

REPUBLIC OF SOUTH AFRICA

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**THE SOUTH AFRICAN NATIONAL  
ROADS AGENCY LIMITED  
AND NATIONAL ROADS BILL**

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*(As introduced in the National Assembly)*

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(MINISTER OF TRANSPORT)

[B 19—98]

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REPUBLIEK VAN SUID-AFRIKA

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**WETSONTWERP OP DIE SUID-  
AFRIKAANSE NASIONALE  
PADAGENTSKAP BEPERK EN  
OP NASIONALE PAAIE**

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*(Soos ingedien in die Nasionale Vergadering)*

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(MINISTER VAN VERVOER)

[W 19—98]

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# BILL

To make provision for a national roads agency for the Republic to manage and control the Republic's national roads system and take charge, amongst others, of the development, maintenance and rehabilitation of national roads within the framework of government policy; for that purpose to provide for the establishment of The South African National Roads Agency Limited, a public company wholly owned by the State; to provide for the governance and management of that company ("the Agency") by a board of directors and a chief executive officer, respectively, and to define the Agency's powers and functions and financial and operational accountability, and regulate its functioning; to prescribe measures and requirements with regard to the Government's policy concerning national roads, the declaration of national roads by the Minister of Transport and the use and protection of national roads; to repeal or amend the provisions of certain laws relating to or relevant to national roads; and to provide for incidental matters.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## Definitions

1. In this Act, unless inconsistent with the context—
- (i) “advertisement” means a visible representation of a word, name, or abbreviation of a word or name, or any visible representation of a letter, figure, object, sign or symbol, or a light not intended for illumination or as a warning against danger, but does not include a road traffic sign; (ii) 20
  - (ii) “building restriction area” means the area consisting of land (but excluding land in an urban area)—
    - (a) situated alongside a national road within a distance of 60 metres from the boundary of the national road; or 25
    - (b) situated within a distance of 500 metres from any point of intersection; (iii)
  - (iii) “Chief Executive Officer” means the Chief Executive Officer of the Agency contemplated in section 19; (xii)
  - (iv) “Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973); (xvii) 30
  - (v) “construct”, with regard to a road, including a national road, includes to widen, divert, alter, repair, upgrade and expand; (i)
  - (vi) “Department” means the Department of Transport in the national sphere of government; (iv) 35
  - (vii) “incorporation date” means the date on which the Agency is incorporated as a company in accordance with section 3 and issued with a certificate to commence business; (xiii)
  - (viii) “interprovincial bridge” means a bridge across the boundary between adjoining provinces of the Republic; (xiv) 40
  - (ix) “interstate bridge” means a bridge across the boundary between the Republic and any adjoining country; (xv)
  - (x) “land” includes a real right in or over any land; (x)
  - (xi) “Minister” means the Minister of Transport in the national sphere of government; (xviii) 45
  - (xii) “municipality”—
    - (a) until the legislation envisaged in section 155(2) of the Constitution takes effect, means any local government body vested with municipal legislative and executive jurisdiction (whether on an exclusive or a shared basis) in respect of a particular area in terms of the Local Government Transition Act, 1993 (Act No. 209 of 1993), in compliance with section 155(1) of the Constitution; 50
    - (b) as from the date when that legislation takes effect, means any municipality as contemplated in that legislation; (xix)
  - (xiii) “national road”— 55
    - (a) means any road or route declared a national road under section 40(1); and
    - (b) includes any road or route which, in terms of section 40(5), is regarded and treated as a national road so declared; and

- (c) includes any part of the road which is a toll road as defined in this section, as well as any “interprovincial bridge” and “interstate bridge” as so defined which is used in conjunction with a national road; (xx)
- (xiv) “point of intersection” means the point where the centre line— 5  
 (a) of a national road meets the centre line of any road crossing the national road; or  
 (b) of any road meets the boundary of any national road with which it links up; (xvi)
- (xv) “Premier” includes the member of the Executive Council of a province designated by the Premier of the province for the purposes of this Act; (xxiii) 10
- (xvi) “prescribed” means prescribed from time to time by regulation; (xxviii)
- (xvii) “previous Act” means the National Roads Act, 1971 (Act No. 54 of 1971), and, where appropriate, includes any other law amended or repealed by this Act; (xxix) 15
- (xviii) “public road” means a road which the public has the right to use; (xxi)
- (xix) “regulation” means any regulation made and in force under section 58(1), and includes any regulation mentioned in section 58(3), for as long as it continues in force under section 58(3); (xxiv) 20
- (xx) “road” means a public road and includes, in addition to the roadway—  
 (a) the land of which the road consists or over which the road reserve in question extends;  
 (b) anything on that land forming part of, connected with, or belonging to the road; and 25  
 (c) land acquired for the construction of a connection between a national road and another road; (xxii)
- (xxi) “the Agency” means the national roads agency envisaged for the Republic by section 2 and which in terms of that section, is established by the incorporation of a company, named The South African National Roads Agency Limited, in accordance with section 3; (v) 30
- (xxii) “the Board” means the Agency’s Board of Directors contemplated in section 12; (vii)
- (xxiii) “the Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (vi) 35
- (xxiv) “the South African Roads Board” means the South African Roads Board established by section 2 of the South African Roads Board Act, 1988 (Act No. 74 of 1988); (viii)
- (xxv) “this Act” includes the Schedules and the regulations; (xi)
- (xxvi) “toll plaza” means a structure on a toll road where toll is payable in terms of this Act, or any electrical, electronic or mechanical device on a toll road for recording the liability to pay toll, or any combination of such a structure and such a device, and includes a toll gate; (xxvii) 40
- (xxvii) “toll road” means any toll road declared under subsection (1)(a) of section 27, the declaration of which is effective in terms of subsection (2) of that section, and includes any national road or portion of a national road (whether with or without any bridge or tunnel thereon) which, in terms of section 27(6), must be regarded and treated as a toll road; (xxvi) 45
- (xxviii) “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— 50  
 (a) established or recognised as a township under any law; or  
 (b) recognised by the Agency as a township for the purposes of this Act, to the extent so recognised; and (ix)
- (xxix) “urban area” means any area consisting of— 55  
 (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 60  
 (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 that definition which the Agency by notice in the *Gazette* has declared to be an urban area for the purposes of this Act. (xxv) 65

## CHAPTER 1

**THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED: INCORPORATION, ESTABLISHMENT AND RELATED MATTERS****Establishment of a national roads agency for Republic**

2. (1) There will be a national roads agency for the Republic for the purpose of taking charge of the financing, management, control, planning, development, maintenance and rehabilitation of the South African national roads system. 5

(2) That agency will be established upon being incorporated as a company in accordance with section 3.

(3) The main objects of the agency and, accordingly, those of that company, will be to perform the functions specified in section 25 in pursuance of the purpose mentioned in subsection (1) of this section. 10

**Incorporation of The South African National Roads Agency Limited**

3. (1) The Minister must take all the steps that are necessary for the formation and incorporation of that agency as a public company with a share capital within the meaning of the Companies Act, subject to section 2, this section and section 4. 15

(2) Despite the provisions of the Companies Act, the State will be the only member and shareholder of that company upon its incorporation and at any time thereafter.

(3) Despite the provisions of the Companies Act—

(a) the Minister, who represents the State, will sign the memorandum of association, articles of association and all other documents necessary in connection with the formation and incorporation of the company; 20

(b) the Registrar of Companies must register the memorandum of association and articles of association as signed by the Minister, and incorporate the company as a public company under the name “The South African National Roads Agency Limited”, with the State as its only member and shareholder, and issue to the company a certificate to commence business with effect from the date of the company’s incorporation. 25

(4) (a) The State’s rights as member and shareholder of the Agency are to be exercised by the Minister. 30

(b) The relationship between the Agency and the Minister representing the State as the only member and shareholder, will be as defined in an agreement entered into by the Agency and the Minister for that purpose, subject to this Act.

**Agency’s memorandum and articles of association**

4. (1) The memorandum of association and articles of association of the Agency must be so drawn up that the contents thereof are consistent with this Act. 35

(2) Despite the Companies Act, an amendment of the memorandum of association or articles of association affecting any arrangement made by any provision of this Act, will not be operative or have any legal force unless and until the relevant provision of this Act has been amended accordingly and that amendment has come into effect. 40

**Application of Companies Act to Agency**

5. (1) The provisions of the Companies Act which are not in conflict with this Act, apply to the Agency, subject to subsection (2).

(2) A provision of the Companies Act will not apply to the Agency in the following circumstances, namely, where— 45

(a) because of any special or contrary arrangement made by this Act, such a provision is clearly inappropriate or incapable of being applied; or

(b) the Minister of Trade and Industry has issued a declaration under section 6 with regard to the provision.

**Certain provisions of Companies Act may be declared not applicable to Agency 50**

6. (1) The Minister, on the recommendation of the Agency, may from time to time as

and when considered necessary, request the Minister of Trade and Industry to declare any particular provision of the Companies Act not to be applicable to the Agency.

(2) The request must be fully motivated, and the necessary particulars about the request must be made known by the Registrar of Companies, together with the motivation therefor, by notice in the *Gazette*. In that notice that Registrar must also invite interested persons who may have any objections to such a declaration, to submit their objections and representations to a person named in the notice, or, if sent by post, to place that person in possession of their objections and representations, not later than 21 days after the date of the notice.

(3) After having considered the objections and representations (if any) received within the 21 day period, the Minister of Trade and Industry, by notice in the *Gazette*, may declare the whole or any part of any provision of the Companies Act about which the above-mentioned request was made, not to be applicable to the Agency with effect from a date stated in that notice, if satisfied on reasonable grounds that the non-application of that provision to the Agency—

- (a) will contribute to the Agency's efficiency or will reduce its operating costs; and
- (b) will not reduce or limit the Agency's accountability as a public institution or from the requirements of transparency as regards its functioning and operations; and
- (c) will not be prejudicial to the rights, interests or claims of the Agency's creditors or employees or to the rights or interests of any other interested parties.

#### **Agency the successor to certain property, assets and liabilities**

7. (1) On the incorporation date, the Agency will become entitled to and have claim to any moneys which, immediately before that date, stand to the credit of the National Roads Fund, mentioned in section 2(1) of the previous Act.

(2) On the incorporation date, the following immovable property will pass to and vest in the Agency:

- (a) The immovable property of the South African Roads Board consisting of land and any servitudes on or over land, on which national roads are situated;
- (b) land and any servitudes or other real rights with regard to land (including any right to use land temporarily), acquired by the South African Roads Board or the State in terms of the previous Act for the purposes of or in connection with national roads;
- (c) any other immovable property of the South African Roads Board acquired in terms of the previous Act from moneys made available from that National Roads Fund;
- (d) any State land on which a national road is situated, or any servitude or other real right with regard to land held by the State for the purposes of or in connection with a national road situated on the latter land.

(3) (a) The Minister and the Agency may enter into an agreement providing for the Agency to take over—

- (i) any assets (except immovable assets) of which the South African Roads Board is the owner for the purposes of or in terms of the previous Act; and
- (ii) any liabilities which were incurred by the South African Roads Board in terms of the previous Act or pursuant to its operations and activities thereunder.

(b) The assets and liabilities specified in that agreement, which the Minister must cause to be published in the *Gazette*, will pass to and vest in the Agency on the day on which that agreement is so published.

(4) (a) The Minister, by notice in the *Gazette*, may declare that any movable or immovable property belonging to and under the control of the State for the purposes of the previous Act and which is specified in the notice, except any immovable property mentioned in subsection (2)(b) and (d), will pass to and vest in the Agency on the date mentioned in the notice.

(b) The Minister must lay the notice mentioned in paragraph (a) on the table in the National Assembly within 14 days after publication of that notice in the *Gazette*, if the

National Assembly is sitting then, or, if the National Assembly is not sitting then, within 14 days after the beginning of its next sitting.

(5) Where any immovable property passes to and becomes vested in the Agency in terms of subsection (2), section 31 or 32 (as the case may be) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), will apply for the purpose of registering the Agency's newly acquired ownership of or entitlement to that immovable property. 5

(6) Where the ownership in any particular immovable property of the State has passed to and become vested in the Agency in terms of subsection (4), the Registrar of Deeds, upon being furnished with the notice that has been issued in respect of that immovable property in terms of that subsection, must— 10

(a) make the necessary entries in the appropriate registers kept by that Registrar in terms of the Deeds Registries Act, 1937; and

(b) also—

(i) make the necessary endorsements on the relevant title deeds and other documents or records relating to that immovable property; or 15

(ii) where applicable, issue a deed of grant in the name of the Agency in order to register the Agency's title to that property.

