

**NATIONAL MONUMENTS ACT
NO. 28 OF 1969**

[ASSENTED TO 21 MARCH, 1969]

[DATE OF COMMENCEMENT: 1 JULY, 1969]

(English text signed by the State President)

as amended by

National Monuments Amendment Act, No. 22 of 1970

National Monuments Amendment Act, No. 30 of 1971

Expropriation Act, No. 63 of 1975

[with effect from 1 January, 1977—see title LAND]

National Monuments Amendment Act, No. 35 of 1979

Finance Act, No. 21 of 1980

[with effect from 31 March, 1980—see title FINANCE]

National Monuments Amendment Act, No. 13 of 1981

War Graves and National Monuments Amendment Act, No. 11 of 1986

Legal Succession to the South African Transport Services Act, No. 9 of 1989

[with effect from 6 October, 1989—see title RAILWAYS AND HARBOURS]

National Monuments Amendment Act, No. 25 of 1991

ACT

To provide for the repair, maintenance and general care of certain burial grounds and graves, the establishment of gardens of remembrance in respect of certain persons, the erection of memorials for certain persons and the preservation of certain immovable or movable property as national monuments and for that purpose to establish the National Monuments Council and to define its powers, functions and duties; to establish a Burger-graftekomitee and a British War Graves Committee to assist the said Council in connection with certain matters; to provide for National Gardens of Remembrance and for the continued existence of the War Graves Trust Fund established by the War Graves Act, 1967; to repeal certain laws relating to natural and historical monuments, relics and antiques; and to provide for incidental matters.

[Long title substituted by s. 15 of Act No. 35 of 1979 and by s. 17 of Act No. 13 of 1981.]

1. Definitions.—In this Act, unless the context otherwise indicates—

“alter” means a structural or any other alteration to a monument;

[Definition of “alter” inserted by s. 1 (a) of Act No. 11 of 1986.]

“badge” means the badge of the council registered in terms of the Heraldry Act, 1962 (Act No. 18 of 1962);

[Definition of “badge” inserted by s. 1 (a) of Act No. 35 of 1979.]

“conservation area” means an area referred to in section 5 (9);

[Definition of “conservation area” inserted by s. 1 (b) of Act No. 11 of 1986.]

“council” means the council established by section 2;

“cultural treasure” means any movable property declared under this Act to be a cultural treasure;

[Definition of “cultural treasure” inserted by s. 1 (c) of Act No. 11 of 1986.]

“Director-General” means the Director-General: National Education;
[Definition of “Director-General” inserted by s. 1 (a) of Act No. 13 of 1981.]

“exile” means any person who, during the Anglo-Boer War (1899-1902), was removed as a prisoner of war from any place now included in the Republic to any place outside South Africa and died there;
[Definition of “exile” inserted by s. 1 (a) of Act No. 13 of 1981.]

“garrison troops” means the permanent forces of the former republics and colonies in South Africa and the forces of the United Kingdom of Great Britain stationed in South Africa prior to 1910;
[Definition of “garrison troops” inserted by s. 1 (a) of Act No. 13 of 1981.]

“historical site” means any indentifiable building or part thereof, marker, milestone, gravestone, landmark or tell older than 50 years;
[Definition of “historical site” inserted by s. 1 (d) of Act No. 11 of 1986.]

“local authority” means an institution or a body contemplated in section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961);

“Minister” means the Minister of National Education;

“monument” means any property declared under this Act to be a national monument and includes, for the purposes of section 12, any property provisionally so declared for a period of five years from the date of the provisional declaration;
[Definition of “monument” substituted by s. 1 (b) of Act No. 35 of 1979.]

“planning authority” means an office of the State, a province, a local authority or a regional authority which is invested with a physical planning capacity;
[Definition of “planning authority” inserted by s. 1 (e) of Act No. 11 of 1986.]

“register” as a verb means to register as contemplated in section 5A (1);
[Definition of “register” inserted by s. 1 (e) of Act No. 35 of 1979.]

“register” means the register referred to in section 5 (1) (cC) or (7) as the case may be;
[Definition of “register” inserted by s. 1 (c) of Act No. 35 of 1979 and substituted by s. 1 (f) of Act No. 11 of 1986.]

“Republic” includes the territory;

“sign” means a sign determined from time to time by the council which indicates that an object has been declared to be a monument;
[Definition of “sign” inserted by s. 1 (d) of Act No. 35 of 1979.]

“territory” means the territory of South-West Africa.

“Voortrekker grave” means the grave of any person who participated in the movement known as the Great Trek and who died between the years 1835 and 1854;
[Definition of “Voortrekker grave” inserted by s. 1 (b) of Act No. 13 of 1981.]

“wreck” means any wreck as defined in section 112 (1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964);
[Definition of “wreck” inserted by s. 1 (e) of Act No. 35 of 1979.]

2. Establishment of National Monuments Council.—There is hereby established a council to be known as the National Monuments Council, which shall be a body corporate, capable of suing and being sued in its corporate name and of performing, subject to the provisions of this Act, all such acts as are necessary for or incidental to the exercise of its powers and the performance of its functions and duties.

2A. Object of the council.—The object of the council shall be to preserve and protect the historical and cultural heritage, to encourage and to promote the preservation and protection of that heritage, and to co-ordinate all activities in connection with monuments and cultural treasures in order that monuments and cultural treasures will be retained as tokens of the past and may serve as an inspiration for the future.

[S. 2A inserted by s. 2 of Act No. 35 of 1979 and amended by s. 2 of Act No. 11 of 1986.]

3. Constitution of council.—(1) The council shall consist of not less than seven members to be appointed by the Minister by notice in the *Gazette*: Provided that the Minister may from time to time appoint not more than two additional members to the council for a particular purpose on the ground of their special knowledge of the matter for the purpose of which they are appointed.

[Sub-s. (1) amended by s. 2 (a) of Act No. 13 of 1981.]

(2) A member of the council shall hold office for such period, not exceeding five years, as the Minister may determine at the time of the appointment, but shall be eligible for re-appointment: Provided that if in his opinion there are good reasons for doing so, the Minister may at any time terminate the period of office of any member.

