

DEPARTMENT OF SPORTS, ARTS AND CULTURE

NO. 3083

24 February 2023

REPUBLIC OF SOUTH AFRICA

# NATIONAL HERALDRY BILL

*(As introduced in the National Assembly (proposed section ...); explanatory summary of  
Bill published in Government Gazette No. ... of ..... 2023)*

*(The English text is the official text of the Bill)*

*(Introduced by the Minister of Sport, Arts and Culture)*

## BILL

**To establish the South African National Heraldic Authority and the National Heraldry Council; to provide for the registration of heraldic representations, traditional cultural symbols, names, related designations and uniforms and the protection of their owners' rights therein; and to provide for matters incidental thereto.**

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

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## CHAPTER 1

### INTRODUCTORY PROVISIONS

#### 1. Definitions.

In this Act, unless the context otherwise indicates:

**'Act'** means this Act and includes any regulation made in amplification of the provisions of this Act;

**'administrative action'** means any decision taken, or any failure to take a decision, by the National Herald, the Council or a Committee or an official of the Authority exercising a public power or performing a public function in terms of this Act;

**'application'** means an application referred to in Sections 19, 20, 22, 23, 24 and 25 lodged with the Authority for the registration, amendment or deletion of a registered heraldic representation or name or related designation or uniform, and 'applicant' has a corresponding meaning;

**'approve'** means approve under this Act and 'approval' has a corresponding meaning;

**'association'** means any body of persons in the Republic of South Africa or in a foreign country established to engage in any lawful activity;

**'Authority'** means the National Heraldic Authority established by this Act;

**'badge'** means any distinguishing pictorial representation, not necessarily displayed on a shield, that is used as a mark of recognition of an individual person, a family, an association, a military, police, emergency or other uniformed or civilian service, formation or unit or any other institution;

**'bear'** means to use a heraldic representation in order to identify oneself, and 'borne' has a corresponding meaning;

**'blazon'** means the description of a heraldic representation in the customary heraldic terminology used for that purpose; 'blazoned' has the corresponding meaning;

**'coat of arms'** means any object being a symbolic representation displayed in colour on a shield in keeping with the principles of heraldry, with or without a crown, coronet, helm, crest, mantling, supporters, motto or other accessories;

**'Committee'** means a Committee established by the Council in terms of the provisions of Section 9;

**'Constitution'** means the *Constitution of the Republic of South Africa, 1996*;

**'Council'** means the National Heraldry Council established by Section 8;

**'deletion'** means entering in the South African Register an endorsement declaring the registration of a particular registered heraldic representation, traditional cultural symbol, name, related designation, or uniform to be annulled and without legal force and effect;

**'descendant'** includes an adopted child, a child conceived by artificial fertilisation, a child borne by a surrogate mother, or a child of unmarried parents, all as provided for in the *Children's Act 2005* (Act No 38 of 2005), as amended;

**'difference'** means a brisure, mark or alteration in design or other form incorporated in the shield of a coat of arms in keeping with the principles and rules of heraldry so as to differentiate clearly and sufficiently between the separate owners of such heraldic representations; and 'differencing' has a corresponding meaning;

**'display'** means the use of a heraldic representation for purposes other than self-identification, including, but not limited to, indicating membership of an association or institution, or for decorative purposes;

**'emblem'** means a pictorial or three-dimensional representation of an object that is used as a symbol of a particular quality or concept, relationship, person, association, institution, group or country;

**'flag'** means a piece of fabric of distinctive design and colour as a symbol of identity; attachable to a staff and used as a means of identification or signal;

**'Gazette' or 'Government Gazette'** means the Government Gazette of the Republic of South Africa;

**'heraldry'** means

- (a) the study and art of designing and describing coats of arms, badges, flags, national, and cultural and indigenous symbols, other emblems and marks of identity with the exception of trade or merchandise marks;
- (b) the rules, traditions and practices relating to the registration of heraldic representations and the depiction of such in heraldic art;
- (c) the regulation thereof;

- (d) determining legal rights in them and registering and protecting their ownership;

**'heraldic representation'** means a coat of arms, traditional cultural symbol, badge or other emblem;

**'institution'** means any private or public institution established for any lawful purposes whatsoever including educational, professional, religious, scientific, agricultural, maritime, heritage, cultural, linguistic, arts, sports, trades, craft or research and development in the Republic, or in a foreign country;

**'Minister'** means the Cabinet member responsible for the department of state in which the Authority is located;

**'name'** means the word or words by which an, association, institution or animal is known;

**'national emblems'** means heraldic representations used to identify the Republic as described in Chapter 4, Section 36;

**'National Herald'** means the officer appointed in terms of this Act;

**'official'** means of or belonging to the Government of the Republic or any provincial or local government;

**'other emblem'** means any characteristic flag, pennant, seal, insignia of an order, decoration or medal, insignia of rank or office or other symbolic representation but not a coat of arms or badge or traditional cultural symbol;

**'owner'** in relation to any heraldic representation, name or related designation or uniform, means an official authority, traditional community, association, institution, or individual person

- (a) in whose name such heraldic representation, name, related designation or uniform, has been registered, or
- (b) who is able to provide satisfactory evidence that entitlement to ownership and its recording have been acquired
  - (i) by the user, or
  - (ii) by the user's predecessors or ancestors through usage over a long period

without infringing the rights of any prior owner;

**'personal coat of arms'** means any coat of arms borne by a natural person;

**'register'** means the South African National Register or Registers kept in terms of Chapter 3 (15);

**'registrable'** means that –

- (a) a heraldic representation, traditional cultural symbol badge, name, related designation or uniform can be clearly, unambiguously and consistently described and be differenced or distinguished in compliance with the conditions for registration as determined by the Council or by the Minister by regulation in the *Gazette*;

- (b) the applicant's ownership, or descent from or legal succession to an earlier lawful owner of a heraldic representation can be proved; and
- (c) the registration of a heraldic representation, traditional cultural symbol badge, name, related designation or uniform complies with Council policy.