### **Nature of State's financial interest in Agency**

**8.** (1) In exchange for the nett value of the assets invested in the Agency in terms of section 7, the State, as provided in an agreement entered into by the Agency and the Minister acting with the approval of the Minister of Finance, will be issued with fully paid-up shares in the Agency— 20

(a) for an amount equal to the nett value of the assets so invested in the Agency; or

(b) for an amount equal to a percentage, specified in the agreement, of the nett value of the assets so invested, subject to subsection (2). 25

(2) If the amount for which shares in the Agency are to be issued to the State is less than the nett value of the assets invested in the Agency, the Agency will be indebted to the State for an amount equal to the difference between the nett value of the assets so invested and the value of the shares so issued. The terms and conditions of that loan must be set out in the agreement mentioned in subsection (1). In that agreement provision may be made that the Agency issues the State with debentures for the whole or any part of the amount of the loan. 30

(3) For the purposes of this section, any reference to the nett value of the assets invested in the Agency, however expressed, must be understood to mean all the moneys mentioned in subsection (1) of section 7 plus the value of all the movable, immovable and other property (assets) made over or transferred to the Agency in terms of subsections (2), (3) and (4) of that section, minus an amount representing the sum of all the liabilities made over to the Agency under subsection (3) of that section. 35

(4) Where the value of any assets consisting of immovable property is to be determined for the purposes of this section, regard must be had to the criteria mentioned in section 12(1) and (5)(b), (c), (d), (e), (f) and (h) of the Expropriation Act, 1975 (Act No. 63 of 1975). 40

### **Financial year**

**9.** The Agency's financial year will be from 1 April in any year to 31 March in the following year, both days included. 45

### **Judicial management, and liquidation**

**10.** Despite the provisions of any other law, the Agency may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted specially for that purpose. 50

### Pre-incorporation acts on behalf of Agency

11. (1) Where, at any time before the incorporation date but after the promulgation of this Act in the *Gazette*, the Minister has selected and, under section 12(3), has appointed, with effect from the incorporation date, the Board's members belonging to the class mentioned in that section, the Minister, by written notice to those persons, may authorise them to act as members of the Board— 5
- (a) for the purposes mentioned in subsections (2)(a) and (b) and (3)(a); and
  - (b) until their appointment as members of the Board takes effect.
- (2) (a) Those acting members of the Board (hereafter called the acting appointed members) must meet on the date stated by the Minister in that notice to select, and, in accordance with section 19, to appoint with effect from the incorporation date, the first Chief Executive Officer. 10
- (b) Those acting members (hereinafter called the acting appointed members) must thereafter forthwith issue a provisional letter of appointment to the person so appointed.
- (c) The appointment of the first Chief Executive Officer on the authority of paragraph (b) must be ratified by the Board members mentioned in section 12(3) within seven days after the incorporation date. 15
- (3) Despite any provisions to the contrary in the Companies Act or this Act—
- (a) the appointed acting members and the person so appointed by them, will jointly, with effect from the date of that person's provisional letter of appointment until immediately before the incorporation date, be competent to perform any act and do anything which, had the Board been in existence during that period, would have been within its sphere of competence in terms of this Act, and which may be necessary to perform or do for the purpose of ensuring that the prospective national roads agency for the Republic is in a position to start functioning and commence its business as the Agency on the incorporation date; and 20 25
  - (b) that person, during that period, may act as Chief Executive Officer and perform any act and do anything within the sphere of competence of the Chief Executive Officer in terms of this Act, which may be necessary to perform or do to achieve the purpose mentioned in paragraph (a). 30
- (4) Any act performed or thing done in terms of subsection (2) before the incorporation date, must be ratified by the Board at its first meeting on or after that date, and will have legal consequences for, be binding on the Agency and be regarded and treated for all purposes, as if performed or done from the very outset by the Board or the Chief Executive Officer (as the case may be). 35

## CHAPTER 2

### GOVERNANCE AND STAFFING OF AGENCY

#### Board of Directors

12. (1) The Agency is governed and controlled, in accordance with this Act, by a Board of Directors. The Board of Directors represents the Agency, and all acts of or under the authority of that Board will be the acts of the Agency. 40
- (2) The Board consists of eight members of whom seven must be appointed by the Minister. The eighth member is the Chief Executive Officer, by virtue of holding that office. 45
- (3) The members to be appointed, are the chairperson, who must be a fit and proper person for that office, and six additional members, of whom —
- (a) one must be a representative of the Department of Finance who has been nominated by that Department; and
  - (b) five must be persons having special qualifications, skills, expertise or experience in matters concerning national roads or the business or operations of the Agency. 50
- (4) A person who in terms of the Companies Act is disqualified from being appointed a director of a company, may not be appointed a member of the Board in terms of subsection (3). 55

(5) In applying the Companies Act to the Agency, the Chief Executive Officer will be regarded and treated as the Agency's managing director.

### **Terms of office, service conditions and remuneration of appointed members of Board**

- 13.** (1) An appointed member of the Board— 5
- (a) holds office for a period of three years, unless a shorter term of office has been stipulated in the member's letter of appointment, subject to subsection (2) and section 14;
  - (b) serves as member on the terms and conditions determined by the Minister and specified in the member's letter of appointment. 10
- (2) An appointed member of the Board may resign therefrom on one month's written notice given to the Minister.
- (3) (a) A member of the Board, except the Chief Executive Officer and any appointed member who also holds any post or office in or under any department, administration or organisational component mentioned in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), or in or under any institution, organisation or body established by or under any other law and funded wholly or partly by the State, will be remunerated, at a daily rate determined by the Minister from time to time, for each day in any month (including any part of a day) on which the member was officially occupied with the business or affairs of the Agency. 15 20
- (b) However, an appointed member holding a post or office in or under such a department, administration or organisational component may, with the permission of that member's employer and the Minister of Finance, be paid an honorarium for services rendered as member of the Board. The honorarium will be determined by the Minister with the agreement of the Minister of Finance. 25
- (4) (a) The remuneration to which a member of the Board becomes entitled during any month in terms of subsection (3)(a), will be payable as a director's fee within one week after the end of that month.
- (b) For the purposes of subsection (3)(a) and paragraph (a) of this subsection, "month" means any one of the 12 months on the calendar. 30

### **Vacancies in Board**

- 14.** (1) An appointed member of the Board vacates office—
- (a) in the case of resignation, when the member's resignation takes effect;
  - (b) when, in terms of the Companies Act, the member has become disqualified to serve as a director of a company; 35
  - (c) in the case of a member representing the Department of Finance, when that Department has requested the Minister in writing to substitute another representative for its serving representative on the Board.
- (2) The Minister may remove any appointed member of the Board from office—
- (a) for misconduct; 40
  - (b) for failing to perform the duties of a member or to perform them diligently and efficiently;
  - (c) if, because of any physical or mental illness or disability, the member has become incapable of performing a member's duties or performing them efficiently; 45
  - (d) for being absent from three consecutive meetings of the Board without the chairperson's permission and without good reason.
- (3) (a) A vacancy in the office of an appointed member must be filled by the Minister, as soon as possible, through the appointment of another member who meets the requirements stipulated in section 12(3) for the office that has become vacant. 50
- (b) A member appointed in terms of paragraph (a) holds office for the unexpired portion of the predecessor's term of office.

### **Board meetings**

- 15.** (1) Any meeting of the Board will be held at the place and time determined by the Board. 55
- (2) A quorum for any meeting of the Board will be five members.
  - (3) The decision of the majority of the members present at any meeting of the Board

will be the decision of the Board, provided there is a quorum. Where there is an equality of votes, the chairperson who has a casting vote in addition to a deliberative vote, must exercise that casting vote so as to break the deadlock in decision making.

(4) Except as provided by this section, the Board determines the procedure applicable at its meetings. 5

### **Committees of Board**

**16.** (1) The Board may from time to time appoint one or more committees to assist the Board in performing its functions.

(2) A committee—

(a) may consist of members of the Board or of one or more of those members and one or more other persons. However, a committee must be chaired by a committee member who is also a member of the Board; 10

(b) may be a standing committee or be appointed for a particular task and period only;

(c) may perform investigatory and research functions only, upon the completion of which it must report its findings, conclusions and recommendations to the Board for further action (if any); 15

(d) may determine the procedure to be followed with regard to a matter relevant at a meeting only in so far as this section and any rules made by the Board in terms of subsection (4), do not make any provision for the matter. 20

(3) A majority of all the members of a committee will form a quorum.

(4) The procedure applicable at the meetings of any committee will be as determined by rules which the Board must make for that purpose.

(5) Committee members who are not also members of the Board, may be remunerated on the same basis as that provided for in section 13(3)(a) which, for that purpose, will apply to those committee members, reading in the changes necessary in the context. However, in so applying that section to committee members, the daily rate of remuneration mentioned therein must be determined by the Board but may not exceed the maximum amount that the Minister may fix from time to time and make known to the Board by written notice. 25 30

(6) A member of any committee holds office at the Board's pleasure.

(7) The Board may fill a vacancy in any committee.

### **Board and committees to keep minutes**

**17.** (1) The Board and any committee must have minutes prepared and kept of the proceedings of their respective meetings and must have copies of the minutes circulated to their respective members. 35

(2) The minutes so prepared, when signed at a next meeting by the person who chairs that meeting, will, in the absence of proof of error therein, be regarded and treated as a true and correct record of the proceedings and matters that they purport to minute and will be sufficient evidence of those proceedings and matters at any proceedings before a court of law, any tribunal or a commission of inquiry. 40

### **Delegation and assignment of functions by Board**

**18.** (1) (a) Subject to subsection (2), the Board by special resolution may delegate any of the powers, functions or duties conferred or imposed on it by the operation of section 12(1) or conferred or imposed on it elsewhere by this Act, to any appointed member of the Board or the Chief Executive Officer, or any employee of the Agency. 45

(b) However, the Agency will not be divested of any power nor be relieved of any function or duty it may have delegated.

(2) The delegation—

(a) may be made on and subject to any conditions determined by the Board; 50

(b) may be given together with the power to subdelegate, on and subject to any conditions so determined (if any);

(c) must be communicated to the delegatee in writing. The written communica-

tion must contain full particulars of the matters being delegated and of the conditions determined under paragraph (a), if any, and, where the power of sub-delegation is also conferred, must state that fact as well as any conditions determined under paragraph (b), if any.

(3) The Board, by special resolution, may at any time— 5

(a) amend or revoke a delegation made under subsection (1);

(b) withdraw any decision made by the delegatee with regard to a delegated matter and decide the matter itself.

(4) The Board may from time to time, at its pleasure, entrust any of its powers, functions or duties to the Chief Executive Officer or any appointed member of the Board or any employee of the Agency, subject to the Board's instructions, supervision and control. 10

(5) The powers, functions and duties conferred and imposed on the Board by this section and those contemplated in the following sections, may not be delegated or entrusted in terms of subsection (1) or (4): 15

(a) Section 20(2) and (4);

(b) section 21;

(c) section 22(1);

(d) section 27(1);

(e) section 28, in so far as the Board necessarily has to decide on the conclusion and contents of the agreement contemplated in that section; 20

(f) section 35, in so far as the Board necessarily has to decide on the Agency's business plan and strategic plan.

#### **Chief Executive Officer: Appointment and functions**

19. (1) (a) The Agency's organisation and its day to day business and operations will be under the charge and general management and control of the Chief Executive Officer appointed for the Agency in terms of subsection (2), subject to the general or special directions and instructions that the Board may issue to the Chief Executive Officer from time to time (if any). 25

(b) The Chief Executive Officer will be the accounting officer and chief administrative and executive officer of the Agency. 30

(c) Any person appointed in that office will serve, in addition, as a member of the Board during incumbency of that office, and will perform all the functions and duties of a managing director as far as the Agency as company is concerned.

(2) Subject to section 11(2), the members of the Board mentioned in section 12(3) must appoint as Chief Executive Officer of the Agency a fit and proper person who is suitable for that office. 35

(3) A person who in terms of the Companies Act is disqualified from being appointed a director of a company, may not be appointed as Chief Executive Officer.

(4) The Chief Executive Officer may not take up any other employment or take on and perform any work for pay or reward outside the duties of that office, except with the written permission of the Minister, on the recommendation of the Board, given beforehand. 40

(5) (a) The Chief Executive Officer may resign from office on one month's written notice given to the Board. However, when the Board is not sitting, the notice of resignation may be handed to the chairperson or secretary of the Board for the Board's attention. A notice of resignation so handed in, will be regarded and treated as having been received by the Board on the same day. 45

(b) The secretary of the Board must ensure that a copy of the Chief Executive Officer's notice of resignation is forwarded to the Minister forthwith. 50

#### **Chief Executive Officer: Vacation of and removal from office**

20. (1) The Chief Executive Officer vacates office—

(a) in the case of resignation, when the resignation takes effect;

(b) when, in terms of the Companies Act, the person holding that office has become disqualified to serve as a director of a company; 55

(c) upon having been removed from office in terms of subsection (2).

- (2) Subject to subsection (3), the Minister, at the request of the Board, may remove the Chief Executive Officer from office—
- (a) for misconduct;
  - (b) for failing to perform the duties connected with that office or to perform them diligently and efficiently; 5
  - (c) if, because of any physical or mental illness or disability, the holder of that office has become incapable of performing or efficiently performing the functions and duties connected with that office.
- (3) The Chief Executive Officer may not be removed from office unless the Minister is satisfied that removal from office is justified in the circumstances. However, where the allegations that are relied on by the Board in making that request are not admitted or are denied or are said by the Chief Executive Officer not to justify removal, the Minister may not decide the matter unless the Minister has appointed an impartial person to investigate those allegations, and— 10
- (a) the investigator has given the Chief Executive Officer sufficient opportunity to respond to those allegations or show cause why they do not justify removal from office (as the case may be), and to make representations and give whatever explanations may be regarded necessary; and 15
  - (b) has duly considered the investigator's report as to the truth or accuracy, or otherwise, of those allegations and/or as to the question whether or not they are sufficient to justify removal from office. 20
- (4) The Board may suspend the Chief Executive Officer from office pending the outcome of the investigation on any condition as to remuneration that the Minister may approve and that is fair in the circumstances.

#### **Acting Chief Executive Officer** 25

- 21.** (1) The Board may appoint any employee of the Agency who is not disqualified in terms of the Companies Act to be a director of a company, to act as Chief Executive Officer—
- (a) during any period that the Chief Executive Officer is absent from the Republic; 30
  - (b) when, because of illness or incapacity, the holder of that office is temporarily unable to perform the duties connected with that office;
  - (c) while that office is vacant; or
  - (d) if the holder of that office has been suspended under section 20(4), for the duration of the period of suspension. 35
- (2) A person appointed to act as Chief Executive Officer will, for the duration of the period of appointment, have the status, be entitled to all the privileges, be subject to all the obligations and be competent to exercise and perform all the powers, functions and duties, conferred and imposed on the Chief Executive Officer in terms of this Act, and any act or thing performed or done or omitted by that person during that period of appointment, will be regarded and treated for the purposes of this Act as having been performed, done or omitted by the Chief Executive Officer. 40

#### **Delegations by Chief Executive Officer**

- 22.** (1) The Chief Executive Officer, with the Board's approval, may delegate any of the powers, functions or duties of that office in terms of this Act, to any employee of the Agency. 45
- (2) Section 18(1)(b), (2)(a) and (c) and (3), will apply, reading in the changes necessary in the context, to any delegation in terms of this section.

#### **Staff of Agency**

- 23.** (1) (a) Subject to the general or special directions of the Board (if any), the Chief Executive Officer may 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. 50
- (b) The remuneration, allowances and service benefits of the Agency's staff will be as determined by the Board from time to time.

(2) Employees of the Department may by agreement between the Agency and the Department and with their consent, be transferred to the service of the Agency in a permanent capacity.