(2A) A member of the council appointed for a particular purpose shall hold office until the matter for the purpose of which he was appointed has been disposed of by the council.

[Sub-s. (2A) inserted by s. 2 (b) of Act No. 13 of 1981.]

(3) A member of the council designated by the Minister as chairman shall preside at any meeting of the council: Provided that if the chairman is absent from any meeting of the council, a chairman elected by the members present from among themselves, shall preside at such meeting.

3A. Establishment of committees.—(1) There are hereby established two committees to be known as—

- (a) the *Burgergraftekomitee*; and
- (b) the British War Graves Committee,

respectively.

(2) The object and function of the said committees shall be to identify—

- (a) burial grounds and graves of persons who died in any area now included in the Republic in wars, other than the wars known as the First and Second World Wars, or rebellions which occurred therein;
- (b) burial grounds and graves in the Republic of members of garrison troops who died up to 3 August 1914;
- (c) Voortrekker graves and burial grounds; and
- (d) burial grounds and graves of exiles,

in order to enable the council to act in respect of such burial grounds and graves as contemplated in the relevant provisions of section 5, and to report to the council on the desirability of declaring any such burial ground or grave to be a national monument.

(3) The said committees shall each consist of such number of members, but not more than five, as the Minister may determine from time to time.

(4) Such members, of whom only the chairmen may be members of the council, shall be appointed by the Minister.

(5) Every member of each such committee shall hold office for such period, not exceeding five years, as the Minister may determine at the time of his appointment, but shall be eligible for reappointment: Provided that if in his opinion there are good reasons for doing so, the Minister may at any time terminate the period of office of any member.

(6) A member of each committee designated by the Minister as chairman shall preside at the meetings of the committee for which he has been so designated as chairman: Provided that if the chairman of a committee concerned is absent from any meeting of such committee, a chairman elected by the members from among themselves shall preside at such meeting.

(7) The committees referred to in subsection (1) shall for all purposes be deemed to be committees of the council.

[S. 3A inserted by s. 3 of Act No. 13 of 1981. Sub-s. (7) added by s. 3 of Act No. 11 of 1986.]

4. Committees of council.—(1) The council may establish committees to assist it in the exercise of its functions and the performance of its duties, and may appoint in addition to any of its members of such other persons as it may deem fit to be members of any such committee: Provided that the council may from time to time appoint not more than two additional members to any such committee for a particular purpose on the ground of their special knowledge of the matter for the purpose of which they are appointed.

(2) A member of any such committee so appointed for a particular purpose shall hold office until the matter for the purpose of which he was appointed has been disposed of by the committee.

[S. 4 substituted by s. 4 of Act No. 13 of 1981.]

5. Powers, functions and duties of council.—(1) The council shall, subject to the provisions of this Act, have power, in addition to any other power conferred on it by this Act or any other Act—

- (a) to make such recommendations as may be required to be made in order to enable the Minister to exercise any of his powers under this Act;
- (b) at the request of the Minister, or of its own accord, to investigate and report to the Minister on—
 - (i) any matter relating to a monument;
 - (ii) the desirability of declaring anything to be a national monument;
 - (iii) any application for a State subsidy in respect of the purchase, restoration or maintenance of a monument;

[Para. (b) amended by s. 4 (a) of Act No. 11 of 1986.]

- (c) by notice in the *Gazette* provisionally to declare any immovable property (including any burial ground and grave referred to in section 3A (2), any garden of remembrance, and any area declared to be a National Garden of Remembrance under section 9C) described in such notice and in respect of which the council is investigating the desirability of recommending it to be declared a national monument, to be a national monument, or by like notice to withdraw any such notice;

[Para. (c) substituted by s. 5 (a) of Act No. 13 of 1981.]

- (cA) to repair, restore, maintain and generally care for burial grounds and graves referred to in section 3A (2);

[Para. (cA) inserted by s. 5 (b) of Act No. 13 of 1981.]

- (cB) subject to the provisions of subsection (4A) or any other law, to exhume and re-inter the remains of any person buried in any grave referred to in section 3A (2) (a), (b) or (c);

[Para. (cB) inserted by s. 5 (b) of Act No. 13 of 1981.]

- (cC) to compile and maintain a register of immovable property which it regards as worthy of conservation on the ground of its historic, cultural or aesthetic

interest and to supplement, amend or delete any entry in the register from time to time by notice in the *Gazette*: Provided that an entry shall not be made until such time as it has consulted with the local authority in whose area of jurisdiction such immovable property is situated;

[Para. (cC) inserted by s. 4 (b) of Act No. 11 of 1986.]

(cD) by notice in the *Gazette* to declare, after consultation with the owner, any movable property to be a cultural treasure as described in such notice:

[Para. (cD) inserted by s. 4 (b) of Act No. 11 of 1986.]

(d) to invest, lend or borrow money;

(e) to purchase or otherwise acquire, hold, let, hire, receive in trust, make over to any person to hold in trust, or sell, exchange or otherwise alienate, or hypothecate, burden with a servitude or otherwise confer any real right in any property movable or immovable;

(f) to preserve, repair or restore anything declared or provisionally declared under this Act to be a national monument or to construct fences, walls or gates around it or on it, if it is under the control of the council or, if it is not under the control of the council, if the owner consents thereto: Provided that if the owner fails to maintain properly any monument, the council may, with the concurrence of the Minister, after reasonable notice to such owner, take such steps as may be necessary for the maintenance thereof;

[Para. (f) substituted by s. 3 (b) of Act No. 35 of 1979 and amended by s. 5 (c) of Act No. 13 of 1981.]

(g) (i) to take steps for the erection in suitable places of memorial tablets giving information in both official languages and, if the council considers it to be desirable, in any other language, about historical events relating to such places;

(ii) to affix to any monument the badge or a sign;

[Para. (g) substituted by s. 3 (c) of Act No. 35 of 1979.]

(gA) to establish gardens of remembrance in respect of any class of persons contemplated in section 3A (2) (a);

[Para. (gA) inserted by s. 5 (d) of Act No. 13 of 1981.]

(gB) to erect memorials for any class of persons or any person belonging to any such class of persons;

[Para. (gB) inserted by s. 5 (d) of Act No. 13 of 1981.]

