

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain odd numbered pages as the other language is printed on even numbered pages.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 322

Cape Town

15 April 1992

No. 13922

THE PRESIDENCY

No. 1073

15 April 1992

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 45 of 1992: Expropriation Amendment Act, 1992.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

[**]** Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Expropriation Act, 1975, so as to define, further define or delete certain expressions; to extend the power to expropriate to any minister responsible for the administration of works and land affairs; to restrict expropriation by Transnet to expropriation under the Legal Succession to the South African Transport Services Act, 1989; to facilitate the expropriation procedure; to extend payment of compensation in respect of unregistered rights; to extend penal provisions; to further regulate offers and claims relating to compensation, disposal of the amount of compensation, payment of interest, payment of legal costs and the withdrawal of expropriation; and to repeal certain obsolete provisions; to effect certain consequential amendments to the Water Act, 1956; to amend the Deeds Registries Act, 1937, so as to facilitate the recording of expropriation; to amend the Legal Succession to the South African Transport Services Act, 1989, so as to regulate expropriation by Transnet anew; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 7 April 1992.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 63 of 1975, as amended by section 1 of Act 21 of 1982

- 5 1. Section 1 of the Expropriation Act, 1975 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the deletion of the definition of “compensation court”;
- (b) by the substitution for the definition of “date of expropriation” of the following definition:
- 10 “‘date of expropriation’ means the **[appropriate]** date of expro-
 riation contemplated in section 7(2)(b);”;
- (c) by the deletion of the definition of “date of offer of compensation”;
- (d) by the substitution for the definition of “executive committee” of the following definition:
- 15 “‘executive committee’ means the executive committee of a province mentioned in section **[76]** 7 of the **[Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961)]** Provincial Government Act, 1986 (Act No. 69 of 1986)”;
- (e) by the deletion of the definition of “immovable property”;

EXPROPRIATION AMENDMENT ACT, 1992

Act No. 45, 1992

- (f) by the insertion before the definition of "local authority" of the following definition:
" 'lessee' includes a sub-lessee by virtue of a written sub-lease contract;";
- 5 (g) by the substitution for the definition of "local authority" of the following definition:
" 'local authority' means [an institution or body contemplated in section 84(1)(f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), and includes a Regional Water Service Corporation constituted in terms of the Water Services Ordinance, 1963 (Ordinance No. 27 of 1963 of Natal)]—
- 10 (a) an institution contemplated in section 84(1)(f)(i) of the Provincial Government Act, 1961 (Act No. 32 of 1961);
- 15 (b) a board of management or board contemplated in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);
- (c) a regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);
- 20 (d) a joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990);
- (e) a local authority as defined in section 1 of the Black Local Authorities Act, 1982 (Act No. 102 of 1982);
- 25 (f) a local council contemplated in section 2 of the Local Councils Act (House of Assembly), 1987 (Act No. 94 of 1987);
- (g) the Local Government Affairs Council contemplated in section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act No. 84 of 1989);
- 30 (h) a Local Development Committee established under section 28A(1) of the Development Act (House of Representatives), 1987 (Act No. 3 of 1987);
- 35 (i) any institution or body established by or under the provisions of any law and which exercises powers and performs duties which, in the opinion of the Minister, correspond to the powers and duties ordinarily exercised or performed by a local authority, and which the Minister, by notice in the *Gazette*, declares to be a local authority for the purposes of this Act";
- 40 (h) by the substitution for the definition of "Minister" of the following definition:
" 'Minister' means [the] a minister [of Community Development] responsible for the administration of works and land affairs and, except for the purposes of [sections] section 3 [and 25(2)], includes an executive committee;";
- 45 (i) by the addition to the definition of "owner" of the following paragraphs:
"(i) in the case of a public place or road under the control of a local authority, that local authority;
- 50 (j) in the case of a right of leasehold granted in terms of section 52 of the Black Communities Development Act, 1984 (Act No. 4 of 1984), the holder of such right;";
- (j) by the insertion after the definition of "owner" of the following definition:
" 'possess' includes exercise a right;";
- 55 (k) by the deletion of the definition of "regulation";
- (l) by the insertion after the definition of "public purpose" of the following definition:
" 'road' means a road as defined in the relevant provincial ordinance and includes any land acquired or used for quarries, outspans or camps or other purposes in connection with such a road;"; and
- 60 (m) by the deletion of the definition of "this Act".

Amendment of section 2 of Act 63 of 1975

2. Section 2 of the principal Act is hereby amended—

(a) by the substitution for subsections (2) and (3) of the following subsections, respectively:

5 “(2) The power of the Minister in terms of subsection (1) **[to expropriate property for public purposes, and any power in terms of] or any other law to expropriate [or otherwise acquire] any property [on behalf of the State]**, shall include the power to expropriate, when any **[immovable] property is so expropriated**
10 **[or acquired]**, so much of any other **[immovable] property** which, in the opinion of the Minister, is affected by such expropriation **[or acquisition]** as the Minister may for any reason deem expedient.

15 (3) The power of the Minister in terms of subsection (2) to expropriate **[immovable] property** which, in the opinion of the Minister, is affected by an expropriation, shall, in the case where only a portion of a piece of land is expropriated in terms of this section, include the power to expropriate the remainder of such a piece of land if the owner so requests and satisfies the Minister that due to the said partial expropriation the said remainder has become useless to the owner, or if the Minister, after consultation with the Minister of Agriculture, is satisfied that the said remainder is or is likely to become an uneconomic farming unit.”; and

(b) by the addition of the following subsection:

25 “(4) If the Minister negotiates with an owner of property for the acquisition thereof by means of agreement and the owner requests the Minister that the property be expropriated, the Minister may, subject to the other provisions of this Act, expropriate such property.”.

