

#### **4. LAYMAN'S DRAFT OF A NEW NAMIBIAN ROADS ACT**

The complete draft of the proposed new Roads Act, being the Roads Ordinance (1972) amended commensurate with the foregoing philosophy, follows under this section.

## ***A Layman's Draft of a New Namibian Roads Act***

**To consolidate the laws relating to roads in Namibia and to provide for the planning, proclamation, design, development, construction, management, control, maintenance and rehabilitation of roads in Namibia and to provide for matters connected therewith.**

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:

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## CHAPTER I

### DEFINITIONS

#### 1. *Definitions*

In this Act, unless the context otherwise indicates-

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

“bridge” includes a culvert and a concrete slab;

“centre line” means -

- (a) in respect of a proclaimed road with one roadway, the centre line of such roadway;
- (b) in respect of a proclaimed road with two roadways the median of the centre lines of such roadways;

“construct” includes the surveying or beaconing-off of land, the clearing of tree stumps and all other construction work in connection with roads or in connection with bridges, pons and ferries, drifts, concrete slabs in the course of such roads or proposed roads and all accesses, approaches, cuttings, embankments, subways, culverts, ditches, drains, dams, kerbs, fences, parapets and partitions, motor grid gates, swing gates as well as any alteration, deviation or improvement of such road, and any work or thing forming part of, or being connected with, road construction.

“Construction” has a corresponding meaning;

“Department” means the Department of Transport of the Ministry of Works, Transport and Communication or the Roads Authority where authorised to act on behalf of the Department of Transport ;

“district” means the area for which a roads board has been established in terms of section 6 and which constitutes the area of jurisdiction of such board;

“district road” means a proclaimed road declared to be a district road in terms of the provisions of section 24;

“farm” means a piece of land registered as a farm, portion of a farm or lot in the Deeds Office of Namibia, or government land, and for the purposes of Chapter VI it includes any area set aside as a nature reserve in terms of relevant legislation and communal areas which are [areas for] inhabited by the different ethnic groups;

“farm road” means a proclaimed road declared to be a farm road in terms of the provisions of section 24;

“freeway” means a trunk road declared to be a freeway in terms of section 25;

“game park” means an[y] area [declared to be a game park under section 37 or 38 of] defined as such in the Nature Conservation Ordinance, [1967] 1975 (Ordinance [31] 4 of [1967] 1975);

“interchange” means a place constructed by the Minister as a place where users of a freeway may enter upon or leave such freeway and which is indicated as such by such notices as may be deemed necessary or desirable by the Minister;

“intersection point” means any point where two or more proclaimed roads intersect each other or where one or more proclaimed roads join another proclaimed road or roads;

“intersection point reserve” means any area declared to be an intersection point reserve in terms of the provisions of section 26;

[“local authority” means a municipality or a village management board or other local authority or the Peri-Urban Development Board, established in terms of section 2 of the Peri-Urban Development Board Ordinance 1970 (Ordinance 19 of 1970) established in accordance with the Local Authorities Act, 1992;]

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

“magistrate” means the magistrate of a magisterial district and includes any other officer lawfully acting as such;

“main road” means a proclaimed road declared to be a main road in terms of the provisions of section 24;

“maintenance” includes the repair of and care for a road and each construction in the course thereof or which forms part thereof as well as any work or thing being connected with such repair or care and “maintain” has a corresponding meaning;

“Minister” means the Minister responsible for Transport;

“minor road” means a road-

- (a) which is not a proclaimed road; and
- (b) which links two or more proclaimed roads with each other or which crosses the boundary or boundaries of two or more farms; and
- (c) to which the public has rightful access;

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

[“*Official*” “Gazette” means the [Official] Government Gazette of Namibia;

“owner” means-

- (a) in respect of land the title deeds of which have been registered in the Deeds Office of Namibia, the registered owner thereof;
- (b) in respect of government land any lessee of such government land, whether or not the contract of lease by virtue of which he is in possession of the land has been registered in the Deeds Office of Namibia;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for Transport;

“prescribe” or “prescribed” means prescribed by this Act or by the Minister by regulation or notice in the *Gazette*;

“private road” means a road to which the public has no rightful access and which is indicated to be a private road by means of clearly-shown notice boards erected at all entrances to such road;

“proclaimed road” means any road proclaimed, or declared to be a proclaimed road in terms of the provisions of section 23;

“public grazing area” means a strip of land not more than one hundred metres wide, measured at right angles with the centre line, on each side of the roadway of an unfenced proclaimed road : Provided that -

- (a) any fence which is nearer to the centre line of such proclaimed road than one hundred metres shall be deemed to be the boundary of such public grazing area;
- (b) no garden or other land which is usually cultivated shall be included in such public grazing area;

“regional council” means a regional council as defined in section 1 of the Regional Councils Act, 1992, (Act No.22 of 1992)

“regulations” means the regulations made and in force under this Act;



“road” means any road and any bridge or pont or ferry (excluding private bridges or pons or ferries) or drift or concrete slab in the course of such road and any access to and exit from such road and any approach, cutting, embankment, subway, culvert, ditch, drain, dam, kerb, fence, parapet, partition, motor grid gate, swing gate and any other work or thing forming part of, or being connected with, such road;

“roads board” and “board” mean a roads board established in terms of section 6;

“road reserve” means the full width of a proclaimed road, including the roadside and the roadway;

“roadside” means that portion of a proclaimed road not forming the roadway;

“roadway” means, in respect of a proclaimed road, that portion of such proclaimed road improved, constructed or intended for vehicular traffic and includes those portions generally known as shoulders;

“service road” means a proclaimed road which links properties, situated along a freeway with an interchange or interchanges, which thereby provides an alternative route and access to such freeway and which has been approved by the Minister to be a service road;

“this Act” includes the regulations made and in force thereunder;

“tourist recreation area” means any area declared a tourist recreation area under section 48 of the Accommodation Establishments and Tourism Ordinance, 1973 (Ordinance 20 of 1973);

“trunk road” means a proclaimed road declared to be a trunk road in terms of the provisions of section 24;

“urban area” means that portion of [the area of a local authority which has by actual

survey been subdivided into erven of less than five hectares or which is surrounded by surveyed erven of less than five hectares] a local authority area or a settlement area as defined in section 1 of the Local Authorities Act, 1992, and section 31 of the Regional Councils Act, 1992, respectively, comprising or surrounded by surveyed erven, and includes [any] the public roads abutting thereon;

”urban district road” means any proclaimed road within an urban area declared to be a district road in terms of the provisions of sections 24;

”urban main road” means any proclaimed road within an urban area declared to be a main road in terms of the provisions of sections 24;

“urban trunk road” means any proclaimed road within an urban area declared to be a trunk road in terms of the provisions of section 24;

“vehicle” means a device designed or adapted principally to travel on wheels or crawler tracks but does not include any such device moving exclusively on rails.

## CHAPTER II

### APPLICATION OF ACT AND PROCLAIMED ROADS

#### **2. *Application of Act within urban areas***

Only the provisions of sections 1, 4(2), 5(1), 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 38, 39, 41, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 70 and 71 of this Act shall apply within an urban area; provided that the provisions of sections 38, 39, 58, 59 and 64 shall within an urban area apply only to urban trunk and main roads maintained by the Minister in terms of section 27.

#### **3. *Division of proclaimed roads***

For the purposes of this Act proclaimed roads shall be divided into the following classes:

- (a) trunk roads;
- (b) main roads;
- (c) district roads;
- (d) farm roads.

#### **4. *Width of proclaimed roads***

- (1) (a) The road reserve of a trunk, main or district road shall, subject to the provisions of subsections (2) and (4), be sixty metres wide.
- (b) The Minister shall determine where the boundaries of the road reserve of a trunk, main or district road are situated; provided that no such boundary shall be closer to the centre line of such trunk, main or district road than fifteen metres measured at right angles with the centre line thereof.

- (c) Whenever the Minister has not, in terms of paragraph (b), determined where the boundaries of the road reserve of a trunk, main or district road are situated, the road reserve boundary on each side of such trunk, main or district road shall be situated thirty metres from, and measured at right angles with, the centre line of such trunk, main or district road.
- (2) The provisions of subsection (1) shall not apply in respect of urban trunk and main roads, the width of which may be determined or increased by the Minister after consultation with the local authority concerned.
- (3) The road reserve of a farm road shall, subject to the provisions of subsection (4), be thirty metres wide and the road reserve boundary on each side of such farm road shall be situated fifteen metres from, and measured at right angles with, the centre line of such farm road.
- (4)
  - (a) The Minister may at any time increase the width of the road reserve of a proclaimed road or any part thereof.
  - (b) The Minister may at any time decrease the width of the road reserve of a proclaimed trunk, main or district road or any part thereof; provided that the width of such road reserve shall not be less than thirty metres.
  - (c) Any such increase or decrease of the width of the road reserve of a proclaimed road shall be made known by notice in the [*Official*] *Gazette*.

## **5. Control and supervision over proclaimed roads and other roads**

- (1) All roads in game parks and tourist recreation areas approved by the Minister from time to time and all trunk, main and district roads within Namibia (excluding urban trunk and main roads maintained by a local authority in terms of section 27) shall be under the control and supervision of the Minister.
- (2) Any person using a farm, private or minor road, does so at his own

responsibility.

- (3) The Minister, a[n officer or employee] staff member [of the State] in terms of the Public Service Act, 1995, and the owner, lessee or occupier of a farm, which is crossed by a farm, private or minor road, shall in no way be liable, for any loss through possible damage or injury to any person, vehicle or stock used on such farm, private or minor road, by reason of the construction, maintenance or repair of such road.

### CHAPTER III

## ROADS BOARDS

#### **6. *Establishment and constitution of roads boards***

- (1) The Minister may, from time to time by proclamation in the [*Official*] *Gazette*-
- (a) establish a roads board for any area defined in such proclamation, which is situated outside the area of jurisdiction of a local authority;
  - (b) increase, alter or diminish any area defined in terms of paragraph (a);
  - (c) dissolve or abolish any roads boards established in terms of paragraph (a).
- (2) (a) The Minister may appoint any member of the board as [An officer in the Department appointed thereto by the Minister, shall be] the chairperson of such a board.
- (b) If the chairperson is for some or other reason unable to act as such during any period, the Minister may appoint another member of the board [another officer in the Department] to act as chairperson during that period.

- (c) A member [An officer] appointed under paragraph (b), shall, during the period that he acts as chairperson, have all the powers and perform all the duties of the chairperson .
- (3) The Minister shall appoint a member of the Department as a member of the Board.
- (4) The Minister shall appoint a person who represents the interests of local authorities in the area as a member of the Board.
- (5) In addition to the chairperson, the Minister shall, in compliance with the provisions of section 6, appoint three [four] other persons as members of the board.
- (6) (a) The Minister may further also appoint as many other persons as he or she may deem necessary or expedient as *ex officio* members of such a board.
- (b) An *ex officio* member of a board shall hold this office until the Minister decides otherwise and shall have the right to take part in the proceedings of the board, but shall not have the right to vote.

## **7. Qualifications and disqualifications of members**

No person may be appointed or act as a member or *ex officio* member of a board if-

- (a) he or she has at any time been convicted of any offence for which he or she has been sentenced to imprisonment without the option of a fine, unless he or she has received a free pardon or unless the term of imprisonment expired at least three years before the date of his or her appointment; or
- (b) he or she is of unsound mind or is under curatorship; or
- (c) his or her estate is held in liquidation or in trust for his or her creditors; or

- (d) he or she is an unrehabilitated insolvent; or
- (e) he or she is under the age of 21 years.

#### **8. *Vacation of office by members***

A member or *ex officio* member of a board shall vacate his office-

- (a) if he or she ceases to possess the qualifications mentioned in section 6 or becomes subject to the dis-qualifications mentioned in section 7; or
- (b) if the Minister relieves him or her of his office in terms of section 9; or
- (c) if he or she is convicted of a contravention of section 15; or
- (d) in the case of an *ex officio* member, if the Minister cancels his or her appointment.

#### **9. *Suspension and dismissal of members***

The Minister may suspend a member from his or her office or relieve him or her of his or her office for incapacity, misconduct or any other valid reason and may cancel the appointment of an *ex officio* member at any time.

#### **10. *Term of office of members***

Unless otherwise provided in this Act or determined by the Minister every member of a board shall hold office for a period of three years from the date of his or her appointment.

#### **11. *Vacancies***

If any member or *ex officio* member of a board ceases to be a member of the board during his or her term of office the Minister may appoint another person as his or her successor and such person shall, subject to the provisions of this Act, hold office for the unexpired period of the term of office of the member whose successor he or she is.

#### **12. *Meetings of boards***

- (1) The first meeting of a board shall be held at a time and place to be fixed by the

Minister and every meeting thereafter shall be held at a time and place fixed by the board or, if authorised thereto by the board, by the chairperson.

