



# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 349.

25 Februarie 1981.

No. 349.

25 February 1981.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

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

No. 13 van 1981: Wysigingswet op Nasionale Gedenkwaardighede, 1981.

No. 13 of 1981: National Monuments Amendment Act, 1981.

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NATIONAL MONUMENTS AMENDMENT ACT, 1981

**GENERAL EXPLANATORY NOTE:**

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

**ACT**

To amend the National Monuments Act, 1969, so as to further regulate the constitution of the National Monuments Council and its committees; to extend the said Council's powers and duties; to vest that Council also with the powers of the South African War Graves Board, and in pursuance hereof to provide for the establishment of a *Burgergraftekomitee* and a British War Graves Committee; to regulate the declaration of certain burial grounds and graves to be national monuments; to make further provision for the delegation of powers; to provide for the transfer of the officers and employees of the said War Graves Board to the said National Monuments Council, and for the vesting in the said National Monuments Council of the assets, rights, liabilities and obligations of the said War Graves Board; to effect the continued existence of the War Graves Trust Fund; to make new provision in respect of National Gardens of Remembrance; to regulate the preservation of certain antiques; and to create additional offences and penalties; to repeal certain laws; and to provide for matters connected therewith.

(*Afrikaans text signed by the State President.*)  
(*Assented to 10 February 1981.*)

**BE IT ENACTED** by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of  
section 1 of  
Act 28 of 1969,  
as amended by  
section 1 of  
Act 35 of 1979.

1. Section 1 of the National Monuments Act, 1969 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion after the definition of "council" of the following definitions: 5
- "‘Director-General’ means the Director-General:  
    National Education;  
    ‘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; 10  
    ‘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;" 15
- and
- (b) by the insertion after the definition of "territory" of the following definition: 20
- "‘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;"

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Amendment of  
section 3 of  
Act 28 of 1969.

2. Section 3 of the principal Act is hereby amended—  
(a) by the addition to subsection (1) of the following proviso:

“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.”; and

- (b) by the insertion after subsection (2) of the following subsection:

“(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.”

Insertion of  
section 3A in  
Act 28 of 1969.

3. The following section is hereby inserted in the principal Act after section 3:

“Establish-  
ment of  
committees.

3A. (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 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.

(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.”

Substitution of  
section 4 of  
Act 28 of 1969.

4. The following section is hereby substituted for section 4 of the principal Act:

“Committees  
of council.

4. (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

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addition to any of its members 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. 5

(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." 10

Amendment of section 5 of Act 28 of 1969, as amended by section 3 of Act 35 of 1979.

## 5. Section 5 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph: 15

"(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;" 20 25

(b) by the insertion after paragraph (c) of the said subsection (1) of the following paragraphs:

"(cA) to repair, restore, maintain and generally care for burial grounds and graves referred to in section 3A (2); 30

(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);"

(c) by the substitution in paragraph (f) of the said subsection (1) for the words preceding the proviso of the following words: 35

"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;" 40

(d) by the insertion after paragraph (g) of the said subsection (1) of the following paragraphs: 45

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

(gB) to erect memorials for any such class of persons or any person belonging to any such class of persons;" 50

(e) by the substitution for paragraph (k) of the said subsection (1) of the following paragraphs: 55

"(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 60

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- in the course of the performance of their duties as such members;
- (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;
- (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;
- (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;"
- (f) by the addition to the said subsection (1) of the following paragraphs:
- "(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;
- (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;"
- (g) by the insertion after subsection (4) of the following subsection:
- "(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."; and
- (h) by the insertion after subsection (7) of the following subsection:
- "(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."

Amendment of  
section 6 of  
Act 28 of 1969.

6. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of subsection (2), the council shall out of its funds pay to a member of the council or any committee thereof or any committee established by section 3A, such allowances and afford him such transport

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facilities in respect of his services as such a member as the Minister may with the concurrence of the Minister of Finance determine.”.

Substitution of section 7A of Act 28 of 1969, as inserted by section 5 of Act 35 of 1979.

7. The following section is hereby substituted for section 7A of the principal Act: 5

“Delegation of powers by Minister.

7A. 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 [Secretary for National Education] Director-General, Deputy Director-General: National Education, or the director of archives appointed under section 3 of the Archives Act, 1962 (Act No. 6 of 1962).” 10

Amendment of section 8 of Act 28 of 1969, as amended by section 6 of Act 35 of 1979.

8. Section 8 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections: 15

“(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. 20

(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. 25

(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. 30

(2D) If any such person was immediately prior to the date mentioned in subsection (2A) a member of an applicable pension fund— 35

(a) he remains as from that date without a break in his pensionable service a member of that pension fund; 40

(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 45

(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. 50

(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.”. 55

Amendment of section 9 of Act 28 of 1969, as amended by section 7 of Act 35 of 1979.

9. Section 9 of the principal Act is hereby amended—

(a) by the insertion after paragraph (c) of subsection (1) of the following paragraph: 55

“(cA) moneys which become part of the funds of the council in terms of section 9A (5);”;

(b) by the substitution for subsection (5) of the following subsection: 60

“(5) The council shall, in such manner as the [Secretary for National Education] Director-General

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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)."; and

- (c) by the substitution in subsections (6) and (7) for the expression "Controller and Auditor-General" of the expression "Auditor-General".

