## CHAPTER 8

**LIMITATIONS ON LEGAL PROCEEDINGS AGAINST SANRAL**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1 OVERVIEW</td>
<td>2</td>
</tr>
<tr>
<td>8.2 STATUTORY IMPLICATIONS</td>
<td>2</td>
</tr>
<tr>
<td>8.3 PROCEDURES</td>
<td>5</td>
</tr>
</tbody>
</table>
8.1 OVERVIEW

8.1.1 It is necessary to distinguish between two different categories of claims that may arise against SANRAL:

8.1.1.1 claims that arise from the use of a national road; and

8.1.1.2 other claims.

8.1.2 In terms of the Constitution, SANRAL is an Organ of State.

8.1.3 Legal proceedings against SANRAL are limited by section 59 of the Act and by the provisions of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002.

8.2 STATUTORY IMPLICATIONS

8.2.1 Claims arising from the use of a national road

8.2.1.1 In terms of the Act, SANRAL will not be liable for any damage or loss suffered by any person through the use of any part of the national road other than the roadway as a result of the closure or deviation of a national road under the Act.

8.2.1.2 This means that SANRAL may be liable for loss or damage suffered by any person using a national road, in two situations:

(a) if it is caused on the roadway itself;

(b) if it is caused as the result of the closure or deviation of a national road under this Act.

8.2.1.3 The term “roadway” is not defined in the Act. However, the term “road” is defined and means “a public road and includes, in addition to the roadway

(a) the land of which the road consists or over which the road reserve in question extends;

(b) anything on that land forming part of, or connected with, or belonging to the road; and

(c) land acquired for the construction of a connection between a national road and any other road”.

8.2.1.4 Furthermore, in terms of section 1 of the National Road Traffic Act, 93 of 1996, a “roadway” is defined as that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic which is between the edges of the road way.

8.2.1.5 These definitions, read with the definitions of “shoulder” and “verge”, contained in Act 93 of 1996, imply that the roadway is that portion of the actual surfaced and improved portion of the road reserve over which persons normally drive. This may include a deviation of a portion of the “normal roadway”. The portion of the normal roadway, which is temporarily not in use, will therefore not comprise part of the “roadway” for the period that the deviation or detour is used.

8.2.1.6 In terms of the Act therefore, if a

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1 Section 239 of the Constitution provides that an organ of State includes any functionary or institution exercising a public power or performing a public function in terms of any legislation. In terms of section 3 of the Act, SANRAL was established to take charge of the South African national roads system and in terms of section 3, the State is the sole shareholder of SANRAL.


3 Chapter 7 of the Manual deals specifically with the compensation payable by the SANRAL for damages or losses suffered by a person as a result, for example, the closure of an entrance to or exit from a national road.
person suffers loss or damage off the roadway but within the road reserve, SANRAL is not liable for such loss or damage.

8.2.1.7 In terms of the Act, SANRAL may close a national road to traffic or divert the roadway of a national road whenever in its opinion it is necessary or desirable to do so. 6

8.2.1.8 If the roadway has been diverted by SANRAL, it may be liable for loss or damage suffered by a person through the use of that diversion, but not as a result of a person’s illegal use of that portion of the roadway itself which has been diverted.

8.2.1.9 A claim could also arise if the loss or damage was the result of the improper closure of the national road.

8.2.1.10 The limitation on legal proceedings which applies to SANRAL also applies to:

(a) any members of the Board;

(b) the Chief Executive Officer;

(c) any of the other employees of SANRAL acting in the performance of their duties;

(d) any person acting on behalf of SANRAL on the authority of the Board; or

(e) any person who operates or has constructed a national road. 7

8.2.2 Other claims

8.2.2.1 Claims may also arise against SANRAL for reasons other than the use of a national road. For example, a supplier of services may institute an action against SANRAL for a payment allegedly due, or a person could institute action arising from a breach of an agreement of sale for the purchase of land.

8.2.2.2 In these instances, proceedings against SANRAL are affected by the Institution of Legal Proceedings against certain Organs of State Act, 40 of 2002, which came into operation on 24 November 2002.

8.2.2.3 The purpose of this Act was to regulate the prescription and to harmonise the periods of prescription of debts for which certain organs of state are liable, and to make provision for notice requirements in connection with the institution of legal proceedings against certain organs of state in respect of the recovery of debt.

8.2.2.4 SANRAL is specifically included in the Organs of State affected by this Act. 7

8.2.2.5 Act 40 of 2002 defines a debt as meaning “any debt arising from any cause of action.

(a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any-

(i) act performed under or in terms of any law; or
(ii) omission to do anything which should have been done under or in terms of any law; and

(b) for which an organ of state is liable for payment of damages\textsuperscript{m}. 

8.2.2.6 It is clear from this definition that Act 40 of 2002 not only applies to claims by contractors for payment for services rendered but also to claims arising from wrongful acts or omissions on the part of SANRAL.

8.2.2.7 The provisions of Act 40 of 2002 therefore apply to all claims against SANRAL including claims arising from the use of a national road.

8.2.2.8 Act 40 of 2002 essentially deals with procedural issues and is applicable to all legal proceedings issued against SANRAL.

8.2.2.9 Legal proceedings may not be instituted against SANRAL for recovery of a debt unless the claimant has either given SANRAL notice in writing of his or her intention to institute the legal proceedings or, alternatively, SANRAL has consented in writing to the institution of the legal proceedings without such notice\textsuperscript{n}.

8.2.2.10 The claimant is obliged to give notice to SANRAL within six months of the date on which the debt became due. The notice must briefly set out the facts giving rise to the debt and particulars of the debt as are within the knowledge of the claimant\textsuperscript{o}.

8.2.2.11 A notice must be served on SANRAL by delivering it by hand or by sending it by certified or electronic mail or by transmitting it by facsimile. If the notice is sent by electronic mail or transmitted by facsimile, the creditor must -

(a) take all reasonable steps to ensure that the notice has been received by the officer or person to whom it was so sent or transmitted; and

(b) within seven days after the date upon which the notice was sent or transmitted, deliver by hand or send by certified mail a certified copy of that notice to the officer or person to whom it was sent, which must be accompanied by an affidavit by the claimant:

(i) indicating the date on which and the time at which, and the electronic mail address or facsimile number to which the notice was sent;

(ii) containing any proof that it was sent or transmitted;

(iii) setting out the steps taken to ensure that the notice was received by the person to whom it was sent;

(iv) indicating where the confirmation of the receipt of the notice has been obtained, and if applicable, the name of the officer or person who has given that confirmation\textsuperscript{p}.

8.2.2.12 The claimant may not institute legal proceedings before the expiry of a period of thirty days after the notice has been served on SANRAL.
8.3 PROCEDURES

8.3.1 In the event that notice is received of any claim against SANRAL, the Chief Executive Officer and the Regional Manager of the region affected by such claim, must immediately be notified of such claim and provided with a copy of the notice.

8.3.2 It must be determined whether the claimant has complied with the requirements of Act 40 of 2002.

8.3.3 Investigations must immediately be undertaken by the relevant regional office in order to determine the appropriate response to such claim. This may require an attorney to be appointed.

8.3.4 In the event that legal action is instituted against SANRAL, the person signing affidavits or approving any pleadings on behalf of SANRAL must have delegated authority to do so.