

EXPROPRIATION ACT 63 OF 1975

[ASSENTED TO 20 JUNE 1975]

[DATE OF COMMENCEMENT: 1 JANUARY 1977]

(Afrikaans text signed by the State President)

as amended by

Abattoir Industry Act 54 of 1976
Expropriation Amendment Act 19 of 1977
Expropriation Amendment Act 3 of 1978 Slums Act 76 of 1979
Expropriation Amendment Act 8 of 1980
Expropriation Amendment Act 21 of 1982
Conservation of Agricultural Resources Act 43 of 1983
University of the Western Cape Act 78 of 1983
University of Durban-Westville Act 81 of 1983
Forest Act 122 of 1984
Transfer of Powers and Duties of the State President Act 97 of 1986
Tertiary Education Act 66 of 1988
Abolition of Racially Based Land Measures Act 108 of 1991
Expropriation Amendment Act 45 of 1992
Proclamation R41 of 1994

Regulations under this Act

REGULATIONS IN TERMS OF SECTION 25 (1)

ACT

To provide for the expropriation of land and other property for public and certain other purposes; and to provide for matters connected therewith.

1 Definitions

In this Act, unless the context otherwise indicates-

'compensation court'

[Definition of 'compensation court' deleted by s. 1 (a) of Act 45 of 1992.]

'date of expropriation' means the date of expropriation contemplated in section 7 (2) (b);

[Definition of 'date of expropriation' substituted by s. 1 (b) of Act 45 of 1992.]

'date of notice' means the date on which a notice of expropriation is in terms of section 7 (3) delivered, tendered or posted to a person or is in terms of section 7 (5) published in the *Gazette*, and if such a notice in respect of the same property is so delivered, tendered or posted and published, the date on which it is so published;

'date of offer of compensation'

[Definition of 'date of offer of compensation' deleted by s. 1 (c) of Act 45 of 1992.]

'executive committee' means the executive committee of a province mentioned in section 7 of the Provincial Government Act, 1986 (Act 69 of 1986);

[Definition of 'executive committee' substituted by s. 1 (d) of Act 45 of 1992.]

'immovable property'

[Definition of 'immovable property' deleted by s. 1 (e) of Act 45 of 1992.]

'lessee' includes a sub-lessee by virtue of a written sub-lease contract;

[Definition of 'lessee' inserted by s. 1 (f) of Act 45 of 1992.]

'local authority' means-

- (a) an institution contemplated in section 84 (1) (f) (i) of the Provincial Government Act, 1961 (Act 32 of 1961);
- (b) a board of management or board contemplated in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987);
- (c) a regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act 109 of 1985);
- (d) a joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990);
- (e) a local authority as defined in section 1 of the Black Local Authorities Act, 1982 (Act 102 of 1982);
- (f) a local council contemplated in section 2 of the Local Councils Act (House of Assembly), 1987 (Act 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 84 of 1989);
- (h) a Local Development Committee established under section 28A (1) of the Development Act (House of Representatives), 1987 (Act 3 of 1987);
- (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;

[Definition of 'local authority' substituted by s. 1 (g) of Act 45 of 1992.]

'Master', in relation to particular property, means the Master of the Supreme Court appointed in respect of the area in which that property is or is situated;

'Minister' the Minister of Public Works and, except for the purposes of section 3, includes an executive committee;

[Definition of 'Minister' substituted by s. 1 of Act 21 of 1982, by s. 1 (h) of Act 45 of 1992 and by Proclamation R41 of 25 March 1994.]

'notice of expropriation' means a notice contemplated in section 7;

'owner' means, in relation to land or a registered right in or over land, the person in whose name such land or right is registered, and-

- (a) if the owner of any property is deceased, the executor in his estate;
- (b) if the estate of the owner of any property has been sequestrated, the trustee of his insolvent estate;
- (c) if the owner of any property is a company which is being wound up, the liquidator thereof;
- (d) if any property has vested in a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act, 1966 (Act 28 of 1966), that liquidator or trustee;
- (e) if the owner of any property is otherwise under a legal disability, his legal representative;
- (f) if any property has been attached in terms of an order of a court, includes the sheriff, deputy-sheriff or messenger of the court concerned, as the case may be;
- (g) in relation to a holding allotted, leased, sold or granted in terms of the Land Settlement Act, 1956 (Act 21 of 1956), the person to whom it was so allotted, leased, sold or granted or his cessionary or sub-lessee;
- (h) includes the authorized representative of the owner in the Republic;
- (i) in the case of a public place or road under the control of a local authority, that local authority;

[Para. (i) added by s. 1 (i) of Act 45 of 1992.]