30 **Amendment of section 3 of Act 63 of 1975, as amended by section 2 of Act 21 of 1982**

3. Section 3 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

35 “(1) If a juristic person or body mentioned in subsection (2) satisfies the Minister charged with the administration of the law mentioned in connection therewith that it reasonably requires any particular immovable property for the attainment of its objects and that it is unable to acquire it on reasonable terms, the Minister **[of Community Development]** may, at the request of the first-mentioned Minister, and subject to the provisions of subsections
40 (4) and (5), **[and, in the case of a juristic person contemplated in paragraph (h) of the said subsection (2), with the approval, by resolution, of the House of Assembly]** expropriate such immovable property on behalf of that juristic person or body as if it were required for public purposes.”; and

45 (b) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

50 “(c) a **[college] technikon [as defined] mentioned in section 1 of the [Advanced Technical Education] Technikons (National Education) Act, 1967 (Act No. 40 of 1967), or section 1 of the Technikons Act, 1967 (Act No. 40 of 1967);**”.

Repeal of section 4 of Act 63 of 1975, as amended by section 3 of Act 21 of 1982 and paragraph 7 of Schedule 1 to Act 9 of 1989

4. Section 4 of the principal Act is hereby repealed.

55 **Amendment of section 5 of Act 63 of 1975, as amended by section 1 of Act 19 of 1977**

5. Section 5 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

5 “(1) If a local authority has the power to expropriate property or to take the right to use property temporarily, such power may **subject to the provisions of section 26(2)** only be exercised, *mutatis mutandis*, in accordance with the provisions of this Act **and subject to the approval of, and the conditions imposed by, the executive committee concerned**.”

Amendment of section 7 of Act 63 of 1975

6. Section 7 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) The notice of expropriation shall—

- 10 (a) contain a clear and full description of the property in question and, in the case of the taking of a right to use property temporarily, also of such right, as well as, in the case where only a portion of a piece of land or a real right in or over such portion is expropriated, or a right is taken to use only such a portion, a sketch plan showing the approximate position of such portion, and state the approximate extent of such portion: Provided that whenever only a portion of a piece of land or a real right in or over any such portion is expropriated, or a right is taken to use only such a portion, the owner may, within thirty days from the date of notice, request the Minister by registered post to furnish, in accordance with subsection (3), further particulars of such portion so as to enable the owner to determine the position or extent of the said portion, and upon the furnishing of such particulars the date of the notice in which such particulars were furnished, shall, for the purposes of this Act, be deemed to be the date of **[the] notice [of expropriation]**;
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- (b) state the date of expropriation or, as the case may be, the date as from which the property will be used, as well as the period during which it will be used, **[Provided that such date shall not be later than one hundred and eighty days after the date of notice: Provided further that the date as from which the property may be used, shall not be earlier than sixty days as from the date of notice unless the Minister is of the opinion that such property is urgently required for any purpose for which it will be used by the State]** and also state the date upon which the State will take possession of the property;
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- (c) **[either state the amount which is offered as compensation for the property or for the use thereof, or request the owner to advise the Minister in writing within sixty days from the date of notice of the amount claimed by him as such compensation and how much of the last-mentioned amount represents each of the respective amounts contemplated in section 12(1)(a)(i) and (ii) or (b) with full particulars as to how such amounts are made up: Provided that if the owner requests the Minister in writing within thirty days from the date of notice to extend the said period, the Minister shall extend such period by a further sixty days]** draw the attention of the owner to the provisions of sections 9(1) and 12(3)(a)(ii);
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- (d) if an amount is therein offered as compensation, draw the attention of the owner to the fact that if **[any person]** a lessee has a right by virtue of a lease contemplated in section 9(1)(d)(i) **[(iii) or (iv)]** in respect of the property of which the Minister had no knowledge on the date of notice, the Minister may withdraw that offer.”;
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(b) by the substitution for subsection (3) of the following subsection:

“(3) Subject to the provisions of subsection (5), the Minister shall cause the notice of expropriation and all other notices and documents in connection therewith to be served by causing the

original or a true copy thereof to be delivered or tendered or sent by registered post to the **[owner]** person in question.”;

(c) by the substitution for subsection (4) of the following subsection:

5 “(4) If the property to be expropriated is land, the Minister shall, subject to the provisions of subsection (5), cause a copy of the notice **[contemplated in subsection 2]** of expropriation, or a notice to the effect that the land is being expropriated, giving the particulars of the expropriation, to be served, in the manner prescribed in subsection (3), upon every person who, according to 10 the title deed of the land or the registers of the Registrar of Mining Titles or of any other Government office in which rights granted in terms of any law relating to prospecting or mining affairs are recorded, has any interest in that land, and, if the land is situated within the area of jurisdiction of a local authority, upon such local 15 authority, and, if **[the land]**, to the knowledge of the Minister, the land is the subject of an agreement contemplated in section 9(1)(d)(ii), or a building thereon is subject to a lien contemplated in section 9(1)(d)(iii), upon the buyer or the builder.”; and

(d) by the substitution for subsection (5) of the following subsection:

20 “(5) If the whereabouts of the owner or of every owner of the property in question or of any person or every person having an interest therein, as is contemplated in subsection (4), is not readily ascertainable by the Minister, or, if by reason of the number of such owners or persons having such an interest or for any other 25 reason, he is satisfied that service of a notice or other document in accordance with subsection (3) is not practicable, or if the property is subject to a *fideicommissum* and it is not known to the Minister who all the fideicommissaries are or will be, he shall, instead of or in addition to causing a notice or document or notices or docu- 30 ments to be published in accordance with subsection (3), cause to be published once in the *Gazette* and once a week during two consecutive weeks in an Afrikaans and in an English newspaper circulating in the area in which the property in question is or is situated an appropriate notice complying with the provisions of 35 subsection (2) or containing the other document in question.”.

