



Tonga

# **ROADS ACT 2020**

**Act 10 of 2020**





## ROADS ACT 2020

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# ROADS ACT 2020

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## AN ACT TO ESTABLISH A ROADS ACT

I assent,  
TUPOU VI,  
27<sup>th</sup> August 2020.

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

### 1 Short Title

This Act may be cited as the Roads Act 2020.

### 2 Interpretation

In this Act, unless the context otherwise requires:

“**CEO**” means the Chief Executive Officer of the Ministry responsible for Transport;

“**Director**” means the Director in the Ministry’s Division responsible for road works;

“**land transport infrastructure**” means all –

- (a) public roads; causeways, culverts, bridges, bus stops, car parks, footpaths, signage and signals, markings and barriers on public roads or other things on public roads that relate to the construction and effective use of public roads; and

(b) features on public roads that relate to the construction and effective use of the public road, including drains and seawalls.

**“Minister”** unless otherwise specified, shall mean the Minister having responsibility for Land Transport;

**“Ministry”** means the Ministry responsible for Land Transport;

**“occupier”** means any person who is lawfully in possession of or exercising control over any land, such that if they are not the registered land owner or their legal appointees or agents whichever the case may be, then the actual occupier of the land;

**“public road”** means any road that is proclaimed under the Public Roads Proclamation to be a public road or any road which was before the passing of this Act known or reputed to be a public road. Until such time a new roads proclamation is made, the definition of public road includes all new roads which were built, maintained and accessible for public use since 1983;

**“regulations”** except where the context otherwise requires, means the Regulations made under this Act;

**“RMFSC”** means the Road Maintenance Fund Steering Committee;

**“road asset”** means the physical public road including the land, reinforcements, soil, rock, tar seal, and markings, but also includes all things and objects within the land transport infrastructure such as road and traffic signage.

**“road frontage”** means the surface soil intervening between the boundary of land bordering a public road and the edge of the pavement, or the back of the curb, if any, and includes any drains in that area. For the avoidance of doubt, the entire portion of land that legally constitutes a public road includes the road frontage (which begins from the marked boundary of the land adjacent to the road) on both sides of the road, and the area of land upon which the road is built;

**“Road Maintenance Fund”** means the fund established by the Ministry of Finance and National Planning under section 22 of the Public Finance Management Act 2002;

**“road reserve”** means the surface area and space above and below the surface area of a public road between the boundaries of the road as is prescribed by the Minister of Lands;

### 3 Purpose

The purpose of this Act is -

- (a) to provide for the building and maintenance of public roads, and for the protection of the integrity of the public roads which constitute Tonga’s land transport infrastructure;

- (b) to ensure that public roads are used and maintained to meet the social, environmental and economic needs of the public;
- (c) to provide proper administration for the implementation of all works provided under this Act;
- (d) to establish the Roads Maintenance Fund, and the Roads Maintenance Fund Steering Committee; and
- (e) to ensure levels of service for public roads are established and reviewed to meet the needs of the public in a manner consistent with the national policies of the Government.

#### **4 Responsibility for Roads**

The building, maintenance, and the protection of the integrity of all public roads and road assets shall be the responsibility of the Ministry.

#### **5 Building of new Roads**

- (1) The decision to build a new public road shall first be made and approved by the Minister responsible for Lands. In doing so, that Minister for Lands shall be satisfied that the required land is available, and all legal requirements have been met.
- (2) Whenever the Minister for Lands deems it advisable to proclaim any new road to be a public road, whether such new road be a metalled road or not, he shall cause a copy of such proclamation to be first published in the Gazette and from the date of the publication of such proclamation the said road shall become a public road, and all the laws and Regulations now in force or hereafter to be enacted or made will be applicable to such proclaimed road.
- (3) It shall not be necessary or incumbent upon the Minister for Lands to publish any proclamation in the Gazette relating to roads which are currently already used, known as, and have been considered as a public road.
- (4) The description of surveys and coordinates for the new road shall be provided by the Ministry for Lands.
- (5) The building, maintenance, and protection of the integrity of new roads shall be the responsibility of the Ministry responsible for Land Transport.

#### **6 Classification of Roads**

- (1) The Minister shall have the authority to classify all roads.
- (2) The Ministry shall collate and maintain a register of all roads and their classifications according to levels of public access.
- (3) The levels of public access may include but is not limited to primary, secondary, tertiary, local and general access.