- (2) A quorum for a meeting of a board shall be three members having the right to vote, of whom one shall be the chairperson.
- (3) Every member of a board having the right to vote, who is present at a meeting of the board, shall have one vote; provided that in the case of equality of votes the chairperson shall have a casting vote in addition to his or her ordinary vote.
- (4) The chairperson of a board may in his or her discretion allow any person to attend the proceedings of the board.
- (5) The chairperson of a board may in his or her discretion allow any person having an interest in any matter under consideration by the board to state his or her interest in that matter to the board whether personally or represented by a duly authorised representative; provided that where a person is allowed to state his or her interest in a matter under consideration by the board all other persons who have an interest in that matter shall be offered equal opportunities to state their interests in that matter to the board, as well.

### **13. Remuneration, allowances and fees payable to members**

To those members of a board, including *ex officio* members thereof, who are not officers in the public service or officers or employees in the service of the State shall be paid such remuneration, allowances and fees as may be determined by the Minister from time to time.

### **14. Duties and powers of boards**



A board-

- (a) shall have such duties and powers as is laid down by this Act;
- (b) shall give assistance and advice to the Minister on all matters relating to proclaimed roads within its area;
- (c) shall obtain and supply to the Minister all information which the Minister may require from it in connection with the application of this Act;
- (d) shall in general, perform all those duties which the Minister determines from time to time.

**15. Members with direct or indirect interest shall not take part in proceedings of board**

- (1) No member of a board shall vote in connection with or in his or her capacity as member or *ex officio* member of the board be present at or take part in a discussion by the board of any matter in which he or she, or his or her spouse or partner or nearest blood relations has any direct or indirect interest.
- (2) A member or *ex officio* member of a board who wilfully contravenes or fails to comply with the provisions of this section shall be guilty of an offence and on conviction he or she shall vacate his or her office *ipso facto*.

**16. Conclusion of contracts with members permissible**

- (1) No member of a board shall, by reason of his or her office, be prohibited from contracting with the State or the board either as seller, purchaser or otherwise, and no contract entered into by or on behalf of the board or the State in which a member of the board is in any way directly or indirectly interested, shall be void by reason thereof.

- (2) Where any member of a board has a direct or indirect interest other than as a shareholder in a limited liability company in any contract with the board or the State or any sub-contract with the board or subsequent contract arising from such main contract, which involves the expenditure or receipt by the board or the State of a sum prescribed [two hundred rand or more], such member shall immediately on becoming acquainted with such fact, disclose such fact in writing to the board and to the Minister and such disclosure shall be entered in the minutes of the next succeeding meeting of the board.
- (3) A member of a board, who contravenes the provisions of subsection (2) or fails to comply therewith shall be guilty of an offence and shall on conviction be liable to a fine [not exceeding four hundred rand] or [in default of payment of such fine to] imprisonment [for a period not exceeding one year] as prescribed.
- (4) The [Controller and] Auditor-General shall report to the Minister any case in which, in his opinion, the provisions of this section has been contravened or, in which in his opinion there was a failure to comply with the provisions of this section.

## CHAPTER IV

### **PROCLAMATION, CLOSURE, DEVIATION AND CLASSIFICATION OF PROCLAIMED ROADS**

#### **17. Applications and requests relating to district and farm roads to be received and dealt with by board**

- (1) Whenever-
- (a) at least six [twelve] adult persons, who are the owners, lessees or occupiers of farms in a district, or a district and one or more adjoining districts, desire-
    - (i) a district or farm road to be proclaimed on land where no road previously existed;
    - (ii) a road to be declared a proclaimed district or farm road;
    - (iii) an existing district or farm road to be closed or deviated;
    - (iv) a closed road to be reopened and declared a proclaimed or farm road;
    - (v) the classification of a district or farm road to be changed; or
  - (b) the owner, lessee or occupier of a farm desires an existing district or farm road to be closed or deviated where it crosses such farm; or
  - (c) the owner, lessee or occupier of a farm which does not have a farm road or minor road providing access to a proclaimed road, desires a farm road, which will provide such access, to be proclaimed,
- he, she or they may apply therefor to the chairperson of the board (hereinafter referred to as the chairperson) of [in] the district in [of] which that road, or that portion of the road to which the application refers, is situated.

- (2) Any application in terms of subsection (1) and any objection to it shall conform to regulations promulgated under this Act [be done in writing on a form approved by the Minister which will be provided by the Department, and such application shall be accompanied by -
- (a) an amount determined by the Minister from time to time in respect of the cost of the publication of the notice referred to in subsection (3); and
  - (b) a sketch of the area concerned which will be provided by the Department, and on which the road or portion thereof to which the application refers and other proclaimed roads are shown].
- (3) Whenever the chairperson receives an application in terms of subsection (1), it shall be made known by a notice published in the [*Official*] *Gazette* and in at least one other newspaper circulating in Namibia.
- (4) The chairperson shall furthermore make known the application by forwarding a copy of the notice referred to in subsection (3) to the owner, lessee or occupier of each farm which is or will be crossed by the road to which such application refers and whose address is known to him and, if such road terminates on the boundary of any farm, to the owner, lessee or occupier of the farm immediately adjacent to such road, and whose address is known to him.
- [(5) Such notice shall command every person having any objection to the application to lodge his objection in writing, with the grounds upon which it is based clearly and specifically therein stated, with the officer or person mentioned in such notice within a period of thirty days of the date mentioned in such notice.]
- [(6) (a) Such notice shall also state the number of the sketch referred to in subsection (2)(b).

- (b) A copy of such notice and sketch shall lie for inspection at the office of the Permanent Secretary and the local Roads Superintendent during normal office hours for the full period of thirty days referred to in subsection (5).]

[(7) Before the first meeting of the board to be held after the expiry of the period of thirty days referred to in subsection (5)-

- (a) the Department shall submit to the chairman the sketch referred to in subsection (2)(b) (hereinafter referred to as the sketch map), on which minor and private roads in the area in question shall then also be shown;
- (b) the chairman may, if he considers it necessary, himself conduct an investigation in regard to the application and report in writing to the board thereon, or he may require another member of the board or the Department to conduct an investigation in regard to the application and report in writing to the board thereon;]

[Provided that failure to submit the said sketch map or to conduct the said investigation, or to submit the said report to the board before the said first meeting, shall not invalidate any proceedings of the board.]

#### **18. *Requests by board relating to district and farm roads***

- (1) [Whenever] A board may itself request that-
  - (i) a district or farm road be proclaimed on land where no road previously existed;
  - (ii) a road be declared a proclaimed district or farm road;
  - (iii) an existing district or farm road be closed or deviated;
  - (iv) a closed road be reopened and declared a proclaimed district or farm road;
  - (v) the classification of a district or farm road be changed.

The Department's representative on the board shall deal with such a request in the way determined by regulation [chairperson shall obtain a sketch of the area concerned which will be provided by the Department and on which the road or portion thereof to which the request refers and other proclaimed roads, are shown.]

- (2) [Thereafter] The request shall be made known by notice published in the [Official] Gazette and in at least one other newspaper circulating in Namibia.
- (3) The provisions of section 17 (2) shall *mutatis mutandis* apply in regard to such request by the board.

#### **19. Consideration of applications, objections and requests**

- (1) At the first meeting of the board [held after the expiry of the period of thirty days] following the publication of the application referred to in section 17(3), the chairperson shall submit to the board the application or request together with all reports, comments, recommendations and sketch maps related thereto and all objections lodged against it, for consideration thereof and the making of recommendations in connection therewith; provided that failure to submit all reports, comments, recommendations or the sketch map referred to in this subsection at the said meeting of the board, shall not invalidate any proceedings of the board.
- (2) After the board has made its recommendations, the chairperson shall forward all the papers submitted to the board in terms of subsection (1), including all objections lodged against the application or request together with-
  - (a) the board's comments and recommendations and its reasons therefore;
  - (b) an indication whether the board favours the appointment of a commission of inquiry in terms of section 20 or not; and

- (c) in any case, the names of four persons who are being proposed as possible members thereof if a commission of inquiry is appointed in terms of section 20.

to the Permanent Secretary who shall submit it to the Minister together with his comments and recommendations thereon.

- (3) The board may only propose a person who-
  - (a) is a member of the board of an adjoining district; and
  - (b) has no interest in the granting or the refusal of the application or request in question.

as a member of a commission of inquiry referred to in section 20.

**20. Commission of inquiry into and decision in regard to application or request**

- (1) Whenever an application or request is submitted to him or her in terms of section 19(2) the Minister may-
  - (a) decide which road arrangement is to be made in terms of the application or request; provided that the Minister may in his or her discretion impose any conditions should [when] he or she so decide[s], or
  - (b) appoint a commission of inquiry to make a recommendation on [into] the application or request as prescribed.
- (2) A commission of inquiry appointed in terms of subsection (1) shall consist of three members, with a fourth person to act as substitute for any member who might not be [un]able to attend the meetings and inquiries of the commission.

- (3) The members of such a commission of inquiry may be persons proposed in terms of section 19(2) or, subject to the provisions of section 19(3)(b), any other persons appointed thereto by the Minister.
- [(4) Such a commission of inquiry-
- (a) shall investigate the application or request and, if deemed necessary by the Minister, any other road or possible road which the Minister considers to be relevant to such application or request or which such commission may, in course of its investigation, find to be so relevant;
  - (b) may visit the localities and hear the evidence which it deems necessary for the purposes of its inquiry; and
  - (c) shall as soon as possible after completion of its inquiry furnish the Permanent Secretary with a written report thereon.]
- (d) [(5)] (4) To those members of such a commission who are not officers or employees in the public service, shall be paid such remuneration, allowances and fees as may be determined by the Minister from time to time.
- [(6)] (5) The cost of such an inquiry shall be defrayed [by the State] out of Namibia's [revenue] Road Fund; provided that the Minister may order that the applicants concerned shall reimburse the Road Fund with such costs or such portion thereof as the Minister may in his or her discretion determine if the application is ultimately rejected.
- [(7) The Permanent Secretary shall submit any report which has been furnished to him in terms of subsection (4)(c) together with all other documents and papers which refer to the application or request dealt with in the report, to the Minister, who may thereupon decide which road arrangement shall be made in terms of the relevant application or request; provided that the Minister may in his or her discretion impose any conditions when so decides.]



**21. *Proposals by the Permanent Secretary relating to proclaimed roads***

- (1) If the Permanent Secretary proposes that-
- (a) a road be proclaimed on land where no road previously existed;
  - (b) a road be declared a proclaimed road;
  - (c) a proclaimed road be closed or deviated;
  - (d) a closed road be reopened and declared a proclaimed road;
  - (e) the classification of a proclaimed road be changed.
- such proposal shall be made known by notice published in the [Official] Gazette and in at least one other newspaper circulating in Namibia.
- (2) The Department shall forward a copy of such notice to the owner, lessee or occupier of each portion of land which is registered as a separate unit in the Deeds Office of Namibia and which is or will be [~~crossed~~] traversed by the road to which the proposal refers and whose address is known to the Department, and if such road terminates on the boundary of any farm, to the owner, lessee or occupier of the farm immediately adjacent to such road and whose address is known to the Department.
- [(3) Such notice shall command every person having any objection to the proposal to lodge his objection in writing, with the grounds upon which it is based clearly and specifically therein stated, with the officer of person mentioned in such notice within a period of thirty days of the date mentioned in such notice and shall state the number of a sketch map of the area concerned on which the road, or portion thereof, to which the proposal refers and other proclaimed minor and private roads in that area, are shown.]
- [(4) A copy of such notice and sketch map shall lie for inspection at the office of the Permanent Secretary and local Roads Superintendent during normal office hours for the full period of thirty days referred to in subsection (3).]

[(5) The provisions of sections 19 and 20 shall *mutatis mutandis* apply in regard to such proposal by the Permanent Secretary, if the road or portion thereof to which is refers, is or will be a district or farm road.]

[(6)] (3) (a) If the road, or portion thereof, to which such proposal by the Permanent Secretary refers, is or will be a trunk or main road, the Permanent Secretary shall, after the expiry of [the] a period of thirty days [referred to in subsection (3),] submit such proposal to the Minister together with all the objections received against it, his comments and recommendations thereon [and the sketch map referred to in subsection (3)].

(b) The provisions of section 20 shall *mutatis mutandis* apply in regard to a proposal submitted to the Minister in terms of paragraph (a).

**22. Applications relating to district and farm roads within the area of a local authority**

(1) Whenever the owner, lessee or occupier of a farm within [the area of] a local authority or settlement area but outside the urban area-

(a) desires that an existing district or farm road be closed or deviated where it crosses any such farm; or

(b) which does not have a farm road providing access to a district, main or trunk road, desires a farm road which will provide such access, to be proclaimed, he or she may apply therefor to the Permanent Secretary.

(2) The provisions of sections 17 (2), 20 (1), (2), (3) and (5) shall *mutatis mutandis* apply to an application referred to in subsection (1).

