practicable after the appointment of the member to the vacant seat on the board, publish by notice in the *Gazette*–

- (a) the name of the person appointed;
- (b) the date from which the appointment takes effect; and
- (c) the period for which the appointment is made as contemplated in subsection (5).

(5) The person who is appointed to the vacant seat on the board fills the vacancy for the unexpired portion of the period for which the member whose seat became vacant was appointed.

24. Chairperson and deputy chairperson

(1) The MEC must appoint a chairperson and a deputy chairperson for every newly constituted board.

(2) The deputy chairperson must, if the chairperson is for any reason unable to act as chairperson, perform all the functions of the chairperson and may exercise all the powers of the chairperson.

(3) If both the chairperson and the deputy chairperson are for any reason unable to preside at a board meeting, the members present must elect one of the members to preside at that meeting and the person elected may perform all the functions and exercise all the powers of the chairperson.

(4) A chairperson or deputy chairperson may vacate office as such, and such vacation does not terminate his or her membership of the board and if the chairperson or deputy chairperson has vacated office, the MEC must appoint a chairperson or deputy chairperson from the board members for the remaining term of office of the board.

25. Term of office

(1) Board members hold office for a period of three years calculated from the date that their appointment takes effect and may be appointed for more than one term and a member who is re-appointed must be nominated in accordance with section 21.

(2) Despite subsection (1), the MEC may, by notice in the *Gazette*, after consultation with the board, extend the term of office of all the members of the board for a period not exceeding six months, but he or she may only so extend the term of office of the board twice.

(3) Despite the duration of office referred to in subsection (1), board members remain in office until the succeeding board is duly constituted by the MEC.

26. Decisions of board

(1) A decision of the majority of board members present at any duly constituted meeting constitutes a decision of the board.

(2) No decision taken by or act performed under the authority of the board is invalid only by reason of -

- (a) a vacancy on the board at the time the decision was taken or the act was authorised; or
- (b) the fact that any person who was not entitled to sit as a board member, participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present at the time followed the required procedure for decisions.

27. Meetings of board

(1) The MEC must, as soon as is practicable after the appointment of the board members for the first term of office, determine the time and place of its first meeting.

(2) The board must determine the time and place of any future meetings for the first and subsequent terms of office of the board.

(3) The board meets as often as circumstances require, but at least four times in every financial year, at such time and place as the board may determine.

(4) A majority of board members constitutes a quorum at a meeting.

(5) Every board member, including the chairperson, has one vote and in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

(6) Subject to the approval of the board, any person who is not a board member may attend or take part, but may not vote, in a meeting of the board.

(7) The board must adopt governance rules which provides for the conduct of proceedings at meetings and recording of the proceedings and including the governance rules for special meetings.

28. Duties of board

(1) Board is the accounting authority of the Agency within the meaning of the Public Finance Management Act, 1999, and must, in addition to the duties and responsibilities provided for in that Act-

- (a) by adopting governance rules in accordance with subsection (2), provide effective, transparent and accountable corporate governance and conduct effective oversight of the affairs of the Agency;
- (b) comply with all applicable legislation and agreements; and
- (c) at all times act in accordance with the code of conduct for members of the board as may be prescribed by the MEC.

(2) The board must adopt governance rules that substantially complies with the principles of good governance for public entities and which provides for at least the following:

- (a) the role and meetings of the board;
- (b) the role of the chairperson of the board;
- (c) performance assessment of board members ;
- (d) the role of the chief executive officer of the Agency;
- (e) performance assessment of the chief executive officer, chief financial officer and the chief technical officer;
- (f) committees of the board;
- (g) advisory and technical bodies which are established in terms of section 11;
- (h) financial management of the Agency as contemplated in Chapter 6 of the Public Finance Management Act, 1999;
- (i) procurement policy;
- (j) remuneration policy for board and staff members.

29. Executive management and staff

- (1) The MEC must, in consultation with the board, appoint a chief executive officer.
- (2) The board must-
 - (a) appoint a chief financial officer and a chief technical officer;
 - (b) determine the period of office of the chief executive officer, chief financial officer and the chief technical officer; and
 - (c) determine the conditions of appointment of the chief executive officer, the chief financial officer and the chief technical officer.