- (4) Road classifications and road criteria are as set out in the Schedule 1 and 2 of this Act.

## **7 Rights of Road Users**

- (1) A member of the public is individually entitled as of right to pass along a public road, whether on foot, or in a vehicle.
- (2) An owner or occupier of any land which adjoins a public road is entitled as of right to access the public road from that land.
- (3) The rights of road users are subject to any restrictions, limitations or conditions which may be specified by or under this Act.
- (4) Any road user who is affected by an order, permit, or other administrative act or decision made under this Act shall first appeal in writing to the Minister for reconsideration of the matter.

## **8 Road Maintenance Fund**

- (1) The Road Maintenance Fund is hereby established by the Minister for Finance and National Planning, pursuant to the Public Finance Management Act 2002.
- (2) The Road Maintenance Fund shall have an account under the control of the Minister responsible for Finance and National Planning.
- (3) The Road Maintenance Fund shall be a revolving fund, and is not subject any fiscal year limitation and the annual budgetary requirement for funds to be utilized within a financial year.
- (4) The Ministry shall utilize the Road Maintenance Fund only for the purpose of -
  - (a) building, maintaining, and protecting of the integrity of public roads which are in the approved Ministry annual works program for roads;
  - (b) promoting road safety projects; and
  - (c) such other matters as may be prescribed by Regulations.
- (5) The CEO shall be responsible to ensure –
  - (a) expenditure of the fund shall be in accordance with the approved Ministry annual works program for roads;
  - (b) expenditure of the fund shall be in accordance the procurement laws and Regulations, and must comply with the applicable Ministry of Finance and National Planning Treasury directions for the expenditure of public funds;
  - (c) there is appropriate provision for the administrative and overhead costs to manage the fund;
  - (d) an annual financial, system and technical audit of the fund is undertaken to ensure that the fund is receiving value for money; and



- (e) provide quarterly reports to the Road Maintenance Fund Steering Committee on the expenditure, management, operation and oversight of the fund.
- (6) The Fund may be a depository for monies allocated to it from, including but to restricted to –
- (a) any portion of vehicle license fees collected under the Traffic Act and Traffic Regulations;
  - (b) any portion of the fuel excise tax collected under the Excise Tax Act 2007;
  - (c) any fines or fees collected under this Act;
  - (d) any monies collected from the sale of objects left on a public road;
  - (e) any monies from the Government's annual budget allocation;
  - (f) any monies received from a foreign donor under a development aid or project, for the purpose of roads; and
  - (g) any other monies as may be prescribed by Regulations.
- (7) The Road Maintenance Fund shall be used exclusively to finance only those matters set out in this Act.

## **9 Road Maintenance Fund Steering Committee**

- (1) The Road Maintenance Fund Steering Committee (RMFSC) is hereby established.
- (2) The RMFSC shall be -
- (a) the Minister for Finance and National Planning, who shall be the Chair;
  - (b) the Minister;
  - (c) Minister for Lands;
  - (d) Minister for Police;
  - (e) the Ministry CEO;
  - (f) the Ministry Director responsible for land transport;
  - (g) the Ministry Director responsible for civil engineering; and
  - (h) the Solicitor General.
- (3) A quorum of meetings shall be at least four members including the Chair, who shall attend all meetings of the RMFSC.
- (4) The functions of the RMFSC are to meet and regularly report and advise the Cabinet on –
- (a) the on-going expenditures of the road maintenance fund;
  - (b) the status of the road works being implemented by the Ministry pursuant to the annual works program of the Ministry;

- (c) the services being provided to the public with respect to public roads and land transport infrastructure;
- (d) the audit reports on the expenditure of the road maintenance fund;
- (e) the annual report for the road maintenance fund; and
- (f) any other related matter required by Cabinet, or such other functions as may be prescribed by Regulations.