Insertion of sections 9A, 9B, 9C and 9D in Act 28 of 1969.

10. The following sections are hereby inserted in the principal Act after section 9:

"Continued existence of War Graves Trust Fund.

9A. (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.

Repair and maintenance of graves situated on land not owned or occupied by council and construction of access roads to graves.

9B. 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.

National Gardens of Remembrance.

9C. (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

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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 objections 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).

Alteration of National Garden of Remembrance.

**9D.** (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."

Amendment of section 12 of Act 28 of 1969, as amended by section 11 of Act 35 of 1979.

**11.** Section 12 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(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.";

(b) by the insertion after subsection (2A) of the following subsection:

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

(a) any painting, print, document, deed, seal or manuscript or collection or group thereof in respect of which it is known or generally accepted that it has been in the Republic for longer than 80 years; or

(b) any object or collection or group of objects made of gold, silver, copper, brass, bronze, iron, glass, wood or china in respect of which it is known or generally accepted that it has been in the Republic, including the territorial waters of the Republic as defined in section 2 of the Territorial Waters Act, 1963 (Act No. 87 of 1963), for longer than 100 years;

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

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

"(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, [or] remove from its original site or export from the Republic



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any monument or any other object referred to in subsection (2) or (2A), specified in the permit; or  
**(b) destroy, damage, alter or export from the Republic any object referred to in subsection (2B) specified in the permit,** 5

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

**(d) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:** 10

“Whenever any person has been convicted of damaging or altering anything in contravention of subsection (2), [or] (2A) or (2B), the council may—”;  
 and

**(e) by the substitution for subsection (7) of the following subsection:** 15

“(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 [any] such tablet, badge, [or] sign, fence, wall or gate and recover the cost thereof from such person.”. 25

Amendment of section 14 of Act 28 of 1969.

12. Section 14 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1) thereof:

“(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.” 30 35

Amendment of section 16 of Act 28 of 1969, as substituted by section 12 of Act 35 of 1979.

13. Section 16 of the principal Act is hereby amended—

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

“(a) contravenes or fails to comply with any provision of section 12 (1), (2), (2A), [or] (2B) or (3);” 40

**(b) by the substitution in subsection (1) for the words following upon paragraph (d) of the following paragraphs and words:**

“(e) contravenes the provisions of section 9D; 45

**(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);** 50 55

**(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;**

**(h) damages or destroys any memorial erected or so deemed to have been erected by the council; or** 60

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(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), shall be guilty of an offence and liable on conviction, in the case of an offence referred to in paragraph (a), (b), (c) or (d), to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding twelve months 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 five hundred rand or, in default of payment of such fine, to imprisonment for a period not exceeding six months."

Vesting of assets, rights, liabilities and obligations of South African War Graves Board in council.

14. (1) The assets, rights, liabilities and obligations of the South African War Graves Board established by section 2 of the War Graves Act, 1967 (Act No. 34 of 1967), are hereby vested in the council, and any such assets which consist of money shall form part of the funds of the council referred to in section 9 (1) of the principal Act.

(2) The registrar of deeds concerned shall as soon as may be practicable after the commencement of this Act make such entries or endorsements in or on any relevant register, title deed or other document in his office or submitted to him as he may deem necessary in order to give effect to the provisions of subsection (1), and no transfer duty, stamp duty, office fee or other charge shall be payable in respect of any vesting in terms of the said subsection (1) or in respect of any such entry or endorsement.

(3) Unless it would in any particular case obviously be inappropriate, any reference in any law or elsewhere to the South African War Graves Board mentioned in subsection (1) of this section shall be construed as a reference to the council established by section 2 of the principal Act.

Repeal of laws.

15. (1) Subject to the provisions of section 8 and subsection (2) of this section, the laws specified in the Schedule are hereby repealed.

(2) Anything done in terms of a provision of any law repealed by subsection (1) shall be deemed to have been done in terms of the corresponding provision of the principal Act as amended by this Act.

Substitution of section 22 of Act 28 of 1969.

16. The following section is hereby substituted for section 22 of the principal Act:

"Short title. 22. This Act shall be called the War Graves and National Monuments Act, 1969."

Substitution of long title of Act 28 of 1969, as substituted by section 15 of Act 35 of 1979.

17. The following long title is hereby substituted for the long title of the principal Act:

"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 empower provincial councils to make ordinances for the payment of money in connection with certain national monuments;] to establish a Burgergraftekomitee

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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.” 5

Short title  
and commence-  
ment.

18. This Act shall be called the National Monuments Amendment Act, 1981, and shall come into operation on 1 April 1982. 10

### Schedule

#### LAWS REPEALED

Number and year of law	Short title
Act No. 34 of 1967 .....	War Graves Act, 1967
Act No. 35 of 1968 .....	War Graves Amendment Act, 1968
Act No. 8 of 1969 .....	War Graves Amendment Act, 1969
Act No. 38 of 1970 .....	War Graves Amendment Act, 1970
Act No. 53 of 1977 .....	War Graves Amendment Act, 1977