- (j) in the case of a right of leasehold granted in terms of section 52 of the Black Communities Development Act, 1984 (Act 4 of 1984), the holder of such right;

[Para. (j) added by s. 1 (i) of Act 45 of 1992.]

'possess' includes exercise a right;

[Definition of 'possess' inserted by s. 1 (j) of Act 45 of 1992.]

'property' means both movable and immovable property;

'public purposes' includes any purposes connected with the administration of the provisions of any law by an organ of State;

'regulation'

[Definition of 'regulation' deleted by s. 1 (k) of Act 45 of 1992.]

'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;

[Definition of 'road' inserted by s. 1 (l) of Act 45 of 1992.]

'this Act'

[Definition of 'this Act' deleted by s. 1 (m) of Act 45 of 1992.]

2 Power of Minister to expropriate property for public and certain other purposes and to take the right to use property for public purposes

(1) Subject to the provisions of this Act the Minister may, subject to an obligation to pay compensation, expropriate any property for public purposes or take the right to use temporarily any property for public purposes.

(2) The power of the Minister in terms of subsection (1) or any other law to expropriate any property, shall include the power to expropriate, when any property is so expropriated, so much of any other property which, in the opinion of the Minister, is affected by such expropriation as the Minister may for any reason deem expedient.

[Sub-s. (2) substituted by s. 2 (a) of Act 45 of 1992.]

(3) The power of the Minister in terms of subsection (2) to expropriate 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.

[Sub-s. (3) substituted by s. 2 (a) of Act 45 of 1992.]

(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.

[Sub-s. (4) inserted by s. 2 (b) of Act 45 of 1992.]

3 Expropriation of immovable property by Minister on behalf of certain juristic persons or bodies

(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 may, at the request of the first-mentioned Minister, and subject to the provisions of subsections (4) and (5), expropriate such immovable property on behalf of that juristic person or body as if it were required for public purposes.

[Sub-s. (1) substituted by s. 2 of Act 21 of 1982 and by s. 3 (a) of Act 45 of 1992.]

(2) The juristic persons or bodies contemplated in subsection (1) are-

- (a) a university as defined in section 1 of the Universities Act, 1955 (Act 61 of 1955);
- (b) a university college as defined in section 1 of the Extension of University Education Act, 1959 (Act 45 of 1959);
- (c) a technikon mentioned in section 1 of the Technikons (National Education) Act, 1967 (Act 40 of 1967), or section 1 of the Technikons Act, 1967 (Act 40 of 1967);

[Para. (c) substituted by s. 3 (b) of Act 45 of 1992.]

- (d) a governing body as defined in section 1 of the Educational Services Act, 1967 (Act 41 of 1967);

- (e) the Atomic Energy Board mentioned in section 11 of the Atomic Energy Act, 1967 (Act 90 of 1967);
- (f) a college as defined in section 1 of the Indians Advanced Technical Education Act, 1968 (Act 12 of 1968);
- (g) the Council mentioned in section 1 of the National Monuments Act, 1969 (Act 28 of 1969); and
- (h) any juristic person, other than a juristic person mentioned in paragraph (a), (b), (c), (e), (f) or (g), established by or under any law for the promotion of any matter of public importance.

(3) If the Minister expropriates any immovable property on behalf of a juristic person or body in terms of subsection (1), such juristic person or body shall become the owner thereof on the date of expropriation in question.

(4) There shall be payable in respect of the expropriation of any immovable property in terms of subsection (1) the fees, duties and other charges which would have been payable by the juristic person or body concerned in terms of any law if it had purchased that property.

(5) All costs incurred by the said Minister in the performance of his functions in terms of subsection (1) shall be refunded to him by the juristic person or body concerned.

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[S. 4 substituted by s. 3 of Act 21 of 1982 and repealed by s. 4 of Act 45 of 1992.]

5 Exercise by local authority of power to expropriate property or to take the right to use property temporarily

(1) If a local authority has the power to expropriate property or to take the right to use property temporarily, such power may only be exercised, *mutatis mutandis*, in accordance with the provisions of this Act.

[Sub-s. (1) substituted by s. 1 of Act 19 of 1977 and by s. 5 of Act 45 of 1992.]