Amendment of section 8 of Act 63 of 1975

7. Section 8 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

40 “(3) **[Notwithstanding the fact that in terms of subsection (1) the ownership in expropriated immovable property vests in the State on the date of expropriation, the State may not take possession of the property in question until the expiry, from the said date, of a period of sixty days]** The State shall take possession of any property expropriated on the date stated in terms of section 7(2)(b) or such 45 [longer period as is] other date as may be agreed upon between the owner concerned and the Minister [Provided that if, in the opinion of the Minister, such property is urgently required for the purposes for which it was expropriated, he may cause such property to be taken into possession at any time prior to the expiration of the applicable period and on a date mentioned for the purpose in the notice of expropriation or in an appropriate notice to be served or published in accordance with section 7(3) or (5)].”;

(b) by the substitution for subsection (4) of the following subsection:

50 “(4) The owner of expropriated **[immovable]** property shall from the date of expropriation to the date upon which the State takes possession of the property, take care of and maintain the property, and if the owner wilfully or negligently fails to do so and as a result thereof the property depreciates in value, the Minister may recover the amount of the depreciation from the owner: 55 Provided that the Minister shall compensate the owner for costs

which, in the opinion of the Minister, were necessarily incurred after the date of expropriation in respect of such maintenance or care.”;

(c) by the substitution for subsection (5) of the following subsection:

5 “(5) If the owner desires to place the State in possession of the property expropriated prior to the **[expiry of the appropriate period contemplated in subsection (3)]** date stated in terms of section 7(2)(b) and he and the Minister do not agree upon a date as contemplated in subsection (3) of this section, he shall give the
10 Minister not less than twenty-one days’ notice in writing of the date on which he desires to **[do so, and the Minister]** place the State in possession, and the State shall thereupon be deemed to have **[caused the property to be]** taken possession of the property on that date.”; and

15 (d) by the substitution for subsection (7) of the following subsection:

“ (7) The provisions of subsections (3) to (6) shall also apply in respect of the expropriation of property in terms of section 3 on behalf of a juristic person or body, and in such application a
20 reference in the said subsections to the State and the Minister **[(except a reference to the Minister in the proviso to the said subsection (3))]** shall be construed as a reference to the juristic person or body concerned.”.

Amendment of section 9 of Act 63 of 1975

8. Section 9 of the principal Act is hereby amended—

25 (a) by the substitution for subparagraph (i) of paragraph (d) of subsection (1) of the following subparagraph:

“(i) which prior to the date of notice was leased **[for business or agricultural purposes]** as a whole or in part by unregistered lease, the name and address of the lessee, and accompanied
30 by the lease or a certified copy thereof, if it is in writing, or full particulars of the lease, if it is not in writing;”;

(b) by the deletion of subparagraph (iv) of the said paragraph (d);

(c) by the substitution for paragraph (e) of the said subsection (1) of the following paragraph:

35 “(e) the address to or at which the owner desires that further documents in connection with the expropriation may be posted or delivered or tendered **[to him]**.”;

(d) by the deletion of subsection (2);

(e) by the deletion in subsection (5) of the expression “(2)”;

40 (f) by the substitution for subsection (6) of the following subsection:

“ (6) Any person who without sufficient reason refuses or fails to comply with a request by the Minister in terms of subsection (3)**[(b)]** shall be guilty of an offence and liable on conviction to a fine not exceeding **[two hundred rand]** R2 000 or to imprisonment
45 for a period not exceeding six months or to both such fine and such imprisonment.”.

Substitution of section 10 of Act 63 of 1975

9. The following section is hereby substituted for section 10 of the principal Act:

50 “Offers of compensation

10. (1) **[If compensation has in an expropriation notice been offered for the property in question and the owner concerned fails to indicate in terms of section 9(1)(a) whether or not he accepts such compensation or has indicated that he does not accept such compensation but fails to furnish any relevant information in terms of section 9(1)(a), (c) or (d) or (2), the Minister may apply to an appropriate court contemplated in section 14(1) for the determination by such court of**

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5 the amount of the compensation, and in such case no interest up to the
 date of such determination, and no costs, shall be payable by the State
 unless the owner satisfies that court, notwithstanding such failure,
 that special reasons exist why the State shall pay such interest or costs
 or a portion thereof: Provided that, if such property is land, the
 Minister shall cause a copy of such application or particulars thereof,
 to be served upon the owner and upon every holder of a mortgage
 bond over such land and, if such land, to the knowledge of the
 Minister, is the subject of an agreement contemplated in section
 10 9(1)(d)(ii), upon the buyer, in the manner, *mutatis mutandis*, con-
 templated in section 7(3) or (5) The Minister may in the notice of
 expropriation offer the owner concerned an amount of compensation
 for the property.

15 (2) If no compensation was in the expropriation notice offered for
 the property in question and the owner concerned fails to furnish any
 relevant information in terms of section 9(1)~~[(b), (c) or (d) or (2)]~~, the
 Minister shall within a reasonable period offer him an amount as
 compensation for such property ~~[and in the manner, *mutatis mutan-*
 20 *dis*, contemplated in section 7(3) or (5), and the provisions of section
 7(4) shall *mutatis mutandis* apply in connection with any such offer].~~

(3) **[If the owner does not within thirty days after an offer in terms
 of subsection (2) or (4) notify the Minister that he does not accept that
 offer, the provisions of subsection (1) shall *mutatis mutandis* apply.]**

25 (4) If an owner has in terms of section 9(1)~~[(a) or (b)]~~ indicated
 what amount is claimed by him as compensation and has ~~[complied
 with] furnished~~ the relevant ~~[provisions] information in terms~~ of
 section 9~~[(1)(a), (b), (c) and (d) and (2)]~~ and the Minister is not
 prepared to pay that amount as compensation, the Minister shall
 30 within a reasonable period offer him an amount as compensation and
 indicate how much of that amount represents each of the respective
 amounts contemplated in section 12(1)(a)(i) and (ii) or (b) and
 furnish full particulars as to how such amounts are made up.