(h) to lend any monument under its control to any museum or other public institution;

(i) by agreement with the owner of any land, to acquire or construct and maintain an access road over such land to any monument, or to construct upon such land fences, walls or gates upon, across or next to such road;

(j) by means of the news media or in any other manner—

(i) to publish and distribute or to cause to be published and distributed any knowledge and information directly or indirectly relating to any monument;

(ii) to encourage and to promote the preservation of monuments;

[Para. (j) substituted by s. 3 (d) of Act No. 35 of 1979.]

(k) to provide insurance cover—

(i) for the council against any loss, damage, risk or liability which it may suffer or incur; and

(ii) for the members of the council, of any committee of the council and of any committee established by section 3A, in respect of bodily injury,

disablement or death resulting solely and directly from an accident occurring in the course of the performance of their duties as such members;

[Para. (k) substituted by s. 5 (e) of Act No. 13 of 1981.]

(kA) subject to the approval of the Minister, to insure such of its officers or employees as are excluded from the definition of "workman" in section 3 of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), without having regard to subsection (1) (b) of the said section, against disablement or death resulting from accidents or scheduled diseases as defined in that Act, either by way of special arrangement with the Workmen's Compensation Commissioner as provided for in the said section, or in some other manner;

[Para. (kA) inserted by s. 5 (e) of Act No. 13 of 1981.]

(kB) subject to the approval of the Minister and subject to such conditions as the Minister may determine when granting such approval, insure any of its officers and employees in respect of whom the council considers it necessary to do so, against disablement or death sustained or taking place in the execution of their duties, to supplement any indemnification in accordance with the provisions of the Workmen's Compensation Act, 1941;

[Para. (kB) inserted by s. 5 (e) of Act No. 13 of 1981.]

(kC) to inspect or cause to be inspected any grave repaired or maintained by it, any garden of remembrance established by it, any memorial erected by it, or any National Garden of Remembrance mentioned in section 9C;

[Para. (kC) inserted by s. 5 (e) of Act No. 13 of 1981.]

(l) to perform such functions relating to the preservation of any property as a national monument as the Minister may from time to time determine.

(m) to make a recommendation referred to in section 7A of the Forestry Act, 1968 (Act No. 72 of 1968), to the Minister of Water Affairs, Forestry and Environmental Conservation;

[Para. (m) added by s. 5 (f) of Act No. 13 of 1981.]

(n) if agreed upon between the Government of the Republic and the government of any other state, to perform, with the concurrence of the Minister, in that state any function which it would be capable of performing in the Republic in terms of this Act.

[Sub-s. (1) amended by s. 3 (a) of Act No. 35 of 1979. Para. (n) added by s. 5 (f) of Act No. 13 of 1981.]

(2) The council shall not invest, lend or borrow any money without the consent of the Minister in writing given in consultation with the Minister of Finance.

(3) The council may acquire immovable property by way of purchase, only if it has been or is about to be declared under this Act to be a national monument and if the council has the necessary funds at its disposal.

(4) The council shall not let, make over to any person to hold in trust, or sell, exchange or otherwise alienate, or hypothecate, burden with a servitude or otherwise confer any real right in—

(a) immovable property, without the consent in writing of the Minister given in consultation with the Minister of Finance;

(b) movable property being a monument, without the consent in writing of the Minister.

(4A) The council shall not exhume and re-inter the remains of any person if the owner of the land or premises on which such remains happen to be, is a descendant of such person and objects to the exhumation and re-interment.

[Sub-s. (4A) inserted by s. 5 (g) of Act No. 13 of 1981.]

(5) The council shall not by notice under subsection (1) (c) provisionally declare to be a national monument—

- (a) any property belonging to the State, unless the Minister consents thereto;
- (b) any property belonging to any person other than the State or the council, without the consent of such person, unless the council has, at least one month before the date of such notice, served upon the owner of such property, by post or by delivery to him personally, a notice in writing advising him of the proposed declaration and calling upon him to lodge objections thereto with the council within one month of the date of service of such last-mentioned notice.

(6) The Minister may, at the request of any person whose property has by notice under subsection (1) (c) been provisionally declared to be a national monument, after consultation with the council by notice in the *Gazette* withdraw such first-mentioned notice in so far as it relates to such property.

[Sub-s. (6) substituted by s. 3 (e) of Act No. 35 of 1979.]

(6A) The Minister may, at the request of any person whose property has by notice under subsection (1) (cD) been declared to be a cultural treasure, after consultation with the council, by notice in the *Gazette* withdraw such a declaration.

[Sub-s. (6A) inserted by s. 4 (c) of Act No. 11 of 1986.]

(7) The council shall keep a register of all monuments and shall record therein such particulars as the Minister may from time to time determine, and may make such register available for inspection by any person during the council's normal office hours.

[Sub-s. (7) substituted by s. 3 (e) of Act No. 35 of 1979.]

(7A) The council shall—

- (a) compile and maintain registers of the situation of graves referred to in section 3A (2) and of personal details of persons buried therein;
- (b) establish and keep a register of all graves repaired or maintained, gardens of remembrance established and memorials erected by it;
- (c) publish periodically lists of any graves referred to in section 3A (2) with such particulars of or information relating to such graves as may be determined by the council.

[Sub-s. (7A) inserted by s. 5 (h) of Act No. 13 of 1981.]

(8) (a) The council shall—

- (i) endeavour to ensure that land surrounding or in the immediate vicinity of a monument is not developed in such a manner that the aspect of, or the view from, that monument is obstructed;
- (ii) as far as may be practicable, mark each monument by affixing its badge or a sign thereto.

(b) The council may in order to comply with the provisions of paragraph (a) (i), enter into an agreement with the owner of the land in question.

[Sub-s. (8) added by s. 3 (f) of Act No. 35 of 1979.]

(9) The council may, after consultation with the relevant authority, by notice in the *Gazette* designate any area of land to be a conservation area on the ground of its historic, aesthetic or scientific interest: Provided that in the absence of any agreement the relevant authority may appeal to the Minister, who may after consultation with the council, revoke such designation by notice in the *Gazette*.