(2) For the purposes of the application of subsection (1) any reference in this Act to the Minister and the State shall be construed as a reference to the local authority concerned.

6 Inspection of property for purposes of expropriation or taking of right to use temporarily

(1) If any property or the temporary use of any property is required for public purposes, the Minister may-

- (a) for the purpose of ascertaining whether any particular property is suitable for the purposes or use contemplated, or for the purpose of determining the value thereof, authorize any person to-
 - (i) enter upon any land in question with the necessary workmen, equipment and vehicles;
 - (ii) survey and determine the area and levels of that land;
 - (iii) dig or bore on or into that land;

- (iv) construct and maintain a measuring weir in any river or stream;
 - (v) in so far as it may be necessary to gain access to that land, enter upon and go across any other land with the necessary workmen, equipment and vehicles; and
- (b) authorize any person to demarcate the boundaries of any land required for the said purposes or use:

Provided that such person shall not, without the consent of the owner or occupier, enter any building or enter upon any enclosed yard or garden attached to any building, unless he has given the owner or occupier at least twenty-four hours' notice of his intention to do so.

(2) If any person has suffered any damage as a result of the exercise of any power conferred in terms of subsection (1), the State shall be liable to pay damages or to repair such damage.

(3) Any proceedings by virtue of the provisions of subsection (2) shall be instituted within six months after the damage in question has been caused or within six months after completion of the acts contemplated in subsection (1), whichever period is the longer, and may only be instituted if the plaintiff has given the Minister not less than one month's notice thereof and of the cause of the alleged damage.

7 Notification that property is to be expropriated or is to be used temporarily

(1) If the Minister has decided to expropriate, or to take the right to use temporarily, any property in terms of the provisions of section 2, he shall, subject to the provisions of subsection (5), cause to be served upon the owner in question an appropriate notice in accordance with the provisions of subsection (3).

(2) The notice of expropriation shall-

- (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 any 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 notice;
- (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, and also state the date upon which the State will take possession of the property;
- (c) draw the attention of the owner to the provisions of sections 9 (1) and 12 (3) (a) (ii);
- (d) if an amount is therein offered as compensation, draw the attention of the owner to the fact that if a lessee has a right by virtue of a lease contemplated in section 9 (1) (d) (i) in respect of the property of which the Minister had no knowledge on the date of notice, the Minister may withdraw that offer.

[Sub-s. (2) substituted by s. 6 (a) of Act 45 of 1992.]

(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 person in question.

[Sub-s. (3) substituted by s. 6 (b) of Act 45 of 1992.]

(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 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 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 authority, and, if, 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.

[Sub-s. (4) substituted by s. 6 (c) of Act 45 of 1992.]

(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 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 documents 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 subsection (2) or containing the other document in question.

[Sub-s. (5) substituted by s. 6 (d) of Act 45 of 1992.]

8 Passing of ownership in expropriated property and exercise of right to use property

(1) The ownership of property expropriated in terms of the provisions of this Act shall, subject to the provisions of section 3 (3), and on the date of expropriation, vest in the State, released from all mortgage bonds (if any) but if such property is land, it shall remain subject to all registered rights (except mortgage bonds) in favour of third parties with which it is burdened, unless or until such rights have been expropriated from the owner thereof in accordance with the provisions of this Act.

(2) If the Minister has in terms of section 2 taken the right to use any property for any purpose, the State may, as from the date of expropriation, exercise that right.

(3) The State shall take possession of any property expropriated on the date stated in terms of section 7 (2) (b) or such other date as may be agreed upon between the owner concerned and the Minister.

[Sub-s. (3) substituted by s. 7 (a) of Act 45 of 1992.]

(4) The owner of expropriated 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: 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.

[Sub-s. (4) substituted by s. 7 (b) of Act 45 of 1992.]

(5) If the owner desires to place the State in possession of the property expropriated prior to the 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 Minister not less than twenty-one days' notice in writing of the date on which he desires to place the State in possession, and the State shall thereupon be deemed to have taken possession of the property on that date.

[Sub-s. (5) substituted by s. 7 (c) of Act 45 of 1992.]

(6) The owner shall be entitled to the use of and the income from the property expropriated from the date of expropriation to the date upon which the State may or is required to take possession of the property, and shall, during that period, remain responsible for the payment of taxes and other charges in respect of the property expropriated as if the property had not been expropriated.

(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 reference in the said subsections to the State and the Minister shall be construed as a reference to the juristic person or body concerned.