(3) If any portion of the road or portion thereof to which the application refers falls outside the area of the local authority concerned-

- (a) the provisions of section 17 (2) shall not apply to such application; and
- (b) the provisions of section 21 (1) shall apply to such application.

**23. *Proclaiming and declaration of proclaimed roads and the closing, deviation and re-opening thereof***

(1) Notwithstanding anything to the contrary contained in any law, the Minister may from time to time after investigation and report by the board concerned or the Permanent Secretary, or both the board concerned and the Permanent Secretary as the case may be -

- (a) proclaim a road on land where no road previously existed and define the course of a road thus proclaimed;
- (b) declare any road to be a proclaimed road;
- (c) close or deviate any proclaimed road;
- (d) reopen any road which has been closed and declare the same to be a proclaimed road and define the course thereof:

Provided that the Minister may, if it is deemed necessary or expedient, act without any such investigation and report; provided further that the Minister shall only exercise the powers granted to him or her in terms of this subsection within the area of a local authority after consultation with the local authority concerned.

- (2) (a) Whenever the Minister has in terms of subsection (1)-
- (i) proclaimed a road on land where no road previously existed and defined the course of such road;
  - (ii) declared a road to be a proclaimed road;
  - (iii) closed or deviated a proclaimed road;
  - (iv) reopened a road which had been closed and has declared the same to be a proclaimed road and has defined the course of such road,
- it shall be made known by notice published in the prescribed manner in the *[Official] Gazette* and in at least one other newspaper circulating in Namibia.
- [(b) The proclaimed road to which such notice refers shall be described therein and the number thereof shall be stated therein.
- (c) Such notice shall also state the number of a sketch map on which that road is shown and such sketch map shall be kept by the Department and shall at all times during normal office hours lie for inspection at the office of the Permanent Secretary against payment of the fees determined by the Minister from time to time.]
- [(3) The provisions of sections 17 (2), 19 and 20 shall *mutatis mutandis* apply in regard to an investigation and report by the board concerned, referred to in subsection (1).]
- [(4) The provisions of section 21 shall *mutatis mutandis* apply in regard to an investigation and report by the Permanent Secretary referred to in subsection (1).]

## **24. Classification of proclaimed roads**

- (1) The Minister may-
  - (a) declare a proclaimed road which is or will be part of the road system connecting Namibia as a whole with surrounding territories, to be a trunk road;
  - (b) declare a proclaimed road which is of strategic importance for the development of a region [connects or will connect important centres] within Namibia to be a main road;
  - (c) declare a proclaimed road which is of importance for the development of a district [carries or will carry a reasonable amount of traffic] to be a district road;
  - (d) declare a proclaimed road which it considers important enough to be a farm road;
  - (e) amend or repeal any such declaration.
- (2) Whenever the Minister has declared a proclaimed road to be a trunk, main, district or farm road in terms of the provisions of subsection (1) or has amended or repealed any such declaration, it shall be made known by notice in the [*Official*] *Gazette*.
- (3) The Minister may prescribe any further criteria to be considered when declaring a proclaimed road a trunk, main, district or farm road.

## **25. Freeways**

- (1) (a) The Minister may at any time, after consultation with the local authority concerned, and notwithstanding anything to the contrary contained in any law, declare any trunk road or any portion of any trunk road, situated within the area of such local authority, and whether situated within the urban area of such local authority or not, to be a

freeway, or close or deviate any trunk road or any portion of any trunk road thus declared to be a freeway, or any access thereto or exit therefrom.

(b) The Minister may at any time in its discretion declare any trunk road or any portion of any trunk road situated outside the area of a local authority to be a freeway or close or deviate any trunk road or any portion of any trunk road thus declared to be a freeway, or any access thereto or exit therefrom.

(2) Whenever the Minister has declared a trunk road or portion of a trunk road to be a freeway in terms of the provisions of subsection (1) or has closed or deviated a freeway or access thereto or exit therefrom in terms of the provisions of subsection (1) it shall be made known by notice in the [*Official*] *Gazette*.

(3) No person shall without the permission of the Minister enter upon or leave a freeway at any place other than an interchange.

(4) Any person who contravenes or fails to comply with the provisions of subsection (3) shall be guilty of an offence.

## **26. Intersection point reserves**

(1) The Minister may at any time in his or her discretion declare any area within which an intersection point is situated to be an intersection point reserve and determine the boundaries of such an intersection point reserve; provided that the powers granted to the Minister in terms of this subsection shall only be exercised after consultation with the owner, lessee or occupier of each portion of land-

- (a) which is registered as a separate unit in the Deeds Office of Namibia;  
and
  - (b) upon which the intersection point reserve, or any portion thereof, is or will be situated unless the address of such owner, lessee or occupier is unknown to the Minister; provided further that the powers granted to the Minister in terms of this subsection shall only be exercised within the area of a local authority after consultation with the local authority concerned.
  
- (2)
  - (a) Whenever the Minister has in terms of subsection (1) declared an area to be an intersection point reserve and determined the area of such an intersection point reserve, it shall be made known by notice in the *[Official] Gazette* [together with such information as the Minister deems necessary].
  - (b) Such notice shall [also] state the number of a sketch map on which the boundaries of that intersection point reserve are shown and such sketch map shall be kept by the Department and shall at all times during normal office hours lie open to inspection at the office of the Permanent Secretary [against payment of the fees determined by the Minister from time to time].
  
- (3)
  - (a) The Minister may-
    - (i) from time to time amend the boundaries of an intersection point reserve;
    - (ii) at any time withdraw the declaration of an area as an intersection point reserve.
  - (b) The provisions of subsection (2) shall *mutatis mutandis* apply in regard to-
    - (i) any amendment of the boundaries of an intersection point reserve; and

- (ii) any withdrawal of the declaration of an area as an intersection point reserve.
- (4) Notwithstanding anything to the contrary contained in this Act any intersection point reserve shall for the purposes of this Act be part of the road reserve of the proclaimed roads concerned; provided that whenever the width of the road reserve of any proclaimed road is increased as a result of the declaration of any area as an intersection point reserve no person shall be entitled to any compensation in terms of section 67 until such time as all roads which are contemplated within such intersection point reserve have been proclaimed and the Minister has determined where the boundaries of the road reserves of such proclaimed road are situated.

## CHAPTER V

### URBAN [TRUNK ROADS AND MAIN] ROADS

**27. *Powers of Minister in relation to construction and maintenance of urban trunk, [and] main and district roads***

- (1) Notwithstanding anything to the contrary contained in any law the Minister may, after consultation with the local authority or regional council concerned, construct or maintain or construct and maintain any urban trunk, [or] main or district road; provided that the construction or maintenance of such a road by the Minister in terms of the provisions of this subsection shall not exempt the local authority concerned from any obligation imposed upon it in respect of the construction and maintenance of and control over such a road in terms of any law.
- (2) After consultation with the local authority concerned the Minister may, on such conditions as may be determined by it, hand over any urban trunk, [or] main or district road, constructed by the Minister to such local authority to be



maintained by it if the Minister is of the opinion that such local authority is capable of maintaining such road properly.

**28. [Subsidies for] Funding of the maintenance of urban trunk, [and] main and district roads**

[Whenever an urban trunk or main road is being maintained to the satisfaction of the Minister may in his or her discretion and on such basis and conditions as he or she may determine, pay a subsidy to such local authority for the maintenance of such trunk or main road.] Funding of the maintenance of urban trunk, main and district roads will be done in accordance with the provisions of the Road Fund Administration Act (Act No..... of 199..)

**29. Control of traffic on urban trunk, [and] main and district roads**

- (1) Notwithstanding anything to the contrary contained in any law a local authority which intends controlling the traffic on any urban trunk, [or] main or district road by the institution of permanent stop streets, traffic islands, traffic lights, parking spaces, one-way streets or accesses to or exits from such urban trunk, [or] main or district road or in any other way whatsoever, shall, before putting such intention into effect apply in writing to the Minister for approval thereof.
- (2) The Minister may grant or refuse any such approval and may, if he or she grants such approval, impose such conditions as he or she may deem fit, except for the funding of the traffic control function which will be done in accordance with the provisions of the Road Fund Administration Act (Act No..... of 199..)

## CHAPTER VI

### CONSTRUCTION AND MAINTENANCE OF PROCLAIMED ROADS AND RELATED MATTERS

#### 30. *General powers of Minister*

- (1) Subject to the provisions of this Act and the Road Traffic and Transport Act, 1998 (Act ... of 1998), as amended, the Minister shall have the power and authority in respect of the following matters:
- (a) the construction, maintenance and control of all freeways and all trunk, main and district roads and the road reserve of all proclaimed roads;
  - (b) the acquisition, erection and maintenance of all road route markers, road traffic signs and other signs which may be necessary for the regulation and protection of traffic on proclaimed roads;
  - (c) the establishment and maintenance of wells, [watering places] boreholes, pump installations and other facilities for road construction or maintenance purposes or public use on proclaimed roads;
  - (d) the erection and maintenance of dwellings and other buildings, in the road reserve or elsewhere, for the execution of the provisions of this Act;
  - (e) the planting of trees within the road reserve of a proclaimed road or making other improvements therein;
  - (f) the granting of approval to the owner, lessee or occupier of a farm crossed by a proclaimed road to cut grass in the road reserve of such proclaimed road and imposing conditions in relation thereto;
  - (g) the erection and maintenance of any fence, wall, gate, ditch, furrow or similar obstruction, or beacon of stone, concrete, iron or other permanent material, on the centre line or along or near the boundaries of the road to indicate the location of such road on the land, whether such road has been constructed or not;

- (h) the construction of any road which gives access to any proclaimed road when, in his or her opinion it becomes necessary, because of the construction, [and] maintenance or deviation of such proclaimed road, to construct a road to give access to such proclaimed road.
- (2) Any person who-
- (a) damages a well dug, borehole drilled, pump installation, dwelling or other building erected in the road reserve of a proclaimed road or elsewhere in terms of subsection (1); or
  - (b) damages a tree or other improvement planted or effected in the road reserve of a proclaimed road or elsewhere in terms of subsection (1) or a natural tree in the road reserve of a proclaimed road; or
  - (c) cuts grass in the road reserve of a proclaimed road without the approval of the Minister or contrary to the conditions imposed by the Minister when such approval was granted; or
  - (d) damages or removes any fence, wall, gate, ditch, furrow or similar [beacon] or any beacon erected or effected in, or along or near the boundary of the road reserve of a proclaimed road,

shall be guilty of an offence.

Provided that the powers granted to the Minister in terms of this subsection shall only be exercised within [the area of] a local authority or settlement area in consultation with the local authority council or regional council concerned.

**31. Control of traffic on proclaimed roads at temporary closing or deviation thereof**

- (1) Subject to the provisions of the Road Traffic and Transport Act, 1998 (Act ... of 1998), as amended, the Minister may in his or her discretion -

- (a) at any time after the expire of a period of fourteen days from the date stated in a notice published in the [*Official*] *Gazette* and in at least one other newspaper circulating in Namibia, and in which the intention thus to close such proclaimed road, is made known, temporarily close a proclaimed road for all traffic or temporarily or permanently close it for that particular kind of traffic mentioned in such notice;
  - (b) without any notice temporarily deviate a proclaimed road and control the traffic thereon for the duration of construction, maintenance or repairs to such road.
- (2) Whenever the Minister closes or deviates a proclaimed road in terms of the provisions of this section, he or she shall, notwithstanding anything to the contrary contained in any law, erect such signs as he or she may deem necessary and suitable to indicate that that road has thus been closed or deviated; provided that the kind of traffic for which it has been so closed, shall be clearly indicated on such signs if the road concerned has been closed in terms of subsection (1) for a particular kind of traffic.
- (3) Any person who uses a proclaimed road which has been closed or deviated in terms of the provisions of subsection (1) while it is thus closed or deviated, or who contravenes or fails to comply with or to obey the prohibition or order indicated on a sign erected in terms of the provisions of subsection (2) shall be guilty of an offence.
- (4) The Minister shall in no way be liable to any person who uses a proclaimed road which has been closed or deviated in terms of the provisions of subsection (1), while it is thus closed or deviated, or who uses such proclaimed road contrary to a prohibition or order indicated on a sign erected in terms of the provisions of subsection (2), for any loss, [through possible] damage or

injury to any person, vehicle or stock or anything whatsoever, but such person shall be liable for any loss, [through possible] damage or injury caused to the road, equipment or [the staff or] personnel of the Department or representatives of contractors, during such use.