[Sub-s. (9) added by s. 4 (d) of Act No. 11 of 1986.]

5A. Rendering of financial assistance to registered person, authority or body of persons.—(1) Subject to the provisions of section 9 the council may with the approval of the Minister render financial assistance to any person, authority or body of persons which

restores and preserves monuments and which has been registered under this section, for defraying such expenditure of such person, authority or body as determined by the Minister from time to time.

(2) Any person, authority or body of persons desirous of being registered under this section, shall apply to the council and shall in connection with the application furnish such particulars as may be required by the council.

[S. 5A inserted by s. 4 of Act No. 35 of 1979 and substituted by s. 5 of Act No. 11 of 1986.]

6. Remuneration and allowances of members of council or committees.—The council may pay to a member of the council or any committee thereof or any committee established by section 3A—

- (a) who is not in the full-time employment of the State or the council, the remuneration; and
- (b) the allowances,

determined by the Minister with the concurrence of the Minister of Finance.

[S. 6 amended by s. 6 of Act No. 13 of 1981 and substituted by s. 1 of Act No. 25 of 1991.]

7. Delegation of powers of council.—The council may delegate to any of its members, committees or officers any of its powers other than the power to purchase immovable property, but shall not thereby be divested of any power which it may so have delegated and may amend or withdraw any decision by a member, committee or officer.

7A. Delegation of powers by Minister.—The Minister may delegate any power, duty or function conferred or imposed upon or assigned to him by sections 5 (1) (f), 5 (2), 5 (4) (a) and (b), 5 (7), 5A, 6 and 8 (1) to the Director-General or the incumbent of a designated post in the Department of National Education.

[S. 7A inserted by s. 5 of Act No. 35 of 1979 and substituted by s. 7 of Act No. 13 of 1981 and by s. 6 of Act No. 11 of 1986.]

8. Officers and employees of council.—(1) (a) (i) The council may appoint such officers and employees as it may deem necessary for the performance of its functions and the carrying out of its duties, and shall determine their remuneration, allowances, subsidies and other benefits in accordance with a system approved by the the Minister with the concurrence of the Minister of Finance, as such system is amended from time to time.

(ii) Any person who immediately prior to the commencement of the National Monuments Amendment Act, 1991, was an officer or employee in the employment of the council shall, subject to the provisions of subparagraph (iii), be deemed to have been appointed as an officer or employee, as the case may be, of the council, as from such commencement.

(iii) The remuneration, allowances, subsidies and other benefits of any person mentioned in subparagraph (ii) shall not be less favourable than the remuneration, allowances, subsidies and other benefits to which such person was entitled immediately before the commencement of the said Amendment Act.

[Para. (a) substituted by s. 2 of Act No. 25 of 1991.]

(b) The council shall designate one of its officers or employees as director—

- (i) in addition to any other function or duty assigned to or imposed upon him in terms of this Act, to manage the affairs of the council and to carry out its decisions; and
- (ii) to furnish the council with an annual report on the activities and financial position of the council.

(c) The council shall designate one of its officers or employees as acting director when the office of director is vacant or when the director is absent.

[Sub-s. (1) substituted by s. 6 of Act No. 35 of 1979.]

(2) Any person who, on the day immediately preceding the date of commencement of this Act, was employed under the provisions of section 6 (1) (a) of the Natural and Historical Monuments, Relics and Antiques Act, 1934 (Act No. 4 of 1934), or section 5 (1) (a) of the Natural and Historical Monuments, Relics and Antiques Ordinance, 1948 (Ordinance No. 13 of 1948 of the territory), shall be deemed to have been appointed under subsection (1) on the said date to the service of the council, on the conditions of service applicable in respect of him and at the remuneration received by him on the said day.

(2A) Any person who immediately prior to the date of commencement of the National Monuments Amendment Act, 1981, was under the provisions of section 12A of the

War Graves Act, 1967 (Act No. 34 of 1967), in the service of the South African War Graves Board established by section 2 of that Act, shall be deemed to have been appointed under subsection (1) of this section on the said date to the service of the council, on the conditions of service applicable in respect of him and at the remuneration received by him immediately prior to the said date.

[Sub-s. (2A) inserted by s. 8 of Act No. 13 of 1981.]

(2B) Save in pursuance of disciplinary measures applied by the council, the conditions of service applicable in respect of any such person or his remuneration, referred to in subsection (2A), shall not be altered to his prejudice without his consent.

[Sub-s. (2B) inserted by s. 8 of Act No. 13 of 1981.]

(2C) Any sick or vacation leave which accrued in favour of any such person on account of his service with the said South African War Graves Board mentioned in subsection (2A), shall be deemed to have accrued in his favour by virtue of service with the council.

[Sub-s. (2C) inserted by s. 8 of Act No. 13 of 1981.]

(2D) If any such person was immediately prior to the date mentioned in subsection (2A) a member of an applicable pension fund—

- (a) he remains as from that date without a break in his pensionable service a member of that pension fund;
- (b) he retains all the rights which he acquired and remains subject to all the obligations which he incurred in terms of any law relating to that pension fund; and
- (c) he is not entitled to any advantage which would otherwise by reason of the abolition of the post he occupied immediately prior to the date mentioned in paragraph (a) have accrued to him in terms of any such law.

[Sub-s. (2D) inserted by s. 8 of Act No. 13 of 1981.]

(2E) For the purposes of subsection (2D) “applicable pension fund” means a pension or provident fund administered by or under the control of the Minister of Health, Welfare and Pensions.

[Sub-s. (2E) inserted by s. 8 of Act No. 13 of 1981.]

(3) The council shall for the purposes of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), be deemed to be an associated institution.

9. Finances of council.—(1) The funds of the council shall consist of—

- (a) moneys appropriated by Parliament to enable the council to perform its functions;
- (b) fees received under its by-laws;
- (c) interest derived from investments;
- (cA) moneys which become part of the funds of the council in terms of section 9A (5);
- (d) moneys received from any other source.

[Para. (cA) inserted by s. 9 (a) of Act No. 13 of 1981.]

