



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 438 Cape Town 7 December 2001 **No. 22911**

THE PRESIDENCY

No. 1312 7 December 2001

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

No. 36 of 2001: Cultural Laws Amendment Act, 2001



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

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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(English text signed by the President.)
(Assented to 4 December 2001.)

ACT

To amend the Heraldry Act, 1962, so as to amend certain definitions and to define an expression; to provide for the vacation of office by members of the council, and the dissolution of the council; and to replace an obsolete reference; to amend the Pan South African Language Board Act, 1995, so as to further regulate the composition of the Board; to further regulate the termination of membership of the Board; to provide for the dissolution of the Board; and to empower the Minister to determine criteria for the honoraria payable to and reimbursement of expenses incurred by members of the Board; to amend the National Archives of South Africa Act, 1996, so as to rename the National Archives of South Africa; to further regulate the appointment of the National Archivist; to make provision for the establishment of the National Archives Advisory Council in place of the National Archives Commission; to provide for the submission by the Council of a business plan to the Minister; and to empower the Minister to determine criteria for the allowances payable to and reimbursement of expenses incurred by members of the Council; to amend the National Arts Council Act, 1997, so as to extend the membership of the National Arts Council and the period of tenure of the members; to empower the Minister to appoint the chairperson of the Council; to further regulate the circumstances under which a member of the Council vacates office; to provide for the dissolution of the Council; to provide for the submission by the Council of a business plan to the Minister; to further regulate the composition of the executive committee; and to extend the period of tenure of a member of an advisory panel; to amend the National Film and Video Foundation Act, 1997, so as to empower the National Film and Video Foundation to establish a separate legal entity for purposes of investing in film and video projects; to provide for the submission by the Council of a business plan to the Minister; to provide for the dissolution of the Council; to further regulate the composition of the executive committee; and to effect a textual amendment; to amend the South African Geographical Names Council Act, 1998, so as to empower the Minister to determine criteria for the honoraria payable to and reimbursement for expenses incurred by members of the Council; and to provide for the submission by the Council of a business plan to the Minister; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:

Amendment of section 1 of Act 18 of 1962, as amended by section 1 of Act 63 of 1980 and section 1 of Act 49 of 1996

1. Section 1 of the Heraldry Act, 1962, is hereby amended by the—

- (a) substitution for the definition of “differencing” of the following definition: 5
 “ ‘differencing’ means the incorporation of a brisure in a heraldic representation in conformity with the principles and rules of heraldry in order to distinguish between the different owners of such [**representation**] representations;”;
- (b) insertion after the definition of “differencing” of the following definition: 10
 “ ‘family coat of arms’ means any coat of arms borne by a natural person;”;
- (c) substitution for the definition of “Minister” of the following definition:
 “ ‘Minister’ means the Minister [**of National Education**] responsible for Heraldry;”;
- (d) substitution for the definition of “municipal” of the following definition: 15
 “ ‘municipal’ means of or belonging to [**an institution or body referred to in section 84(1)(f)(i) or (ii) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961)**] a municipality contemplated in Chapter 7 of the Constitution;”.

Amendment of section 6 of Act 18 of 1962 20

2. Section 6 of the Heraldry Act, 1962, is hereby amended by the addition of the following subsections:

“(6) A member of the council or of the committee shall vacate office if—

- (a) that member resigns in writing; 25
 (b) that member has been absent from three consecutive meetings of the council or committee, as the case may be, without its leave;
 (c) that member is an unrehabilitated insolvent;
 (d) that member is found to be of unsound mind by a court of law;
 (e) that member is convicted of an offence involving dishonesty or bodily harm and is sentenced to imprisonment without the option of a fine; 30
 (f) that member materially breaches the code of ethics of the institution; or
 (g) on reasonable grounds, the majority of the council or committee, as the case may be, so recommends.

(7) The Minister may dissolve the council or the committee on any reasonable grounds.”. 35

Amendment of section 24 of Act 18 of 1962

3. Section 24 of the Heraldry Act, 1962, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 “(2) The Minister shall [**lay**] table a copy of such report [**on the Table of the Senate and of the House of Assembly**] in Parliament within 14 40
 days after receipt thereof if Parliament is then [**in ordinary session**] sitting or, if Parliament is not then [**in ordinary session**] sitting, within 14 days after the commencement of [**its**] the next ensuing [**ordinary session**] sitting of Parliament.”; and
- (b) by the addition of the following subsection: 45
 “(3) Within five months after the report has been tabled, a delegation consisting of the state herald and at least two other council members must brief the Portfolio Committee on Arts, Culture, Science and Technology on the annual report.”.