### **32. *Obtaining materials***

For the purpose of the construction, maintenance or repair of a proclaimed road the Minister may through his or her representatives, officers or contractors enter upon any land with any vehicle, tool, material or animal and after the expiry of a period of fourteen days after a written notice of his or her intention to do so

- [(i)] (a) has been handed to the owner, lessee or occupier of such land; or
- [(ii)] (b) has been sent to the last-known address of such owner, lessee or occupier by registered post; or
- [(iii)] (c) has been left at a conspicuous place on such land;

he or she may through his or her representatives, staff members or contractors without any compensation to the owner, lessee or occupier of the land, remove any material which may be necessary for such construction, maintenance or repair from such land or process it on such land and thereafter remove it therefrom and for this purpose he or she may build and maintain any access roads which he or she may consider necessary; provided that -

- (i) nothing shall be removed from any garden or [other] land usually cultivated, nor within two hundred and fifty metres of any house nor within fifty metres of any kraal;
- (ii) every excavation, including an excavation for a sample and an experimental pit, shall as soon as possible be filled up or fenced off or shall otherwise be made safe for human beings and animals [again] to the satisfaction of the owner, lessee or occupier of such land or as the Minister directs; provided that road building materials may be reserved in a stockpile for road maintenance purposes;
- (iii) any road provided for this purpose shall be ripped up in such a way that it

cannot be washed away should the owner, lessee or occupier so desire;

- (iv) road building materials clearly identified by the Minister may be reserved for future road building or maintenance purposes.

[iv] (v) the Minister, its representatives, [officers] staff members or contractors shall, in exercising these powers take every care to prevent damage, injury, loss or inconvenience to the owner, lessee or occupier concerned;

Provided further that the powers granted to the Minister in terms of this section shall only be exercised within the area of a local authority in consultation with the local authority concerned.

### **33. *Camping sites, water, firewood and cutting of trees and brushwood***

- (1) The Minister may through his or her representatives, officers or contractors -
- (a) where no other opportunity is available, erect temporarily dwellings for road workers and their families on private land and select or, where necessary, erect places [for] of storage [of] for their equipment and material at a place on such private land determined in consultation with the owner, lessee or occupier of the land; provided that when no agreement in regard to such place can be reached at such consultation, the Minister shall determine such place;
  - (b) take water at a tariff determined by the Minister from time to time, or take measures for obtaining water where the construction or maintenance of a proclaimed road so demands; provided that no water shall be taken from any artificial dam, well or borehole without the consent of the owner, lessee or occupier concerned, except where such artificial dam, well or borehole has been provided by and at the expense of the Minister for road purposes;

- (c) take firewood for the use of road workers and their families; provided that where large quantities are taken it shall only be taken with the consent of the owner, lessee or occupier concerned and at a tariff determined by the Minister from time to time;
- (d) cut down trees or brushwood and remove the same from the road reserve where the construction or maintenance of a proclaimed road or the safety of traffic so demands; provided that such trees or brushwood shall, when cut down, belong to the owner, lessee or occupier concerned.

Provided that the powers granted to the Minister in terms of this subsection shall only be exercised within the area of a local authority in consultation with the local authority concerned.

- (2) No compensation shall be payable to the owner, lessee or occupier of the land concerned in respect of any temporary dwellings and places of storage erected or selected on such land in terms of subsection (1) (a).

### **34. Compensation for damage caused by contractors**

Where a contractor, in exercising any of the rights and powers granted to him in terms of sections 32 and 33, causes any damage, compensation for it may be recovered from the Minister in terms of the provisions of this Act and the Minister may in turn claim indemnity from such contractor.

**35. *Improvement and repair of farm roads***

- (1) (a) Where interested persons desire that a farm road or a portion thereof should be improved or repaired by means of a grader of the [State] Minister or his or her representatives, they may apply to the board in the district of which such farm road or such portion thereof is situated for the required improvements or repairs.
- (b) The board shall then have the cost of such improvements or repairs estimated by the Department and inform the interested persons accordingly.
- (c) If the interested persons furnish documentary proof to the board that they have contributed half of the estimated cost of such improvements and repairs, and have supplied a written undertaking to the satisfaction of the board to pay half of the ultimate actual cost of such improvements and repairs calculated at a tariff determined by the Minister from time to time, the board may, with due allowance for the graders and funds at the disposal of the board, approve -
- (i) the improvements or repairs desired to be done by a grader of the [State] Minister or his or her representatives, and
- (ii) to contribute up to half of the costs thereof.
- (2) (a) Whenever interested persons wish to improve or repair a farm road or any portion thereof themselves and desire that the Minister should make a contribution to the cost of the improvements or repairs they shall, before such work is being done, apply to the Minister for the contribution desired.



- (b) Such application shall be lodged with the Roads Superintendent in whose area such farm road or portion thereof is situated, and after the cost of such improvements or repairs have been estimated by the Department it shall be submitted to the Minister [which] who may approve or reject the application.
- (c) If the application is approved the interested persons shall be informed of the estimated cost and if they complete the improvements or repairs to which the application refers to the satisfaction of the Minister, the Minister may, upon submission to it of documentary proof of the cost incurred in making such improvements or repairs, consent to contribute up to half of the actual cost thereof.

**36. *Deviation of farm roads after approval of applications by interested persons***

- (1) Whenever any person has applied in terms of section 17 for the deviation of a farm road and the Minister has decided in terms of the provisions of sections 20 and 23 that such farm road shall be deviated, the applicant shall deviate such farm road or cause it to be deviated him- or herself and at his or her own expense.
- (2)
  - (a) Such deviation shall be built within a period of three months after publication in terms of section 23 of the notice that the farm road concerned is to be deviated; provided that the Minister may extend such period by a further period not exceeding three months.
  - (b) If such deviation is not built and opened for use by the public within the period mentioned in paragraph (a) the approval of the deviation lapses and the notice referring thereto shall be deemed to have been repealed.

- (c) All work on fences, motor grid gates or swing gates which have to be changed or moved as a result of such deviation shall, subject to the provisions of section 52, be carried out by or at the expense of the applicant and no existing road shall be closed to the public before the new road has been opened to the public in the place thereof.

### **37. *Establishment and maintenance of pont services***

The Minister may -

- (a) establish pont services across rivers and construct anchorages and landings and the necessary approaches both within and beyond the road limits;
- (b) charge a pont tariff for the conveyance of travellers, vehicles and stock, and may determine such tariff from time to time [: Provided that no tariff shall be charged for any transport in respect of State services];
- (c) enter into contracts for the construction and maintenance, the hiring and the letting of pons on such conditions regarding tariffs as he or she may [think] deem fit;
- (d) co-operate with the [administrations] governments of neighbouring [territories] countries for the establishment of pont services across rivers along Namibia's borders, and may enter into any agreements with such [administrations] governments in regard to the control, management and maintenance of such service.

**38. *Rails, tracks, bridges, wires, cables, subways or culverts across or under proclaimed roads***

- (1) No person shall, without the written permission of the Minister, granted on such conditions as he or she may in his or her discretion impose, [no person shall] -
- (a) construct any railway, tramway, trolley or cocopan line or track across any proclaimed road;
  - (b) build any bridge across or any subway or culvert under a proclaimed road;
  - (c) construct any electric or other wires or cables or any pipeline on, across or under any proclaimed road.
- (2) Any person who contravenes or refuses or fails to comply with the provisions of this section or any condition imposed in terms of subsection (1) shall be guilty of an offence.
- (3) The Minister may without notice remove anything constructed or built contrary to the provisions of subsection (1), or have such thing removed and may recover the costs thereof from the person who constructed or built it.
- (4) For every permission granted in terms of this section the Minister may charge an annual fee which he or she may determine in each case.

**39. *Infringements and obstructions on and interference with proclaimed roads***

- (1) Unless this Act or any other law authorizes it, no person shall -
  - (a) infringe any proclaimed road by erecting or introducing any building, structure, advertisement, fence, furrow, canal, ditch[es], or other obstruction[s] on, across or under such proclaimed road or by wilfully or negligently causing water to run over it;
  - (b) wilfully or unnecessarily obstruct, impede, hinder or endanger the free flow of traffic on a proclaimed road or introduce or leave any rubbish or debris on a proclaimed road or within sight thereof;
  - (c) leave any vehicle or any part of a vehicle on a proclaimed road or within sight thereof;
  - (d) interfere in any way with the roadway of a proclaimed road or with anything erected or introduced within the road reserve of a proclaimed road, in terms of this Act, or with any cuttings, banks or drains of a proclaimed road;
  - (e) erect or introduce anything whatsoever within the road reserve of a proclaimed road.
  
- (2) The Minister may instruct any person who has caused, erected, introduced or left any damage, infringement, hindrance, obstruction or anything else whatsoever contrary to the provisions of subsection (1), on a proclaimed road or within the road reserve of a proclaimed road or within the road reserve of a proclaimed road, without delay to repair or remove such damage, infringement, hindrance or obstruction or any such thing or itself repair or remove it or have it repaired or removed without delay, and recover the costs of such repair or removal from the person who has caused, erected, introduced or left such damage, infringement, hindrance, obstruction or any such thing.

- (3) Any person who contravenes the provisions of subsection (1) or refuses or fails to comply therewith or with any instruction given to him in terms of the provisions of subsection (2) shall be guilty of an offence and shall on conviction be liable to a fine as prescribed [not exceeding one thousand rand] or to imprisonment [for a period not exceeding two years] or to both such fine and such imprisonment.
- (4) If satisfied that it will not be prejudicial to any public interest the Minister may, in writing and upon such conditions as he or she may in his or her discretion impose, authorize anything prohibited by this section.

## CHAPTER VII

### FENCES AND GATES

#### **40. *Distance from proclaimed roads at which fences are erected***

- (1) Subject to the provisions of subsection (2) no fence shall be erected nearer to the centre line of a proclaimed road than the boundary of the road reserve thereof as determined in terms of section 4.
- (2) Without in any way affecting the road reserve of [such] a proclaimed road thereby, the Minister may, in his or her discretion and on such conditions as he or she may from time to time determine -
  - (a) on written application by the owner of a farm crossed by a proclaimed road, excluding a farm road, approve that a fence or fences [may] be erected nearer to the centre line of such road than the boundary of the road reserve thereof and at such distance from the centre line thereof as he or she may determine; or

- (b) erect a fence or fences, or cause it to be erected, nearer to the centre line of a proclaimed road, excluding a farm road, than the boundary of the road reserve thereof;

Provided that no such fence shall be erected nearer to the centre line of such road than fifteen metres.

**41. *Fencing off of freeways and intersection point reserves***

The Minister may, for any reason that he or she deems fit, decide that a freeway or intersection point reserve shall be fenced off [on both sides] in accordance with the standards determined by him or her and when he or she so decides he or she shall erect the fence or fences or cause them to be erected at the expense of the State and according to the standards determined by it. Provided that notwithstanding anything to the contrary contained in this Act no person shall as a result of such fencing off be entitled to any compensation in terms of this Act until such time as all roads which are contemplated within such intersection point reserve have been proclaimed and fenced off.

**42. [Fencing off of intersection point reserves**

The Minister may for any reason that he or she deems fit decide that an intersection point reserve shall be fenced off and when he or she so decides he or she shall fence off such intersection point reserve or cause it to be fenced off at the expense of the State and in accordance with the standards determined by it. Provided that notwithstanding anything to the contrary in this Act contained no person shall as a result of such fencing off be entitled to any compensation in terms of this Act until such time as all roads which are contemplated within such intersection point reserve have been proclaimed and fenced off.]

**42. Fencing off of trunk, main and district roads**

- (1) The owner, lessee or occupier of a farm who wishes to fence off on both sides a trunk, main or district road that crosses such farm and that has not been fenced off in accordance with the standards prescribed by regulation, whether such road has already been built or not, shall apply in writing to the Minister for approval to do so.
- (2) Such application shall be accompanied by a certificate issued by an [officer] staff member of the Ministry of Agriculture, Water and Rural Development [Department of Agricultural Technical Services] stating whether the fence or fences to which the application refers, qualify or did qualify for a grant or not, and if so, what the value of such grant is.
- (3) The Minister may [grant] approve or refuse the [approval] application referred to in subsection (1) and may when [granting] approving it -
  - (a) determine that the fence or fences concerned shall comply with a standard prescribed by regulation;
  - (b) impose such conditions as he or she may in his or her discretion determine.
- (4) Whenever the Minister has approved such application he or she may make a contribution to the applicant consisting of -
  - (a) the material that is needed to fence off the road concerned on both sides in accordance with the standards prescribed by regulation; or
  - (b) where the applicant has fenced off the road concerned or caused it to be fenced off, on both sides in accordance with the standards prescribed by regulation, the cost, calculated at a tariff determined by the Minister from time to time, of the material that is needed to fence it off in that way;provided that -

- (i) if the Minister when granting such approval imposes a condition that until such time as the building of the road concerned has been completed across the farm concerned, the road concerned need to be fenced off on one side only, a *pro rata* portion of the contribution in terms of this subsection may be made [at the] after erection of the fence [with which the road is so fenced off] on one side; and
  - (ii) any contribution in terms of this subsection shall be reduced by the value of any grant for which the fence or fences concerned qualify or did qualify; and
  - (iii) no compensation shall be paid to the owner, lessee or occupier concerned in respect of loss of grazing or any cost of providing water as a result of the erection of such fence or fences.
- (5) The Minister may, for any reason which he or she deems fit, decide that a trunk, main or district road, or any portion thereof, shall be fenced off on both sides in accordance with the standards prescribed by regulation, and when he or she so decides he or she may make a contribution to the owner, lessee or occupier of the farm crossed by the road concerned, consisting of -
- (a) the material that is needed to fence off the road concerned on both sides in accordance with the standards prescribed by regulation; or
  - (b) where the owner, lessee or occupier of any farm crossed by the road concerned has fenced off such road or caused it to be fenced off, on both sides in accordance with the standards prescribed by regulation, the cost, calculated at a tariff determined by the Minister from time to time of the material that is needed to fence it off in that way; and
  - (c) where the owner, lessee or occupier of a farm has so fenced off or caused it to be so fenced off, on both sides, the cost calculated at a tariff determined by the Minister of the transport and labour incurred in connection with such fencing off;
- provided that any contribution in terms of this subsection shall be reduced by the value of any grant for which the fence or fences concerned qualify or did



qualify.