(1A)

[Sub-s. (1A) inserted by s. 7 (a) of Act No. 35 of 1979 and repealed by s. 3 (1) of Act No. 21 of 1980.]

(2) The council shall not incur any expenditure except in accordance with an estimate of expenditure approved in terms of subsection (3).

[Sub-s. (2) substituted by s. 7 (b) of Act No. 35 of 1979.]

(3) Once during every financial year, at such time as the Minister may direct, the council shall submit to the Minister for his approval, with the concurrence of the Minister of Finance, estimates of the income and expenditure of the council during the ensuing financial year, and the council may also during the course of a financial year, submit to the Minister for his approval, with the concurrence of the Minister of Finance, supplementary estimates of expenditure for that financial year.

[Sub-s. (3) substituted by s. 7 (b) of Act No. 35 of 1979.]

(4) The council shall open one or more accounts with any bank approved by the Minister and shall deposit therein any moneys received.

(5) The council shall, in such manner as the Director-General may direct, keep records of all property under its control and of all its financial transactions, as well as of all its financial transactions in its capacity of trustee of the War Graves Trust Fund mentioned in section 9A (1).

[Sub-s. (5) substituted by s. 7 (b) of Act No. 35 of 1979 and by s. 9 (b) of Act No. 13 of 1981.]

(6) The accounts of the council shall be audited by the Auditor-General.

[Sub-s. (6) amended by s. 9 (c) of Act No. 13 of 1981.]

(7) The council shall furnish the Minister with such information as he may call for from time to time in respect of its activities or financial position, and shall in addition submit to the Minister, before the thirty-first day of December of each year, a report on its activities, including a balance sheet and a statement of income and expenditure certified by the Auditor-General, for the year ending on the last preceding thirty-first day of March.

[Sub-s. (7) amended by s. 9 (c) of Act No. 13 of 1981.]

(8) The Minister shall lay the said report upon the Table in the Senate and in the House of Assembly within fourteen days after receipt thereof, if Parliament is in ordinary session, or, if Parliament is not in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

9A. Continued existence of War Graves Trust Fund.—(1) The War Graves Trust Fund established by section 13A of the War Graves Act, 1967 (Act No. 34 of 1967), shall, notwithstanding the repeal of that Act by this Act, continue to exist.

(2) The council shall act as trustee of the said fund.

(3) There shall be paid into the said fund—

(a) all moneys collected by the council for the fund; and

(b) all grants and donations made to the fund.

(4) All moneys in the said fund shall be invested by the council in such manner as may be approved by the Minister with the concurrence of the Minister of Finance.

(5) Any income derived from the moneys invested in terms of subsection (4) shall become part of the funds of the council and may, subject to the provisions of subsection (6), be used by it for any of the functions of the council.

(6) In each year not less than R1 000 shall be devoted by the council to the maintenance, repair and general care of the burial grounds and graves of persons who died in the Anglo-Boer War in the Orange Free State or in any concentration camp established in the Cape Province for the reception of inhabitants of the former Republic De Oranje-vrijstaat.

[S. 9A inserted by s. 10 of Act No. 13 of 1981.]

9B. Repair and maintenance of graves situated on land not owned or occupied by council and construction of access roads to graves.—The council may—

(a) enter into an agreement with the owner of any land who or a local authority or other body which controls any land on which is situated any such grave as is referred to in section 3A (2) in terms of which—

(i) the council acquires a right to repair or maintain such grave; or

(ii) such owner or local authority or other body undertakes to repair or maintain such grave; and

(b) by agreement with the owner of any land acquire or construct and maintain an access road over such land to any such grave as is referred to in section 3A (2), garden of remembrance established by it, memorial erected by it or

National Garden of Remembrance and may, with the concurrence of such owner, construct fences, walls and gates across or next to such road.

[S. 9B inserted by s. 10 of Act No. 13 of 1981.]

9C. National Gardens of Remembrance.—(1) The Minister may from time to time, on the recommendation of the council, by notice in the *Gazette* declare any area of land on which any such grave as is referred to in section 3A (2) (a), (b) or (c) is situated, to be a National Garden of Remembrance: Provided that no such recommendation shall be made unless the council has at least one month before making the recommendation notified the owner of such area of land in writing that it proposes to make such recommendation and that he is entitled to lodge with the council objection in writing to the proposed recommendation.

(2) When making any such recommendation the council shall submit to the Minister proof that the owner concerned has received the said notice and shall also transmit to the Minister any objections which may have been lodged against such recommendation.

(3) Any area of land in respect of which notice has been given in terms of the proviso to subsection (1), shall, for a period of three months from the date on which such notice was given, or if it is sooner declared to be a National Garden of Remembrance under subsection (1), until it is so declared, for the purposes of section 9D be deemed to have been declared a National Garden of Remembrance under subsection (1).

[S. 9C inserted by s. 10 of Act No. 13 of 1981.]

9D. Alteration of National Garden of Remembrance.—(1) No person shall, without the written consent of the council, alter any National Garden of Remembrance.

(2) Any person who feels aggrieved by any decision of the council for the purposes of subsection (1) may appeal against such decision to the Minister.

(3) The decision of the Minister on any appeal lodged with him under this section shall be final and shall be deemed to be a decision of the council.

[S. 9D inserted by s. 10 of Act No. 13 of 1981.]

10. Declaration of national monuments by Minister.—(1) Whenever the Minister considers it to be in the national interest that any immovable or movable property of aesthetic, historical or scientific interest be preserved, protected and maintained he may, subject to the provisions of subsection (3), on the recommendation of the council, by notice in the *Gazette* declare any such property described in the notice to be a national monument.

[Sub-s. 1 substituted by s. 8 of Act No. 35 of 1979.]

(2) The Minister may, subject to the provisions of subsection (3), by notice in the *Gazette*—

(a) on the recommendation of the council amend any notice issued under subsection (1), by including in or excluding from any area of land, declared by such notice to be a national monument, any area of land described in the amending notice;

(b) withdraw any notice issued under subsection (1) or paragraph (a) of this subsection.