## 10 Permits

- (1) A person must first apply to, and obtain from the Ministry, a permit to carry out an activity for which a permit may be required under this Act.
- (2) Subsection (1) does not apply to Ministry employees who are using, carrying out work on, or occupying land transport infrastructure for the purposes of building, maintenance and protection of the integrity of public roads.
- (3) A person wanting to carry out work that affects the road, or to occupy a public road or land transport infrastructure, shall apply in writing to the CEO for a permit, and pay the prescribed fee in Schedule 3. The permit fee may include an amount for resealing of the road.
- (4) Where the CEO receives an application under subsection (3), the CEO may issue a permit where the CEO is satisfied that the person meets such Ministry conditions as may be required.
- (5) A permit issued under this section may contain such terms and conditions as the CEO considers appropriate in the circumstances, and any other terms and conditions.
- (6) For the purposes of this section, work on a public road or land transport infrastructure includes work above or below the surface of the public road, to any height or depth required.
- (7) The CEO may require a monetary bond from any person applying for a permit, in an amount which in the CEO's reasonable opinion will be required to repair the road to its original state after completing the permit works.
- (8) Monetary bonds will be returned to the permit holder after completion of the installation, provided the CEO is satisfied that the road has been repaired to its original state.
- (9) Any person who is required by the Ministry to repair a road after carrying out permit works, shall complete the repair according to Ministry road standards as may be required.
- (10) Where a person fails to repair a public road or land transport infrastructure to the condition required, the person shall be liable to reimburse the Ministry for the cost of the repair, or forfeit that component of the bond required by the Ministry to repair the road to its original state, whichever the case may be.

- (11) Failure to repair the road as required under this section is an offence under this Act.
- (12) Every person who fails to comply with any of the provisions of this section shall be guilty of an offence against this Act for which he shall be liable to a fine not exceeding \$100,000.

## 11 Prohibited acts

- (1) A person shall not -
  - (a) use a public road in any manner that contravenes the provisions of this Act or related Regulations; and
  - (b) cause damage to a public road in any manner.
- (2) A person shall not, without a permit from the Ministry -
  - (a) leave any object on a public road or act in a way on a public road that may obstruct the road or cause damage to or endanger any person or thing using the road;
  - (b) encroach on any public road by making or erecting any fence, ditch or other obstacle, by planting anything, or installing any advertising sign;
  - (c) encroach on any public road by allowing any tree or vegetation to grow next to, onto, or over a public road which becomes a safety risk to users of the road;
  - (d) fill in or obstruct any ditch or drain made to carry water off a public road, whether on the road or elsewhere;
  - (e) make a dam, ditch or other construct that may cause flooding on any public road;
  - (f) install water pipes, sewage pipes, gas pipes, electricity poles, conduits, electricity lines, telecommunication lines or such other utility as may be prescribed, within a road reserve; and
  - (g) interfere with or stop the ordinary traffic on a public road.
- (3) Application for a permit under (2) shall be made in writing to the CEO, together with the permit fee.
- (4) Permits shall not be issued under this section unless the CEO is satisfied that the activity applied for will not be detrimental or not likely to cause irreparable damage to the road asset and the maintenance and protection of its integrity.
- (5) Every person who fails to comply with any of the provisions of this section shall be guilty of an offence against this Act for which he shall be liable to a fine not exceeding \$100,000.

## 12 Restricted vehicles on certain public roads

The Ministry may, by Order, prohibit the use of certain public roads and land transport infrastructure, by vehicles whose total excessive weight, height or width would have a detrimental and potentially damaging effect on the road asset, and the maintenance and protection of its integrity.

## 13 Metal tyres

- (1) A person shall not cause a vehicle of any size that uses metal tyres or other non-rubber equipment to use a public road, without first applying for and obtaining a permit from the Ministry, and paying the applicable fee.
- (2) Permits shall not be issued under section 10 for the use of a vehicle under this section, unless the CEO is satisfied that such use will not be detrimental or damaging to the road asset and the maintenance and protection of its integrity.

## 14 Removal of objects left on a public road

- (1) The CEO may require a person who leaves an object on a public road in contravention of this Act, to remove the object or, where the person cannot be found, authorize an employee of the Ministry or any other person to remove the object and, if the object is one of value, store it, pending the object being claimed or sold under this section.
- (2) Where an object is removed from a public road and stored under this section, the Ministry shall cause a notice to be published on two occasions in a newspaper and on the radio announcing the seizing and storing of the object.
- (3) Where a person claims an object left on a public road, the person may, where the person can prove ownership of the object, retrieve the object from where it is stored, after paying such fees as may be imposed by the Ministry.
- (4) An object not claimed within one month of the notice under subsection (2), may be sold or otherwise disposed of in such manner as may be prescribed.