- (6) Whenever the Minister has decided in terms of subsection (5) that a trunk, main or district road, or any portion thereof, shall be fenced off in accordance with the standards prescribed by regulation, the owner, lessee or occupier of the farm crossed by the road concerned shall complete the erection of such fence or fences within six months from the date determined by the [said] Minister or within such other period as the Minister may determine; provided that the Minister may at any time extend such period on such conditions as he or she may determine.
- (7) Whenever the Minister has supplied any fencing material to the owner, lessee or occupier of a farm in terms of subsection (4) or (5) for the fencing off of a trunk, main or district road crossing such farm in accordance with the standards prescribed by regulation, the owner, lessee or occupier shall -
- (a) use the material thus supplied to him or her solely for the erection of the fence or fences for which it had been supplied; and
  - (b) except as provided in subsection (5)(c), at his or her own expense erect the said fence or fences or cause it to be erected in accordance with the standards prescribed by regulation; and
  - (c) complete the erection of such fence or fences within six months from the date on which the material has been supplied to him or her or within such other period as the Minister may determine; provided that the Minister may at any time extend such period on such conditions as he or she may determine.
- (8) Should the erection of such fences not be completed within the period referred to in subsection (6) or (7)(c) or, if the period has been extended, within such extended period, the Minister may complete the erection thereof or cause it to be completed and, where the erection of such fences has been approved in terms of subsection (1), recover the cost incurred in such completion from the person who had to erect the fence or cause it to be erected.

- (9) For the purposes of this section “grant” means any grant or subsidy made or paid or which may be made or paid in terms of the Soil Conservation Act, 1969 (Act 76 of 1969) or the regulations made thereunder [and includes any subsidies and grants paid or made or which could have been paid or made in terms of the Soil Conservation Ordinance, 1952 (Ordinance 28 of 1952) or the regulations made thereunder and any grants of money that has been or could have been made in terms of the Promotion of Farming Interests Ordinance, 1952 (Ordinance 29 of 1952).]

**43. Conversion and improvement of fences along trunk, main and district roads**

- (1) Whenever the owner, lessee or occupier of a farm applies in writing, through the [Chief Roads Engineer] Department, to the Minister to convert a fence erected in terms of section 42, or any fence along the [whole] entire distance of a trunk, main or district road crossing such farm into a jackal-proof fence, the Minister may refuse such application or approve it, either unconditionally or on such conditions as he or she may deem fit, and should the said owner, lessee or occupier have converted such fence or caused it to be converted into a jackal-proof fence complying with the standard prescribed by regulation, the Minister may pay the cost, calculated at a tariff determined by the Minister from time to time, of the material so used to convert such fence, to such owner, lessee or occupier.
- (2) Whenever the owner, lessee or occupier of a farm applies in writing, through the [Chief Roads Engineer] Department, to the Minister to improve a standard stock-proof fence along the [whole] entire distance of a trunk, main or district road crossing such farm, into a fence complying with a higher prescribed standard, the Minister may refuse such application or approve it, either unconditionally or on such conditions as he or she may deem fit, and should such owner, lessee or occupier have improved such fence or caused it to be improved into a fence complying with the higher prescribed standard stated in the application and approved by the Minister, the Minister may pay the cost, calculated at a tariff determined by the Minister from time to time, of the so

used to improve such fence, to the said owner, lessee or occupier.

**44. Maintenance and repair of fences along proclaimed roads**

- (1) (a) (i) Any fence erected in accordance with or in terms of the provisions of this Chapter and any other fence erected along a proclaimed road, shall, subject to the provisions of subparagraph (ii), be maintained properly, to the satisfaction of the Minister, by the owner, lessee or occupier of the farm on which or along the boundary of which such fence has been erected.
- (ii) The provisions of this subsection shall not apply in respect of any fence erected along a freeway which fence shall be maintained by the Minister.
- (b) If the owner, lessee or occupier of the farm concerned fails to maintain such fence properly, the Minister may cause a written notice in which he or she is commanded to repair such fence to the satisfaction of the Minister within the time stipulated in the notice to be served on him or her and if the fence is not so repaired within the time thus stipulated, the Minister may him- or herself repair such fence or cause it to be repaired and recover the cost thereof from the owner, lessee or occupier of the farm concerned.
- (c) Whenever [it is deemed] the Minister deems it necessary or expedient [by it], or whenever the owner, lessee or occupier of the farm concerned, cannot be traced, the Minister may repair such fence or cause it to be repaired without the notice referred to in paragraph (b) and recover the cost thereof from the owner, lessee or occupier of the farm concerned.
- (d) For the purposes of this subsection “fence” also includes any swing gate forming part of such fence.

- (2) (a) The Minister may for such purposes as he or she may deem necessary attach or cause to be attached, at the place and in the manner deemed fit by him or her, any metal plate to any fence referred to in subsection (1) and remove it or have it removed.
- (b) Without the written approval of the Minister no person shall remove such metal plate or interfere with it.
- (3) Subject to the provisions of this section and of section 43, no person shall in any way whatsoever interfere with any fence referred to in subsection (1).
- (4) Any person who contravenes or fails to comply with the provisions of this section, shall be guilty of an offence.

**45. *Motor grid gates and swing gates in fences crossing proclaimed roads***

- (1) No person -
  - (a) except the Minister shall erect or cause to be erected any motor grid gate in any fence crossing a proclaimed road excluding a farm road;
  - (b) shall erect or cause to be erected a motor grid gate in any fence crossing a farm road without having obtained the approval of the Minister therefor;

provided that whenever any motor grid gate is erected in any fence crossing a proclaimed road in terms of the provisions of this subsection, a swing gate shall, unless the Minister determines otherwise, also be erected in the road reserve of such proclaimed road in such fence.

- (2) The Minister may at any time erect a motor grid gate at any place where only a swing gate has been or will be erected in any fence across a trunk, main or district road, if the Minister considers such a road to be important enough to erect a motor grid gate therein.
- (3)
  - (a) All motor grid gates in boundary fences crossing trunk, main and district roads shall be erected at the expense of the State.
  - (b) Whenever a motor grid gate is erected in a camp fence crossing a trunk, main or district road which crosses a farm, the owner, lessee or occupier of such farm shall pay half of the cost of erection thereof, calculated at a tariff as determined by the Minister from time to time.
- (4)
  - (a) Whenever the owner, lessee or occupier of a farm crossed by a farm road, wishes to erect a motor grid gate or cause it to be erected, in any fence across such road, he shall apply, through the [Chief Roads Engineer] Department, to the Minister for approval to do so.
  - (b) The Minister may [grant] approve or refuse the [approval] application and may when approving it impose such conditions as he or she may in his or her discretion determine.
  - (c) After approval therefor has been granted, the applicant shall erect such motor grid gate or cause it to be erected, at his or her own expense and in accordance with the specifications prescribed by regulation by the Minister and the conditions imposed by the Minister in terms of paragraph (b).

**46. *Liability for damages by reason of the erection of motor grid gates***

The Minister or the owner of a fence shall in no way by reason of the construction, maintenance or repair of any motor grid gate in such fence in terms of the provisions of this Act be liable for any loss through [possible] damage or injury to any person, vehicle or stock passing or attempting to pass through any motor grid gate; provided that this section shall not exempt the Minister from liability for any loss through negligence in the construction, maintenance or repair of such motor grid in a trunk, main or district road.

**47. *Fences with swing gates across proclaimed roads***

- (1) No person shall without the approval of the Minister erect a fence with only a swing gate across a trunk or main road.
- (2) Subject to the provisions of section 27 of the Fencing Proclamation 1921 (Proclamation 57 of 1921), as amended, and of this [Ordinance] Act, any owner, lessee or occupier of a farm may erect a fence with a swing gate across a district or farm road crossing such farm; provided that where the road concerned is a district road a swing gate may be erected across it only with the written approval of the Minister and in accordance with the conditions imposed by the Minister when granting such approval.

**48. *Erection and maintenance of swing gates across proclaimed roads***

(1) Notwithstanding the provisions of the Fencing Proclamation 1921 (Proclamation 57 of 1921), as amended, every person who is responsible for the erection and maintenance of a swing gate across any proclaimed road in terms of the provisions of this Act shall ensure that such swing gate is erected and maintained in accordance with the standards prescribed by regulations . -

- [(a) fasten in the centre of such swing gate a plate not less than sixty centimeters by sixty centimeters in size, painted white and which shall, in the case of boundary gates, also give the names and numbers of the two farms concerned, and shall repaint it white whenever it becomes necessary; provided that every owner, lessee or occupier shall be responsible for the plate on which the name and number of his or her farm is to be given;
- (b) ensure that the swing gate is erected in such a way that vehicles can stop on both sides thereof;
- (c) ensure that swing gate can swing freely above the ground in both directions;
- (d) ensure that no pegs or other projections which, in the opinion of the Minister, are dangerous or injurious to persons, animals or anything whatsoever, are attached to such swing gate;
- (e) ensure that the swing gate conforms to a standard type of swing gate, is at least 4,26 metres wide and is not a concertina gate, nor a gate of which certain parts can swing away separately, nor a gate which in the opinion of the Minister may in any way be dangerous or injurious to persons, animals or anything whatsoever;
- (f) erect the swing gate, or cause it to be erected, at right angles with the roadway of the road and in the case of trunk, main and district roads at a place approved by the Minister.]

(2) Any person who contravenes the provisions of this section or fails to comply

therewith shall be guilty of an offence.

**49. *Removal of motor grid gates and swing gates***

Whenever a trunk, main or district road has been fenced off on both sides in accordance with the standards prescribed by regulation and the fences are of the [same] prescribed standard, the Minister may remove all motor grid gates and swing gates between the fences on either side thereof or cause it to be removed.

**50. *Closing of gates across proclaimed roads***

- (1) Without the consent of the Minister no person shall close or otherwise bar any motor grid gate in or swing gate across a proclaimed road against passage.
- (2) Any person who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

**51. *Shifting of gates and fences***

- (1) Whenever the deviation of a proclaimed road necessitates the shifting of swing or motor grid gates, the Minister shall shift such swing or motor grid gates, or cause it to be shifted, at cost to the State; provided that the Minister may recover the cost of the shifting of such swing or motor grid gates -
  - (a) from the interested persons who applied for the deviation of such road in terms of section 17 (1) (a); or
  - (b) from the owner, lessee or occupier of a farm, who applied for the deviation of such road in terms of section 17 (1) (b),

if the road thus deviated is a farm road.

- (2) Whenever the construction of a new proclaimed road necessitates the erection



of swing or motor grid gates in fences crossing such new proclaimed road or the shifting of existing swing or motor grid gates to such new proclaimed road, the Minister may erect or shift such swing or motor grid gates, or cause it to be erected or shifted at cost to the State; provided that the Minister may recover the cost of the erection or shifting of such swing or motor grid gates and the material used therefor -

- (a) from the interested persons who applied for the proclamation of such new road in terms of section 17 (1) (a); or
  - (b) from the owner, lessee or occupier of a farm who applied for the proclamation of such new road in terms of section 17 (1) (c),
- if the new road thus proclaimed is or will be a farm road.

- (3) Whenever the owner, lessee or occupier of a farm has, as far as it [crosses] traverses such farm, entirely fenced off a proclaimed road on one side or on both sides and a new proclaimed road is constructed across such farm, the Minister may, if such owner, lessee or occupier requests that the fence or fences with which the existing proclaimed road has so been fenced off, should be shifted and erected along the new proclaimed road, in his or her discretion at State cost entirely fence off such new proclaimed road or cause it to be so fenced off, as far as it crosses such farm, on one side or on both sides in accordance with the standards prescribed by regulation with a fence or fences of the same prescribed standard as the fence or fences with which the existing proclaimed road was fenced off or with a fence or fences of a higher prescribed standard; provided that -

- (a) the Minister may recover the cost of the erection of the fences with which such new proclaimed road has thus been fenced off, and the material used therefor -
  - (i) from the interested persons who applied for the proclamation of such new road in terms of section 17 (1) (a); or
  - (ii) from the owner, lessee or occupier, of a farm who applied for the proclamation of such new road in terms of section 17 (1)

(c),

if the new road thus proclaimed is or will be a farm road;

- (b) no compensation will be paid to the said owner, lessee or occupier for the demolition of a fence or fences along such existing proclaimed road;
- (c) any material which the Minister supplies to the said owner, lessee or occupier to erect such fence or fences or cause such fence or fences to be erected along such new proclaimed road, shall be used solely for that purpose.