(5) **[If an amount has been offered as compensation, the owner
 concerned shall be deemed to have accepted the compensation offered if—**

- 35 (a) an application for the determination thereof is not made by the
 owner to an appropriate court contemplated in section 14(1)
 within eight months (or such longer period as the Minister may
 allow) from the date of the offer of compensation concerned; and
 40 (b) the Minister has, not later than thirty days prior to the expiry of
 such period, by written notice served as contemplated in section
 7(3), directed the attention of the said owner to the preceding
 provisions of this subsection,

unless it has been earlier agreed to submit the dispute to arbitration]

45 (a) Unless the Minister and the owner have agreed otherwise the
 latter shall be deemed to have accepted an offer made to him by
 the Minister in terms of subsection (1), (2) or (4) if he fails to
 make an application to a court referred to in section 14(1), for
 the determination of the compensation, before the date deter-
 mined by the Minister by written notice addressed to him.

50 (b) A notice in terms of paragraph (a) shall be addressed to the
 owner concerned not later than eight months prior to the date
 contemplated therein, and the Minister shall not later than 60
 days before such date by written notice direct the attention of
 such owner to the first-mentioned notice.

55 (6) A claim for compensation in terms of section 9(1) and an offer of
 compensation in terms of subsection (1), (2) or (4) shall remain in force
 until it is replaced, either before or after the institution of proceedings
 contemplated in section 14(1), by another claim or an offer in terms of
 subsection (1), (2) or (4), according as to which subsection is applicable,
 or until the compensation has been determined by the court, unless the
 Minister and the owner have agreed otherwise.

60 (7) The Minister may from time to time ask for reasonable
 particulars regarding the owner's claim for compensation, and the
 owner may from time to time ask for reasonable particulars regard-

ing the Minister's offer of compensation, and particulars so asked for shall be furnished within a reasonable time.

- 5 (8) If the Minister or the owner fails to comply with a request in terms of subsection (7), the court may, on application, issue an order directing him to comply therewith."

Amendment of section 11 of Act 63 of 1975

10. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- 10 “(1) **[If]** The Minister **[deems it expedient, he may, prior to the determination of the amount of compensation payable in terms of this Act for property or for the use of property and on or at any time after the date of expropriation, but subject to the provisions of subsection (3), pay the amount offered the owner concerned as such compensation, or a portion of such amount]** shall pay, on the date
- 15 on which an amount is, in terms of section 10(1), (2) or (4), offered as compensation or, if the State has then not yet taken possession of the property, on the date on which it takes possession thereof, not less than eighty per cent of such amount to the owner concerned or the person contemplated in section 19 or deposit it with
- 20 the Master or utilize it in settlement of the tax or other moneys contemplated in section 20 under the same circumstances under which he should **[or could]** have so paid, deposited or utilized such compensation had it been determined on **[that] the** date concerned.”;
- 25 (b) by the deletion of subsection (2); and
- (d) by the deletion at the end of subsection (3) of the words “in terms of subsection (2)”.

Amendment of section 12 of Act 63 of 1975, as amended by section 1 of Act 3 of 1978 and section 4 of Act 21 of 1982

30 11. Section 12 of the principal Act is hereby amended—

- (a) by the substitution in paragraph (a) of subsection (1) for the words preceding subparagraph (i) of the following words:
- “in the case of any property other than a right, excepting a registered right to minerals, the aggregate of—”;
- 35 (b) by the substitution for paragraph (b) of the said subsection (1) of the following paragraph:
- “(b) in the case of a right, excepting a registered right to minerals, an amount to make good any actual financial loss **[or inconvenience]** caused by the expropriation or the taking of the right:”;
- 40 (c) by the addition to the said subsection (1) of the following proviso:
- “Provided that where the property expropriated is of such nature that there is no open market therefor, compensation therefor may be determined—
- 45 (aa) on the basis of the amount it would cost to replace the improvements on the property expropriated, having regard to the depreciation thereof for any reason, as determined on the date of notice; or
- (bb) in any other suitable manner.”;
- 50 (d) by the substitution for subsection (2) of the following subsection:
- “(2) Notwithstanding anything to the contrary contained in this Act there shall be added to the total amount payable in accordance with subsection (1)**[(a)(i) in respect of all land, including any portion of a piece of land, expropriated in terms of the notice of expropriation in question]**, an amount equal to—
- 55 (a) ten per cent of such total amount, [but not exceeding ten thousand rand] if it does not exceed R100 000; plus
- (b) five per cent of the amount by which it exceeds R100 000, if

- it does not exceed R500 000; plus
- (c) three per cent of the amount by which it exceeds R500 000, if it does not exceed R1 000 000; plus
- (d) one per cent (but not amounting to more than R10 000) of the amount by which it exceeds R1 000 000.”;
- 5 (e) by the substitution for subsection (3) of the following subsection:
- “**(3) (a)** Interest at the standard interest rate determined in terms of section 26(1) of the Exchequer Act, 1975 (Act No. 66 of 1975), shall, subject to the provisions of subsection (4), be payable from the date on which the State takes possession of the property in question in terms of section 8(3) or (5) on any outstanding portion of the amount of compensation payable in accordance with subsection (1)**[(a)(i)]**: Provided that—
- 10 **[(a)] (i)** in a case contemplated in section 21(4), in respect of the period calculated from the termination of thirty days from the date on which—
- [(i)] (aa)** the property was so taken possession of, if prior to that date compensation for the property was offered or agreed upon; or
- 20 **[(ii)] (bb)** such compensation was offered or agreed upon, if after that date it was offered or agreed upon, to the date on which the dispute was settled or the doubt was resolved or the owner and the buyer or the mortgagee or the builder notified the Minister in terms of the said section 21(4) as to the payment of the compensation money, the outstanding portion of the amount so payable shall, for the purposes of the payment of interest, be deemed not to be an outstanding amount; and
- 25 **[(b) from the date on which the Minister in terms of section 11(1) pays or makes available an amount to the owner or any person referred to in section 21(4), the amount which is so payable shall for the purposes of the payment of interest not be deemed to be an outstanding amount]**
- 30 **(ii) if the owner fails to comply with the provisions of section 9(1) within the appropriate period referred to in the said section, the amount so payable shall during the period of such failure and for the purpose of the payment of interest be deemed not to be an outstanding amount.**
- 40 (b) Interest payable in terms of paragraph (a) shall be deemed to have been paid on the date on which the amount has been made available or posted to the owner concerned.
- (c) Any deposit, payment or utilization of any amount in terms of section 11(1), 20(2) or 21(1) or (4) shall be deemed to be a payment to the owner, and no interest shall in terms of paragraph (a) be payable on any such amount as from the date on which it has been so deposited, paid or utilized.”;
- 45 (f) by the substitution for paragraph (c) of subsection (5) of the following paragraph:
- 50 “(c) if the value of the property has been enhanced in consequence of the use thereof in a manner which is unlawful **[or detrimental to the health of any person]**, such enhancement shall not be taken into account;”;
- (g) by the deletion of paragraph (g) of the said subsection (5);
- 55 (h) by the deletion of subparagraph (iii) of paragraph (h) of the said subsection (5); and
- (i) by the substitution for subparagraph (iv) of the said paragraph (h) of the following subparagraph:
- “(iv) any relevant quantity of water to which the person to be