(3) The chief executive officer, chief financial officer and the chief technical officer must enter into a performance agreement with the board on acceptance of their appointment.

(3) The chief executive officer is responsible for the day-to-day management of the Agency and is accountable to the board.

(4) The Agency may determine its own staff establishment and must determine the conditions of service for that staff.

(5) The chief executive officer may, subject to the general or special directions of the board (if any), appoint staff for the Agency to perform the work necessary for or arising from the performance of the Agency's functions in terms of this Act.

(6) The chief executive officer may delegate any duty or power to any staff member appointed in terms of subsection (5).

30. Committees

(1) The board may, subject to subsection (2), establish any committee to assist it in the performance of its functions and appoint members to that committee, and it may at any time dissolve or reconstitute any such committee.

- (2) The board must, at least, establish the following permanent committees:
 - (a) an executive committee;
 - (b) an audit committee;

- (c) a remuneration committee;
- (d) a disciplinary committee; and
- (e) a nomination committee.

(3) The board must determine, subject to section 31 and any applicable legislation, the number of members and the terms of reference of each committee.

(4) The board may summarily terminate the membership of a member of a committee if -

- (a) the performance by the member of the powers and functions of that committee is unsatisfactory;
- (b) the member, either through illness or for any other reason, is unable to perform the functions of the committee effectively; or
- (c) the member has failed to comply with or breached any legislation regulating the conduct of members, including any applicable code of conduct.

(5) If this Act or the board does not designate a chairperson for a committee, the committee may elect a chairperson from among its members.

(6) Sections 27(4), (5), (6) and (7) apply with the necessary changes in respect of any meeting of a committee.

31. Executive Committee

(1) The executive committee established by the board under section 30 consists of the chairperson of the board and not more than three other members of the board elected by the board.

(2) A member of the executive committee, except the chairperson, serves on the executive committee for a period of one year and may be re-elected.

(3) A member of the executive committee remains in office until his or her successor is elected.

32. Delegations by board

(1) The board must develop a system of delegation to maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system may -

- (a) in writing delegate appropriate powers, excluding the power to establish a committee, prescribe governance rules for a committee and appropriating funds, to a committee, the chief executive officer, an employee or member of the board; and
- (b) assign the performance of any of its functions to a committee, the chief executive officer, an employee or member of the board.

(2) A delegation or assignment in terms of subsection (1)-

- (a) is subject to such limitations and conditions as the board may impose;
- (b) may authorise subdelegation; and
- (c) does not divest the board of the responsibility for the delegated power or the performance of the assigned duty.

(3) The board may confirm, vary or revoke any decision taken by a committee, the chief executive officer, a member of the board or an employee as a result of a delegation or assignment in terms of subsection (1).

CHAPTER 5: FUNDING, STRATEGIC AND FINANCIAL MANAGEMENT OF AGENCY

33. Financial year

The financial year of the Agency is from 1 April to 31 March.

34. Funding

The MEC must in accordance with the Agency's strategic plan and budget, and subject to the Public Finance Management Act, 1999, provide funds from-

- (a) moneys appropriated for that purpose by the legislature; and
- (b) all other monies which may accrue to the Agency from any other legal source.

35. Submission of annual budget and strategic plan

The Agency must annually submit its budget of estimated revenue and expenditure and the strategic plan to the MEC as contemplated in the Public Finance Management Act, 1999, and the strategic plan must contain the minimum information required in terms of section 37.

36. Financial management, financial statements and annual report

The financial management and the preparation and submission of financial statements and annual reports must be done in accordance with the Public Finance Management Act, 1999.

37. Contents of strategic plan

In addition to the requirements of the Public Finance Management Act, 1999, relating to the strategic plan of a public entity, the strategic plan must provide for -

- (a) the manner in which the Agency intends to give effect to its objectives as stated in section 2, inclusive of strategies and preliminary action plans;
- (b) an integrated road safety management plan in accordance with the policy adopted by the MEC, inclusive of strategies and preliminary action plans;
- (c) the manner in which funding will be motivated and acquired for the strategies and preliminary action plans referred to in paragraphs (a) and (b);
- (d) the manner in which funding will be equitably shared between the social and the economic networks.