## **52. Minister may direct removal of gates, fences and other obstructions**

- (1) The Minister may direct the owner or erector thereof, within seven days thereafter to remove -
  - (a) any fences, swing gates, motor grid gates or other obstructions erected on, across or along a proclaimed road contrary to the provisions of this Act or the Fencing Proclamation 1921 (Proclamation 57 of 1921), as amended; or
  - (b) any swing gate which in the [his] opinion of the Minister has been erected on or across a proclaimed road at an unsuitable place.
- (2) If such direction is not complied with within the period of seven days referred to in subsection (1), the Minister may him- or herself remove such fence, swing gate, motor grid gate or other obstruction, or cause it to be removed, and recover the cost thereof from the owner or erector thereof, who in addition thereto, shall be guilty of an offence.

## **CHAPTER VIII**

### **TREKKING WITH ANIMALS**

**53. *Trekking with stock along unfenced proclaimed roads and unproclaimed roads***

- (1) Where an unfenced proclaimed road crosses a farm no person shall drive or graze any animal, whether inspanned to a vehicle or not, across or on such farm, outside the public grazing area.
- (2)
  - (a) No person except a licensed butcher or [speculator] vendor in stock, or the owner, lessee or occupier of a farm in Namibia, or an authorised representative or employee of such butcher, [speculator] vendor in stock, owner, lessee or occupier may trek or stay on any public grazing area with stock, unless he or she is the holder of the prescribed permit [issued by a magistrate or, in the case of Natives, by a magistrate, Bantu affairs commissioner, assistant Bantu affairs commissioner or superintendent of a Native reserve] authorizing him or her thereto.
  - (b) Such permit shall state the number, type and destination of the stock concerned, the route to be followed, as well as the period for which it shall be valid.
- (3) The holder of a permit issued in terms of subsection (2) shall on demand produce it to the owner, lessee or occupier of the farm on which he or she is found with his or her stock.
- (4)
  - (a) Where an unproclaimed road crosses a farm, no person shall, without the written consent of the owner, lessee or occupier of such farm, trek or remain on such road with stock.
  - (b) The owner, lessee or occupier of a farm or his or her authorised representative, or the Minister or his or her authorised representative may act in accordance with the provisions of the Trespass of Animals Ordinance, 1939 (Ordinance 16 of 1939), as amended, in respect of any animals with which any person treks or stays contrary to the provisions of paragraph (a) or which may be allowed to trek or stay contrary to the provisions of paragraph (a).

- (5) Any person who contravenes or fails to comply with the provisions of this section, shall be guilty of an offence.

**54. *Limit on period of stay***

- (1) Any person trekking with stock across a public grazing area shall continue to trek in the same direction from a starting point [of beginning] to a destination and shall cover a distance of at least fifteen kilometres per twenty-four hours, unless he or she has obtained the written consent of the owner, lessee or occupier of the farm on which such public grazing area is situated to cover a shorter distance or unless he or she is delayed by adversity, floods or other unforeseen circumstances.
- (2) The time limit imposed in subsection (1) shall not include Sundays.
- (3) Any person who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

**55. *Grazing and water rights for stock on trek***

- (1) Any traveller on an unfenced proclaimed road may graze and water his stock within the public grazing area along such road.
- (2) (a) If such public grazing area does not have adequate water supplies available the Minister may take any reasonable steps to supply water thereon and until such time as this happens, a traveller may, after having previously handed a written notice of his or her intention to do so to the owner, lessee or occupier of the farm concerned or after having left it in a conspicuous place on the farm if he or she could not trace such owner, lessee or occupier, water his or her stock at the water nearest to such public grazing area, provided sufficient water is left for the normal requirements of such owner, lessee or occupier.
- (b) Any traveller who waters his or her stock in that way without having notified the owner, lessee or occupier of the farm concerned in

accordance with the provisions of paragraph (a), and every such owner, lessee or occupier who refuses to allow a traveller who has, in accordance with paragraph (a), notified him or her of his or her intention to water his or her stock, so to water his or her stock when sufficient water is available for that purpose and for his or her own normal requirements, or who in any way prohibits any such traveller from using such water, shall be guilty of an offence.

- (3) Any such owner, lessee or occupier may charge fees at a tariff, which may from time to time be prescribed by the Minister by regulation, for the provision of water and kraal facilities; provided that no such fees shall be charged for any water from a running stream thus consumed or for the provision of water or kraal facilities for the riding or trekking animals of the officers or employees of [the State, the Department of Bantu Administration and Development or] the Namibian Police who act in the exercise of their powers or in the execution of their duties, or for any animals - but not more than twenty-five - being under the supervision of such officers or employees.
- (4) (a) If a proclaimed road is fenced off, whether in accordance with the standards prescribed by regulation or not, and no sufficient supply of water is available within the fences thereof, the Minister may provide a gate to be erected in such fence to give access to the nearest available watering-place.
- (b) Such gate shall be erected by the owner, lessee or occupier of the farm crossed or bounded by such fence, at a place determined by the

Minister after consultation with such owner, lessee or occupier and the access to a watering-place given in that way, shall not be obstructed.

**56. *Trespassing on public grazing areas***

- (1) Excluding any stock of the owner, lessee or occupier of the farm concerned all stock being on any proclaimed road or on any public grazing area on such farm, shall be subject to the provisions of the Trespass of Animals Ordinance, 1939 (Ordinance 16 of 1939).
- (2) For the purposes of this section all stock being in the possession of any person who is required in terms of section 53 (2) to hold a permit, but who does not hold such permit, on such proclaimed road or public grazing area, shall be deemed to trespass on such proclaimed road or public grazing area, and all stock, being in the possession of any person who, contrary to the provisions of section 54, covers a distance of less than fifteen kilometres per twenty-four hours along such proclaimed road or across such public grazing area with such stock, shall be deemed to trespass on such proclaimed road or public grazing area.

## **CHAPTER IX**

### **ROAD ROUTE MARKERS**

**57. Road route markers**

- (1) Subject to the provisions of the Road Traffic and Transport Act, 1998 (Act .. of 1998), as amended, and any regulations made and in force thereunder, the Minister may -
  - (a) erect a road route marker, on which the names of the centres to which such roads lead are indicated where -

- (i) one trunk road turns off from another trunk road;
    - (ii) a main road turns off from a trunk road;
    - (iii) one main road turns off from another main road;
  - (b) erect a road route marker on which the number of the district road concerned, and if such district road leads to a centre or centres which is considered by the Minister to be important enough, also the name or names of such centre or centres, are indicated, where a district road turns off from a trunk or main road or from another district road;
  - (c) erect a road route marker on which the number of such farm road and the name of the first farm the homestead of which is served by such farm road, are indicated where a farm road turns off from a trunk, main or district road;
  - (d) whenever the owner, lessee or occupier of the first farm the homestead of which is served by a minor road, had applied in writing through the [Chief Roads Engineer] Department to the Minister for the erection thereof erect a road route marker on which the name of such farm is indicated where such minor road turns off from a trunk, main or district road.
- (2) Any one or more owners, lessees or occupiers of farms served by a farm or minor road, may erect a road route marker on which the name or names of his, her or their farms are indicated, or cause the same to be erected, where such farm road turns off from another farm road or where such minor road turns off from a farm road or another minor road; provided that such road route marker shall be erected in such a manner that it does not or will not constitute a danger or hindrance to traffic on any such road.

## CHAPTER X

### FURROWS AND WATER COURSES

#### **58. *Water courses over or under proclaimed roads***

- (1) Any person wishing to lead water over or under a proclaimed road, shall do so at his or her own expense after having obtained the approval of the Minister which may determine the type of culvert or other conduit to be used and the conditions on which it will be permitted.
- (2) Whenever any person leads water over or under a proclaimed road -
  - (a) without having obtained the approval of the Minister to do so; or
  - (b) in a type of culvert or other conduit other than that determined by the Minister in terms of subsection (1); or
  - (c) contrary to the conditions determined by the Minister in terms of subsection (1),

he or she shall be guilty of an offence and the Minister may require him or her to remove any culvert or other conduit erected without such permission or contrary to such determination or may remove [it itself] or have it removed and recover the cost thereof from him or her.

#### **59. *Raising of water level***

- (1) No person shall, without the approval of the Minister, raise the water level of a river, stream or [spruit] other water course at a proclaimed road, bridge or drift.
- (2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence.



**60. *Draining of proclaimed roads***

- (1) The Minister may, in consultation with the owner, lessee or occupier of land, divert storm water from or from under any proclaimed road[s] onto such land, provided no buildings, orchards, gardens or other improvements have been erected or laid out on such land and the Minister shall not be liable for any damage caused by the diversion of such storm water.
- (2) The Minister may, in consultation with the owner, lessee or occupier of land, erect, lay out and maintain, outside proclaimed roads, retaining walls or other structures which he or she may deem necessary for the diversion of water onto such land, provided that no buildings, orchards or gardens or other improvements are erected or laid out on such land and the Minister shall not be liable for damage caused by the diversion of such water.
- (3) Should it however become necessary to divert water to land on which buildings, orchards, gardens or other improvements have been erected or laid out and damage is caused thereby, the Minister shall be liable to the owner, lessee or occupier of the land, for damages, the amount of which shall be determined by agreement between the parties, or failing such agreement, by arbitration in terms of the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

**61. *Construction and maintenance of bridges and crossings***

The Minister shall [not] be responsible for the construction or maintenance of bridges or crossings of any kind whatsoever over drains or water courses outside such roads, which have been made for the diversion of storm water or otherwise for the protection of proclaimed roads and shall [not] be liable [in connection therewith] therefor.

## CHAPTER XI

### GENERAL AND SUPPLEMENTARY PROVISIONS

**62. *Entering upon or taking possession of land to exercise powers or duties***

Subject to the provisions of section 68(1) the Minister or any person authorised thereto by him or her may, in the exercise or execution of the powers or duties granted to him or her or imposed upon him or her by this Act at any time enter upon or take possession of any land after having handed a written notice of his or her intention to do so to the owner, lessee or occupier of such land or should the owner, lessee or occupier of such land not be found thereon, without any notice whatsoever.

**63. *Authorised persons may exercise powers***

Wherever any rights or powers are granted to the Minister in this Act, such rights and powers shall also be given to every person duly authorised by the Minister or lawfully acting on his or her behalf.

**64. *Undermining of proclaimed roads***

Wherever public safety necessitates the deviation or reconstruction of a proclaimed road because the ground has been undermined subsequent to the construction thereof, the Minister may, after consultation with the mine owner, mining company or underminer concerned, reconstruct or repair the original road or, if necessary, deviate it and recover the cost of such reconstruction, repair or deviation from the mine owner, mining company or underminer concerned.

**65. *Minor roads and private roads shall turn off from trunk and main roads at approved places only***

- (1) No minor road or private road shall turn off from a trunk or main road at any place other than a place approved by the Minister.
- (2) Any person who constructs a minor road or a private road contrary to the provisions of subsection (1) or causes it thus to be constructed and any person who maintains a minor road or a private road so constructed, or causes it to be maintained, shall be guilty of an offence.

**66. *Closing of minor roads***

- (1) (a) Whenever the owner, lessee or occupier of a farm desires the closing or deviation of a minor road crossing such farm, or a portion thereof, he or she shall in writing apply therefor to the chairperson of the board (hereinafter referred to as the chairperson) in the district of which that road or that portion of the road to which the application refers, is situated.
- (b) When submitting such application the applicant shall furnish the chairperson with-
  - (i) a sketch of the area concerned on which the road concerned and all other roads in the area are shown; and
  - (ii) the names of the other farms crossed by the road concerned; and
  - (iii) the names and addresses of the owners, lessees or occupiers of such farms.

- (2) (a) The chairperson shall then, at the applicant's cost, make known the application by notice published in at least one newspaper circulating in that area and shall send a copy of such notice by registered post to the owner, lessee or occupier of every farm crossed by such road, whose name and address have been furnished to him or her.
- (b) Such notice shall command every person having any objection to the proposed [closing] closure or deviation of the concerned road, or portion thereof, [concerned] to lodge his or her objection in writing with the officer or person mentioned in such notice within a period of thirty days of the date mentioned in such notice.
- (3) Should no objections to the [closing] closure or deviation of the concerned road, or portion thereof, [concerned] be lodged within the said period of thirty days, the chairperson shall notify the applicant in writing that he or she may close or deviate such road or such portion of the road.
- (4) (a) Should objections to the [closing] closure or deviation of the concerned road, or portion thereof, [concerned] however be received, the chairperson shall submit the application together with all the objections so received, to the board as soon as possible thereafter for consideration thereof and a decision in connection therewith.
- (b) All decisions by the board in connection with such an application and the reasons for such decisions shall be recorded.
- (c) Should the board decide that the concerned road , or portion thereof, [concerned] may be closed or deviated the chairperson shall notify the applicant and all persons who lodged objections to it in writing of the board's decision and he or she shall at the same time inform the applicant that the concerned road, or portion thereof, [concerned] shall not be closed or deviated before he or she has received a written notice authorising him or her to do so from the chairperson.