[Sub-s. (7) substituted by s. 7 (d) of Act 45 of 1992.]

9 Duties of owner of property expropriated or which is to be used by State

(1) An owner whose property has been expropriated in terms of this Act, shall, within sixty days from the date of notice in question, deliver or cause to be delivered to the Minister a written statement indicating-

- (a) if any compensation was in the notice of expropriation offered for such property, whether or not he accepts that compensation and, if he does not accept it, the amount claimed by him as compensation and how much of that amount represents each of the respective amounts contemplated in section 12 (1) (a) (i) and (ii) or (b) and full particulars as to how such amounts are made up;
- (b) if no such compensation was so offered, the amount claimed as compensation by him and how much of that amount represents each of the respective amounts contemplated in section 12 (1) (a) (i) and (ii) or (b) and full particulars as to how such amounts are made up;
- (c) if the property expropriated is land and any amount is claimed in terms of paragraph (a) or (b), full particulars of all improvements thereon which, in the opinion of the owner, affect the value of such land;
- (d) if the property being expropriated is land-
 - (i) which prior to the date of notice was leased as a whole or in part by unregistered lease, the name and address of the lessee, and accompanied 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;

[Sub-para. (i) substituted by s. 8 (a) of Act 45 of 1992.]

- (ii) which, prior to the date of notice, was sold by the owner, the name and address of the buyer, and accompanied by the contract of purchase and sale or a certified copy thereof;
- (iii) on which a building has been erected which is subject to a builder's lien by virtue of a written building-contract, the name and address of the builder, and

accompanied by the building contract or a certified copy thereof;

(iv)

[Sub-para. (iv) deleted by s. 8 (b) of Act 45 of 1992.]

(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:

[Para. (e) substituted by s. 8 (c) of Act 45 of 1992.]

Provided that the Minister may at his discretion extend the said period of sixty days, and that, if the owner requests the Minister in writing within thirty days as from the date of notice to extend the said period of sixty days, the Minister shall extend such period by a further sixty days.

(2)

[Sub-s. (2) deleted by s. 8 (d) of Act 45 of 1992.]

(3) If the property expropriated is immovable property, the Minister may in the manner contemplated in section 7 (3) or (5)-

(a) request the owner to deliver or cause to be delivered to the Minister within sixty days his title deed thereto or, if it is not in his possession or under his control, written particulars of the name and address of the person in whose possession or under whose control it is;

(b) request any person in respect of whom particulars have been furnished in terms of paragraph (a), to deliver or cause to be delivered to the Minister within sixty days the title deed in question.

(4) The provisions of subsection (1) (a), (b) and (c) shall *mutatis mutandis* apply in respect of the taking, in terms of section 2, of a right to use any property for public purposes.

(5) Any person who wilfully furnishes false or misleading particulars in any written instrument which he by virtue of the provisions of subsection (1) or (3) (a) delivers or causes to be delivered to the Minister, shall be guilty of an offence and liable on conviction to be punished as if he had been convicted of fraud.

[Sub-s. (5) amended by s. 8 (e) of Act 45 of 1992.]

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

[Sub-s. (6) substituted by s. 8 (f) of Act 45 of 1992.]

10 Offers of compensation

(1) The Minister may in the notice of expropriation offer the owner concerned an amount of compensation for the property.

(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), the Minister shall within a reasonable period offer him an amount as compensation for such property.

(3)

(4) If an owner has in terms of section 9 (1) indicated what amount is claimed by him as compensation and has furnished the relevant information in terms of section 9 and the Minister is not prepared to pay that amount as compensation, the Minister shall 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) (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 determined by the Minister by written notice addressed to him.

(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.

(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.

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

(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.

[S. 10 substituted by s. 9 of Act 45 of 1992.]

11 Payment of amount offered as compensation

(1) The Minister shall pay, on the date 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 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 have so paid, deposited or utilized such compensation had it been determined on the date concerned.

[Sub-s. (1) substituted by s. 10 (a) of Act 45 of 1992.]

(2)

[Sub-s. (2) deleted by s. 10 (b) of Act 45 of 1992.]

(3) The payment, deposit or utilization of any amount under subsection (1) shall not preclude the determination by agreement or by a court contemplated in section 14 (1), of a different amount as compensation, but if the amount so determined as compensation is less than the amount paid, deposited or utilized, the owner to whom or on whose behalf the last-mentioned amount was paid, or the Master with whom it was deposited, or the local authority concerned, as the case may be, shall refund the difference to the State together with, in the case of such owner or local authority, interest at the rate contemplated in section 12 (3) from the date on which the amount was so paid or utilized, and, in the case of the Master, the interest accrued thereon.