(3) The transfer of those employees will be subject to the terms of and arrangements made by that agreement and to the following conditions, namely that— 5

- (a) the salaries or wages, and the allowances (if any) to be paid to them, and service benefits due to them, by the Agency, may not be less than those payable or due to them by the Department immediately before transfer; and
- (b) those employees' respective periods of pensionable service with the State will be regarded and treated as pensionable service for the purposes of any pension fund or scheme of which they may become members after transfer. If, upon the transfer of those employees' benefits from the Government Service Pension Fund to the first-mentioned pension fund or scheme there is an actuarial deficit in the first-mentioned pension fund in respect of those employees' pensions, the deficit must be made up by the Agency or the Department, or both, as provided for in that agreement; 10 15
- (c) the leave which had been accumulated by each of those employees whilst in the service of the State, will be regarded and treated as if it were leave accumulated by such an employee in the service of the Agency, except where the employee has requested the Department in writing to be paid the cash value of the accumulated leave, in which case the Department must make that payment. Liability for the cost of either arrangement will be as stipulated in that agreement. 20

(4) (a) The Minister, at the request of the Agency, may place any person in the service of the Department at the disposal of the Agency in accordance with section 15(3) of the Public Service Act, 1994, to perform service with the Agency for a period the Minister considers fit. However, the Minister may do so only with the person's consent. 25

(b) For as long as that person renders service with the Agency, the Agency must compensate the Department for the remuneration and allowances paid by the Department to that person, and for any other moneys spent by the Department on that person's other service benefits and any other costs to the Department arising from placing that person at the Agency's disposal. 30

#### **Fair and equitable employment practices**

24. The Agency must establish and follow employment practices which are fair and equitable. 35

### **CHAPTER 3**

#### **FUNCTIONS, POWERS AND RESPONSIBILITIES OF AGENCY**

##### **Main functions of Agency**

25. (1) The Agency, within the framework of government policy, is responsible for, and is hereby given power to perform, all strategic planning with regard to the South African national roads system, as well as the planning, design, construction, operation, management, control, maintenance and rehabilitation of national roads for the Republic, and is responsible for the financing of all those functions in accordance with its business and financial plan, so as to ensure that government's goals and policy objectives concerning national roads are achieved, subject to section 32(3). 40 45

(2) For the purposes of subsection (1)—

- (a) the Agency, on the incorporation date, will take over from the South African Roads Board the responsibility for all projects and work which, before that date, had been commenced in terms of the previous Act by the South African Roads Board in connection with the planning, design, construction, operation, 50

- management, control, maintenance and rehabilitation of a national road or the planning of a proposed national road, and which is still pending on that date;
- (b) the Agency, as from the incorporation date, will be competent to continue with and to carry out those projects and that work or to have them carried out subject to the provisions of this Act and any existing contracts and agreements concluded by the South African Roads Board with regard to the execution of the projects or the performance of the work. 5

(3) Except in so far as this Act provides otherwise, the responsibility and capacity to perform the functions mentioned in subsection (1) in the Republic, are entrusted to the Agency only. 10

### **Additional powers of Agency**

**26.** In addition to the Agency's main powers and functions under section 25, the Agency is competent—

- (a) at the request of a municipality or the Premier of a province, and with the Minister's approval, to perform any work in connection with any road (whether a national road or a road of which that municipality or province is the road authority), including the planning, design and construction of such a road, or to have it done under its supervision, for the account of that municipality or province. The Agency may charge a fee for any service rendered under this paragraph; 15 20
- (b) to perform any of the functions mentioned in section 25(1), or work for the purposes of or in connection with functions of that nature, in any other country, in accordance with and subject to section 31 and the provisions of an operating agreement contemplated in section 31;
- (c) to appoint any private person, institution or body, in terms of a contract concluded for that purpose, in order to perform any work on behalf of the Agency with regard to the planning or design of a national road or proposed national road or the construction, operation, management, control, maintenance or rehabilitation of a national road, or in order to perform any work in the execution of a project or in connection therewith, and to monitor the execution and the work performance; 25 30
- (d) to participate with the Minister's approval in ventures, involving national roads and other roads, jointly with the road authorities, or (as the case may be) any private persons or bodies, who have or will have ownership or control of the other roads; 35
- (e) to provide, establish, erect and maintain facilities on national roads for the convenience and safety of road users;
- (f) to operate any national road or part thereof as a toll road and levy a toll on the users of such a road as provided for in this Chapter, and to collect the toll or have it collected by any authorised person, and for those purposes to provide, establish, erect, operate and maintain toll plazas on a national road, subject to section 27 or 28; 40
- (g) to charge a levy, fee or rent for any authorisation, approval or permission that may be granted or given by the Agency to any person from time to time in terms of section 44, 48, 50 or 52 for the provision, construction, erection, establishment, carrying on or operation on, over or underneath any national road, of anything provided for in the section concerned; 45
- (h) to fence any national road;
- (i) to plant trees, shrubs, other plants or grass, and protect or promote any vegetation, alongside the roadways of national roads, and to take any other steps or perform any other work considered desirable for the convenience of users of a national road or the appearance of a national road or in order to prevent soil erosion on a national road or to prevent it arising as a result of the construction of a national road; 50
- (j) to establish and operate an information and management system concerning national roads; 55
- (k) to use any portion of a national road that is not immediately required for traffic purposes, for any purposes which the Agency considers fit, subject to this Act;
- (l) to exploit, for gain or reward, any immovable property owned by or under the control of the Agency (except roads), that is not used or immediately required 60

- for use in connection with the Agency's organisation or administration or its functions, operations, projects or work in terms of this Act;
- (m) to undertake or conduct any research, investigations or inquiries and collect any information in connection with roads, whether in the Republic or elsewhere; 5
  - (n) to advise the Minister about any matter relating to a particular national road or to national roads generally;
  - (o) to recommend to the Minister the introduction of legislation with regard to roads or road traffic;
  - (p) to advise the Minister, on request, on questions with regard to roads which may arise with the government of any other country; 10
  - (q) to take out insurance against any risk, loss or damage connected with the exercise of its powers or the performance of its functions or duties in terms of this Act;
  - (r) to liaise with bodies of professional persons performing work with regard to national roads in the Republic or similar roads elsewhere; 15
  - (s) to liaise and exchange information, knowledge and expertise with the official bodies or authorities entrusted with control over roads of a national or international character in other countries, and to participate in the conferences, seminars and workshops of those bodies or authorities and in the activities of any multinational or international association of those bodies or authorities; 20
  - (t) to purchase, hire or otherwise acquire, and hold, and to sell, exchange or let, or, with the Minister's approval, to donate or otherwise dispose of or deal with, movable or immovable property for the purposes of this Act, including office accommodation for the Board and the Agency's employees. However, immovable property of a value exceeding R2 000 000 or any higher amount that the Minister from time to time may determine by notice in the *Gazette*, may not be sold or otherwise alienated except with the approval of the Minister; 25
  - (u) to 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 help it in achieving its objects and performing its functions in terms of this Act or will contribute to efficiency or economy within the Agency; 30
  - (v) to 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; and 35
  - (w) to do anything else which is reasonably ancillary to any of its main functions and powers in terms of section 25. 40

### **Levying of toll by Agency**

27. (1) Subject to the provisions of this section, the Agency—
- (a) with the Minister's approval—
    - (i) may declare any specified national road or any specified portion thereof, including any bridge or tunnel on a national road, to be a toll road for the purposes of this Act; and 45
    - (ii) may amend or withdraw any declaration so made;
  - (b) for the driving or use of any vehicle on a toll road, may levy and collect a toll the amount of which has been determined and made known in terms of subsection (3), which will be payable at a toll plaza by the person so driving or using the vehicle, or at any other place subject to the conditions that the Agency may determine and so make known; 50
  - (c) may grant exemption from the payment of toll on a particular toll road—
    - (i) in respect of all vehicles of a category determined by the Agency and specified in a notice in terms of subsection (2), or in respect of the vehicles of a category so determined and specified which are driven or used on the toll road at a time so determined and specified; 55

- (ii) to all users of the road of a category determined by the Agency and specified in such a notice, irrespective of the vehicles driven or used by them on the toll road, or to users of the road of a category so determined and specified when driving or using any vehicles on the toll road at a time so determined and specified; 5
- (d) may restrict the levying of toll on a particular toll road to the hours or other times determined by the Agency and specified in such a notice;
- (e) may suspend the levying of toll on a particular toll road for any specified or unspecified period, whether in respect of all vehicles generally, or in respect of all vehicles of a category determined by the Agency and specified in such a notice, and resume the levying of toll after the suspension; 10
- (f) may withdraw the following, namely—
  - (i) any exemption under paragraph (c);
  - (ii) any restriction under paragraph (d);
  - (iii) any suspension under paragraph (e). 15
- (2) A declaration, amendment, withdrawal, exemption, restriction or suspension under subsection (1), will become effective only 14 days after a notice to that effect by the Agency has been published in the *Gazette*.
- (3) The amount of toll that may be levied under subsection (1), any rebate thereon and any increase or reduction thereof— 20
  - (a) is determined by the Minister on the recommendation of the Agency;
  - (b) may differ in respect of—
    - (i) different toll roads;
    - (ii) different vehicles or different categories of vehicles driven or used on a toll road; 25
    - (iii) different times at which any vehicle or any vehicle of a particular category is driven or used on a toll road;
    - (iv) different categories of road users, irrespective of the vehicles driven or used by them;
  - (c) must be made known by the head of the Department by notice in the *Gazette*; 30
  - (d) will be payable from a date and time determined by the Minister on the recommendation of the Agency, and must be specified in that notice. However, that date may not be earlier than 14 days after the date on which that notice was published in the *Gazette*.
- (4) The Minister will not give approval for the declaration of a toll road under subsection (1)(a), unless— 35
  - (a) the Agency, in the prescribed manner, has given notice, generally, of the proposed declaration, and in the notice—
    - (i) has given an indication of the approximate position of the toll plaza contemplated for the proposed toll road; 40
    - (ii) has invited interested persons to comment and make representations on the proposed declaration and the position of the toll plaza, and has directed them to furnish their written comments and representations to the Agency not later than the date mentioned in the notice. However, a period of at least 30 days must be allowed for that purpose; 45
  - (b) the Agency in writing—
    - (i) has requested the Premier in whose province the road proposed as a toll road is situated, to comment on the proposed declaration and any other matter with regard to the toll road (and particularly, as to the position of the toll plaza) within a specified period (which may not be shorter than 60 days); and 50
    - (ii) has given every municipality in whose area of jurisdiction that road is situated the same opportunity to so comment;
  - (c) the Agency, in applying for the Minister's approval for the declaration, has forwarded its proposals in that regard to the Minister together with a report on the comments and representations that have been received (if any). In that report the Agency must indicate the extent to which any of the matters raised in those comments and representations have been accommodated in those proposals; and 55

(d) the Minister is satisfied that the Agency has considered those comments and representations.

Where the Agency has failed to comply with paragraph (a), (b) or (c), or if the Minister is not satisfied as required by paragraph (d), the Minister must refer the Agency's application and proposals back to it and order its proper compliance with the relevant paragraph or (as the case may be) its proper consideration of the comments and representations, before the application and the Agency's proposals will be considered for approval. 5

(5) Any person liable for toll who, at a toll plaza or other place for the payment of toll determined and made known in terms of subsection (1), refuses or fails to pay the amount of toll that is due— 10

(a) is guilty of an offence and punishable on conviction with imprisonment for a period not longer than six months or a fine, or with both the term of imprisonment and the fine; and

(b) is liable, in addition, to pay to the Agency a civil fine of R1 000. This amount may be increased in 1999 and annually thereafter in accordance with the increase in the official consumer price index for the relevant year as published in the *Gazette*. 15

(6) Any national road or portion of a national road (including any bridge or tunnel thereon) which under section 9 of the previous Act had been declared a toll road for the purposes of that Act and which immediately before the incorporation date exists and is operated as such under the previous Act, will be regarded and treated for all purposes as if it had been declared a toll road under subsection (1) of this section. 20

#### **Operation of toll roads and levying of toll by authorised persons**

**28.** (1) Despite section 27, the Agency may enter into an agreement with any person in terms of which that person, for the period and in accordance with the terms and conditions of the agreement, is authorised— 25

(a) to operate, manage, control and maintain a national road or portion thereof which is a toll road in terms of section 27 or to operate, manage and control a toll plaza at any toll road; or 30

(b) to finance, plan, design, construct, maintain or rehabilitate such a national road or such a portion of a national road and to operate, manage and control it as a toll road.

(2) That person (in this section called the authorised person) will be entitled, subject to subsections (3) and (4)— 35

(a) to levy and collect toll on behalf of the Agency or for own account (as may be provided for in the agreement)—

(i) on the toll road specified in the agreement;

(ii) during the period so specified; and

(iii) in accordance with the provisions of the agreement only; and 40

(b) in the circumstances mentioned in subsection (1)(b), to construct or erect, at own cost, a toll plaza and any facilities connected therewith for the purpose of levying and collecting toll.

(3) Where the agreement provides for any of the matters mentioned in section 27(1)(b), (c), (d), (e) and (f)(ii), the authorised person will be subject to the duties imposed on the Agency by that section in all respects as if the authorised person were the Agency. 45

(4) The amount of the toll that may be levied by an authorised person as well as any rebate on that amount or any increase or reduction thereof, will be determined in the manner provided for in section 27(3), which section will apply, reading in the changes necessary in the context, and, if applicable, the changes necessitated by virtue of the agreement between the Agency and the authorised person. 50

#### **Points demerit system**

**29.** (1) Subject to this section, the Agency, with the Minister's approval, may determine, set up and apply a points demerit system with regard to persons who refuse or fail to pay the amount of any toll for which they are liable to the Agency in terms of section 27 or 28, and whereby provision is made— 55

- (a) for recording a specified number of demerit points against the name of the offender for each occasion on which the offender refuses or fails to pay the toll;
- (b) for imposing any specified civil penalty and any sanction mentioned in subsection (2)(b) on any offender whose demerit points equal or exceed a specified number. 5
- (2) (a) Without limiting the Agency's powers under subsection (1)—
- (i) with regard to the recording of demerit points against offenders, provision may be made that the number of demerit points that may be recorded per occasion of non-payment of toll may be increased in accordance with a specified sliding scale or formula— 10
- (aa) for second and subsequent cases of non-payment of toll;
- (bb) according to the size of the amounts determined as toll, so that the greater the amount determined as toll, the higher the number of demerit points recorded upon not paying the toll. 15
- (b) In addition to or instead of a civil penalty, any one of the following sanctions may be imposed on offenders in appropriate circumstances:
- (i) A reprimand and a warning issued in writing; or
- (ii) suspension of the offender's right to use the toll road concerned. The suspension will be for a period determined by the Agency and specified in its written notice of suspension to the offender; or 20
- (iii) a prohibition on the use of that road, issued in writing by the Agency; or
- (iv) any prescribed sanction that is lesser than that provided for in subparagraph (ii) or (iii).
- (3) The Minister will not grant approval in terms of subsection (1), unless— 25
- (a) the Agency, in the prescribed manner, has given notice of the proposed introduction of the points demerit system, and in the notice—
- (i) has broadly outlined the proposed system; and
- (ii) has invited interested persons to comment on the proposed points demerit system and, in particular, on the civil penalties and other sanctions proposed, and has invited them to furnish their written comments and representations to the Agency not later than 30 days after the date of the notice; 30
- (b) the Agency, in applying for the Minister's approval, has forwarded its proposals with regard to the points demerit system to the Minister together with a report on the comments and representations that have been received (if any). In that report the Agency must indicate the extent to which any of the matters raised in those comments and representations have been accommodated in those proposals; and 35
- (c) satisfied that the Agency has considered those comments and representations. 40
- Where the Agency has failed to comply with paragraph (a) or (b), or if the Minister is not satisfied as required by paragraph (c), the Minister must refer the Agency's application and proposals back to it and order its proper compliance with that paragraph or (as the case may be) its proper consideration of the comments and representations, before the application and the Agency's proposals will be considered for approval. 45
- (4) The provisions of any points demerit system as approved by the Minister must be published in the prescribed manner, and will take effect and become enforceable and binding 30 days after publication.
- (5) The Agency may not impose any civil penalty or other sanction on any person in terms of subsection (2)(b) unless the Agency beforehand has applied the rules of natural justice with regard to the person. 50

#### **Agency may institute legal proceedings to recover outstanding toll moneys**

- 30.** (1) The Agency may institute legal proceedings to recover toll moneys owing to it by any person liable for toll in terms of this Act.
- (2) The Agency's right to do so will not be reduced, limited or affected in any other way where, and only because— 55

- (a) the person concerned has been convicted and sentenced in the circumstances mentioned in paragraph (a) of section 27(5), or has paid or is liable to pay the civil fine provided for in paragraph (b) of that section; or
- (b) a civil penalty or other sanction has been imposed in terms of section 29 on the person concerned.