Amendment of section 5 of Act 59 of 1995, as amended by section 4 of Act 10 of 1999

4. Section 5 of the Pan South African Language Board Act, 1995, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5
 “(a) The Minister, after having followed the procedure provided for in subsection (3), shall appoint **[as members of the Board—**
 (i) **not] no fewer than 11 [but not] and no more than 15 persons as** 10
members of the Board [who, when viewed collectively, are as
representative as possible of the official languages as well as
language skills, including but not limited to, interpreting,
translation, terminology and lexicography, language and lit-
eracy teaching and language planning;
 (ii) **three persons who shall be language planners;**
 (iii) **five persons who shall have special knowledge of language** 15
matters in South Africa; and
 (iv) **one person who shall be a legal expert with special knowledge of**
language legislation].”; and
 (b) by the substitution for subsection (2) of the following subsection: 20
 “(2) The members of the Board shall—
 (a) be fit and proper persons for the offices held by them;
 (b) be South African citizens;
 (c) when viewed collectively, be broadly representative of the diversity
of the [South African community; and] users of the official 25
languages;
 (d) be supportive of the principle of multilingualism; and
 (e) have language skills, which may include skills in interpreting,
translation, terminology and lexicography, literacy teaching and
language planning, or have financial and legal expertise with special
knowledge of language legislation.”; 30
 (c) by the deletion in subsection (4) of the word “or” at the end of paragraph (b), the addition of the word “or” at the end of paragraph (c) and the addition to that subsection of the following paragraph:
 “(d) if, on reasonable grounds, the majority of the members of the Board
so recommends.”; and 35
 (d) by the insertion of the following subsection after subsection (5):
 “(5A) The Minister may dissolve the Board on any reasonable
grounds.”.

Amendment of section 12 of Act 59 of 1995, as amended by section 11 of Act 10 of 1999 40

5. Section 12 of the Pan South African Language Board Act, 1995, is hereby amended by the addition of the following subsection:

- “(4) Within five months after the report has been tabled, a delegation
consisting of the chairperson of the board and at least two other board
members must brief the Portfolio Committee on the annual report.”. 45

Substitution of section 13 of Act 59 of 1995, as amended by section 12 of Act 10 of 1999

6. The following section is hereby substituted for section 13 of the Pan South African Language Board Act, 1995:

“Honoraria for and reimbursement of members of Board 50

13. (1) [A] Subject to subsection (2), a member of the Board or of any committee thereof may, from moneys appropriated by Parliament for that purpose, be paid such [remuneration and allowances] honoraria, and be reimbursed for such expenses incurred for services performed by him or her

as such a member, as [may be determined by the Minister in consultation with the Minister of Finance] the Board may determine.

(2) The Minister, with the concurrence of the Minister of Finance, must determine criteria for payment of the honoraria and the reimbursement of expenses contemplated in subsection (1).”

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Amendment of section 1 of Act 43 of 1996

7. Section 1 of the National Archives of South Africa Act, 1996, is hereby amended—

(a) by the substitution for the definition of “Commission” of the following definition:

“‘[Commission] Council’ means the National Archives [Commission] Advisory Council contemplated in section 6;”;

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(b) by the substitution for the definition of “National Archives” of the following definition:

“‘National Archives’ means the National Archives and Records Service of South Africa established by section 2;”.

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Substitution of section 2 of Act 43 of 1996

8. The following section is hereby substituted for section 2 of the National Archives of South Africa Act, 1996:

“Establishment of National Archives and Records Service of South Africa

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2. There is hereby established a branch of the public service of the Republic to be known as the National Archives and Records Service of South Africa.”

Amendment of section 4 of Act 43 of 1996

9. Section 4 of the National Archives of South Africa Act, 1996, is hereby amended 25 by the substitution for subsection (1) of the following subsection:

“(1) (a) The Minister shall, after consultation with the Public Service Commission contemplated in section 196 of the Constitution, appoint an experienced and qualified person as National Archivist in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), on such grade as the Minister may determine.

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(b) The National Archivist shall manage the National Archives under the direction of the Director-General: Arts, Culture, Science and Technology.”.

Amendment of section 5 of Act 43 of 1996

10. Section 5 of the National Archives of South Africa Act, 1996, is hereby 35 amended—

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

“(d) on the advice of the Council and with the concurrence of the Minister [and the Commission] exempt a governmental body from any provision of this Act; and”;

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(b) by the addition to subsection (1) of the following paragraph:

“(e) publish the appraisal policy and lists of records that may be destroyed.”.