## 15 Delegations

- (1) The Minister, CEO or Director may delegate in writing to any officer within the Ministry, all or any of their respective powers and functions under this Act, except the power to delegate.
- (2) Delegated powers and functions may be exercised and performed by the delegate only in relation to the matters or class of matters specified in the instrument.
- (3) Every delegation is revocable, in writing.

- (4) A delegation does not restrict the exercise of that delegated power or function by the Minister, CEO, or Director making the delegation.

## **16 No Personal Liability, employees of the Ministry**

- (1) No action or other proceeding shall be instituted against an employee of the Ministry for any act done in good faith in the execution or intended execution of any duty or service under this Act or the Regulations, or for any alleged neglect or default in the execution in good faith of that duty or service.
- (2) No action or other proceeding shall be instituted against the Ministry for damages that a person suffers as a result of any act or omission of a person who is not an employee or agent of the Ministry.

## **17 General Offences**

- (1) Except where otherwise provided in the section, every person who –
  - (a) contravenes or fails to comply with any provision of this Act; or
  - (b) knowingly makes or assists in the making of a false declaration, statement or representation or furnishes false information under this Act, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both, or, if the person is a body corporate, to a fine of not more than \$200,000.
- (2) Every person who -
  - (a) contravenes or fails to comply with a term or condition of a permit; or
  - (b) fails to comply with an order, direction or requirement of the CEO, or hinders, obstructs or knowingly misleads or deceives the CEO or delegated officer, is guilty of an offence and upon conviction shall be liable to a fine of not more than \$10,000.
- (3) Every director or officer of a body corporate who knowingly causes the corporation to commit, or permits it to commit, an offence under subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$20,000 or to imprisonment for a term of not more than one year, or to both.

## **18 Regulations**

- (1) The Minister may, with the consent of Cabinet, make Regulations as are necessary or advisable to carry out effectively the intent and purpose of this Act, and for the due administration thereof.

- (2) Without limiting the generality of subsection (1), the Minister may make Regulations under this Act -
- (a) prescribing any matter or thing required or permitted to be prescribed under this Act or otherwise referred to as being prescribed under this Act;
  - (b) prohibiting any person from doing anything that is not in compliance with this Act or the Regulations;
  - (c) prescribing fees for the purposes of the Act and the Regulations;
  - (d) prescribing the specific purpose for how the RMF can be expended or used;
  - (e) establishing the powers, duties and responsibilities of persons with respect to whom this Act or the Regulations apply in addition to those set out in this Act;
  - (f) governing the use of public roads by any class of vehicle;
  - (g) requiring any class of vehicle to obtain a permit before using a public road;
  - (h) establishing different requirements for different classes of person, vehicle, premises or activity;
  - (i) adopting by reference, in whole or in part and with such changes as the Minister considers necessary, any convention, code, standard, guideline or procedure governing the matters set out under this Act and require compliance with the thing as adopted;
  - (j) amending or repealing codes and standards adopted by reference by a regulation before or after this section came into force; and
  - (k) governing the non-application of this Act, the Regulations or a convention or code adopted by the Regulations, or any part of them, to any person or thing or to any class of them, including the conditions of such non-application.

## 19 Repeal

The Roads Act [Cap 155] is hereby repealed in its entirety.

## 20 Transition

The Public Roads Proclamation [Cap 50.04.1] is hereby saved and continued as a regulation under this Act and every road listed in that Proclamation is continued as a public road.

Passed by the Legislative Assembly on this 14<sup>th</sup> day of July 2020.

**SCHEDULE 1**  
**ROAD CLASSIFICATION**

General	Classification	Description
<b>Major</b>	Primary	Significant arterial routes of importance and inter-village road links with high traffic volumes
	Secondary	Significant inter-village road links with moderate traffic volumes
	Tertiary	Interconnecting roads between primary and secondary roads and roads
<b>Minor</b>	Local	Access to a number of minor village or urban or rural access roads
	Access	Access to small number of individual urban or rural properties.