5 compensated is entitled, [by virtue of the provisions of section
62(1) or 63 or by virtue of a permit issued to him under section
62(2), or will become entitled by virtue of a permit which,
according to a statement by the Director-General: Environ-
ment Affairs, will be issued to him, or by virtue of any
scheduling which, according to such a statement, will be
granted to him under the said section 63 of the Water Act, 1956
(Act No. 54 of 1956), as the case may be] or which is likely to
be granted to him, in terms of the provisions of the Water
10 Act, 1956 (Act No. 54 of 1956), or any other law.”.

Substitution of section 13 of Act 63 of 1975

12. The following section is hereby substituted for section 13 of the principal Act:

15 “Payment of compensation in respect of rights out of unregistered leases in respect of property expropriated

13. (1) [In respect of any right which any person may have in respect of any expropriated land by virtue of a contract contemplated in section 9(1)(d)(i), (iii) or (iv) and which has been terminated in terms of section 22, such person] A lessee whose lease has been terminated in terms of section 22 shall, subject to the provisions of subsections (2) and (3) of this section, be entitled to the payment of compensation as if [such right] his right thereunder were a registered right in respect of the [land] property in question which was also expropriated on the date of expropriation in respect of such [land] property.

(2) The Minister shall [in the manner, *mutatis mutandis*, contemplated in section 7(3) or (5), offer any person contemplated in subsection (1) of this section an amount as compensation, and such an amount so offered shall for the purposes of this Act be deemed to have been offered in terms of section 7(2)(c)] simultaneously with the notice of expropriation in question to the owner or as soon as possible thereafter, send to a lessee referred to in subsection (1) of whom he is aware a notice in which he is informed of the expropriation, and thereupon the provisions of sections 7, 9, 10 and 11 shall *mutatis mutandis* apply as if such notice were a notice of expropriation under section 7(1) in respect of the rights of such lessee.

(3) If the owner of expropriated [land] property fails to comply with the provisions of section 9(1)(d)(i) [(iii) or (iv)] and the Minister did not prior to the payment of any compensation money to the owner become aware of the existence of the lease in respect of such property the State shall not be obliged to pay compensation to the lessee [builder or share-cropper] concerned in respect of the [unregistered right in question] termination of his rights, but such owner shall be liable to any such lessee [builder or share-cropper] for damage sustained by him in consequence of the [expropriation] termination of [the property in question] his rights.”.

Substitution of section 14 of Act 63 of 1975

13. The following section is hereby substituted for section 14 of the principal Act:

50 “Determination of compensation by Supreme Court or by arbitration, in absence of agreement

14. (1) Subject to the provisions of subsection (7) of this section and section 10(5) the compensation to be paid for any property expropriated by the Minister or for any right to use property taken by the Minister, shall, in the absence of agreement, on the application of any party concerned be determined by a provincial or local division of the Supreme Court in whose area of jurisdiction the property in question is or is situated on the date of expropriation.

(2)

(3) Any proceedings contemplated in subsection 1—

(a) shall be instituted and conducted by way of action; and

5 (b) shall, if the owner has claimed an amount as contemplated in section 9(1), not be instituted before the expiry of a period of thirty days after he has so claimed an amount.

10 (4) The law of procedure applicable in civil proceedings in a court in which any proceedings contemplated in subsection (1) are conducted, shall, subject to the provisions of this Act, apply in respect of any such proceedings, and any order or judgment of the court in such last-mentioned proceedings shall be deemed to be an order or a judgment in civil proceedings.

15 (5) After any proceedings contemplated in subsection (1) have been set down for hearing, and notwithstanding anything to the contrary contained in any law or any rules of court or practice—

(a) the judge concerned may—

20 (i) order that the conference contemplated in rule 37(1)(a) of the rules promulgated by Government Notice No. R48 of 12 January 1965 be held in his chambers; and

(ii) issue directions in respect of inspections and all other matters connected with the preparation for and the hearing of the proceedings; and

(b) the court may in its discretion regulate the further procedure in the conducting of the proceedings.

25 (6)

(7) The provisions of this section shall not be construed as preventing the Minister and an owner, including a lessee who is not an owner, from submitting by agreement any dispute concerning the amount of compensation to be paid in terms of this Act in respect of the expropriation of property or the taking of any right, to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

30 (8) (a) A party to any proceedings contemplated in subsection (1) may, at any time before or during the hearing of such proceedings, make a written offer to the other party to such proceedings for the settlement of the dispute, and may do so without prejudice.

35 (b) The party making the offer may therein accept liability for costs or a portion thereof, and if he does not do so he shall be deemed to have made also an offer to pay the other party's party and party costs up to the date of the offer.