Substitution of section 6 of Act 43 of 1996

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11. The following section is hereby substituted for section 6 of the National Archives of South Africa Act, 1996:

“Establishment, constitution and functions of National Archives Advisory Council

6. (1) The Minister shall by notice in the *Gazette* establish a **[commission] council** to be known as the National Archives **[Commission] Advisory Council**. 5

(2) The **[Commission] Council** shall consist of **[the National Archivist and]**—

(a) not more than **[nine other] six** members appointed by the Minister from among persons who are knowledgeable of or have an interest in archival matters; and 10

(b) every chairperson of the various provincial councils advising on archives or, in the absence of such a provincial council, a representative for the province in question elected through a public and transparent process which shall be determined and overseen by the responsible member of the Executive Council of that province. 15

(3) The procedures and other conditions for appointment as a member of the **[Commission] Council** shall be as prescribed.

(3A) The Minister may dissolve the Council on any reasonable grounds.

(4) The functions of the **[Commission] Council** shall be to—

(a) advise the Minister and the Director-General: Arts, Culture, Science and Technology on any matter related to the operation of this Act; 20

(b) advise **[and assist]** the National Archivist **[in carrying out] on** furthering the objects and functions of the National Archives;

(c) **[promote the co-ordination of archival policy formulation and planning at national and provincial levels]** advise and consult with the South African Heritage Resources Agency on the protection of records forming part of the National Estate; 25

(d) **[exercise the powers contemplated in sections 5(2)(d) and 12(3) of this Act;**

(e) **approve the appraisal policy of the National Archives and monitor its implementation]** consult with the Public Protector on investigations into the unauthorised destruction of records otherwise protected under this Act; and 30

(f) **[maintain a national list of non-public records in South Africa which, in the opinion of the Commission, have enduring value]** annually submit a business plan to the Minister for approval. 35

(5) The **[Commission] Council** may appoint committees from amongst its members and may assign to any committee so appointed such of its functions as it may deem fit: Provided that the **[Commission] Council** shall not be divested of any function which it has so assigned and may amend or revoke a decision of such a committee. 40

(6) The procedure at meetings of the **[Commission] Council** and of a committee shall be as prescribed.

(7) The **[Commission] Council** or any committee may, subject to the approval of the Minister, co-opt any person to serve on the **[Commission] Council** or on a committee, as the case may be, in an advisory capacity, but such a co-opted member shall not have any voting rights. 45

(8) (a) **[An ordinary]** Subject to paragraph (b), a member of the Council **[, or a co-opted member referred to in subsection (7),]** who is not in the full-time service of the State, **[shall be paid from the funds of the Commission such travel and other expenses incurred by him or her in connection with the activities of the Commission]** may receive in respect of his or her functions as a member of the Council such allowances as the Minister may determine with the concurrence of the Minister of Finance. 50

(b) The Minister, with the concurrence of the Minister of Finance, must determine criteria for payment of allowances contemplated in paragraph (a).” 55

Substitution of section 7 of Act 43 of 1996

12. The following section is hereby substituted for section 7 of the National Archives of South Africa Act, 1996:

“Secretary and staff of Council

7. The administrative and secretarial functions of the Council must be performed by a section established by the Director-General in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).”. 5

Repeal of sections 8 and 9 of Act 43 of 1996

13. Sections 8 and 9 of the National Archives of South Africa Act, 1996, are hereby repealed. 10

Substitution of section 10 of Act 43 of 1996

14. The following section is hereby substituted for section 10 of the National Archives of South Africa Act, 1996:

“Annual reports

10. (1) As soon as practicable after the end of each financial year the National Archivist shall compile a report on all the activities of the National Archives during that financial year, and the [Commission] Council shall compile a report on all the activities of the [Commission] Council during that financial year. 15

(2) The report of the National Archivist shall include— 20
 (a) details of income and expenditure;
 (b) a complete list of disposal authorities issued;
 (c) an account of all cases of unauthorised disposal of public records investigated by the National Archives; and
 (d) an account of all governmental bodies which have failed to comply with this Act. 25

(3) The report of the National Archivist and of the [Commission] Council, together with the audited annual financial statements pertaining to the funds of the [Commission] Council, shall be submitted to the Minister, and the Minister shall [lay them upon the Table] table them in Parliament within 14 days after receipt thereof if Parliament is then [in session] sitting, or if Parliament is not then [in session] sitting, within 14 days of the commencement of the next [session] sitting of Parliament. 30

(4) Within five months after the reports have been tabled, a delegation consisting of the National Archivist and at least two members of the Council must brief the Portfolio Committee on Arts, Culture, Science and Technology on the reports.”. 35

Amendment of section 12 of Act 43 of 1996

15. Section 12 of the National Archives of South Africa Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection: 40

“(3) Notwithstanding subsections (1) and (2), the National Archivist may refuse access to a record on the grounds of its fragile condition, provided that there shall be a right of appeal to the [Commission] Director-General against the refusal.”.