- (5) (a) Any person who has lodged an objection to the [closing] closure or deviation of the concerned road, or portion thereof, [concerned] with the board, may, within a period of thirty days of the date mentioned in the notice referred to in subsection (4) (c) appeal to the Minister against the decision of the board that the road may be closed or deviated.
- (b) Such appeal shall be noted by sending a written notice in which the grounds of the appeal are stated to the chairperson by registered post.
- (6) Should no such notice appeal be lodged with the chairperson within the period of thirty days referred to in subsection (5) (a) he or she shall notify the applicant in writing that he or she may close or deviate the concerned road, or portion thereof [, concerned].
- (7) (a) Upon receipt of a notice of appeal against the decision of the board that the concerned road, or portion thereof, [concerned] may be closed or deviated, the chairperson shall forward it together with the minutes of the proceedings of the board, as far as they may refer to the application concerned and the objections lodged to it, to the [Chief Roads Engineer] Department if [it] the notice has not already been forwarded to it and the [Chief Roads Engineer] Department shall submit [it] the notice to the Minister.
- (b) The Minister may in his or her discretion decide which road arrangement shall be made in terms of the application and should he or she decide that the concerned road, or portion thereof, [concerned] may be closed or deviated, the chairperson shall communicate the decision of the Minister to the appellant and the chairperson shall notify the applicant in writing that he or she may close or deviate such road or portion thereof.

- (8) When the applicant has closed the concerned road, or portion thereof, [concerned] in terms of the provisions of this section, whether by the erection of a fence across it or in any other way whatsoever, he or she shall immediately, in accordance with the provisions of the Road Traffic and Transport Act, 1998 (Act ... of 1998) and the regulations made and in force thereunder, erect a road traffic sign indicating that such road has been closed to traffic at the place or places where the concerned road, or portion thereof, [concerned] has been closed and he or she shall properly maintain such road traffic sign for a period of at least six months.
- (9) When the applicant has deviated the concerned road, or portion thereof [concerned] in terms of the provisions of this section, he or she shall immediately-
- (a) deviate, whether by the erection of a fence across it or in any other way whatsoever, the road or portion thereof which was previously used as a road but as a result of the deviation thereof will no longer be used as a road; and
  - (b) in accordance with the provisions of the Road Traffic and Transport Act, 1998 (Act .. of 1998), and the regulations made and in force thereunder, erect a road traffic sign indicating that such road has been deviated to traffic at the place or places where the road, or portion thereof concerned has been deviated as a result of the deviation and he or she shall properly maintain such road traffic sign for a period of at least six months.
- (10) Any person who-
- (a) closes or deviates a minor road without having been notified in writing in terms of the provisions of this section that he or she may do so;

- (b) fails to erect or maintain a road traffic sign in accordance with the provisions of subsection (8) where a minor road has been closed or deviated.

shall be guilty of an offence.

#### **67. Compensation for encroachment on land**

- (1) Whenever any direct damage is caused to any improvements in the course of the opening, construction, maintenance or widening of a proclaimed road, or the establishment of a pont service by or on behalf of the Minister, but in no other case, the owner concerned shall be entitled to damages, the amount of which shall be determined by agreement between the parties, or failing such agreement, by arbitration in terms of the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

- (2) When the Minister-

- (a) across a portion of land within an urban area which is registered as a separate unit in the Deeds Office of Namibia or across a farm of fifty hectares or smaller, proclaims a road where no road previously existed or re-opens a road which has been closed and declares it to be a proclaimed road;
- (b) determines the course of a road thus proclaimed; and
- (c) declares such road in terms of section 24 to be a trunk, main or district road,

the owner of the land across which such road has been so proclaimed shall, notwithstanding the provisions of subsection (1) and over and above any damages to which he shall be entitled in terms of subsection (1) be entitled to compensation for the land covered by such road.

- (3) Whenever the Minister has increased the width of the road reserve of a proclaimed road in terms of section 4 the owner of the land concerned shall, notwithstanding the provisions of subsection (1) and over and above any damages to which he shall be entitled in terms of subsection (1), be entitled to compensation for the land covered by such increase of the width of the road reserve.
- (4) When in the course of the construction of a trunk road land remains on both sides or on one side of such road-
- (a) the area of which is smaller than the area of the land taken up by such road and the land which so remains is of no use to the owner thereof; or
  - (b) on which the owner shall in terms of the provisions of any law be prohibited from erecting any buildings; or
  - (c) to which no access may be given,
- the owner of the land thus remaining, may require the Minister to increase the width of the road reserve of such proclaimed road in such a way that it includes the land thus remaining, in which case the Minister shall be compelled thus to widen the road reserve, and the owner of the land concerned shall, notwithstanding the provisions of subsection (1) and over and above any damages to which he shall be entitled in terms of subsection (1), be entitled to compensation for the land thus [remaining] added to the road reserve.
- (5) The amount of any compensation to which the owner of land may be entitled in terms of this section shall be determined by agreement between the parties, or failing such agreement by arbitration in terms of the provisions of the Arbitration Act, 1965 (Act 42 of 1965).



- (6) Notwithstanding anything to the contrary contained in this Act the Minister may in his or her discretion, by way of reasonable relief, authorise the payment of an amount fixed by him or her, if he or she is, in any case where no payment of compensation is claimable, of the opinion that damage has been or will be done by the exercising of any power in terms of this Act.

## **68. Regulations**

The Minister may make regulations not inconsistent with the provisions of this **[Ordinance]** Act in respect of any of the following matters:

- (a) the powers, duties and functions of boards established in terms of section 6;
- (b) the control, management and operation of ponts and pont services;
- (c) subject to the provisions of the Public Service Act, 1995 ( Act 13 of 1995), [and the Administration Employees Ordinance, 1957 (Ordinance 17 of 1957)], the duties and conditions of service of [public service officers or employees] staff members charged with the administration or execution of the provisions of this Act;
- (d) the protection from damage or interference of State property or works, including trees, boreholes, wells and improvements within the road reserve of, under or over proclaimed roads;
- (e) the junction of unproclaimed roads with proclaimed roads and control thereof,
- (f) fences on road reserve boundaries and motor grid gates;
- (g) anything which has to be or may be prescribed in terms of this Act;
- (h) generally for the better and more [efficacious] effective carrying out of the provisions and objects of this Act;
- (i) principles, guidelines and procedures regarding the payment of compensation to landowners in terms of section 67 of this Act; and
- (ii) road route markers.

**69. Prohibitions**

- (1) No person shall-
  - (a) make use of any vehicle fitted with metal tracks on any tarred proclaimed road;
  - (b) dig out any bogged down vehicle on any proclaimed road unless he or she repairs or causes to repair the road to the best of his or her ability immediately thereafter.
- (2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence.

**70. Offences and penalties**

- (1) Any person who contravenes any provision of this Act or fails to comply with any provision thereof with which it is his or her duty to comply, or with a condition imposed in terms thereof or with a notice, direction or order given or issued in terms thereof, shall be guilty of an offence.
- (2) Any person convicted of any offence in terms of this Act for which no penalty is expressly provided shall be liable to a fine [not exceeding two hundred rand] or to imprisonment [for a period not exceeding six months] not exceeding the limits prescribed.

**71. Existing roads**

Notwithstanding the provisions of this Act all roads constructed in terms of existing laws, shall be deemed to have been constructed in terms of this Act.

**72. *Repeal of laws***

- (1) Subject to the provisions of subsections (2) and (3) the laws specified in the Schedule are hereby repealed to the extent set out in the third column thereof.
- (2) All proclamations, notices and regulations made, promulgated or framed in terms of the provisions of any law repealed by this Act shall, if not inconsistent with the provisions hereof, remain in force until revoked or amended in terms of the provisions of this Act; provided that every proclaimed road proclaimed in terms of the provisions of any law prior to the commencement of this Act shall continue to exist as it has thus been proclaimed and shall retain the classification and number allocated to it.
- (3) Any proclamation made in regard to any law repealed by this Act shall remain in force as if it had been made in regard to this Act and shall be deemed to have been made in regard to this Act.

**73. *Short title and date of commencement***

This Act shall be called the Namibia Roads Act, 1999, and shall come into operation on a date determined by the Minister and made known by [proclamation] notice in the Official Gazette.

## SCHEDULE

### LAWS REPEALED

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

**GOVERNMENT OF THE REPUBLIC OF NAMIBIA  
MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION  
DEPARTMENT OF TRANSPORT**

**NATIONAL TRANSPORTATION MASTER PLAN STUDY**

**VOLUME 9**

**LAYMAN'S DRAFT OF A NEW NAMIBIAN ROADS ACT**

**September 1998**

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VKE (Namibia) Inc.  
Nordic Consulting Group  
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## **1. INTRODUCTION**

### **1.1 Background**

The Government of the Republic of Namibia through its Ministry of Works, Transport and Communication commissioned the Swedish Consultants KM International AB to undertake a National Transportation Master Plan Study (NTMPS) for Namibia. KM International sub-contracted VKE (Namibia) Inc., Nordic Consulting Group and the Swedish National Road Consulting AB (SweRoad) to undertake particular tasks in the study.

the Terms of Reference for the study contains certain very specific tasks to be carried out during the course of the Study including two related to transport legislation in Namibia, which are summarised below:

- Task 6 : Review current legislation for roads including the system for classifying roads.
- Task 23 : Make recommendations with respect to the present legislation for roads.

This report looks in particular at the Roads Ordinance, 1972 (Ordinance 17 of 1972) and seeks to update this legislation as well as revise particular aspects of the Ordinance. The Advertising on Roads and Ribbon Development Ordinance (Ord. 30 of 1960) has been excluded from the Study and was referred to the legal profession due to its non-engineering nature.

## **2. PROCESS FOLLOWED IN REVISING THE ORDINANCE**

### **2.1 Introduction**

This task of the NMTPS has examined the main legislation which governs the provision of roads in Namibia, the Roads Ordinance, 1972. The following principles were followed when re-drafting this legislation to bring it up to date in the light of the many changes that have occurred in Namibia in the last twenty years:

- Namibia has become an independent nation with a constitution which directly impacts on all her legislation.
- Terminology used in the Ordinance is outdated or inappropriate to Namibia at

this stage in her development.

- Certain aspects of the roads legislation should be covered in Ministerial regulations as opposed to being retained in a Parliamentary act. This would allow the Minister to expediently amend those aspects which are often of a routine and detailed nature without bringing such matters to Parliament.
- The road classification system used in the Ordinance requires amendment.

The changes proposed and included in the layman's draft Roads Act have been organised in two distinct categories which are described in the sections below.

## **2.2 General changes undertaken in the draft legislation**

Initially it was important to make a number of global changes in the legislation. The following terms were substituted throughout the revised legislation.

- “Namibia” was substituted for “South West Africa” or the term “the Territory”
- “Department” was substituted for the term “Roads Branch”. The word Department was defined as “the Department of Transport of the Ministry of Works, Transport and Communication or the Roads Authority where authorised to act on behalf of the Department of Transport”.
- “Permanent Secretary”, which was defined as the Permanent Secretary : Works, Transport and Communication, was substituted for the words “Director of Roads”.
- “Minister”, which is defined as the “Minister responsible for Transport”, was substituted for the terms “Executive Committee” and “Cabinet”.
- “State” was substituted for the term “Administration”.
- “He or she” were substituted for “he” or “it” as applicable.
- “Chairperson” was substituted for “Chairman”.
- “Inquiry” was substituted for “Enquiry”. “Inquiry” is namely being used in other draft legislation in the road sector.
- “Gazette” was substituted for “Official Gazette”



- “ ..... ; provided that ..... ” was substituted for “ .....: Provided that ....” inside sentences
- “local authority or settlement area” was substituted for “area of local authority” and “local authority council and regional council” was substituted for “local authority. This is commensurate with the Local Authorities Act, the Regional Councils Act, the Road Fund Administration Act and the Roads Authority Act.

It should be noted that not all these global changes have been individually indicated in the text.

### **2.3 Specific changes in the draft legislation**

Certain sections have been re-drafted to meet new policies or technical considerations in Namibia. Following amendments to legislation in general is an onerous task. In order to facilitate proof-reading these changes have been indicated in the following manner:

- where the wording of the old Roads Ordinance has been taken out it has been placed in square brackets e.g. [these words have been deleted]
- the new wording added into the Namibia Roads Bill have been underlined e.g. these words have been added

A number of the matters included in square brackets should be issued in ministerial regulations which can be altered periodically.