40 (c) The party to whom the offer has been made, may—

(i) if the offer has been made not less than seven days prior to the commencement of the hearing, within seven days; or

(ii) if the offer has been made less than seven days prior to the commencement of the hearing, within twenty-four hours; or

45 (iii) with the consent of the party who made the offer, at any time, accept the offer.

(d) Acceptance of the offer shall terminate the proceedings, except as regards disputes relating to the interpretation of the offer or to costs.

50 (e) If such an offer to settle the dispute is not accepted and the court determines the compensation at an amount—

(i) which is equal to or more than the amount of the offer by the owner, the court shall order the Minister to pay the owner's costs incurred after the date of the offer; and

55 (ii) which is equal to or less than the amount of the offer by the Minister, the court shall order the owner to pay the Minister's costs so incurred.

(f) The court shall in its discretion decide on costs incurred prior to the date of an offer.

60 (g) If a court has made an order as to costs without knowledge of an offer which had not been accepted and non-acceptance thereof is brought to the notice of the court within five days from the date of the judgment, costs shall be reconsidered in the light thereof.

(9) An offer which is not accepted shall not be disclosed to the court before judgment is given.”.

Amendment of section 15 of Act 63 of 1975

14. Section 15 of the principal Act is hereby amended—

- 5 (a) by the deletion of subsection (1);
 (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “If the compensation awarded by the court in any **[such]** proceedings contemplated in section 14(1)—”;
 10 (c) by the substitution for subsection (3) of the following subsection:
 “(3) **[In any case not mentioned in subsection (2)]** Notwithstanding the provisions of subsection (2), the court shall in its discretion decide as to the costs—
 15 (a) in a case not mentioned in subsection (2);
 (b) if any party did not within a reasonable time comply with reasonable requests under section 10(7);
 (c) if any party abused the provisions of section 10(7); or
 (d) if, in the opinion of the court, the conduct of any party during or prior to the proceedings, justifies a deviation from subsection (2).”; and
 20 (d) by the insertion after subsection (3) of the following subsection:
 “(3A) In the case of a conflict between the provisions of this section and the provisions of section 14 the provisions of the last-mentioned section shall prevail.”.”

25 Repeal of section 16 of Act 63 of 1975

15. Section 16 of the principal Act is hereby repealed.

Repeal of section 17 of Act 63 of 1975

16. Section 17 of the principal Act is hereby repealed.

Substitution of section 19 of Act 63 of 1975

30 17. The following section is hereby substituted for section 19 of the principal Act:

“Discharge of debt secured by mortgage bond, and payment of compensation in case of existence of certain unregistered rights

35 19. (1) If any immovable property expropriated under this Act was immediately prior to the date of expropriation encumbered by a registered mortgage bond or to the knowledge of the Minister the subject of an agreement contemplated in section 9(1)(d)(ii) or any building thereon was then subject to a lien as contemplated in section 9(1)(d)(iii), the Minister shall, subject to the provisions of subsection (3) of this section and sections 20 and 21, not pay out any portion of the compensation money in question, except to such person and on such terms as may have been agreed upon between the owner of such property and the mortgagee, **[or]** buyer or builder concerned, as the case may be, and as the Minister may have been notified of **[in writing]** by them.

45 (2) If an owner of **[immovable]** property fails to comply with the provisions of section 9(1)(d)(ii) or (iii) and the buyer or builder concerned in consequence thereof does not receive any portion of the compensation money by virtue of the provisions of subsection (1) of this section, the owner shall be liable to the buyer or builder, as the case may be, for any damage which the buyer or builder may have sustained in consequence of the expropriation, and the Minister shall not be obliged to pay compensation in respect of that damage.

50

5 (3) If the owner and the mortgagee, buyer or builder, as the case may be, fails to conclude an agreement contemplated in subsection (1), any of the said persons may apply to the court referred to in section 14(1) for an order whereby the Minister is directed to pay out the compensation money as the court may determine, and the court may on such application issue such order, including an order as to costs, as the court may deem fit.”

Amendment of section 20 of Act 63 of 1975

10 18. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

15 “(1) If any land which has been expropriated is situated within the area of jurisdiction of a local authority, such local authority shall, upon receipt or publication of a relevant notice in terms of section 7, forthwith inform the Minister in writing of any outstanding tax or other moneys in respect of the payment of which the production of a receipt or certificate is in terms of any law a prerequisite for the passing of a transfer of such land by a registrar of deeds.”

Substitution of section 21 of Act 63 of 1975, as substituted by section 37 of Act 108 of 1991

20 19. The following section is hereby substituted for section 21 of the principal Act:

“Deposit of compensation money with Master

25 21. (1) If property expropriated under this Act was burdened with a *fideicommissum* or if compensation is payable in terms of this Act to a person whose place of residence is not known, or if compensation is so payable and **[there is no person]** the Minister is unable to determine to whom it can be paid, the Minister may deposit the amount of the compensation payable in terms of this Act with the Master, and after such deposit the Minister shall cease to be liable in respect of that amount.

30 (2) Any money received by the Master in terms of subsection (1) or (4) of this section or in terms of section 11(1) shall—

35 (a) if the property in question was burdened with a *fideicommissum*, *mutatis mutandis* be subject to all the terms and conditions contained in the will or other instrument by which such *fideicommissum* was established; and

40 (b) subject to the provisions of paragraph (a), be paid into the Guardian’s Fund referred to in section 86 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), for the benefit of the persons who are or may become entitled thereto, and bear interest at a rate determined from time to time by the Minister of Finance.

45 (3) The provisions of subsections (1) and (2) shall not affect the jurisdiction of any court to make an order in respect of any moneys in question.

50 (4) In the event of a dispute or doubt as to the person who is to receive any compensation payable in terms of this Act, or in the event of the issue of an interdict in respect of the payment of any such compensation, or if the owner and any mortgagee or any buyer or any builder have not notified the Minister in terms of section 19 in regard to the payment of such compensation, the Minister shall, subject to the provisions of section 19(3), pay the amount of such compensation to the Master.”