Amendment of section 13 of Act 43 of 1996 45

16. Section 13 of the National Archives of South Africa Act, 1996, is hereby amended by the substitution in subsection (2)(a) for subparagraph (ii) of the following subparagraph:

“(ii) a final ruling by the Minister when unresolvable differences arise between the National Archivist and the [Commission] Council;”.

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Amendment of section 14 of Act 43 of 1996

17. Section 14 of the National Archives of South Africa Act, 1996, is hereby amended by the deletion of subsection (6).

Amendment of section 16 of Act 43 of 1996

18. Section 16 of the National Archives of South Africa Act, 1996, is hereby amended by the deletion of paragraph (b) of subsection (2). 5

Substitution of section 20 of Act 43 of 1996

19. The following section is hereby substituted for section 20 of the National Archives of South Africa Act, 1996:

“Short title and commencement 10

20. This Act shall be called the National Archives and Record Service of South Africa Act, 1996, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.”.

Substitution of long title of Act 43 of 1996

20. The following long title is hereby substituted for the long title of the National Archives of South Africa Act, 1996: 15

“To provide for a National Archives and Record Service; the proper management and care of the records of governmental bodies; and the preservation and use of a national archival heritage; and to provide for matters connected therewith.”. 20

Amendment of section 4 of Act 56 of 1997

21. Section 4 of the National Arts Council Act, 1997, is hereby amended—

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

“(1) Subject to section 20(1)(a), the Council shall consist of nine provincial representatives and no fewer than nine and no more than [14] 25
18 other persons.”.

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

“(4) (a) [The members of the Council shall, as the occasion arises, elect—] The Minister shall appoint a chairperson from among the members who are not provincial representatives. [; and] 30

(b) The members of the Council shall elect a vice-chairperson from among all the members.”;

(c) by the substitution for subsection (6) of the following subsection:

“(6) (a) Subject to paragraph (b), a member of the Council shall hold office for a period not exceeding [three] four years, and shall be eligible for reappointment after a further [three] four years have elapsed. 35

(b) At the end of the members' term of office, three members who are not provincial representatives, one of whom shall be an Executive Committee member, shall be re-elected by the [council] Council to serve for a further [three] four years, after which they shall not be eligible for appointment until a further [three] four years have elapsed.”; and 40

(d) by the addition to subsection (6) of the following paragraph:

“(c) A provincial representative may at any time before the expiry of his or her term of office be replaced by another representative elected as contemplated in subsection (2) but no individual representative shall hold office for a term exceeding four years.”. 45

Amendment of section 5 of Act 56 of 1997

22. Section 5 of the National Arts Council Act, 1997, is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (e) of the following paragraph:

“(e) resigns by written notice addressed to the [Minister] chairperson of the Council.”; and

- (b) by the addition of the following subsections:

“(4) On receipt of a notice contemplated in subsection (3)(e) the Chairperson shall inform the Minister accordingly.

(5) The Minister may dissolve the Council on any reasonable grounds.”.

Amendment of section 6 of Act 56 of 1997

23. Section 6 of the National Arts Council Act, 1997, is hereby amended by the deletion in subsection (2) of the word “and” at the end of paragraph (d), the addition of the word “and” at the end of paragraph (e) and the addition to that subsection of the following paragraph:

“(f) not later than one month before the commencement of each financial year, submit a business plan containing such information as may be prescribed to the Minister for his or her approval.”.

Amendment of section 9 of Act 56 of 1997

24. Section 9 of the National Arts Council Act, 1997, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) which shall consist of the chairperson, vice-chairperson and [such] no more than five other members of the Council, [as the Council may determine, but which shall not exceed 25 per cent of the Council’s total membership at the time] determined by the Council; and.”.