CHAPTER 6: GENERAL PROVISIONS

38. Transfer duty and stamp duty

No transfer duty is payable by the Agency in respect of the acquisition of any property by the Agency, and no stamp duty is payable by the Agency in respect of any instrument if the stamp duty thereon would be payable by the Agency in terms of the applicable legislation.

39. Indemnity

Neither the Agency, any member of the board, employee, chief executive officer, committee or any member of a committee, incurs any liability in respect of any act performed or an omission in good faith under or by virtue of a provision in this Act, unless the performance of that act or the omission was willful or negligent.

40. Procedural fairness

Subject to the provisions of this Act, where the Agency takes a decision or any other step of an administrative nature under this Act that affects the rights and duties of another person, the Agency must-

- (a) publish or otherwise make known the nature and effect thereof in a written, printed or electronic manner to any affected persons and bodies in a manner designed to ensure that they acquire full knowledge thereof; and
- (b) comply with any applicable requirement of just administrative action, including the furnishing of reasons for discretionary decisions imposed by, under or by virtue of any law.

41. Offences

(1) No person may apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between that company, body, firm, business or undertaking and the Agency.

(2) Any person who contravenes subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment not exceeding 10 years or to a fine and imprisonment.

42. Repeal and amendment of laws

The laws referred to in the second column of the Schedule is hereby amended or repealed to the extent indicated in the third column of the Schedule.

43. Transitional provisions

(1) From the date of commencement of this Act, all contractual rights, obligations and liabilities of the department relating to the functions of the Agency as contemplated in this Act vest in the Agency.

(2) Financial, administrative and other records of the department, relating to the functions of the Agency must be transferred to Agency.

(3) The MEC may, after the promulgation of this Act by the Provincial Legislature, appoint –

- (a) any official or other person to perform any action which may be necessary for the establishment and functioning of the Agency, the appointment of the board and to assist the board after its appointment with its general powers and functions, excluding the powers and functions referred to in paragraph (b), until such time as the MEC has appointed the chief executive officer;

- (b) any official or other person to perform and exercise the powers and functions necessary to satisfy the financial requirements of this Act until such time as the board has appointed the chief financial officer;
- (c) any official or other person to oversee the transfer of technical duties in relation to road management from the department to the Agency in a manner that is least disruptive to current road and safety management projects, until such time as the board has appointed the chief technical officer.

(4) Notwithstanding section 29(2)(b), the term of office of the first chief executive officer is five years.

(5) The MEC must after the promulgation of this Act by the Provincial Legislature, provide for the establishment of the Agency from the budget of the department and must after the commencement date and the opening of a bank account for the Agency, transfer funds into that account for the purpose of funding the operations and projects of the Agency.

(6) Personnel who are at the commencement date employed by the department to perform any duty that is identified in terms of this Act or the Roads Act, 2007, as a function of the Agency, may be transferred to the Agency as contemplated in section 15 of the Public Service Act, 1994, (Proclamation No. 104 of 1994) for such a period as the MEC and the personnel concerned agree on and those personnel-

- (a) remain members of the Government Employees Pension Fund referred to in section 2 of the Government Employees Pension Law, 1996 for the period agreed on; and
- (b) may, after that period, if permanently appointed by the Agency, elect to continue to so remain members of that fund.

(7) Notwithstanding section 33, the first financial year of the Agency is from the date on which the funds as contemplated in subsection (4) have been transferred by the MEC to the bank account of the Agency, until 31 March of the following year.

(8) The MEC must, within 90 days from the date of commencement of this Act, invite nominations from the constituencies referred to in section 20(2) -

- (a) in the case of invitations from the constituencies referred to in section 20(a) to (g), in the manner determined by the MEC; and
- (b) in the case of invitations from the public, in the manner contemplated in that section,

and the provisions relating to the appointment and disqualification of the members provided for in sections 21 and 22, respectively, apply with the necessary adjustments.

44. Short title and commencement

This Act is called the North West Roads Agency Act and commences on a date determined by the MEC by notice in the *Gazette*.

SCHEDULE

Act No. 9 of 1972	The National Road Safety Act	The whole, to the extent that it has been assigned to the Province under Proclamation 23 of 1995, promulgated in Government Gazette 16340 of 31 March 1995
	Bophuthatswana Road Safety Act	The whole