5

#### **Agency may render assistance to other countries in certain circumstances**

**31.** (1) Where the Republic and any other country have entered into an agreement in terms of which the Republic undertakes to assist the other country in connection with the planning, design, construction, operation, management, control, maintenance or rehabilitation of any road of a national or main character in that other country, the Agency, subject to paragraph (b), may in that other country perform any function or work or undertake any operations with regard to the agreed assistance—

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- (a) which, in terms of this Act, it is competent to perform or undertake in the Republic, if and to the extent requested thereto by the Government of the Republic or if designated for that purpose by a provision of the agreement to which the Government of the Republic has agreed after consultation with the Agency; and
- (b) in accordance with an operating agreement entered into between the Agency, the Government of the Republic and the government of that other country.

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(2) The Agency may not spend its own funds in performing any function or work or undertaking any operations in another country in terms of subsection (1) and may, in addition, charge a fee for so performing any function or work or so undertaking any operations.

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#### **Protection of national interest and Republic's strategic and economic interests**

**32.** (1) If the Agency should act contrary to the national interest or the strategic or economic interests of the Republic, the Minister, by notice in writing to the Board, may order the Agency to discontinue the offending act or conduct.

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(2) The Board and the Chief Executive Officer are responsible to ensure that any lawful order issued under subsection (1) is complied with.

(3) (a) The Minister may request the Agency in writing to plan, design and construct a new national road or to maintain or rehabilitate any particular national road, despite the fact that such a project has not been budgeted for by the Agency and is not included in its business and financial plan, subject to paragraph (b).

30

(b) The Agency must comply with the Minister's request and commence with the project if—

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- (i) the Minister has certified the project as being urgently necessary in the national interest or for the strategic or economic interests of the Republic; and
- (ii) the State bears the cost of the project and makes the necessary funds available to the Agency for that purpose.

40

## **CHAPTER 4**

### **FINANCES AND ACCOUNTABILITY**

#### **Loans and Government guarantees for loans**

**33.** (1) (a) The State, represented by the Minister, may grant loans to the Agency from moneys made available by Parliament for that purpose.

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(b) The Agency will pay interest on such a loan at a rate determined by the Minister acting with the agreement of the Minister of Finance, and must repay the loan in the instalments and within the period determined by the Minister so acting.

(2) (a) The Agency, with the written permission of the Minister granted with the agreement of the Minister of Finance, may raise loans from any other source to finance any expenditure that may be incurred by the Agency during any financial year for the purposes of the planning, design, construction, maintenance or rehabilitation of any national road. 5

(b) The permission may be granted subject to any conditions determined by the Minister acting with the agreement of the Minister of Finance.

(3) The State, represented by the Minister acting with the agreement of the Minister of Finance, may guarantee any loan raised by the Agency in terms of subsection (2).

## **Funding of Agency** 10

- 34.** (1) The Agency is funded and provided with capital from—
- (a) the capital invested in or lent to the Agency as contemplated in section 8;
  - (b) the levies on petrol and distillate fuel to be paid to the Agency in compliance with or in terms of any law by or in terms of which that levy is imposed;
  - (c) loans granted to or raised by the Agency in terms of section 33; 15
  - (d) interest on the Agency's cash balances or on moneys invested by it;
  - (e) income earned from the Agency's participation in joint ventures in terms of section 26(d);
  - (f) income derived from the sale of the Agency's assets;
  - (g) all toll payable to the Agency in terms of Chapter 3; 20
  - (h) fines payable by persons as penalty on their conviction of offences created by this Act, and all civil fines or penalties payable by persons for contravening of this Act, whether imposed under section 27(5) or through the application of a points demerit system in terms of section 29, or otherwise;
  - (i) income generated through developing, leasing out or otherwise managing its assets within the scope of this Act; 25
  - (j) any other levies and any fees, rentals or other moneys charged by and payable to the Agency in terms of this Act;
  - (k) moneys appropriated by Parliament from time to time to supplement the Agency's funds; and 30
  - (l) moneys received by way of grant, donation or inheritance from any source, whether inside or outside the Republic.

(2) Moneys that in terms of subsection (1) are the funds of the Agency, will be used in accordance with the Agency's business and financial plan as approved by the Minister, to meet the expenditure incurred by the Agency in connection with its functioning, operations and work in terms of this Act. 35

(3) The Agency must keep separate accounts of all moneys received as toll or otherwise in connection with toll roads and of the interest earned on the investment of those moneys. Those moneys may be used only for—

- (a) meeting expenditure connected with the acquisition of land for toll roads, any investigations and surveys with regard to toll roads and the planning, designing and construction of, and any other work in connection with, toll roads, including the erection of toll plazas and any facilities in connection therewith; 40
- (b) the maintenance and operation of toll roads and toll plazas and any facilities connected with toll roads and toll plazas; 45
- (c) paying off any loan mentioned in section 61(5)(a) or raised in terms of section 33 to finance toll roads, and the payment of interest on such a loan.

- (4) For the purposes of subsection (1)(b)—
- (a) "distillate fuel" means diesel fuel, and includes any other substance, or any mixture of diesel fuel and such other substance, which is normally capable of being used as fuel in a compression ignition engine; and 50
  - (b) "petrol" means, in addition to petrol, any other substance, or any mixture of petrol and such other substance, which is normally capable of being used as fuel in a spark ignition engine. 55

### Business and financial plan, and strategic plan

35. (1) (a) Not later than 30 days before the end of each financial year the Agency must submit its business and financial plan for the following financial year to the Minister for approval.
- (b) However, the business and financial plan for the Agency's first financial year must be submitted to the Minister for approval within 90 days after the incorporation date. 5
- (2) A business and financial plan must set out and explain the Agency's proposed operations, projects, activities and other objectives for the following financial year, as well as—
- (a) the cost of those operations, projects, activities and other objectives; 10
  - (b) the manner in which it is proposed to finance them;
  - (c) the planned performance indicators applicable to them;
  - (d) a statement of the Agency's estimated income and expenditure for that financial year;
  - (e) any other information and particulars that may be prescribed; and 15
  - (f) any additional relevant information that may be requested by the Minister in writing.
- (3) (a) The Agency must submit to the Minister for approval, not later than 30 days before the end of its first financial year and of every financial year thereafter, a strategic plan covering the period of five years commencing on the first day of the first-following financial year concerned. 20
- (b) A strategic plan must be annexed to the Agency's business and financial plan for any financial year which is also the first year of the five-year period to be covered by the strategic plan.
- (4) The following matters will be as prescribed, namely— 25
- (a) the format and structure of the business and financial plan and, if considered necessary, that of the strategic plan;
  - (b) the extent to and manner in which the Agency must consult with interested persons or members of the public in connection with any business and financial plan or any strategic plan. 30
- (5) Any business and financial plan and strategic plan must be made known by the Agency by having it published in the *Gazette*. However, if satisfied that in the circumstances the interests of the public require that greater prominence be given to such a plan, the Minister may order the further publication of the plan, at the expense of the State, in one or more newspapers with a nation-wide circulation. 35
- (6) This section does not prevent the Agency from undertaking any planning for a longer term.

### Accounting and auditing

36. (1) The Agency must keep proper books and records of account for each financial year in accordance with generally accepted accounting practice and procedure, with regard to its income, expenditure and transactions during the financial year and the state of its assets and liabilities during and as at the end of the financial year. 40
- (2) Annually, as soon as possible after the end of each financial year, the Agency must have the following financial statements prepared for that year, namely, a statement of income and expenditure, a cash-flow statement and a balance sheet, which must accurately reflect the Agency's transactions and financial sources, position and state of affairs so as to comply with the requirements of the Companies Act. 45
- (3) (a) The Agency's books and records of account and financial statements must be audited annually by the Auditor-General.
- (b) The Chief Executive Officer must annually, within three months after the end of the financial year, submit the Agency's financial statements as approved by the Board and certified to that effect by the Chief Executive Officer, to the Auditor-General for auditing who, upon completion of the audit, must furnish an auditor's report to the Board through its chairperson. 50

(c) The chairperson must forthwith, on receipt of the auditor's report, convene a meeting of the Board. At that meeting the auditor's report must be considered by the Board.

(4) In the auditor's report the Auditor-General must express an opinion, amongst others—

- (a) as to whether the information contained in the Agency's financial statements has been presented on a basis consistent with that of the previous financial year (where applicable);
- (b) as to the transactions and activities of the Agency which had come to the Auditor-General's attention in the course of the examination during auditing and which were not authorised (if any), whether by or in terms of this Act or by any directives issued thereunder;
- (c) as to the transactions and activities of the Agency which so had come to the Auditor-General's attention and which were not consistent with the objects and functions of the Agency in all material respects (if any);
- (d) as to whether, broadly speaking, there are adequate measures and procedures in place for the proper management of the Agency, that is to say, for managing the Agency effectively, efficiently and according to sound economic principles.

The auditor's report in addition must draw attention to any other matters arising from the auditing which, in the Auditor-General's opinion, should be brought to the notice of the Minister and Parliament in the interest of the public or the national interest.

### Annual report

37. (1) Annually, within five months after the end of the financial year, the Agency must submit a report to the Minister about the business, operations, projects, finances, transactions and activities of the Agency during the financial year and its financial position as at the end of that year.

(2) For that purpose the annual report, amongst others, must include the following:

- (a) The audited financial statements of the Agency for the financial year covered by the annual report;
- (b) the auditor's report;
- (c) a synopsis by the Board which, in broad terms, outlines the Agency's business, operations, projects and activities during that financial year and gives the necessary background information, explanations or reasons for anything dealt with in the financial statements, and—
  - (i) setting out the extent to which the Agency has succeeded in achieving or advancing its various detailed objectives as set out in its business and financial plan for that financial year and in its then current strategic plan; and
  - (ii) containing all relevant information about the Agency's performance with a view to determining how far the Agency has succeeded in applying its resources effectively, efficiently and economically during that financial year, as well as a comparison between the planned performance indicators for that financial year as set out in that year's business and financial plan, and the actual performance indicators as at the end of that year; and
  - (iii) specifying the amounts of money received by the Agency from the State (if any) and the manner in which it was made available to it and, if any amount was made available by the State for any particular purpose, also the purpose in question; and
  - (iv) specifying any liability incurred or commitment undertaken by the State (if any) for the Agency's benefit.

(3) The Agency's annual report must be laid on the table in the National Assembly within 14 days after the Minister has received it, if the National Assembly is sitting then, or, if the National Assembly is not sitting then, within 14 days after the beginning of its next sitting.

**Certain provisions of Act 93 of 1992 applicable to Agency**

38. The provisions of section 8, section 11(1), (2), (4) and (5) and sections 12(3) and 14 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992), will be applicable to the Agency, reading in the changes necessary in the context.

**CHAPTER 5**

5

**OFFICIAL POLICIES ON, AND DECLARATION, USE AND PROTECTION OF, NATIONAL ROADS**

**National roads policy**

39. (1) The Government's policy with regard to national roads must be made known from time to time by the Minister by notice in the *Gazette*. The notice must state, amongst others— 10

(a) the goals with regard to national roads which the Government wants to achieve; and

(b) the policy objectives to be followed so that those goals may be achieved.

(2) Whenever any proposals relevant to determining or amending the national roads policy is to be considered and decided by the Government, the Minister by notice published in the *Gazette* must make known those proposals and in that notice invite any interested persons and the public to comment on the proposals and make representations with regard thereto. 15

(3) The Agency must determine its business and financial plan and strategic plan and the standards and criteria for road design and construction and for road safety within the framework of the national roads policy as determined by the Government and published in terms of subsection (1). 20

**Declaration of national roads**

40. (1) Subject to subsections (2) and (3), the Minister may from time to time by notice in the *Gazette*— 25

(a) declare any existing road, or any route of which the boundaries have been fixed by survey, to be a national road; and

(b) amend or withdraw any declaration so made.

(2) A national road may be declared under subsection (1) only on the recommendation of the Agency, and then only— 30

(a) with the agreement of the Premier of each province in which the road is situated, in the case of an existing road that is to be declared a national road, subject to subsection (3);

(b) in the case of a new road that will have a substantial impact on the traffic flows in any one or more provinces, after consultation with the Premier of the province or Premiers of the provinces in which the road is proposed to be situated (as the case may be). 35

(3) For the purposes of obtaining the agreement of a Premier required by subsection (2)(a), the Minister and the Premier must act in a manner and spirit consistent with the principles of co-operative government prescribed by section 41 of the Constitution. Where the Premier's agreement cannot be obtained after having made every reasonable effort to settle the dispute or difference and having exhausted all the mechanisms and procedures available for that purpose, the matter may be referred to the Constitutional Court in terms of section 167(4)(a) of the Constitution for decision. 40 45

(4) Within a prescribed period after the date on which a national road was declared under subsection (1), the Agency in writing must request the Registrar of Deeds who has jurisdiction, to endorse the fact of that declaration on the title deeds of the land affected by the declaration. Such an endorsement may be made in any manner considered fit by that Registrar of Deeds. 50

(5) Any road or route which under section 4(1)(a) of the previous Act had been declared a national road for the purposes of that Act and which, immediately before the

incorporation date, exists as a national road under the previous Act, will be regarded and treated for all purposes as if it had been declared a national road under subsection (1) of this section.