### **2.4 Section by Section Commentary on the draft Roads Act**

A detailed discussion of each section has been provided to augment and explain the proposed amendments in the draft legislation. The numbering of this commentary refers to the new section numbers in the draft bill. The corresponding section in the Roads Ordinance, 1972, may be examined by referring to the section number contained in round brackets.

## **3. SECTION BY SECTION COMMENTARY**

**Section 1 : Definitions (Section 1, Roads Ordinance)**

The following definitions have been deleted from the list:

- Director of Roads
- Executive Committee
- Roads Branch
- this Ordinance
- Administration
- Territory

The following definitions have been added to the list:

- Department
- Permanent Secretary
- Minister
- Act

The terms “Namibia” and “State” have been substituted throughout the text for “the Territory” and “Administration” respectively. Neither the terms “Namibia” nor “State” need be defined.

“Urban area” has been redefined as “local authority area” or “settlement area” commensurate with the RFA and RA Acts

**Section 2 : Application of Act within urban areas (Section 1A, Roads Ordinance)**

This section has been renumbered, but the principle that only certain sections should apply in urban areas still applies.

**Section 3 : Division of proclaimed roads (Section 2, Roads Ordinance)**

The division of the types of proclaimed roads into four classes is still necessary and technically acceptable. However, see also Section 24 which contains the altered definitions of two of the four classes.

**Section 4 : Width of proclaimed roads (Section 3, Roads Ordinance)**

No change required.

**Section 5 : Control and supervision over proclaimed roads and other roads (Section 4, Roads Ordinance)**

No change required.

**Section 6 : Establishment and constitution of roads boards (Section 5, Roads Ordinance)**

The composition of boards has been altered even though the minimum number of board members remains the same. One member of the Department of Transport shall be appointed to each board, along with a representative of local authorities in the area and three other persons. The Minister may appoint any member as the Chairperson of the board. The inclusion of a local authority representative is a development which has been practised in recent years and is now proposed to be formalised.

**Section 7 : Qualifications and dis-qualifications of members (Section 6, Roads Ordinance)**

No change required.

**Section 8 : Vacation of office by members (Section 7, Roads Ordinance)**

No change required.

**Section 9 : Suspension and dismissal of members (Section 8, Roads Ordinance)**

**Ordinance)**

No change required.

**Section 10 : Term of office of members (Section 9, Roads Ordinance)**

No change required.

**Section 11 : Vacancies (Section 10, Roads Ordinance)**

No change required.

**Section 12 : Meetings of boards (Section 11, Roads Ordinance)**

No change required.

**Section 13 : Remuneration, allowances and fees payable to members (Section 12, Roads Ordinance)**

No change required.

**Section 14 : Duties and powers of boards (Section 13, Roads Ordinance)**

No change required.

**Section 15 : [Interested members] Members with direct or indirect interest shall not take part in proceedings of board (Section 14, Roads Ordinance)**

The heading has been amended for reasons of clarification.

**Section 16 : Conclu[ding]sion of contracts with members permissible (Section 15, Roads Ordinance)**

Sect. 16(2): Contracts below R200 were formerly excluded but this amount should now be determined by regulation.

Sect. 16(3): The maximum amount of the fine that can be imposed and the maximum term of imprisonment should be determined by regulation.

Sect. 16(4): "Controller" has been removed.

**Section 17 : Applications and requests relating to district and farm roads to be**

**received and dealt with by board (Section 16, Roads Ordinance)**

Sect. 17(1)(a): In the light of current practice, the number of persons who desire the proclamation, closure, etc. has been halved to six persons.

Sect. 17(5)-(7): These matters should be included in ministerial regulations as these relate to detailed procedures. Accordingly, regulations may be altered with greater ease by a ministerial notice promulgated in the [*Official*] *Gazette*.

**Section 18 : Requests by board relating to district and farm roads [by board] (Section 17, Roads Ordinance)**

The clause has been altered to allow the Minister to regulate these matters. The term chairperson has been altered to representative of the Department of Transport as the chairperson may now be any member of the board.

**Section 19 : Consideration of [objections to] applications' objections and [or] request (Section 18, Roads Ordinance)**

The previous reference in Article 19 (1) to "expiry of the period of thirty days" has been replaced by a reference to sub-section 17(3) since the details on procedures have been referred to regulations.

**Section 20 : Commission of inquiry into and decision in regard to application or request (Section 19, Roads Ordinance)**

It is proposed in the new sub-section 20(4) that the costs of an inquiry shall be defrayed out of Namibia's Road Fund since only approved applications will be paid for by the State. Sub-sections 20(4) and (7) in the Ordinance should be transferred to regulations.

**Section 21 : Proposals by the Permanent Secretary relating to proclaimed roads (Section 20, Roads Ordinance)**

Sub-sections 21(3), (4) and (5) in the Ordinance should be transferred to regulations.

**Section 22 : Applications relating to district and farm roads within [the area of a] local authority or settlement area (Section 21, Roads Ordinance)**

“Area of a local authority” has been changed to “local authority area” or “settlement area”.

**Section 23 : Proclaiming and declaration of proclaimed roads and the closing, deviation and re-opening thereof (Section 22, Roads Ordinance)**

A requirement to make a notice in at least one newspaper has been added to sub-section (2) (a). Sub-sections (2) (b) and(c), (3) and (4) have been referred to regulations.

**Section 24 : Classification of proclaimed roads (Section 23, Roads Ordinance)**

Changes to the classification of main and district roads has been included in this section. A sub-section (3) enabling the Minister to prescribe further classification criteria has been added.

**Section 25 : Freeways (Section 24, Roads Ordinance)**

No change required.

**Section 26 : Intersection point reserves (Section 24A, Roads Ordinance)**

The requirement in sub-section (2) (b) to pay a fee to view a notice in the Department has been discarded.

**Section 27 : Powers of Minister in relation to construction and maintenance of urban trunk, [and] main and district roads (Section 25, Roads Ordinance)**

The “local authority” has been substituted by the “local authority council” and the “regional council”.

**Section 28 : Subsidies for the maintenance of urban trunk, main and district roads (Section 26, Roads Ordinance)**

This section has been amended to fit in with the provisions of the RFA Act.

**Section 29 : Control of traffic on urban trunk, main and district roads (Section 27, Roads Ordinance)**

This section has been amended to fit in with the provisions of the RFA Act.

**Section 30 : General powers of Minister (Section 28, Roads Ordinance)**

Minor technical changes of terminology have been made, as marked, as well as the substitution of “local authority area” by “area of local authority” as already discussed.

**Section 31 : Control of traffic on proclaimed roads at temporary closing or deviation thereof (Section 29, Roads Ordinance)**

Only minor changes of terminology have been made, as marked in sub-section (4).

**Section 32 : Obtaining materials (Section 30, Roads Ordinance)**

Sect. 32(iv): This section has been added to allow for reservation of road building materials for future use.

**Section 33 : Camping sites, water, firewood and cutting of trees and brushwood (Section 31, Roads Ordinance)**

Only minor changes required.

**Section 34 : Compensation for damage caused by contractors (Section 32, Roads Ordinance)**

No change required.

**Section 35 : Improvement and repair of farm roads (Section 33, Roads Ordinance)**

Only minor changes required.

**Section 36 : Deviation of farm roads after approval of applications by interested persons (Section 34, Roads Ordinance)**

The publication procedures are now to be prescribed in regulations.

**Section 37 : Establishment and maintenance of pont services (Section 35, Roads Ordinance)**

The exemption for transport in respect of State services to pay a pont tariff has been discarded since all motor vehicles will be eligible to pay road user charges in future.

**Section 38 : Rails, tracks, bridges, wires, cables, subways or culverts across or under proclaimed roads (Section 36, Roads Ordinance)**

No major change required.

**Section 39 : Infringements and obstructions on and interferences with proclaimed roads (Section 37, Roads Ordinance)**

The limits of the fine and period of imprisonment that may be imposed will now be prescribed in regulation. Accordingly, they may be adjusted periodically.

**Section 40 : Distance from proclaimed roads at which fences are erected (Section 38, Roads Ordinance)**

No change required.

**Section 41 : Fencing off of freeways and intersection point reserves (Sections 39 and 39A, Roads Ordinance)**

These sections have been amalgamated in order to save text.

**Section 42 : Fencing off of trunk, main and district roads (Section 40, Roads Ordinance)**

The reference to the Department of Agricultural Technical Services has been changed to Ministry of Agriculture, Water and Rural Development.

**Section 43 : Conversion and improvement of fences along trunk, main and district roads (Section 41, Roads Ordinance)**

Only minor changes required.

**Section 44 : Maintenance and repair of fences along proclaimed roads (Section 42, Roads Ordinance)**

Only minor changes required.

**Section 45 : Motor grid gates and swing gates in fences crossing proclaimed roads (Section 43, Roads Ordinance)**



Some minor improvements of the wording in sub-section (4) (b) are proposed.

**Section 46 : Liability for damages by reason of the erection of motor grid gates (Section 44, Roads Ordinance)**

Remove the word “possible” in line three. If there is a damage or injury it must be possible.

**Section 47 : Fences with swing gates across proclaimed roads (Section 45, Roads Ordinance)**

No change required.

**Section 48 : Erection and maintenance of swing gates across proclaimed roads (Section 46, Roads Ordinance)**

All the details listed in sub-section (1) (a) - (f) are proposed to be transferred to regulations.

**Section 49 : Removal of motor grid gates and swing gates (Section 47, Roads Ordinance)**

Remove the word “same” in line three as being unnecessary.

**Section 50 : Closing of gates across proclaimed roads (Section 48, Roads Ordinance)**

No change required.

**Section 51 : Shifting of gates and fences (Section 49, Roads Ordinance)**

A minor change of wording has been made in sub-section (3).

**Section 52 : Minister may direct removal of gates, fences and other obstructions (Section 50, Roads Ordinance)**

A minor clarification has been added in sub-section (1) (b).

**Section 53 : Trekking with stock along unfenced proclaimed roads and unproclaimed roads (Section 51, Roads Ordinance)**

The reference to inappropriate legislation has been removed and replaced with wording which allows the issuing of trekking permits to be prescribed in regulation. The term “vendor” has been inserted instead of “speculator”.

**Section 54 : Limit on period of stay (Section 52, Roads Ordinance)**

A minor change of wording has been made in sub-section (1).

**Section 55 : Grazing and water rights for stock on trek (Section 53, Roads Ordinance)**

The reference to a Department which existed before Namibia’s independence has been deleted.

**Section 56 : Trespassing on public grazing areas (Section 54, Roads Ordinance)**

No change required.

**Section 57 : Road route markers (Section 55, Roads Ordinance)**

Only a minor change of terminology as marked.

**Section 58 : Water courses over or under proclaimed roads (Section 56, Roads Ordinance)**

A minor clarification has been added in sub-section (2).

**Section 59 : Raising of water level (Section 57, Roads Ordinance)**

Replace “spruit” by “other water course”.

**Section 60 : Draining of proclaimed roads (Section 58 , Roads Ordinance)**

No change required.

**Section 61 : Draining of proclaimed roads (Section 59, Roads Ordinance)**

It appears unconstitutional for the Minister not to be responsible or liable for the activities required for draining of proclaimed roads.

**Section 62 : Entering upon or taking possession of land to exercise powers or duties (Section 60, Roads Ordinance)**

No change required.

**Section 63 : Authorised persons may exercise powers (Section 61, Roads Ordinance)**

No change required.

**Section 64 : Undermining of proclaimed roads (Section 62, Roads Ordinance)**

No change required.

**Section 65 : Minor roads and private roads shall turn off from trunk and main roads at approved places only (Section 63, Roads Ordinance)**

No change required.

**Section 66 : Closing of minor roads (Section 64, Roads Ordinance)**

Some minor changes of wording have been made.

**Section 67 : Compensation for encroachment on land (Section 65, Roads Ordinance)**

A minor change of wording has been made in sub-section (4).

**Section 68 : Regulations (Section 66, Roads Ordinance)**

Sect. 68(c): The appropriate reference to new legislation has been included. Sub-sections (i) and (j) have been added.

**Section 69 : Prohibitions (Section 67, Roads Ordinance)**

A minor clarification has been added in sub-section (1) (b).

**Section 70 : Offences and penalties (Section 68, Roads Ordinance)**

The limits for the amount of a fine or term of imprisonment will now be prescribed in regulations and may be adjusted to meet circumstances.

**Section 71 : Existing roads (Section 69, Roads Ordinance)**

No change required.

**Section 72 : Repeal of laws (Section 70, Roads Ordinance)**

A number of Ordinances as listed will be repealed in terms of this Act.

**Section 73 : Short title and date of commencement (Section 71, Roads Ordinance)**

This Act has been given the title Namibia Roads Act, 1999.