Amendment of section 11 of Act 56 of 1997

25. Section 11 of the National Arts Council Act, 1997, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) A member of an advisory panel shall hold office for a period not exceeding [two] three years, and may be appointed on the same or a different panel after a further [two] three years have elapsed.”.

Amendment of section 17 of Act 56 of 1997

26. Section 17 of the National Arts Council Act, 1997, is hereby amended by the addition of the following subsection:

“(4) Within five months after the report has been tabled, a delegation consisting of the chairperson of the council and at least two other council members must brief the Portfolio Committee on Arts, Culture, Science and Technology on the annual report.”.

Amendment of section 4 of Act 73 of 1997

27. Section 4 of the National Film and Video Foundation Act, 1997, is hereby amended—

- (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (g), the addition of the word “and” at the end of paragraph (h) and the addition to that subsection of the following paragraph:

“(i) not later than one month before the commencement of each financial year, submit a business plan containing such information as may be prescribed to the Minister for his or her approval.”; and

- (b) by the substitution for subsection (3) of the following subsection:

“(3) (a) The Foundation shall not itself establish, acquire or operate any organisation or institution connected with the film and video industry, but the Council may, subject to the approval of the Minister and

the Minister of Trade and Industry, establish a separate legal entity for purposes of investing in film and video projects in accordance with the objects of this Act.

(b) The Foundation may initiate such projects which it considers necessary in pursuit of its objects, provided that such projects are undertaken in partnership with existing organisations, or institutions which have the capacity to undertake the projects.”

Amendment of section 6 of Act 73 of 1997

28. Section 6 of the National Film and Video Foundation Act, 1997, is hereby amended by the addition of the following subsection: 10

“(10) The Minister may dissolve the Council on any reasonable grounds.”

Amendment of section 9 of Act 73 of 1997

29. Section 9 of the National Film and Video Foundation Act, 1997, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 15

“(a) which shall consist of the chairperson, vice-chairperson and **[such] no more than four** other members of the Council, **[as the Council may determine, but which shall not exceed 25 per cent of the Council’s total membership at the time]** determined by the Council; and”.

Amendment of section 16 of Act 73 of 1997

30. Section 16 of the National Film and Video Foundation Act, 1997, is hereby amended by the substitution in subsection (2)(b) for the words preceding the first proviso of the following words: 20

“The foundation shall utilise any money contemplated in subsection (1)(a), in accordance with the statement of its estimated income and expenditure referred to in subsection **[(3)] (6)**, as approved by the Minister:” 25

Amendment of section 17 of Act 73 of 1997

31. Section 17 of the National Film and Video Foundation Act, 1997, is hereby amended by the addition of the following subsection: 30

“(4) Within five months after the report has been tabled, a delegation consisting of the chairperson of the council and at least two other council members must brief the Portfolio Committee on Arts, Culture, Science and Technology on the annual report.”

Amendment of section 4 of Act 118 of 1998

32. Section 4 of the South African Geographical Names Council Act, 1998, is hereby amended by the addition of the following subsection: 35

“(8) The Minister may dissolve the Council on any reasonable grounds.”

Substitution of section 8 of Act 118 of 1998

33. The following section is hereby substituted for section 8 of the South African Geographical Names Council Act, 1998: 40

“Allowances of members of Council and subcommittees

8. (1) Subject to subsection (2), a member of the Council and of any subcommittee who is not in the full-time employment of the State may receive, out of the funds of the Council, in respect of his or her functions as a member, such honoraria and reimbursement for expenses as the Council may determine. 45

(2) The Minister, with the concurrence of the Minister of Finance, must determine criteria for payment of the honoraria and reimbursement of expenses contemplated in subsection (1).”

Amendment of section 9 of Act 118 of 1998

34. Section 9 of the South African Geographical Names Council Act, 1998, is hereby amended by the addition in subsection (1) of the word “and” at the end of paragraph (j) and the addition to that subsection of the following paragraph:

“(k) not later than one month before the commencement of each financial year, submit a business plan containing such information as may be prescribed to the Minister for his or her approval.” 5

Amendment of section 11 of Act 118 of 1998

35. Section 11 of the South African Geographical Names Council Act, 1998, is hereby amended by the addition of the following subsection: 10

“(3) Within five months after the report has been tabled, a delegation consisting of the chairperson of the council and at least two other council members must brief the Portfolio Committee on Arts, Culture, Science and Technology on the annual report.”

Short title and commencement 15

36. This Act is called the Cultural Laws Amendment Act, 2001, and comes into operation on a date determined by the President by proclamation in the *Gazette*.