### **Expropriation of land for purposes of national road**

**41.** (1) Subject to subsection (2) and to the obligation to pay compensation, for which the Agency will be responsible, the Minister, if satisfied on reasonable grounds that the Agency reasonably requires— 5

(a) any land for a national road or for works or other purposes connected with a national road, including any access road, the acquisition, excavation, mining or treatment of gravel, stone, sand, clay, water or any other material or substance, the accommodation of road building staff and the storage or maintenance of any plant, vehicles, machines, equipment, tools, stores or material, may expropriate that land for the Agency; 10

(b) gravel, stone, sand, clay, water or any other material or substance on or in land for the construction of a road or for works or any of the purposes mentioned in paragraph (a), may take it for the Agency or authorise the Agency to take it; 15

(c) the right to use land temporarily for any of the purposes for which the Minister is competent to expropriate land under paragraph (a), may take that right for the Agency or authorise the Agency to take that right.

(2) The Minister may not exercise a power in terms of subsection (1) unless satisfied on reasonable grounds that the Agency is unable to acquire the land or anything mentioned in paragraph (b) of that subsection, or the right to use the land temporarily, by agreement with the owner of the land or the holder of any relevant right in respect of the land, as the case may be. 20

(3) Subject to the obligation to pay compensation, and if satisfied on reasonable grounds that any land is or will be divided by a road contemplated in paragraph (a) of subsection (1) in such a manner that the land or any part of it is or will be useless to its owner, the Minister may expropriate that land or the relevant part thereof. 25

(4) Where the Minister expropriates any land for the Agency in terms of subsection (1) or (3), the Agency becomes the owner thereof on the date of expropriation of the land concerned. 30

(5) Subject to this section, the provisions of sections 7 to 24 of the Expropriation Act, 1975, will apply with regard to any expropriation in accordance with subsection (1) or (3), reading in the changes necessary in the context. However, any reference in those sections of the Expropriation Act, 1975, to “section 2”, must be understood as a reference to this section. 35

### **State land may be made available to Agency for purposes of national road**

**42.** (1) On request made by the Agency in consultation with the Minister, the Minister of Public Works may make any State land available for transfer to the Agency for the purposes of or in connection with a national road or for any of the related purposes mentioned in section 41(1), at a fair price. In determining a price that is fair, the criteria that are mentioned in the following provisions of section 12 of the Expropriation Act, 1975, reading in the changes necessary in the context, must be applied: 40

(a) Subsection (1), except paragraph (b) thereof; and

(b) subsection (5)(b), (c), (d), (e), (f) and (h). 45

(2) For the purposes of subsection (1), any reference in the provisions mentioned in paragraphs (a) and (b) of that subsection—

(a) to compensation that is to be paid, however expressed, must be interpreted as a reference to the price that is to be paid in terms of subsection (1);

(b) to property expropriated or the expropriation of property, however expressed, must be interpreted as a reference to State land made available or (as the case may be) the making available of State land, in terms of that subsection; and 50

- (c) to a date of notice, however expressed, must be interpreted as a reference to the date of the notice by which the Minister of Public Works informs the Agency that the relevant State land has been made available to it under this section.

### **Entry upon land**

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**43.** (1) Subject to subsections (2), (3) and (4), a member or employee of the Agency or other person authorised in writing thereto by the Board (hereafter generically called an Agency delegate), may, with the permission of the owner of any land, enter upon that land with the necessary workers, machines, vehicles, equipment, tools, instruments or materials to perform or carry out on, below the surface of or in connection with that land, any investigation, survey, observation or other act necessary for or in connection with the exercise or performance of a power, function or duty conferred or imposed on the Agency by or in terms of this Act. 10

(2) (a) Where the owner of any land has refused the Agency delegate permission to enter upon that land, the High Court within whose area of jurisdiction that land is situated, may on application by the Agency and subject to paragraph (b), issue an order authorising the Agency delegate to enter upon that land if satisfied, after consideration of the criteria mentioned in section 36(1)(a), (b), (c), (d) and (e) of the Constitution, that entry upon that land by the Agency delegate is reasonably necessary and justifiable in the circumstances. 15 20

(b) The provisions of paragraph (a) may not be applied to gain access to any dwelling or any other building on the land in use for residential purposes. However, the occupier of the dwelling or other residential building may agree to the Agency delegate entering it for the purpose of performing or carrying out therein any activity mentioned in subsection (1). 25

(c) A court order issued in terms of paragraph (a) must specify the purpose for which entry upon the land is authorised, the acts that may be performed or carried out on the land in connection with that purpose and the persons by whom, the means whereby or the manner in which they are to be performed, and may stipulate any conditions with regard thereto. 30

(3) The Agency must repair or pay for any damage arising from any act performed by or on the authority of the Agency delegate in the exercise of any power conferred by or in terms of this section.

### **Access to and egress from national roads**

**44.** (1) No person may— 35

- (a) take a vehicle onto a national road except at an entrance provided for that purpose;  
 (b) take a vehicle off a national road except at an exit provided for that purpose;  
 (c) enter a national road which is fenced, except at an entrance provided for that purpose;  
 (d) leave a national road which is fenced, except at an exit provided for that purpose. 40

(2) Only the Board and any person acting on its written authority may provide or authorise an entrance to or an exit from a national road.

(3) Such an authorisation must be reduced to writing and may be granted by the Agency on any conditions that it considers desirable, including conditions with regard to the nature of the entrance or exit that is authorised, the place where or manner in which the entrance or exit may be erected, constructed or otherwise provided, or its use. The Agency may at any time alter, substitute or cancel such a condition or impose a new condition and insert it in the authorisation. 45 50

(4) An entrance to or exit from a national road—

- (a) provided or authorised in terms of the previous Act or in terms of any other law repealed by this Act, which is in existence and in use immediately before the incorporation date;

- (b) which is lawfully in existence and in use immediately before the date on which the road or route in question is declared under section 40(1)(a) to be a national road,  
will, until the Agency has issued a written authorisation in respect of it under subsection (2) or has removed or closed it under subsection (5), be regarded and treated for all purposes as if it had been provided or authorised under subsection (2), subject—
- (i) in the case of an entrance or exit mentioned in paragraph (a), to the conditions or requirements which immediately before the incorporation date applied with regard to its nature, establishment or use;
  - (ii) in the case of an entrance or exit mentioned in paragraph (b), to the condition that its nature may not be changed and that it may not be used for a purpose for which it was not used before the date mentioned in that paragraph, except if authorised in writing by the Agency.
- (5) Despite any contrary provision of any other law, an entrance to or exit from any national road, or to or from any road in a building restriction area mentioned in paragraph (b) of the definition of “building restriction area” in section 1, may be removed or closed to traffic by the Agency which may, if considered necessary, provide another entrance or exit and take whatever other steps it considers necessary to make the other entrance or exit suitable for use.
- (6) The Agency in its discretion may compensate a person who suffers any direct loss as a result of the removal or closure of an entrance or exit under subsection (5). However, in considering compensation, the Agency must take into account the existence of an alternative entrance or exit or the provision of another entrance or exit under that subsection.
- (7) For the purposes of this section, “entrance” and “exit”, with regard to a road, means any road (whether a public road or not), bridge, subway, gate, sty, passage or other means by which the road can be entered or left, respectively.
- (8) A person is guilty of an offence—
- (a) upon contravening the provisions of subsection (1), and liable on conviction to a term of imprisonment not longer than three months, or a fine;
  - (b) when providing or making an entrance to or exit from a national road without the Agency’s written authorisation in terms of subsection (2), and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.

#### **Closing or diverting national road**

**45.** (1) The Agency may close a national road to traffic or divert the roadway of a national road whenever in its opinion it is necessary or desirable to do so.

(2) Any person who without the permission of the Agency uses a national road so closed to traffic, is guilty of an offence and liable on conviction to a term of imprisonment not longer than three months, or a fine, or to both the term of imprisonment and the fine.

#### **Damaging of national road**

**46.** (1) Any person who damages a national road wilfully or negligently, is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine.

(2) (a) The court convicting a person of an offence contemplated in subsection (1) may, in addition to imposing a sentence on such a person, order that person to pay to the Agency an amount which, in the court’s opinion, is equal to the amount of the damage caused.

(b) Such an order will have the force of a civil judgment and may be enforced in the same manner as a civil judgment.

- (3) The owners or occupiers of land adjoining any national road must—
- (a) take all measures on their land that are reasonably necessary to prevent the occurrence of any damage to the national road concerned, including any measures as prescribed from time to time for that purpose;
  - (b) refrain from doing or permitting anything on or below the surface of that land which is likely to cause damage to that national road. 5
- (4) The owner or occupier of any land adjoining a national road will be liable for any damage to the national road which was or reasonably should have been foreseen and which could have been avoided had the owner or occupier taken measures in compliance with subsection (3)(a), or refrained in compliance with subsection (3)(b) from doing or permitting anything contemplated in the latter subsection. 10
- (5) (a) For the purposes of ensuring compliance with subsection (3), the Agency by notice in writing may demand that the owner or occupier of any land adjoining a national road does the following to prevent the occurrence of any damage which, in the Agency's opinion, is likely to be caused to a national road: 15
- (i) Takes on that land the measures, specified in the notice, within the period mentioned therein, or allows the Agency to take those measures itself; or
  - (ii) forthwith stops doing or permitting anything particularly specified in the notice, at any place, on or below the surface of that land, specified in the notice.
- (b) The demand made in the notice may amongst others order the removal, filling in, alteration, relocation or establishment of any dam, canal, trench, wall, sluice, pipe, excavation, structure or other works, or the cessation of such an act, on the land. 20
- (6) (a) If the owner or occupier of the land fails or refuses to comply with that notice, the Agency may apply to the High Court within whose area of jurisdiction that land is situated for an order directing the owner or occupier— 25
- (i) to take the measures specified in the notice, on that land, or to allow the Agency to do so itself; or
  - (ii) (as the case may be) to stop doing or permitting the thing so specified at the specified place on that land.
- (b) The court may order that all or any of the measures demanded by the Agency or any other measures that the court considers fit, be taken by the owner or occupier, or, as the case may be, that the owner or occupier ceases doing or permitting all or any of the things complained of, if satisfied— 30
- (i) that due to the circumstances prevailing on the particular land, damage is likely to be caused to the national road in question; and 35
  - (ii) that the damage to that national road is likely to be avoided by taking those measures or by ceasing to do or to permit those things.
- (c) The court may order either of the parties to bear the costs of complying with that order, depending on whatever may be fair and just in the circumstances, and may make any order as to the costs of the proceedings that it considers fit. 40
- (7) In any deserving case the Agency, in its discretion and without prejudice to any of its rights, may with the Minister's approval pay the whole or any part of the costs incurred by the owner or occupier of land in complying with any notice issued under subsection (5). 45

#### **Disposing of national roads' storm-water**

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**47.** (1) The Agency may divert storm-water from or under a national road onto any land but must pay compensation for any damage caused by the diversion of the storm-water except in the circumstances mentioned in subsection (2).

(2) Where a township is established on land adjoining a national road, the person establishing the township must receive and dispose of the storm-water discharged or diverted from the national road, and the Agency will not be liable for any damage caused in the township by the storm-water. 50

**Structures and other works on, over or below national roads or certain other land**

48. (1) Except as provided in subsection (2), no person may do any of the following things without the Agency's written permission or contrary to that permission, namely—
- (a) on or over, or below the surface of, a national road or land in a building restriction area, erect, construct or lay, or establish any structure or other thing (including anything which is attached to the land on which it stands even though it does not form part of that land); 5
  - (b) make any structural alteration or addition to a structure or that other thing situated on or over, or below the surface of, a national road or land in a building restriction area; 10
  - (c) give permission for erecting, constructing, laying or establishing any structure or that other thing on or over, or below the surface of, a national road or land in a building restriction area, or for any structural alteration or addition to any structure or other thing so situated.
- (2) Subject to any condition imposed under section 49(3)(a)(iii) or (iv), the provisions of subsection (1), except in so far as they prohibit the erection, construction, laying or establishment of a structure or other thing on or over, or below the surface of, a national road, do not apply to— 15
- (a) a structure erected or constructed by the South African Rail Commuter Corporation Limited on land under its control; 20
  - (b) any dwelling on a farm and any other structure on a farm used only for farming operations in the true sense.
- (3) (a) The Agency, in its discretion, may give or refuse its permission in terms of subsection (1). 25
- (b) When giving permission, the Agency may prescribe—
    - (i) the specifications to which the structure, other thing, alteration or addition for which permission is asked, must comply;
    - (ii) the manner and circumstances in which, the place where and the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made; and 30
    - (iii) the obligations to be fulfilled by the owner of the land in question if the structure, other thing, alteration or addition is erected, constructed, laid, established or made.
- (4) (a) If an obligation to remove a structure or other thing is prescribed by a condition imposed under subsection (3)(b), the Registrar of Deeds having jurisdiction in respect of the area concerned must, at the written request of the Agency, note the obligation on the title deed of the land affected thereby and in the appropriate register kept by that Registrar. 35
- (b) The costs in connection with that noting must be paid by the person to whom the permission has been given. 40
  - (c) The Agency may enforce compliance with an obligation that has been so noted.
  - (d) The provisions of section 49(6)(a) and (b), reading in the changes necessary in the context, will apply to an obligation so noted.
- (5) Where a person without the permission required by subsection (1) or contrary to any permission given thereunder, has erected, constructed, laid or established a structure or other thing or has made a structural alteration or addition to a structure or other thing or given permission therefor, the Agency by notice in writing may direct that person to remove the unauthorised structure, other thing, alteration or addition within a reasonable period which must be stated in the notice but which may not be shorter than 30 days calculated from the date of the notice. 45
- (6) If the person to whom a notice has been issued in terms of subsection (5), fails to remove the structure, other thing, alteration or addition mentioned in the notice, within the period stated therein, it may be removed by the Agency itself which may recover the costs of the removal from that person. 50
- (7) (a) Despite the provisions of any other law, the Agency may remove or shift, to a place determined by it, any structure or other thing (except a structure or thing mentioned in subsection (2)) which, before the date on which the road or route 55

concerned is declared a national road in terms of section 40 or was declared a national road under the previous Act, was erected, constructed, laid or established on or over, or below the surface of—

- (i) that national road;
- (ii) land in a building restriction area; or
- (iii) other land situated within a distance from that national road as specified in a condition imposed under section 49(3)(a)(iv).