(3) The Minister shall not give effect to any recommendation made under subsection (1) or (2) in respect of any property belonging to any person other than the State or the council, without the consent of such person, unless the Minister is satisfied—

(a) that the council has, at least one month before making the recommendation, served upon the owner of such property, by post or by delivery to him personally, a notice in writing advising him of the proposed recommendation and calling upon him to lodge objections with the council within one month of the date of service of the notice;

(2) No person shall—

- (a) destroy, damage, excavate, alter, remove from its original site or export from the Republic any monument except under the authority of and in accordance with a permit issued under this section; or
- (b) disfigure, destroy, remove, alter or damage any memorial tablet, the badge or a sign erected or affixed in terms of section 5 (1) (g) or any fence, wall or gate constructed in terms of section 5 (1) (f), except with the written authority of the council.

[Sub-s. (2) substituted by s. 11 of Act No. 35 of 1979. Para. (b) substituted by s. 11 (a) of Act No. 13 of 1981.]

(2A) No person shall destroy, damage, excavate, alter, remove from its original site or export from the Republic—

- (a) any meteorite or fossil; or
- (b) any drawing or painting on stone or a petroglyph known or commonly believed to have been executed by Bushmen; or
- (c) any drawing or painting on stone or a petroglyph known or commonly believed to have been executed by any other people who inhabited or visited the Republic before the settlement of the Europeans at the Cape; or
- (d) any implement, ornament or structure known or commonly believed to have been made, used or erected by people referred to in paragraphs (b) and (c); or
- (e) the anthropological or archaeological contents of graves, caves, rock shelters, middens, shell mounds or other sites used by such people; or
- (f) any other historical site, archeological or palaeontological finds, material or object,

[Para. (f) substituted by s. 8 (b) of Act No. 11 of 1986.]

except under the authority of and in accordance with a permit issued under this section.

[Sub-s. (2A) inserted by s. 11 (b) of Act No. 35 of 1979.]

(2B) No person shall destroy, damage, alter or export from the Republic—

- (a) any painting, print, document, deed, seal, stamp or manuscript or collection or group thereof or an object made of paper in respect of which it is known or generally accepted that it has been in the Republic for longer than 50 years;
- (b) any object or collection or group of objects of any substance except paper, in respect of which it is known or generally accepted that it has been in the Republic for longer than 100 years;
- (c) any movable object or collection of objects of any substance, including manuscripts, declared by the council to be a cultural treasure;
- (d) any wreck or portion of wreck, or any object derived from wreck, known or generally accepted to have been in South African territorial waters longer than 50 years; or
- (e) any burial ground or grave referred to in section 3A (2),

except under the authority of and in accordance with a permit issued under this section.

[Sub-s. (2B) inserted by s. 11 (b) of Act No. 13 of 1981 and substituted by s. 8 (c) of Act No. 11 of 1986.]

(2C) (a) No person shall disturb or remove any wreck which is 50 years old or older, except by virtue of a permit issued by the council on such conditions as it may deem fit and by virtue of a licence issued by the Commissioner of Customs and Excise.

(b) A permit referred to in paragraph (a) may only be issued to a person providing written proof of affiliation with a museum approved by the council.

(c) (i) A permit referred to in paragraph (a) may only be issued by the council after it has by notice in the *Gazette* afforded the opportunity for the submission of representations to it on the issuing of such permit and after representations received thereon have been considered by it.

(ii) The location of wreck shall not be disclosed in the notice referred to in subparagraph (i).

(d) Any person to whom the council issues a permit referred to in paragraph (a), shall thereby acquire no other right to wreck than the right granted him by such permit.

(e) (i) The council shall not issue a permit referred to in paragraph (a) with regard to wreck in a security area or nature conservation area, or in an area adjacent to a security area or nature conservation area, without obtaining the prior approval of the department controlling such security area or nature conservation area.

(ii) The department concerned may grant its approval subject to certain conditions, which shall be binding on all parties concerned.

(f) All material recovered from wreck or a wreck site shall be placed in the custody of the museum referred to in paragraph (b), and the museum, in consultation with the council and the holder of the permit, shall decide on the disposal thereof: Provided that in the case of a dispute among the parties referred to in this paragraph the said museum shall refer the matter to arbitration.

[Sub-s. (2C) inserted by s. 8 (d) of Act No. 11 of 1986.]

(3) (a) The provisions of subsection (2A) shall not apply to the removal of anything other than deposits in any cave or midden, in the normal course of mining, engineering or agricultural activities: Provided that if anything referred to in section (2A) is found in the normal course of the said activities, the finder thereof or the owner of the land where it is found or the person who performs such activities, shall report that fact immediately to an institution referred to in the Cultural Institutions Act, 1969 (Act No. 29 of 1969).

(b) The council or any person in the employment of the State authorized thereto by the Minister may enter into an agreement with such finder, owner or other person in connection with the removal and safe custody of such thing: Provided that the council and the State shall not be liable in respect of any loss arising out of such removal or custody unless with the consent of the Minister it is otherwise agreed.

[Sub-s. (3) substituted by s. 11 (c) of Act No. 35 of 1979.]

(4) On application by any person in the manner prescribed by regulation under this Act, the council may in its discretion, but subject to the directions of the Minister, issue to such person free of charge a permit to—

(a) destroy, damage, excavate, alter, remove from its original site or export from the Republic any monument or any other object referred to in subsection (2) or (2A), specified in the permit;

(b) destroy, damage, alter or export from the Republic any object referred to in subsection (2B) specified in the permit;

(c) disturb or remove wreck as referred to in subsection (2C) (a);

[Para. (c) added by s. 8 (e) of Act No. 11 of 1986.]

at such time or within such period and subject to such terms, conditions and restrictions or directions as may be so specified.

[Sub-s. (4) substituted by s. 11 (d) of Act No. 35 of 1979 and by s. 11 (c) of Act No. 13 of 1981.]

(5) Whenever the council has refused an application made under this section, or has granted such application subject to any terms, conditions, restrictions or directions, the

applicant may appeal against the decision of the council to the Minister who may confirm such decision or direct the council to grant the application subject to such terms, conditions, restrictions or directions as the Minister may determine.