[Sub-s. (3) amended by s. 10 (d) of Act 45 of 1992.]

12 Basis on which compensation is to be determined

(1) The amount of compensation to be paid in terms of this Act to an owner in respect of property expropriated in terms of this Act, or in respect of the taking, in terms of this Act, of a right to use property, shall not, subject to the provisions of subsection (2), exceed-

- (a) in the case of any property other than a right, excepting a registered right to minerals, the aggregate of-
 - (i) the amount which the property would have realized if sold on the date of notice in the open market by a willing seller to a willing buyer; and
 - (ii) an amount to make good any actual financial loss caused by the expropriation; and

[Para. (a) amended by s. 11 (a) of Act 45 of 1992.]

- (b) in the case of a right, excepting a registered right to minerals, an amount to make good any actual financial loss caused by the expropriation or the taking of the right:

[Para. (b) substituted by s. 11 (b) of Act 45 of 1992.]

Provided that where the property expropriated is of such nature that there is no open market therefor, compensation therefor may be determined-

- (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.

[Sub-s. (1) amended by s. 11 (c) of Act 45 of 1992.]

(2) Notwithstanding anything to the contrary contained in this Act there shall be added to the total amount payable in accordance with subsection (1), an amount equal to-

- (a) ten per cent of such total amount, 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.

[Sub-s. (2) substituted by s. 1 of Act 3 of 1978 and by s. 11 (d) of Act 45 of 1992.]

(3) (a) Interest at the standard interest rate determined in terms of section 26 (1) of the Exchequer Act, 1975 (Act 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): Provided that-

- (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-
 - (aa) the property was so taken possession of, if prior to that date compensation for the property was offered or agreed upon; or
 - (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
- (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.

(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.

[Sub-s. (3) amended by s. 4 (1) (a) of Act 21 of 1982 and substituted by s. 11 (e) of Act 45 of 1992.]

(4) If the owner of property which has been expropriated occupies or utilizes that property or any portion thereof, no interest shall, in respect of the period during which he so occupies or utilizes it, be paid in terms of subsection (3) on so much of the outstanding amount as, in the opinion of the Minister, relates to the property so occupied or utilized.

(5) In determining the amount of compensation to be paid in terms of this Act, the following rules shall apply, namely -

- (a) no allowance shall be made for the fact that the property or the right to use property has been taken without the consent of the owner in question;
- (b) the special suitability or usefulness of the property in question for the purpose for which it is required by the State, shall not be taken into account if it is unlikely that the property would have been purchased for that purpose on the open market or that the right to use the property for that purpose would have been so purchased;
- (c) if the value of the property has been enhanced in consequence of the use thereof in a manner which is unlawful, such enhancement shall not be taken into account;

[Para. (c) substituted by s. 11 (f) of Act 45 of 1992.]

- (d) improvements made after the date of notice on or to the property in question (except where they were necessary for the proper maintenance of existing improvements or where they were undertaken in pursuance of obligations entered into before that date) shall not be taken into account;

- (e) no allowance shall be made for any unregistered right in respect of any other property or for any indirect damage or anything done with the object of obtaining compensation therefor;
- (f) any enhancement or depreciation, before or after the date of notice, in the value of the property in question, which may be due to the purpose for which or in connection with which the property is being expropriated or is to be used, or which is a consequence of any work or act which the State may carry out or perform or already has carried out or performed or intends to carry out or perform in connection with such purpose, shall not be taken into account;
- (g)

[Para. (g) substituted by s. 4 (1) (b) of Act 21 of 1982 and deleted by s. 11 (g) of Act 45 of 1992.]

- (h) account shall also be taken of-
 - (i) any benefit which will ensure to the person to be compensated from any works which the State has built or constructed or has undertaken to build or construct on behalf of such person to compensate him in whole or in part for any financial loss which he will suffer in consequence of the expropriation or, as the case may be, the taking of the right in question;
 - (ii) any benefit which will ensure to such person in consequence of the expropriation of the property or the use thereof for the purpose for which it was expropriated or, as the case may be, the right in question was taken;
 - (iii)
- [Sub-para. (iii) deleted by s. 11 (h) of Act 45 of 1992.]
- (iv) any relevant quantity of water to which the person to be compensated is entitled, or which is likely to be granted to him, in terms of the provisions of the Water Act, 1956 (Act 54 of 1956), or any other law.