(b) In the case of a power line or telephone line, any sewage disposal works or water reticulation, supply or disposal works or other works so erected, constructed, laid or established subject to a condition, imposed under any law, in terms of which any other person is responsible for the removal or shifting thereof, the Agency may recover the costs of the removal or shifting from that other person.

(8) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine.

#### **Agency's approval necessary for division of certain land**

**49.** (1) If land or any part of land (except land or any part of land under the control of the South African Rail Commuter Corporation Limited) is situated in a building restriction area, a surveyor-general may not approve the diagram or general plan of any division of that land or part (whether for the establishment or extension of a township or for any other purpose) unless the Agency in writing has given its approval for the division.

(2) The Agency may refuse to give its approval only if satisfied that the division for which approval is asked may frustrate any of the objects of this Act.

(3) (a) The Agency may give its approval subject to any conditions—

- (i) prohibiting the division or further division of the land or of a specified part of it;
- (ii) limiting the use to which the land or any specified part of it may be put;
- (iii) limiting the number or extent of buildings or other structures which may be erected on the land or on any specified part of it;
- (iv) prohibiting the erection, construction or establishment of any structure or other thing on or over, or below the surface of, the land, or on or over, or below the surface of, a specified part of it, within a specified distance from the road in question.

(b) In giving its approval, the Agency may stipulate that if the land or a specified part of it is consolidated with other land, the title to the consolidated land will be subject to a condition imposed under paragraph (a).

(4) A condition referred to in subsection (3) may be imposed in such a manner as to permit non-compliance therewith or departure therefrom with the Agency's approval.

(5) (a) Despite any contrary provision contained in the Deeds Registries Act, 1937—

- (i) the person giving transfer of land to which one or more of the conditions referred to in subsection (3) apply, must insert each condition that so applies in the deed of transfer;
- (ii) the Registrar of Deeds must endorse on the title deed of the land retained by the person giving transfer, each of those conditions that applies to the land so retained;
- (iii) a certificate of consolidated title issued in respect of consolidated land mentioned in subsection (3)(b), must contain every condition to which the title to that land is made subject in terms of a stipulation made under that subsection.

(b) The Agency may enforce compliance with any such condition.

(6) (a) Despite any contrary provision contained in the Deeds Registries Act, 1937, or any other law, a Registrar of Deeds, with the Agency's written approval, may cancel any

condition which in terms of subsection (5) has been inserted in a deed of transfer or certificate of consolidated title or has been endorsed on a title deed.

(b) The cancellation may be done on the written application of the owner of the land in question, accompanied by the Agency's written approval therefor and proof that all mortgagees (if any) have been notified of the proposed cancellation. 5

(c) Transfer duty or office fees will not be payable for such a cancellation.

### **Advertisements on or visible from national roads**

50. (1) Except as provided in subsection (2), no person may—

(a) display an advertisement on a national road, or permit it to be so displayed; 10

(b) display, outside an urban area, any advertisement visible from a national road, or permit any advertisement which is so visible, to be so displayed; 10

(c) display any advertisement visible from a national road in an urban area, on any land adjoining the national road or on land separated from the national road by a street, or permit it to be so displayed.

(2) Subsection (1) does not apply to the displaying of any advertisement complying with the prescribed requirements (if any) as to the nature, contents or size of such an advertisement or the time, manner or place of its display, where the display thereof is authorised by or under the regulations concerned, or the advertisement— 15

(a) is displayed on a building in which a business or undertaking is carried on, and contains no more than the name of the business or undertaking or description of its nature, the name of its proprietor and the further information (if any) as authorised by or under the regulations concerned; or 20

(b) is displayed on any vehicle, or is displayed on any other machine or implement and contains no more than the trade name of that machine or implement and the name of its manufacturer, so long as the main purpose for which the vehicle, machine or implement is used, is not the displaying of the advertisement; or 25

(c) is displayed in terms of an authorisation conferred, before or after the incorporation date, under the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940), for as long as the advertisement is displayed in accordance with the requirements which, in terms of that authorisation, are applicable to it or were applicable to it immediately before the incorporation date, as the circumstances may require; or 30

(d) is lawfully displayed at any place immediately before the road or route in question is declared a national road under section 40(1), for as long as it is displayed continuously at the same place, unless its removal has been directed under subsection (3) of this section and the period within which it had to be removed, has expired; or 35

(e) is displayed by the State, or is displayed, in the performance of its functions, by a body established by or under any law, or has to be displayed, in terms of any law, at the place where, and under the conditions under which, it is in fact displayed. 40

(3) Any person who displays an advertisement contrary to the provisions of subsection (1) or permits it to be so displayed, or who displays any advertisement mentioned in paragraph (d) of subsection (2) in a manner or in circumstances which, were it not for subsection (2), would have been a contravention of subsection (1), and who has been directed by the Agency by notice in writing to remove that advertisement, must do so within the period stated in the notice which may not be shorter than 14 days. 45

(4) If the person to whom a notice in terms of subsection (3) is directed, fails to remove the advertisement specified in the notice within the period stated therein, it may be removed by the Agency itself which may recover the costs of the removal from that person. 50

(5) Any person who contravenes subsection (1), is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months, or a fine.

**Disused vehicles or machinery and other rubbish on or near national roads**

**51.** (1) No person may—

- (a) deposit or leave a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse on a national road;
- (b) without the Agency's written permission or contrary to any condition imposed by the Agency and set out in the written permission, deposit or leave, so as to be visible from a national road, any disused vehicle, machine or part, or any rubbish or other refuse—
  - (i) on land outside an urban area and within 150 metres from the boundary of a national road; or
  - (ii) on land within an urban area and adjoining a national road or separated from a national road by any street.

(2) The Agency may remove a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse, found on a national road, and may recover the costs of the removal from the person who deposited or left the disused vehicle, machine or part or the rubbish or other refuse on that road.

(3) If, on any land mentioned in subsection (1)(b), there is found any disused vehicle or machine or disused part of a vehicle or machine, or any rubbish or other refuse, which is visible from a national road and the person who deposited or left it there or any person entitled to remove it, has been directed by the Agency by notice in writing to remove it from the land or to take the necessary steps to render it invisible from a national road—

- (a) such a person must remove the disused vehicle, machine or part or the rubbish or other refuse from the land or take those necessary steps within the period stated in the notice, except if—
  - (i) that person produces a written permission of the Agency authorising the presence of that vehicle, machine, part, rubbish or other refuse on that land under the circumstances in question; or
  - (ii) in the case of a person so entitled, that person satisfies the Agency of not having deposited or left the vehicle, machine, part, rubbish or other refuse on that land and not having permitted its being deposited or left there and, where it was deposited or left there by the agent or employee of the person so entitled, of not having been aware of that fact;
- (b) the Agency, if the vehicle, machine, part, rubbish or other refuse has not been removed within the period stated in the notice and if satisfied that no person holds a written permission of the Agency in terms of paragraph (a)(i), may remove the vehicle, machine, part, rubbish or other refuse from that land or take any steps that the Agency considers necessary to render the vehicle, machine, part, rubbish or other refuse invisible from the national road, and may recover the costs of the removal or of those steps from the person who in terms of paragraph (a) was under a duty to make the removal or take the necessary steps.

(4) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.

**Trading on national road or in building restriction area**

**52.** (1) Except as provided in subsection (2), no person may without the Agency's written permission or contrary to the terms of the written permission, carry on any trade or expose, offer or manufacture for sale any goods on a national road or in a building restriction area.

(2) Subsection (1) does not apply to any person who, after the date on which a road or route is declared a national road under section 40, continues, on land forming part of the national road or building restriction area, any business or undertaking which was

carried on or conducted on that land immediately before that date, unless that person, by notice in writing, has been directed by the Agency to discontinue the business or undertaking before a date stated in the notice, and that date has arrived.

(3) Any employee of the Agency or person authorised thereto in writing by the Agency, any employee of the Agency mentioned in section 54(1), any employee of a municipality or province designated or appointed to perform law enforcement functions on a national road by virtue of an agreement entered into under section 54(3), and any person who in terms of a road traffic law is a traffic officer for the purpose of the road traffic law, may—

(a) if such an employee, officer or person (in this section called the competent official) suspects on reasonable grounds that a person has performed an act for which the Agency's written permission is required in terms of subsection (1), demand that the person then and there produces to the competent official the Agency's written permission to perform that act;

(b) if the person to whom the demand is made, fails to produce such a written permission to the competent official, or if the competent official suspects on reasonable grounds that a person has performed on a national road or in a building restriction area any act that is unlawful in terms of subsection (1)—

(i) demand that the person's full name and residential address be furnished by the latter then and there;

(ii) order that person to remove from the building restriction area or the national road—

(aa) every article with or in respect of which that act has been performed or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of such an act by that person; or

(bb) any structure, tent, vehicle, implement or other object in, on or with which that act has been performed, or in or on which there is such an article, or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of such an act by that person;

(c) remove from the national road or the building restriction area any article, structure, tent, vehicle, implement or other object mentioned in paragraph (b)(ii), or which the competent official finds on the national road or in the building restriction area and suspects on reasonable grounds to have been used, or to be destined for use, by any person in connection with a contravention of subsection (1).

(4) (a) A person is guilty of an offence—

(i) upon contravening any provision of subsection (1); or

(ii) when failing to furnish the latter's full name and residential address to a competent official demanding it in terms of subsection (3)(b)(i); or

(iii) upon having failed to obey an order given to that person under subsection (3)(b)(ii).

(b) A person convicted of an offence mentioned in paragraph (a) will be punishable with a term of imprisonment not longer than three months, or a fine.

#### **Agency may pay compensation for damage or loss due to its activities**

53. The Agency, at its discretion and on any conditions it considers fit, may—

(a) pay the costs or part of the costs incurred by a municipality or province in connection with a road or other works which, by agreement between the Agency and the municipality or Premier of the province, as the case may be, may have become necessary as a result of the construction, maintenance or rehabilitation of a national road;

(b) pay an amount to any person for any damage, loss or inconvenience which, in the opinion of the Agency, has been or will be suffered by the person as a result

of the exercise or performance of any of the powers, functions or duties entrusted to the Agency or any other person by or in terms of this Act, and for which no compensation is payable in terms of this Act.

#### **Law enforcement on national roads**

**54.** (1) The Agency may authorise any of its employees to take steps on a national road or any other property of the Agency, in the manner and on the conditions as prescribed, with a view to preventing any offences created by this Act, any other contraventions thereof and any offences in terms of the road traffic and the road safety laws being committed on the national road or other property. 5

(2) Such an authorised employee will have the powers of arrest and detention conferred on a peace officer in terms of Chapter 5 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), with regard to any person who, on a national road or the property mentioned in subsection (1), has committed any offence referred to in that subsection in the presence of the authorised employee or who is suspected by the authorised employee, on reasonable grounds, so to have committed such an offence. 10

(3) Despite subsections (1) and (2), the Agency may enter into an agreement with— 15

(a) any municipality, in terms of which the municipality is authorised, and undertakes, to perform the law enforcement functions mentioned in subsections (1) and (2), on a national road within the municipal area, through employees of the municipality designated or appointed by it for that purpose; 20

(b) the Premier of any province, in terms of which the province is authorised and undertakes to perform those law enforcement functions on the national roads in the province, or any of those national roads as specified in the agreement, through employees of the province designated or appointed by the province for that purpose. 25

## **CHAPTER 6**

### **GENERAL AND MISCELLANEOUS PROVISIONS**

#### **Agency exempt from paying certain duties and fees**

**55.** Despite any other law, no transfer duty, stamp duty, registration fees or office fees will be payable by the Agency for the transfer of land, real rights in land and other immovable property to the Agency or in connection with the Agency's acquisition of land, real rights in land and other immovable property in any other manner. 30

#### **Extension of periods stated, specified or prescribed in notices, etc.**

**56.** (1) Where, in a notice or any other document to any person issued in terms of this Act, the Agency has stated, specified or prescribed a period within which the person must or may perform, carry out, do or cease any act, activity or other thing, the Agency, on application by that person and at its discretion, may allow that person a further period for performing, carrying out, doing or ceasing that act, activity or thing. 35

(2) Any further period so allowed, will be regarded and treated for the purposes of this Act as if it were the period stated, specified or prescribed in the Agency's notice or other document. 40

#### **Appeals to Minister against certain decisions of Agency**

**57.** (1) Where the Agency has refused a person's application for an approval or permission contemplated in section 48 or 49 or has granted a limited or conditional approval or permission, the person may appeal to the Minister against the refusal, limitation or condition in question, and the Minister may dismiss the appeal or allow it 45

in whole or in part, or take any other decision that the Agency could have taken with regard to the application.

(2) Any approval, permission, limitation or condition which on appeal has been granted or imposed by the Minister, will be regarded and treated for the purposes of this Act as if it were granted or imposed by the Agency. 5

(3) An appeal in terms of subsection (1) must be lodged with the Minister in the manner and form and within the period as prescribed.

## Regulations

**58.** (1) The Minister, after consultation with the Agency, may make regulations that are not inconsistent with this Act— 10

- (a) prohibiting or regulating the diversion of storm-water onto, over or under a national road or the alteration of the natural flow of any water in relation to a national road; 15
- (b) prohibiting or regulating the installation or existence of any street-light or other light emitting rays onto a national road; 15
- (c) about traffic on a national road or the use or protection of a national road or the use or presence of vehicles or animals or any other thing on a national road, provided such a regulation is not in conflict with any road traffic law; 15
- (d) prescribing a form to be used in connection with any claim for compensation or in connection with any application, authorisation, approval, permission or exemption provided for in this Act, or prescribing the information to be furnished and procedure to be followed in connection with any of those matters; 20
- (e) with regard to anything which in terms of this Act may or must be prescribed, governed or determined by regulation or which, in terms of this Act, may or must be provided for by regulation. 25

(2) Different regulations may be made under subsection (1) for different national roads, and the regulations may provide that a person who contravenes or fails to comply with any particular regulation will be guilty of an offence and liable on conviction to a term of imprisonment or a fine not exceeding that prescribed in the regulations. 30 However, the maximum period of a term of imprisonment so prescribed may not exceed six months, whilst any fine imposable in conjunction therewith or as an alternative thereto will be calculable in accordance with section 1(1)(a) of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

(3) The regulations made under section 20 of the previous Act and in force immediately before the incorporation date, remain in force and continue to apply in so far as they are not inconsistent with this Act— 35

- (a) despite the repeal of that section by this Act; and
- (b) until they are amended, substituted or repealed under this section.