(6) Whenever any person has been convicted of any contravention of subsection (2), (2A) or (2B), the council may—

- (a) by notice in writing served upon such person by post or by delivery to him personally, direct him to put right the result of the act of which he was found guilty as may be specified in the notice, in the manner thus specified and within such period as may be so specified;
- (b) upon failure of such person to comply with such notice, put right or cause to be put right the result of the act of which he was found guilty and recover the cost thereof from such person.

[Sub-s. (6) amended by s. 11 (e) of Act No. 35 of 1979 and by s. 11 (d) of Act No. 13 of 1981 and substituted by s. 8 (f) of Act No. 11 of 1986.]

(7) Whenever any person has been convicted of disfiguring, destroying, removing, altering or damaging any memorial tablet, the badge or any sign, or any fence, wall or gate constructed in terms of section 5 (1) (f), in contravention of paragraph (b) of subsection (2), the council may repair or replace or cause to be repaired or replaced such tablet, badge, sign, fence, wall or gate and recover the cost thereof from such person.

[Sub-s. (7) added by s. 11 (f) of Act No. 35 of 1979 and substituted by s. 11 (e) of Act No. 13 of 1981.]

13. Noting of certain particulars in deeds office.—(1) Whenever under this Act any area of land or any place or object on any land has been declared or provisionally declared to be or has been recommended to be declared or has been included in or recommended to be included in a national monument or a national garden of remembrance or whenever the council is investigating the desirability of having any area of land or any place or object on land so declared or included, the council may take such steps as it may consider necessary—

- (a) for erecting beacons on the corners of and surveying and preparing a diagram of such area of land; or
- (b) for determining by survey the location of such place or object in relation to the beacons and boundaries of the land upon which it is situate.

[Sub-s. (1) amended by s. 9 (a) of Act No. 11 of 1986.]

(2) If any area of land or any place or object on any land in respect of which a survey has taken place under the provisions of subsection (1), has been or is declared by notice in the *Gazette* to be or to be included in any national monument or national garden of remembrance, the council shall furnish the registrar of deeds in whose deeds registry the land in question is registered, with a copy of the said notice and particulars of the survey (including any diagram prepared).

[Sub-s. (2) substituted by s. 9 (b) of Act No. 11 of 1986.]

(3) The registrar of deeds shall endorse upon the title deed of the land in question filed in his office, and in the appropriate registers, and upon the owner's title deed, as soon as it may for any reason be lodged in his office, a reference to any notice and particulars furnished to him under subsection (2).

(4) Whenever any notice is issued under section 10 (2) whereby any area of land is excluded from an area declared to be a national monument or whereby any notice is withdrawn, the council shall, if such first-mentioned notice relates to any land in respect of which any endorsements have been made under subsection (3) of this section, furnish a copy of such first-mentioned notice to the registrar of deeds in question who shall make the necessary endorsements upon the relevant title deeds and in the appropriate registers.

14. Powers of entry upon land or premises for inspection or other purposes.—(1) Subject to the provisions of any other law, any person authorized by the council in writing may at all reasonable times enter upon any land or premises for the purpose of inspecting any property to which the prohibition under section 12 (2) applies or in respect of which the council is investigating the desirability of having it declared or provisionally declared under this Act to be a national monument or the desirability of including it in any area of land so declared to be a national monument, or for the purpose of performing in relation to any such property any act authorized under section 13.

(2) Whenever any burial grounds or graves referred to in section 3A are situated or believed by the council to be situated on any land or premises not belonging to the council, any person authorized thereto by the council in writing may, at all reasonable times but subject to the provisions of any other law, enter upon such land or premises and perform any of the functions of the council in respect of such burial grounds or graves.

[Sub-s. (2) added by s. 12 of Act No. 13 of 1981.]

14A.

[S. 14A inserted by s. 1 of Act No. 22 of 1970 and repealed by s. 95 of Act No. 63 of 1975.]

15. Exemptions from duties, taxes and fees.—Notwithstanding anything to the contrary in any other law contained, no duty, tax or fees, other than duty, tax or fees under the laws relating to customs and excise, shall be payable by the council to the State in respect of anything done or any transaction under this Act or in respect of any document required in connection with anything so done or any such transaction.

16. Offences and penalties and jurisdiction of magistrate's court.—(1) Any person who—

- (a) contravenes or fails to comply with any provision of section 12 (1), (1A), (2), (2A), (2B), (2C) or (3);

[Para. (a) substituted by s. 13 (a) of Act No. 13 of 1981 and by s. 10 (a) of Act No. 11 of 1986.]

- (b) for the purpose of obtaining, whether for himself or for any other person, any permit or authority under this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true;

- (c) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit has been issued to him under this Act;

- (d) hinders or obstructs any person in the exercise of his powers under section 14;

- (e) contravenes the provisions of section 9D;

[Para. (e) inserted by s. 13 (b) of Act No. 13 of 1981.]

- (f) damages or destroys any such grave as is referred to in section 3A (2) (a), (b) or (c) which has been repaired by the council or is deemed in terms of section 15 (2) of the National Monuments Amendment Act, 1981, to have been repaired by the council, or is being maintained by the council or which has been repaired or is being maintained by any person in terms of an agreement entered into or so deemed to have been entered into under section 9B (a) (ii);

[Para. (f) inserted by s. 13 (b) of Act No. 13 of 1981.]

- (g) damages or destroys any National Garden of Remembrance or any garden of remembrance established or so deemed to have been established by the council;

[Para. (g) inserted by s. 13 (b) of Act No. 13 of 1981.]

- (h) damages or destroys any memorial erected or so deemed to have been erected by the council;

[Para. (h) inserted by s. 13 (b) of Act No. 13 of 1981.]

- (i) damages or destroys any fence, wall or gate constructed or so deemed to have been constructed by the council in terms of section 9B (b);
[Para. (i) inserted by s. 13 (b) of Act No. 13 of 1981.]
- (j) disturbs or removes wreck without a permit referred to in section 12 (2C) (a);
or
[Para. (j) inserted by s. 10 (c) of Act No. 11 of 1986.]
- (k) obstructs the holder of a permit referred to in section 12 (2C) (a) in exercising a right granted to him by means of such a permit,
[Para. (k) inserted by s. 10 (c) of Act No. 11 of 1986.]

shall be guilty of an offence and liable on conviction, in the case of an offence referred to in paragraph (a), (b), (c), (d), (j) or (k), to a fine not exceeding R10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment or, in the case of an offence referred to in paragraph (e), (f), (g), (h) or (i), to a fine not exceeding R1 000 or, in default of payment of such fine, to imprisonment for a period not exceeding 12 months.