[Sub-para. (iv) amended by s. 4 (1) (c) of Act 21 of 1982 and substituted by s. 11 (i) of Act 45 of 1992.]

- (i)

[Para. (i) deleted by s. 4 (1) (d) of Act 21 of 1982.]

- (6)

[Sub-s. (6) deleted by s. 4 (1) (e) of Act 21 of 1982.]

13 Payment of compensation in respect of rights out of unregistered leases in respect of property expropriated

(1) 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 his right thereunder were a registered right in respect of the property in question which was also expropriated on the date of expropriation in respect of such property.

(2) The Minister shall 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 property fails to comply with the provisions of section 9 (1) (d) (i) 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 concerned in respect of the termination of his rights, but such owner shall be liable to any such lessee for damage sustained by him in consequence of the termination of his rights.

[S. 13 substituted by s. 12 of Act 45 of 1992.]

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

(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

(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.

(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.

(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-

(i) order that the conference contemplated in rule 37 (1) (a) of the rules promulgated by Government Notice 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.

(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 42 of 1965).

(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.

(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.

(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
- (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.

(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
- (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.

(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.

[S. 14 substituted by s. 13 of Act 45 of 1992.]

15 Orders as to costs in Supreme Court

(1)

[Sub-s. (1) deleted by s. 14 (a) of Act 45 of 1992.]

(2) If the compensation awarded by the court in any proceedings contemplated in section 14 (1)-

- (a) is equal to or exceeds the amount last claimed by the owner one month prior to the date for which the proceedings were for the first time placed on the roll, costs shall be awarded against the Minister;
- (b) is equal to or less than the amount last offered by the Minister one month prior to the date contemplated in paragraph (a), costs shall be awarded against the owner in question;

- (c) is less than the amount last so claimed by the owner in question, but exceeds the amount last so offered by the Minister, so much of the costs of the owner shall be awarded against the Minister as bears to such costs the same proportion as the difference between the compensation so awarded and the amount so offered, bears to the difference between the amount of compensation so awarded and the amount so claimed.

[Sub-s. (2) amended by s. 14 (b) of Act 45 of 1992.]

(3) Notwithstanding the provisions of subsection (2), the court shall in its discretion decide as to the costs -

- (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).

[Sub-s. (3) substituted by s. 14 (c) of Act 45 of 1992.]

(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.

[Sub-s. (3A) inserted by s. 14 (d) of Act 45 of 1992.]

(4) The liability for costs and taxation fees of a party to be compensated shall be a first charge against the money which, in terms of the order of court, and the interest which, in terms of section 12 (3), is to be paid to him, and such money and interest shall be applied, as far as may be required, towards the payment of those costs and fees.

16

[S. 16 amended by s. 2 of Act 19 of 1977, by s. 2 of Act 3 of 1978 and by s. 5 of Act 21 of 1982 and repealed by s. 15 of Act 45 of 1992.]

17

[S. 17 repealed by s. 16 of Act 45 of 1992.]

18 Effect of application for determination of compensation, and of noting of appeal

Notwithstanding any application in terms of section 14 (1) for the determination of compensation, or an appeal against a decision of any court contemplated in that section, the other provisions of this Act shall apply as if no such application or appeal had been made.

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

(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, buyer or builder concerned, as the case may be, and as the Minister may have been notified of by them.

(2) If an owner of 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.

(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.

[S. 19 substituted by s. 17 of Act 45 of 1992.]

20 Payment of certain taxes and other moneys out of compensation moneys

(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.

[Sub-s. (1) substituted by s. 18 of Act 45 of 1992.]

(2) The Minister may utilize so much of the compensation money in question as is necessary for the payment on behalf of the owner of such land of any tax or other moneys mentioned in subsection (1).

21 Deposit of compensation money with Master

(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 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.

(2) Any moneys received by the Master in terms of subsection (1) or (4) of this section or in terms of section 11 (1) shall-

- (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
- (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 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.

(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.

(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.

[S. 21 substituted by s. 37 of Act 108 of 1991 and by s. 19 of Act 45 of 1992.]

22 Termination of unregistered rights in respect of land expropriated

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 an office referred to in section 7 (4) 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.

[S. 22 substituted by s. 20 of Act 45 of 1992.]