## Limitation on legal proceedings against Agency 40

**59.** (1) (a) Except as provided in subsection (2), legal proceedings may not be brought against the Agency, any member of the Board, an employee of the Agency or any other person for any damage or loss allegedly suffered by a person (in this section called the claimant) as a result of any act with regard to a national road which allegedly was performed or omitted by any of the persons mentioned in paragraph (b)— 45

- (i) unless instituted within 15 calendar months after the date upon which the claimant became aware of the alleged act or omission, or after the date on which the claimant may reasonably be expected to have become aware of the alleged act or omission, whichever is the earlier date; and
  - (ii) before the expiry of at least three calendar months after written notification of the claimant's intention to institute the legal proceedings, containing sufficient particulars of the alleged act or omission, has been served on the defendant or respondent, unless the defendant or respondent in writing has denied liability. 50
- (b) For the purposes of paragraph (a), the persons concerned are the following:

- (i) Any of the members of the Board;
- (ii) the Chief Executive Officer;
- (iii) any of the other employees of the Agency acting in the performance of their duties;
- (iv) any person acting on behalf of the Agency on the authority of the Board. 5

(2) The High Court that has jurisdiction to determine the legal proceedings contemplated by the claimant in any particular case, may on application by that claimant order that any requirement of subsection (1)(a) be dispensed with or relaxed or that non-compliance therewith be condoned if the interests of justice so require.

(3) Neither the Agency nor any person mentioned in subsection (1)(b) or any person who operates or has constructed a national road, will be liable for any damage or loss suffered by any person through the use of any part of the national road other than the roadway or as a result of the closure or deviation of a national road under this Act. 10

### **Amendment and repeal of laws**

**60.** (1) The laws mentioned in items 1 and 2 of Schedule 1 to this Act are amended, with effect from the incorporation date, to the extent specified in those items. 15

(2) Subject to section 61, the laws mentioned in the first two columns of Schedule 2 to this Act are repealed, with effect from the incorporation date, to the extent shown opposite those laws in the third column of that Schedule.

### **Transitional provisions, and savings** 20

**61.** (1) Subject to this Act, any notice, authorisation, permission, approval, decision, exemption, direction, order, suspension, determination or condition issued, given, granted, made or imposed under any provision of the previous Act, and any other act or thing performed or done under such a provision, will be regarded and treated as having been issued, given, granted, made, imposed, performed or done under the corresponding provision of this Act by the person or functionary competent in terms of this Act to do so. 25

(2) Except where any other provision is made by this Act or in any agreement entered into by the Minister and the Agency and published in terms of section 7(3), and subject to subsection (3) of this section, the Agency will be the legal successor of the South African Roads Board or the State with regard to, and must be substituted for the South African Roads Board or the State in, any contract or agreement entered into with any person before the incorporation date by or on behalf of the South African Roads Board (including an agreement with a municipality or the Premier of a province), or by or on behalf of the Minister representing the State (as the case may be), if— 30

(a) by the incorporation date, the term of the relevant contract or agreement has not yet expired; and 35

(b) that contract or agreement is one which has been concluded in terms of the previous Act and which relates to any matter falling within the scope of the Agency's powers, functions and duties in terms of this Act. 40

(3) (a) Unless any other provision has been made in an agreement entered into by the Minister and the Agency and published in terms of section 7(3)—

(i) the State, as represented by the Minister, will be substituted for the South African Roads Board as party in any legal proceedings instituted by or against the South African Roads Board before the incorporation date and still pending on that date, where the legal proceedings entail a contractual or delictual claim founded on a cause of action relating to or arising from the financing, construction, operation, management, control, maintenance or rehabilitation of a national road under the previous Act; 45 50

(ii) any legal proceedings entailing a contractual or delictual claim founded on a cause of action which arose before the incorporation date, relates to or arises from the financing, construction, operation, management, control, maintenance or rehabilitation of a national road under the previous Act and which is brought after the incorporation date, must be instituted by or against the State as represented by the Minister. 55

(b) For the purposes of any claim referred to in paragraph (a), the Minister will be regarded and treated, in all respects, as the legal successor to the South African Roads Board.

(4) Any determination of the amount of toll, exemption from payment of toll, and restriction or suspension of the levying of toll in terms of the previous Act, which is in force in respect of a particular toll road immediately before the incorporation date, will continue in force in respect of that road in all respects as if made, granted or imposed under this Act, until it is determined anew, or is altered, withdrawn or terminated (as the case may be) under Chapter 3. 5

(5) (a) The Agency will succeed the South African Roads Board as debtor under the loans which before the incorporation date were raised by that Board in terms of section 2(2A) of the previous Act for the purposes of or in connection with the existing toll roads. 10

(b) Any guarantee issued in terms of the previous Act by the State to cover the loan obligations of the South African Roads Board to which the Agency succeeds in terms of paragraph (a) of this subsection, will be regarded and treated in all respects as if it had been issued in terms of section 33(3) of this Act to cover the fulfilment of those obligations by the Agency. 15

(c) With a view to accommodating the intrinsic funding levels associated with the existing toll roads, the State, represented by the Minister and acting with the agreement of the Minister of Finance, may from time to time increase the amount of any guarantee mentioned in paragraph (b) so as to cover any replacement or additional loans that may be raised by the Agency for the purposes of or in connection with any existing toll road. 20

(d) For the purposes of this subsection, “existing toll road” means any national road which was declared a toll road under section 9 of the previous Act and to which the provisions of section 27(6) of this Act apply. 25

#### **State bound by this Act**

**62.** This Act binds the State.

#### **Short title and commencement**

**63.** (1) This Act is called The South African National Roads Agency Limited and National Roads Act, 1998, and comes into operation on 1 April 1998. 30

(2) Subsection (1) must not be understood as requiring or permitting the application, as from the date so determined, of any provision reliant on the occurrence of the incorporation date.



**SCHEDULE 2****Laws repealed by section 60(2)****(Laws of the Republic unless otherwise specified)**

Number and year of law	Short title	Extent of repeal
Act No. 54 of 1971	National Roads Act, 1971	The whole, except section 2(1A)
Act No. 62 of 1973	General Law Amendment Act, 1973	Section 43
Act No. 26 of 1974	National Roads Amendment Act, 1974	The whole
Act No. 72 of 1975	Finance Act, 1975	Section 7
Act No. 102 of 1976	Finance Act, 1976	Section 20
Act No. 38 of 1978	National Roads Amendment Act, 1978	The whole
Act No. 3 of 1979	National Roads Amendment Act, 1979	The whole
Act No. 8 of 1979, of the former Republic of Transkei	Roads Act, 1979	The whole, in so far as it relates to national roads
Act No. 66 of 1980	National Roads Amendment Act, 1980	The whole
Act No 93 of 1981	National Roads Amendment Act, 1981	The whole
Act No. 5 of 1982	National Roads Amendment Act, 1982	The whole
Act No. 10 of 1983	National Roads Amendment Act, 1983	The whole
Act No. 79 of 1983	Second National Roads Amendment Act, 1983	The whole
Act No. 58 of 1985	National Roads Amendment Act, 1985	The whole
Act No. 52 of 1991	Transnet Limited Amendment Act, 1991	Sections 33, 34 and 35
Act No. 108 of 1991	Abolition of Racially Based Land Measures Act, 1991	Section 34
Act No. 100 of 1992	National Roads Amendment Act, 1992	The whole
Act No. 27 of 1994	National Roads General Amendment Act, 1994	The whole
Act No. 24 of 1996	National Roads Amendment Act, 1996	The whole

## **MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED AND NATIONAL ROADS BILL, 1998**

### **BACKGROUND**

1. Mainly because the national roads of South Africa have suffered extensive deterioration in the past due, amongst others, to inadequate funding, the Department of Transport in the national sphere of government (“the Department”), has embarked on an extensive exercise since 1994 to evaluate its role in the planning, construction and maintenance of national roads. The Department’s efforts culminated in May 1996 in the publication of a document titled *A future for Roads in South Africa*, containing a policy framework with regard to national roads. The principles encapsulated in that document were summarised in the *White Paper on National Transport Policy* (“the White Paper”) which was approved by Cabinet during September 1996. The salient principles of the White Paper are the following:

- A sound financial base must be fostered for transport infrastructure.
- Co-ordination of strategic planning for this infrastructure must be promoted.
- A strategy on long-term and integrated planning must be formulated.
- A comprehensive management system for infrastructure must be developed.
- User charges must be levied.
- New sources for financing infrastructure must be developed.
- A professionally managed State enterprise or agency such as the Airports Company, must be set up to manage matters relating to national roads.
- The ownership of transport infrastructure and the regulation thereof should be separated.
- Public involvement processes must be developed.
- The primary road network should preferably be financed through a dedicated levy on fuel and through tolls.

### **THE BILL**

2.1 The South African National Roads Agency Limited and National Roads Bill, 1998 (“the Bill”), represents a first major step towards the implementation of the policy set out in the White Paper. In keeping with the policy guidelines contained in the White Paper, with particular reference to the principle that there should be a separate State enterprise or agency to take over the responsibility for national roads (which was endorsed by MINCOM), the Bill provides for the establishment of a national roads agency in the form of a public company—

- to be incorporated by the Registrar of Companies under the name “The South African National Roads Agency Limited” (i.e. “the Agency”);
- with the State as its only member and shareholder;
- for the purpose of taking charge of the management, control, planning, development (eg. through roads construction), maintenance and rehabilitation of the Republic’s national roads system and the financing thereof. (See clauses 2 and 3.) In terms of clause 25(1) of the Bill, the performance of these activities also constitutes the Agency’s *main functions*.

The Minister of Transport in the national sphere of government (“the Minister”) represents the State’s interests in the Agency inasmuch as the Minister exercises the State’s rights as member and shareholder. (See clause 3(4)(a) of the Bill.)

2.2 The Bill further provides that the Companies Act, 1973 (Act No. 61 of 1973), will apply to the Agency except in so far as it is contrary to or modified by the Bill or is clearly inappropriate. However, the Minister of Trade and Industry may, on the fully motivated request of the Minister and after the public has had an opportunity to respond to the request, also declare certain other provisions of the Companies Act, 1973, not to be applicable to the Agency if satisfied that this will—

- contribute to the Agency’s efficiency or reduce its operating costs; and
- will not detract from the Agency’s accountability and transparency as a public institution; and
- will not prejudice the rights of the Agency’s creditors or employees, or of other interested persons.

(See clauses 5 and 6.)

3.1 The Bill, in clause 7, proposes that on the date of the Agency’s incorporation as a company (“the incorporation date”), being the date on which the Agency is established in law, the unspent moneys in the National Roads Fund (which ceases to exist on the incorporation date due to the repeal of the National Roads Act, 1971, with effect from that date), will pass to the Agency, as well as the following:

- (a) All State land, and all land owned by the South African Roads Board (“the SARB”), on which existing national roads are situated, as well as all servitudes of the State or the SARB, or other real rights held by them, in respect of land on which existing national roads are situated, if those servitudes or other real rights are held for the purposes of or in connection with those national roads.
- (b) All other land, and any real rights in respect of land, that had been acquired by the State or the SARB before the incorporation date for the purposes of or in connection with a national road in terms of the National Roads Act, 1971.
- (c) All other immovable property of the SARB acquired by it under that Act from moneys made available from the said National Roads Fund.
- (d) Those other assets of which the SARB was the owner for the purposes of or in terms of that Act, and those liabilities incurred by the SARB in terms of that Act, as specified in an agreement between the Minister and the Agency specially concluded for that purpose.

3.2 Clause 8 of the Bill provides that in return for the nett assets so passing to the Agency (i.e. invested in the Agency), the State will receive fully paid-up shares in the Agency as provided for in an agreement entered into by the Minister and the Agency for that purpose. However, where the amount for which the State receives shares is less than the nett value of the assets it invests in the Agency, the Agency will be indebted to the State for the amount of the difference, and in that event the terms and conditions of the loan must be set out in that agreement.

4. The Agency is to be governed and controlled by a Board of Directors consisting of eight members, seven of whom are to be appointed by the Minister, namely a non-executive chairperson, a representative of the Department of Finance and five additional members with special qualifications, skills, expertise or experience with regard to matters concerning national roads or the business or operations of the Agency, whilst the Agency’s Chief Executive Officer (CEO) is the eighth member, *ex officio*. (See clause 12.) The CEO, who is appointed by the other Board members, is accorded the status and capacity of a managing director and, amongst others—

- (a) is charged with the general and daily management of the Agency’s business and affairs and responsible for the appointment, supervision and control of its staff;
- (b) is responsible to ensure that the Agency’s day to day operations, activities and work are efficiently and duly performed or executed; and
- (c) is the Agency’s accounting officer and chief administrative and executive officer.

(See clauses 19 and 23(1)(a).)

It may be mentioned that in terms of the Bill a person will not qualify to become a member of the Agency’s Board of Directors or to be appointed CEO if the person is

disqualified, in terms of the Companies Act, 1973, from being appointed a director of a company (in the private sector) — see clauses 12(4) and 19(3).

5. The model of a public company has been chosen for a number of reasons, including the following (the list is not exhaustive):

- The commercial potential in national roads infrastructure makes company status a good choice.
- The performance of governmental or public functions entailing the operation of and control over public infrastructure through a body with company status is not a new concept in South Africa: The Airports Company Limited may serve as an example in this regard.
- One of the national roads authorities abroad that were reviewed, namely that of New Zealand, is moving towards company status.
- The public company model is a well-known legal institution in South Africa in respect of which the Companies Act, 1973, imposes stringent requirements with regard to accountability and transparency.
- The Companies Act, 1973, and the vast body of common law that has built up around it, make the company model a vehicle well-suited to ensure overall governance and control.
- The company model also stands as a symbol of the break with the past and separation from governmental operations. In this sense the choice of the company model will hopefully send out a signal of striving for effectiveness and efficiency.
- By choosing the company model, South Africa will be in the forefront of roads infrastructure reform.