## SCHEDULE 2

## ROADS CLASSIFICATION CRITERIA

Characteristics	1-Primary	2-Secondary	3-Tertiary	4 - Local	5 - Access
<b>Function</b>	Routes of strategic and importance forms back-bone of road network	Major rural Roads and interurban collectors for Rural, and minor arterials, CBD Roads in Urban.	Local distributors in Urban and district distributors in Rural.	Residential collectors in Urban and local access roads in Rural.	All local access roads providing only local people access to the rest of the road network
	Major urban roads, and inter-urban roads for the rural and major arterials in urban.	Roads which provide mobility of moderate distance traffic, routes to essential services.	Provide for travel between smaller towns and districts	Roads providing local people access to the rest of the road network , the main function is to serve land uses next to the road network	The main function is to serve land uses next to the road network
	high flows of general traffic over longer distances	Provide a link between towns not situated on primary road network	Provide mobility for short trips between district centres and between higher level roads		
	High design standards	Slightly lower design standards than primary road network.			
<b>Traffic Volume</b>	Very Heavy ( ADT: > 2500)	Heavy (1200<ADT>2500)	Medium (500<ADT>1200)	Light (100<ADT>500)	Very Light (ADT : < 100)
<b>Public Transport</b>	Main public transport Route		May or may not be a public transport route	Unlikely to be a public transport route	Unlikely to be a public transport route



<p><b>Social Importance</b> (evacuation roads, tourism roads, schools, health centres, cultural heritage etc.)</p>	<p>Include access to major service centres and Government Buildings, markets and other primary social services.</p>	<p>Include access to major service centres and Government Buildings, markets and other primary social services.</p>	<p>Minimum classification for all roads of social importance</p>	<p>Generally not a road of wider social importance</p>	<p>Generally not a road of wider social importance</p>
<p><b>Economic Importance</b> (tourist attraction sites, agricultural areas and markets etc.)</p>	<p>include access to main agricultural areas, tourist attraction sites, airport, markets and other primary economic services</p>	<p>include access to main agricultural areas, tourist attraction sites, airport, markets and other primary economic services</p>	<p>Minimum classification for all roads of economic importance</p>	<p>Generally not a road of wider economic importance</p>	<p>Generally not a road of wider economic importance</p>
<p><b>Other Road Users</b></p>	<p>Require Separation between road and pedestrian access and cyclists due to risk of injury.</p>	<p>Allowance for Separation between road and pedestrian access and cyclists due to risk of injury.</p>	<p>Mixed used design although some key ones may require separation for pedestrians and cyclists</p>	<p>Mixed use design low speed environment</p>	<p>Mixed use design low speed environment</p>
<p><b>Design Standards</b></p>	<p>Rural and Urban Design Standards</p>	<p>Rural and Urban Design Standards</p>	<p>Single Design Standards</p>	<p>Single Design Standards</p>	<p>Single Design Standards</p>

<p><b>Design Parameters</b> (Lane width, shoulder required, seal type, speed, drainage, footpaths, onroad cycle path, alignment of service utilities etc.)</p>	<p>Eg. Must be Sealed, with shoulder reinstatements, must make provisions for service utilities, with footpaths and drainage in urban. High speed limit in rural.</p>	<p>Must be Sealed, with shoulder reinstatements, must make provisions for service utilities, with drainage and footpaths in some areas for urban, High speed limit for rural.</p>	<p>Must be Sealed, with shoulder reinstatements, must make provisions for service utilities, drainage and footpaths in some areas for urban.</p>	<p>Typically Gravel in rural, sealed in Urban areas.</p>	<p>Gravel /Dirt Road, May be sealed in urban areas if funded by the developer / community</p>
<p>Examples</p>	<p>Taufa'ahau, By pass, Hihifo Rd</p>	<p>Salote, Wellington, Liku and Loto Rd</p>	<p>Fatafehi and Tupoulahi, Vaiola Road, Matalafa Rd</p>	<p>Tungi Rd and Longoteme Road</p>	<p>Penny Lane -Gravel Access Roads to rural blocks</p>

**SCHEDULE 3****PERMIT FEES**

<b>Section Number</b>	<b>Application Fee</b>	<b>Permit Fee</b>
10(3)	\$50	\$50 per day of work plus the Ministry's cost of resealing
11(3)	\$50	\$50 per day of activity
13(1)	\$50	\$50 per trip