[Sub-s. (1) amended by s. 13 (b) of Act No. 13 of 1981 and by s. 10 (c) of Act No. 11 of 1986.]

(2) A magistrate's court shall, notwithstanding the provisions of any other Act, be competent to impose any punishment referred to in this section.

[S. 16 substituted by s. 12 of Act No. 35 of 1979.]

17. Regulations by Minister.—The Minister may make regulations relating to—

- (a) the calling of and procedure and quorum at meetings of the council or committees thereof;
 - (b) the manner in which any application shall be made under this Act, including the particulars or information to be furnished in the application and any documents, drawings or photographs which shall accompany such application,
- and generally, relating to all matters which the Minister considers it to be necessary or expedient to prescribe for achieving the objects of this Act.

18. By-laws by council or local authority.—(1) The council may, with the approval of the Minister, make by-laws—

- (a) regulating admission of members of the public to monuments under its control;
- (b) fixing fees payable to the council for such admission;
- (c) safeguarding monuments and conservation areas from damage, disfigurement, alteration, destruction or defilement or for the prevention of unauthorized export of monuments;

[Para. (c) substituted by s. 11 (a) of Act No. 11 of 1986.]

- (d) regulating the excavation, removal or export of any object or group or collection of objects which in the opinion of the council may be declared under this Act to be national monuments;
- (e) regulating the conditions of use by any person of any area of land which has been declared to be a monument and which is under the control of the council, as well as conservation areas;

[Para. (e) inserted by s. 13 (1) (a) of Act No. 35 of 1979 and substituted by s. 11 (b) of Act No. 11 of 1986.]

- (f) regulating the conditions for the erection of any building structure on any area of land declared to be a monument;

[Para. (f) inserted by s. 13 (1) (a) of Act No. 35 of 1979.]

- (g) regarding the keeping of proper records during work on wreck, the submission of reports on such work and the application of suitable conservation measures on material recovered.

[Para. (g) added by s. 11 (c) of Act No. 11 of 1986.]

(2) Any local authority may with the approval of the Minister and of the council make by-laws—

(a) regulating admission of members of the public to monuments under its control;

(b) fixing fees payable to the local authority for such admission;

(c) safeguarding such monuments and conservation areas from damage, disfigurement, alteration, destruction or defilement;

[Para. (c) substituted by s. 11 (d) of Act No. 11 of 1986.]

(d) for the control of members of the public or the prevention of any nuisance at such monuments;

(e) regulating the conditions of use by any person of any area of land which is under the control of the local authority and which has been declared to be a monument;

[Para. (e) inserted by s. 13 (1) (c) of Act No. 35 of 1979.]

(f) regulating the procedure and conditions for the erection of any building structure on any such area of land declared to be a monument;

[Para. (f) inserted by s. 13 (1) (c) of Act No. 35 of 1979.]

(g) generally, for the proper management and control of such monuments.

[Sub-s. (2) amended by s. 13 (1) (b) of Act No. 35 of 1979. Para. (g), formerly para. (e), renumbered by s. 13 (1) (c) of Act No. 35 of 1979.]

(3) Any by-laws made under this section may prescribe fines not exceeding one hundred rand for any contravention thereof or failure to comply therewith.

19. Transfer of certain assets and liabilities to council.—(1) The commissions referred to in the laws repealed by this Act are hereby abolished and all their assets, rights, liabilities and obligations shall devolve upon the council without formal transfer and without payment of any taxes, duties, fees or other charges.

(2) Unless it would in any particular case obviously be inappropriate, any reference in any law, including a law as defined in the Interpretation of Laws Proclamation, 1920 (Proclamation No. 37 of 1920 of the territory), or in any document or register, to any of the said commissions or to an officer thereof, shall be construed as a reference to the council or to an officer thereof performing functions or exercising powers similar to those of the first-mentioned officer, as the case may be.

20. Repeal of laws.—(1) Subject to the provisions of section 19 and subsections (2) and (3) of this section, the laws specified in the Schedule are hereby repealed.

(2) Any notice issued under any law repealed by this Act whereby anything has been proclaimed to be a monument, relic or antique shall be deemed to be a notice issued under this Act whereby any such thing has been declared to be a national monument.

(3) Any by-law made by any local authority under any provision of any law repealed by this Act, shall be deemed to have been made under the corresponding provision of this Act, and any reference in any such by-law to a monument, relic or antique shall be deemed to be a reference to a monument as defined in this Act.

21. Application of Act to South-West Africa.—This Act shall apply also in the territory, including that portion of the territory known as the Eastern Caprivi Zipfel and defined in the Eastern Caprivi Zipfel Administration Proclamation, 1939 (Proclamation No. 147 of 1939).

22. **Short title.**—This Act shall be called the National Monuments Act, 1969.
[S. 22 substituted by s. 16 of Act No. 13 of 1981 and by s. 12 of Act No. 11 of 1986.]

Schedule

LAWS REPEALED

NO. AND YEAR OF LAW	SHORT TITLE
Act No. 4 of 1934 . . .	Natural and Historical Monuments, Relics and Antiques Act, 1934
Act No. 9 of 1937 . . .	Natural Monuments Amendment Act, 1937
Act No. 13 of 1967 . . .	Monuments Amendment Act, 1967
Ordinance No. 13 of 1948 of the territory . . .	Natural and Historical Monuments, Relics and Antiques Ordinance, 1948
Proclamation No. 45 of 1950 of the territory . . .	Natural and Historical Monuments, Relics and Antiques Amendment Proclamation, 1950
Ordinance No. 12 of 1960 of the territory . . .	Natural and Historical Monuments, Relics and Antiques Amendment Ordinance, 1960
Ordinance No. 19 of 1962 of the territory . . .	Natural and Historical Monuments, Relics and Antiques Amendment Ordinance, 1962