6.1 In addition to the functions mentioned in paragraph 2.1 above, the Agency, in terms of clause 25(2) of the Bill, is destined to take over responsibility for projects started by the SARB before the incorporation date, and will be competent to continue with and carry out these projects. Clause 26 of the Bill also confers on the Agency a multitude of additional powers, for instance—

- at the request of a province or municipality, to do work in connection with roads within the province or the municipal area;
- to appoint private persons, institutions or bodies in terms of contracts to execute projects with regard to the planning or design of national roads or proposed national roads, or the construction, operation, management, control, maintenance or rehabilitation of national roads, or to perform work in the execution of such a project or monitor the performance of work in connection therewith;
- to participate in any joint venture in which a national road is involved;
- to authorise the construction or erection of anything on, over or below a national road and to charge levies, fees or rent therefor;
- to exploit, for gain or reward, its immovable property (except roads) that is not required for immediate use;
- to advise the Minister about matters related to a particular national road or to national roads generally; and
- to operate national roads as toll roads.

6.2 Provision is further made that where, in terms of an agreement with the government of another country, the Government of the Republic has undertaken to assist the other country in connection with the planning, design, construction, operation, management, control, maintenance or rehabilitation of its roads, the Agency may render that assistance on behalf of the Republic (and charge a fee therefor) in accordance with an operating agreement to which the Agency and the two governments are parties. (See clause 31 of the Bill.)

7. Clauses 27, 28 and 29 contain provisions governing toll roads. These provisions do not differ substantially from those in relation to toll roads presently contained in the National Roads Act, 1971 (which is to be repealed with effect from the incorporation date), except in the following respects:

- The Minister's approval is required for the Agency's declaration of a toll road.

Moreover, that approval may be given only if the Minister is satisfied that the Agency beforehand has given the requisite notice of the proposed toll road, has complied with the requirements for public participation and has duly taken the inputs made in the process into consideration in determining its scheme of arrangement with regard to the proposed toll road. (See clause 27(1)(a) and (4).)

- More stringent requirements are prescribed with regard to public participation in that the Agency must invite the Premiers of the provinces in which, and the municipalities in the areas of which, the road proposed as a toll road is situated or to be situated, as well as other interested persons, to comment or make representations on the proposed toll road, and must give them sufficient opportunity therefor. Failure to do so and to give due weight to the comments and representations received, will cause the Ministerial approval to be withheld. (See also the item preceding this one.)
- Provision is further made (in clause 27(5)(b)) that a person convicted of the offence of non-payment of toll, may, in addition to any sentence imposed, be ordered by the court to pay to the Agency a civil fine of R1 000. This amount may be adjusted annually in accordance with the official consumer price index.
- Clause 29 authorises the Agency to introduce a points demerit system in terms of which users of a toll road who refuse or fail to pay toll are to be penalised by recording demerit points against them for each occasion on which non-payment of toll occurs on their part, and according to which certain sanctions are to be imposed on offenders against whom more than a specified number of demerit points have been recorded. These sanctions may include imposing civil fines on the offenders, prohibiting the offenders' use of the toll road or suspending their right to use the road. The introduction of the points demerit system is subject to the Minister's approval, which will be granted only if the Agency has given notice of the proposed system and has followed the prescribed public participation procedures. (See clause 29(3).)

8.1 In addition to the share and loan capital derived from the State/public sector (see clauses 7 and 8 of the Bill and paragraphs 3.1 and 3.2 above), the Agency will also derive funding from toll revenues, the levy on fuel imposed by law specially for the benefit of the Agency, income earned from its participation in joint ventures or out of developing, leasing or otherwise beneficially exploiting its assets, all criminal and civil fines, and all civil penalties, payable by offenders for contraventions of the Act (i.e. the Bill once it has become law), and moneys appropriated by Parliament to supplement the Agency's funds (see clause 34). The Agency will also be able to raise loans from the State and, with the consent of the Minister of Finance, from any other source.

8.2 The Agency will be authorised to spend money in a financial year only in accordance with its business and financial plan as approved by the Minister. To that end the Agency must annually, not later than 30 days before the end of the financial year, submit that plan to the Minister for consideration and approval. The business and financial plan must set out the Agency's proposed operations, projects, activities and other objectives for the ensuing financial year and the cost and proposed method of financing those matters, and must contain a statement of the Agency's estimated income and expenditure for that financial year and any other prescribed information and information that may be requested by the Minister. The first business and financial plan must be submitted to the Minister within 90 days from the incorporation date. Not later than 30 days before the end of its first financial year, and of any financial year thereafter, the Agency must also submit a strategic plan for the five years following. (See clause 35 of the Bill.)

8.3 In terms of clause 36 the Agency will be obliged to keep proper accounting and financial records for each financial year in accordance with generally accepted accounting practice and procedures. Its accounting and financial records for each financial year, as well as its financial statements for that year, consisting of an income and expenditure statement, a cash-flow statement and a balance sheet, will be audited by the Auditor-General. In the Auditor-General's report an opinion will have

to be expressed, amongst other things, as to whether the information in the financial statements has been presented on a basis consistent with that of the previous financial year and, generally, whether there are adequate procedures in place for managing the Agency effectively, efficiently and according to sound economic principles. Unauthorised transactions, including any transactions that are not reconcilable with the Agency's objects and functions, that come to the notice of the Auditor-General, have to be highlighted. The report must also point out matters that, in the interest of the public or the national interest, should be brought to the attention of the Minister and Parliament. Clause 38 of the Bill, in addition, makes the provisions of sections 8, 11(1), (2), (4) and (5), 12(3) and 14 of the reporting by Public Entities Act, 1992 (Act No. 93 of 1992), applicable to the Agency.

8.4 Clause 37 introduces the principle of public reporting by the Agency inasmuch as it requires that the Agency annually, within five months after the end of its financial year, submits a report to the Minister about its business, operations, projects, finances and other activities with regard to the financial year. The annual report must also include the audited financial statements and the auditor's report and must specify the State's contribution to the Agency's budget and the purposes for which that contribution was used. The annual report must be tabled in Parliament by the Minister within 14 days after receipt.

9. However, the Government's role in relation to national roads and the Agency and its operations and affairs, embraces much more than appears from the foregoing. Indeed, the Bill contains numerous provisions that underline Government's prominent role in this regard inasmuch as—

- the Government as represented by the Minister, is vested by many of those provisions with residuary and other powers relating specifically to national roads or the Agency's functions or activities (see, for instance, clauses 20(3), 26(a), (d) and (t), 27(1)(a) and (f)(i), (3) and (4), 33, 35, 40, 41, 57 and 58, to mention but a few);
- *the determination of the national roads policy is the exclusive domain of the Government* in terms of clause 39. That clause further provides, amongst others, that the Minister by notice in the Government Gazette must make known the Government's goals relating to national roads and the policy objectives to be followed for achieving these goals. Provision is also made for public participation procedures in that regard (see subclause (2)). It should also be noted that the Agency's business and financial plan and strategic plan and its standards and criteria for road design and construction and road safety, are to be determined within the framework of the Government's national roads policy (see subclause (2) of clause 39);
- the Agency is by clause 25(1) required to perform its main functions (and therefore necessarily also its ancillary functions) *within the framework of government policy*;
- in terms of clause 32(1) the Minister may direct the Agency's Board to discontinue any of its activities that may be contrary to the strategic or economic interests of the Republic or against the national interest. Moreover, the Agency, under clause 32(3), *in effect* may be compelled to plan, design or construct a new national road or maintain or rehabilitate a particular existing national road where the Minister regards this as urgently necessary for the strategic or economic interests of the Republic or in the national interest, despite the fact that no provision therefor has been made in the Agency's business and financial plan. (However, in the event of such a request, the State will bear the costs involved.)

10. Clause 40 empowers the Minister, *on the recommendation of the Agency*, to declare national roads by notice in the *Gazette*. In the case of a new road that will have a substantial impact on traffic flows in a province, it is a requirement that the Minister must first have consulted with the Premier of each province in which the road is to be situated. Where an *existing road* is to be declared a national road, the agreement of the Premier of the province in which the road is situated, is required. Should the Minister not succeed in obtaining the Premier's agreement after every reasonable effort has been made to settle the dispute or difference between them, the

matter may be referred to the Constitutional Court in terms of section 167(4)(a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 — “the Constitution”), for decision.

11. Clause 41 authorises the Minister to expropriate for the Agency, against payment of compensation, any land that the Agency reasonably requires for the purposes of or in connection with a national road in any case where the Agency is unable to acquire the land concerned by agreement with the owner. This clause also authorises the taking of gravel, stone, clay, sand, water and other natural material for the purposes of a national road against payment of compensation, whereas State land, in terms of clause 42, may be made available for transfer to the Agency for purposes of a national road against payment of a fair price.

12. The provisions of clauses 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 of the Bill dealing with the following matters, respectively, do not differ substantially from their counterparts in the (old) National Roads Act, 1971:

- Entry upon land (i.e. on the Agency’s behalf).
- Access to and egress from national roads.
- Closing and diverting national roads.
- Damaging of national roads.
- Disposing of national roads’ storm-water.
- Structures and other works on, over or below national roads or certain other land.
- Agency’s approval necessary for division of certain land.
- Advertisements on or visible from national roads.
- Disused vehicles or machinery and other rubbish on or near national roads.
- Trading on national road or in building restriction area.
- Agency may pay compensation for damage or loss due to its activities.

Many of the differences that do occur have been effected to ensure consistency with the Constitution.

13. Clause 54 authorises designated employees of the Agency to perform law enforcement functions on national roads and other property of the Agency with a view to preventing the commission of any road traffic offences, road safety offences and offences created by the Bill, on those roads or that property. It also allows the Agency to enter into an agreement with any municipality or the Premier of any province in terms of which the municipality or province (as the case may be), through its employees, is to undertake those law enforcement functions on any portion of a national road situated within the municipal area or province concerned.

14. Clause 59(1) provides that no legal proceedings for any damage or loss allegedly suffered as a result of an act or omission by any of the Agency’s Board members, employees or agents and connected to any national roads matter, may be brought against the Agency or any of those persons, unless instituted within 15 calendar months after the date on which the claimant became aware or should reasonably have become aware of the alleged act or omission. The claimant also must have given the defendant or respondent concerned at least three calendar months’ written notice of the intention to institute legal proceedings. However, a competent High Court on application by the claimant may order that those requirements be dispensed with or relaxed or that non-compliance therewith be condoned if the interests of justice so require. (See clause 59(2).)

15.1 In terms of clause 60 of the Bill, the laws with regard to national roads mentioned in Schedule 2 to the Bill, including the National Roads Act, 1971, but excepting section 2(1A) thereof (which provides for the levy on petrol and diesel fuel), will be repealed with effect from the incorporation date. (See subclause (2).) Provision is also made (by subclause (1) of that clause read with Schedule 1 to the Bill) for the amendment of—

- the so “preserved” section 2(1A), so as to authorise the utilisation of the fuel levy to fund the operations of the Agency; and

— section 3(1) of the Transport Deregulation Act, 1988 (Act No.80 of 1988), so as to divest the SARB from its powers and functions with regard to national roads and matters connected therewith.

15.2 By virtue of the transitional arrangements made in clause 61, the Agency will be the legal successor to the SARB or the State, and will be substituted for the SARB or the State, in any existing contract or agreement about matters within the competence of the Agency, except where some other arrangement has been made by agreement between the Agency and the State. (See subclause (2).) Provision is also made that in any legal proceedings based on a contractual or delictual claim against or by the SARB which are connected with a national road and arose before the incorporation date, the State, as represented by the Minister, is to be substituted for the SARB irrespective of whether the claim was instituted before the incorporation date or is instituted only thereafter. (See subclause (3).)

Furthermore, subclause (5) of that clause provides that—

- the Agency will succeed the SARB as debtor under loans which, under section 2(2A) of the National Roads Act, 1971, were raised for the purposes of or in connection with existing toll roads;
- the State guarantees issued to cover the obligations of the SARB under those loans, will continue to be in force and to apply and will serve to guarantee the fulfillment of those obligations by the Agency as legal successor to the SARB; and
- with a view to accommodating the intrinsic funding levels associated with existing toll roads, those State guarantees may be increased, with the agreement of the Minister of Finance, so as to cover replacement or additional loans that in future may have to be taken up by the Agency in connection with existing toll roads — see paragraph (c) of subclause (5). The background to and motivation for this provision, which is linked to the actuarial concept of “intrinsic funding levels”, is specially yet briefly dealt with, from an actuarial perspective, in the attached Annexure.

## **CONSULTATION**

16. On 25 April 1997 a draft of this Bill was published for comment in the *Government Gazette* in the format of a working document. The principles embodied in the Bill were also discussed and accepted at a meeting of some 200 stakeholders and interested parties, including the members of the Executive Councils to whom road matters within the respective provinces have been entrusted and the heads of the respective provincial roads departments engaged with road matters in those provinces. Discussions on the matter were also held with the members of the SARB. In addition, the Minister, on numerous occasions when addressing public meetings, focused attention on the creation of a national roads agency by means of a law that was in the offing. The comments that were received from interested parties have been duly considered and, where appropriate, incorporated in the Bill.

## **PROCEDURE**

17. The view is held by the State Law Advisers that the Bill should be dealt with in accordance with the procedure provided for in section 75 of the Constitution, inasmuch as the Bill—

- is designed to regulate matters relating to national roads, which does not fall within any of the functional areas mentioned in Schedule 4 or 5 to the Constitution, and further is designed to establish and regulate a public enterprise (i.e. the Agency) to take charge of national roads;
- does not contemplate any amendment to the Constitution or propose the imposition of any tax, levy or duty; and
- does not provide for legislation of the nature envisaged in section 76(3)(a) to (e), (4) or (5) of the Constitution.

**ANNEXURE**

Toll roads are financed by loans (that are raised in the private sector). Loans guaranteed by the State are perceived as carrying a low level of risk and therefore attract lower interest rates, amounting to lower financing costs. When a toll road is planned, the total funding requirements, and concomitant debt levels, are estimated based on certain assumptions made regarding future income and expenditure associated with the road over its projected lifespan (usually 30 years). The loans taken up to finance the toll road over the 30 year period will therefore fluctuate, and will of necessity be higher or lower than those originally planned for as and when income and expenditure levels fluctuate. The State has guaranteed loans taken up in the private sector to finance construction costs as well as loans subsequently taken up to make up for the deficit in the early years.

The level of State guarantees required in the future in connection with the funding of existing toll roads will therefore have to be increased with the increase in those roads' loan level requirements (i.e. due to the taking up of additional or replacement loans), thence the arrangements contained in clause 61(5)(c) of The South African National Roads Agency Limited and National Roads Bill, 1998.