23 Withdrawal of expropriation

(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.

[Sub-s. (1) substituted by s. 21 of Act 45 of 1992.]

(2) If any person directly or indirectly sustains any damage in consequence of the withdrawal of an expropriation, he shall be entitled to compensation by the State for such damage.

(3) If the expropriation of any property is withdrawn and the State has already paid compensation in connection with such expropriation, the amount of such compensation shall be a debt due to the State.

(4) If an expropriation of property is withdrawn in terms of this section, the ownership in such property shall, from the date contemplated in subsection (1), again vest in the owner from whom it was expropriated, and any mortgage bonds, servitudes and other rights discharged or terminated in connection with the expropriation shall revive and the registrar of deeds concerned shall, on receipt of a copy of, or publication in the *Gazette* of, the notice of withdrawal of expropriation in question, cancel any endorsement made in connection with the expropriation in his registers and on the title deed of the property in question.

24 Assignment of powers and duties by Minister

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 section 23, and in addition an executive committee may assign any such power or duty also to any of its members.

[S. 24 substituted by s. 22 of Act 45 of 1992.]

25

[S. 25 amended by s. 3 of Act 3 of 1978, by s. 1 of Act 8 of 1980 and by s. 46 of Act 97 of 1986 and repealed by s. 23 of Act 45 of 1992.]

26 Application of Act

(1) 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 if any such power is exercised after the commencement of this Act, the compensation owing in respect thereof shall *mutatis mutandis* be calculated, determined and paid in accordance with the provisions of this Act.

(2)

(3) 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)

(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 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).

(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), notwithstanding that the executive committee is not required to do so.

[S. 26 amended by s. 3 of Act 19 of 1977 and substituted by s. 24 of Act 45 of 1992.]

27 and 28

[Ss. 27 and 28 repealed by s. 41 (1) of Act 76 of 1979.]

29 to 31 inclusive

[Ss. 29 to 31 inclusive repealed by s. 11 (1) (u) of Act 108 of 1991.]

32

[S. 32 repealed by s. 25 of Act 45 of 1992.]

33 and 34

[Ss. 33 and 34 repealed by s. 13 (c) of Act 108 of 1991.]

35 to 41 inclusive

[Ss. 35 to 41 inclusive repealed by s. 25 of Act 45 of 1992.]

42

[S. 42 repealed by s. 31 (1) Act 41 of 1987.]

43 to 45 inclusive

[Ss. 43 to 45 inclusive repealed by s. 25 of Act 45 of 1992.]

46 and 47

[Ss. 46 and 47 repealed by s. 56 of Act 108 of 1991.]

48

[S. 48 repealed by s. 41 (1) of Act 76 of 1979.]

49 to 68 inclusive

[Ss. 49 to 68 inclusive repealed by s. 25 of Act 45 of 1992.]

69 to 73 inclusive

[Ss. 69 to 73 inclusive repealed by s. 76 (1) of Act 54 of 1976.]

74 and 75

[Ss. 74 and 75 repealed by s. 25 of Act 45 of 1992.]

76

[S. 76 repealed by s. 89 (1) of Act 122 of 1984.]

77 to 79 inclusive

[Ss. 77 to 79 inclusive repealed by s. 25 of Act 45 of 1992.]

80

[S. 80 repealed by s. 23 (1) of Act 81 of 1983.]

81

[S. 81 repealed by s. 20 (1) of Act 78 of 1983.]

82

[S. 82 repealed by s. 30 of Act 43 of 1983.]

83 to 95 inclusive

[Ss. 83 to 95 inclusive repealed by s. 25 of Act 45 of 1992.]

96 Pending proceedings

(1) Any expropriation commenced by the Minister, or proceedings for the determination of compensation in terms of any law instituted against the Minister, prior to the commencement of this Act, shall be concluded as if this Act had not been passed: Provided that the parties concerned may agree to proceed with such expropriation or proceedings in accordance with the provisions of this Act, in which case in relation to the continuation of such expropriation or proceedings, the relevant provisions of this Act shall apply as if it were a continuation of an expropriation or proceedings for the determination of compensation in terms of this Act.

(2) For the purposes of subsection (1) 'Minister' shall include any other Minister or juristic person authorized by law to acquire property by expropriation.

97 Short title and commencement

This Act shall be called the Expropriation Act, 1975, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Schedule

[Schedule repealed by s. 25 of Act 45 of 1992.]