Substitution of section 22 of Act 63 of 1975

55 20. The following section is hereby substituted for section 22 of the principal Act:

“Termination of unregistered rights in respect of land expropriated

22. If a notice of expropriation relates to the expropriation of land, all rights in respect of such land not registered or recorded against

the title deed thereof or in any office referred to in section 7(4) **[or in terms of section 60(5) of the Water Act, 1956 (Act No. 54 of 1956)]** shall terminate on the date of expropriation and the State shall, subject to the provisions of sections 13 and 19, not be obliged to pay any compensation for such rights.”.

Amendment of section 23 of Act 63 of 1975

21. Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary contained in any law, if the Minister is of the opinion that it is in the public interest or otherwise expedient to withdraw an expropriation of property, he may withdraw such expropriation, *mutatis mutandis* and in the manner contemplated in section 7, from a date mentioned in the notice in question: Provided that an expropriation of property shall not be withdrawn—

(a) after the expiration of three months after the date of expropriation, except with the written consent of the owner in question; or

(b) if, where the property expropriated is immovable property, transfer of the property in consequence of the expropriation has already been registered.”.

20 Substitution of section 24 of Act 63 of 1975

22. The following section is hereby substituted for section 24 of the principal Act:

“Assignment of powers and duties by Minister

24. **[The] A** Minister may either generally or in relation to particular property or in any particular case assign to an officer in the service of the State any power or duty conferred or imposed on him by or in terms of this Act, other than a power contemplated in **[sections] section 23 [and 25]**, and in addition an executive committee may so assign any such power or duty also to any of its members.”.

Repeal of section 25 of Act 63 of 1975

23. Section 25 of the principal Act is hereby repealed.

Substitution of section 26 of Act 63 of 1975, as amended by section 3 of Act 19 of 1977

24. The following section is hereby substituted for section 26 of the principal Act:

“Application of Act

26. (1) **[The] Subject to the provisions of section 5, the provisions of this Act shall not derogate from any power conferred by any other law to expropriate or take any property or to take the right to use property temporarily, but shall not preclude the expropriation or the taking of property or the taking of any such right being effected either under the said provisions or under the said power: Provided that [subject to the provisions of subsection (2)] if any such power is exercised after the commencement of this Act, [the expropriation or the taking of the property or the taking of the right to use the property temporarily, and the determination of the amount of] the compensation [therefor, shall be effected *mutatis mutandis*] owing in respect thereof shall *mutatis mutandis* be calculated, determined and paid in accordance with the provisions of this Act.**

(2) **[Subject to the provisions of subsections (3) and (4), the provisions of this Act shall not derogate from the provisions of any other law relating to the taking or use or expropriation of property by a provincial administration or a local authority for the purposes of the construction or maintenance of a public road or the taking or use of**

a property by a provincial administration or a local authority for the purposes of the construction or maintenance of any water, electricity, drainage or sewerage works, and the provisions of this Act shall not apply to the taking or use of property by the Rand Water Board in terms of section 24(b) or (j) of the Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950), or any expropriation in terms of section 120 of the Precious Stones Act, 1964 (Act No. 73 of 1964), or section 183 of the Mining Rights Act, 1967 (Act No. 20 of 1967).]

(3) [If compensation is to be paid for the taking or use or expropriation of any property contemplated in subsection (2), and the amount of such compensation is not agreed upon, the provisions of section 14 shall *mutatis mutandis* apply in connection with the determination of such amount.] In the case of land which is in terms of an ordinance declared to be a road or acquired for a road without such land being expropriated, the following provisions shall apply, namely—

(a) notwithstanding anything to the contrary contained in any such ordinance—

(i) the compensation to which the owner is entitled, shall be calculated, determined and paid in accordance with section 12, as if the land to which the declaration or acquisition relates had been expropriated in terms of the provisions of this Act;

(ii) no compensation shall be paid in respect of land which at the time of the declaration or acquisition already existed, or was being used, as a road;

(iii) compensation in respect of unregistered rights shall be paid in accordance with section 13;

(iv) the amount of the compensation shall be determined in terms of section 14, if the amount of the compensation cannot be agreed upon;

(v) the rights to precious metals, precious stones, base minerals and natural oil shall continue to vest in the person (including the State) in whom they vested prior to such declaration or acquisition;

(vi) the date on which the province becomes liable for the payment of compensation in terms of the provisions of the ordinance in question shall be regarded as the date of expropriation;

(vii) the executive committee shall within sixty days of the declaration of the land to be a road, notify the owner thereof, *mutatis mutandis* in the manner contemplated in section 7, if the land was not already a road at the time of the declaration;

(viii) the executive committee shall furnish the local authority (if any) in whose area of jurisdiction the land is situated and the Registrar of Deeds in whose deeds registry the title deed to the land is registered, with a copy of the notice referred to in subparagraph (vii); and

(b) the Registrar of Deeds referred to in paragraph (a)(viii) shall on receipt of the said copy cause an appropriate endorsement of the declaration of the land to be a road to be made in his registers.

(4) [The amount of compensation paid or determined for the taking or use or expropriation of property contemplated in subsection (2) shall not be more than what it would have been had it been calculated in accordance with the provisions of section 12(1), (2) and (5).]

(5) If any land is expropriated after it had been declared to be a public road and the provisions of subsection (3)(b) complied with in respect thereof, the endorsement referred to therein shall serve as a note contemplated in section 31(6)(a) or 32(5), as the case may be, of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(6) If an executive committee is in terms of the ordinance in question required to expropriate any land for a road after the declaration thereof to be a public road, it may act in accordance with the provisions of subsection (3)(a)(vii) and (viii).

5 (7) An executive committee may, in respect of any land which was prior to the commencement of this subsection declared to be a road, request the Registrar of Deeds concerned to have such an endorsement made in his registers as is contemplated in subsection (3)(b),
10 notwithstanding that the executive committee is not required to do so.”.

Repeal of sections 32, 35 to 41, 43 to 45, 49 to 68, 74, 75, 77 to 79, and 83 to 95 of, and the Schedule to, Act 63 of 1975

25. Sections 32, 35 to 41, 43 to 45, 49 to 68, 74, 75, 77 to 79, and 83 to 95 of, and the Schedule to, the principal Act are hereby repealed.

15 **Amendment of section 31 of Act 47 of 1937, as substituted by section 11 of Act 87 of 1965 and amended by section 3 of Act 61 of 1969, section 95 of Act 63 of 1975, section 10 of Act 27 of 1982 and section 6 of Act 62 of 1984**

26. Section 31 of the Deeds Registries Act, 1937, is hereby amended by the substitution for paragraph (a) of subsection (6) of the following paragraph:

20 “(a) Immediately after any land has been expropriated the expropriating authority shall lodge with the registrar a certified copy of the notice of expropriation, two copies of the relevant expropriation plan of the land in question, and a certificate describing the land and stating the name, number and administrative district thereof, as well as the full names and surname of
25 the registered owner and the number (consisting of the serial and year number) of the title deed, and the registrar shall cause a note of the expropriation to be made in his registers, **[and endorsed on the office copy of the title deed]** and if at any time the original of the title deed is lodged in his registry for any purpose, or application is made for the issue of a
30 certified copy thereof, he shall cause **[a similar]** an appropriate note to be endorsed thereon as well as on the office copy thereof and a copy of the expropriation plan to be annexed thereto as well as to the office copy thereof: Provided that the afore-mentioned expropriation plans shall be dispensed with where the whole of a piece of land has been expropriated.”.

35 **Amendment of section 32 of Act 47 of 1937, as substituted by section 12 of Act 87 of 1965 and amended by section 4 of Act 61 of 1969, section 9 of Act 62 of 1973, section 10 of Act 29 of 1974, section 95 of Act 63 of 1975 and section 7 of Act 62 of 1984**

40 27. Section 32 of the Deeds Registries Act, 1937, is hereby amended by the substitution for subsection (5) of the following subsection:

“ (5) Immediately after any right of servitude over any land or right to minerals therein has been expropriated, the expropriating authority shall lodge with the registrar a certified copy of the notice of expropriation, two
45 copies of the relevant expropriation plan of the servitude in question, or where the right to minerals in only a portion of the land has been expropriated, two copies of the relevant expropriation plan of such portion, and a certificate describing the land and stating the name, number and administrative district thereof, as well as the full names and surname of the registered owner and the number (consisting of the serial and year number)
50 of the title deed, and the registrar shall cause a note of the expropriation to be made in his registers **[and endorsed on the office copy of the title deed of the land which is subject to the servitude or the title under which the right to minerals in question is held, as the case may be]**, and if at any time the original of the title deed or of **[such title]** the title under which the right to
55 minerals in question is held is lodged in his registry for any purpose or

application is made for the issue of a certified copy of such title deed or title, he shall cause **[a similar]** an appropriate note to be endorsed thereon as well as on the office copy thereof and a copy of the expropriation plan to be annexed thereto as well as to the office copy thereof.”

5 **Amendment of section 60 of Act 54 of 1956, as substituted by section 8 of Act 47 of 1972 and amended by section 10 of Act 42 of 1975, section 41 of Act 63 of 1975, section 7 of Act 92 of 1980 and section 10 of Act 97 of 1986**

28. Section 60 of the Water Act, 1956, is hereby amended by the substitution for subsection (2) of the following subsection:

- 10 “(2) (a) For the purposes of subsection (1) ‘property’ means both movable and immovable property **[including an existing right]** and ‘immovable property’ includes a real right in or over land.
- (b) The provisions of section 6 to 15 and 18 to 24 of the Expropriation Act, 1975, shall *mutatis mutandis* apply in respect of the expropriation of
- 15 any property or the taking of any right in terms of this section, and any reference in the said sections of that Act—
- (i) to ‘Minister’ shall be construed as a reference to the Minister of Water Affairs;
- (ii) to ‘section 2’ shall be construed as a reference to this section;
- 20 (iii) **[to a provincial or local division of the Supreme Court of South Africa shall be construed as a reference to a water court]**
- (iv) **[to ‘judge’ shall be construed as a reference to a judge of a water court]** and
- (v) to ‘this Act’ shall be construed as a reference to this Act,
- 25 unless the context otherwise indicates.”

Amendment of paragraph 7 of Schedule 1 to Act 9 of 1989

29. Paragraph 7 of Schedule 1 to the Legal Succession to the South African Transport Services Act, 1989, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph:
- 30 “(1) The Company shall be entitled **[with due regard to the relevant provisions of the Expropriation Act, 1975,]** to expropriate movable and immovable property.”; and
- (b) by the substitution for subparagraph (2) of the following subparagraph:
- 35 “(2) The provisions of sections 7 to 15 and 18 to 23 of the Expropriation Act, 1975 (Act No. 63 of 1975), shall *mutatis mutandis* apply in respect of the expropriation of property by the Company in terms of subparagraph (1): Provided that:
- (a) any reference in any of the said sections—
- 40 (i) to the Minister, shall be construed as a reference to the Chairman of the board of directors of the Company; and
- (ii) to the State, shall be construed as a reference to the Company;
- (b) the powers vested in the Chairman of the board of directors of the Company by virtue of subparagraph (a), may also be
- 45 exercised by the Managing Director and a Group Chief Manager of the Company and, in connection with immovable property urgently required in an emergency, also by any officer of the Company of or above the rank of Assistant Superintendent or an equivalent engineering rank, and, if no officer of that rank is readily available at the place where the property in question is, any employee of the Company whose
- 50 duty it is to take measures to deal with the emergency.”

Short title and commencement

30. (1) This Act shall be called the Expropriation Amendment Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.