**'registration'** means an entry in the register; and 'registered' has a corresponding meaning;

**'regulation'** means any regulation made in accordance with the provisions of Section 14 or Section 20 (3) (a);

**'related designation'** means a designation used by the owner of a registered name in addition to that name, referred to in Section 18 (3); and may include the post-nominal letters, curtailed words, acronyms, abbreviated names, designations or shortened titles used in lieu of the full name, and shall include any 'special name' already registered or protected under the Heraldry Act 1962 (Act 18 of 1962) as amended;

**'shield'** means a stylized depiction of a shield used for displaying a coat of arms;

**'totem'** means a creature or object used as the kinship emblem of a traditional community or a family on grounds of such kinship;

**'totem emblem'** means an emblem depicting in a distinctive form a creature or object that is the totem of a traditional community, a family or a person;

**'traditional community'** means a recognised traditional community as described in the *Traditional Leadership and Governance Framework Act, 2003* (Act 41 of 2003);

**'traditional council'** means a traditional council established in terms of the *Traditional Leadership and Governance Framework Act, 2003* (Act 41 of 2003);

**'traditional cultural symbol'** means a totem emblem or other symbol used by a traditional community in a distinctive form as a means of identification;

**'uniform'** means any article or articles of apparel, being distinctive in design or colour, but without a heraldic representation as part thereof and not likely to give offence and intended for wearing by members of any official authority, association, institution, or traditional community engaging in any lawful activity;

## **2. Objects and Application of this Act**

- (1) The objects of this Act are to
  - (a) provide for a South African National Heraldic Authority and National Heraldry Council and committees able to modernise and coordinate the roles played by the Heraldry Authority with other departments;
  - (b) provide for the registration of heraldic representations, traditional cultural symbols, names, related designations and uniforms and the protection of their owners rights therein;



- (c) effect the continuation and extension of the provision of protection of existing heraldic representations, traditional cultural symbols names, traditional cultural symbols related designations and uniforms owned by governmental authorities, associations, institutions and persons and traditional communities;
- (d) provide for an Act that will accord with the provisions of the Constitution, 1996, and the *Promotion of Administrative Justice Act, 2000*;
- (e) promote the progressive development of heraldry so as to reflect the country's cultural diversity and project a distinct South African heraldic image with a unique character and style in keeping with the advent of democratic governance that relates to present-day South Africa;
- (f) promote the formulation of policies, planning and sound practices, services of a high quality and customer care in the delivery of such services;

(2) This Act binds the State.

### 3. Principles

The application of this Act and all regulations, procedures and administrative practices established in pursuance of this Act shall comply with the principles and rights contained in the *Constitution, 1996* and the *Promotion of Administrative Justice Act, 2000* (Act 3 of 2000), and the following general principles shall apply:

- (a) Whenever the Act gives any discretionary power to the National Herald or the National Heraldry Council, such power shall not be exercised adversely to any applicant or objector or to any other person who appears to be an interested party unless such applicant, objector or interested party is afforded a reasonable opportunity of being heard.
- (b) Every official authority, traditional community, association, institution and person in the Republic has the right to bear a heraldic representation, provided that such representation is not already lawfully borne by another owner in the Republic.
- (c) Registration of a heraldic representation is a means of formalising and embodying its owner's rights and rendering them enforceable under this Act; provided that registration is voluntary and absence of registration does not necessarily mean that a heraldic representation is inferior or invalid or unlawful in any way;
- (d) A personal coat of arms or other personal heraldic representation is lawfully borne by one living person at a given time and is unique to that person.
- (e) A personal coat of arms or other personal heraldic representation is hereditary, subject to proven descent from an earlier lawful owner with the same surname, and provided that similarity of surname alone does not create a right to inherit a particular coat of arms or other heraldic representation.



- (f) No person may be deprived of his or her or its right to any coat of arms or other heraldic representation which he or she may be entitled to inherit, but he or she or it is not obliged to bear it and may assume and bear another coat of arms or heraldic representation in lieu thereof if he or she wishes.
- (g) The concept of a "family coat of arms" is not recognised, but members of families can own distinct personal coats of arms and other heraldic representations.
- (h) No person is entitled to any individual precedence, rank, title or appointment in the Republic because he or she:
  - (i) has registered a heraldic representation in his or her name, or
  - (ii) has been granted a heraldic representation by an authority in another country, or has inherited, or is entitled to inherit, such granted heraldic representation.

## CHAPTER 2

### SOUTH AFRICAN NATIONAL HERALDIC AUTHORITY, NATIONAL HERALDRY COUNCIL AND COMMITTEES

#### *Part A*

#### *South African National Heraldic Authority and National Herald*

#### **4. Establishment of a South African National Heraldic Authority**

- (1) There is hereby established a South African National Heraldic Authority for the registration and protection of heraldic representations, traditional cultural symbols, names and related designations and uniforms and for the performance of such other functions as are assigned to the Authority by or under this Act.
- (2) The Authority shall be organised as a unit of the department of state in which the Authority is located and may be sub-divided as may be prescribed by the Director General of the Department.
- (3) The Authority shall have an official seal.

#### **5. Objects of the South African National Heraldic Authority**

The objects of the Authority are to –

- (1) act as the competent registering authority for National Emblems to safeguard them against abuse or malicious treatment or use;
- (2) register any heraldic representation, name or related designation or uniform which is owned by official authorities associations and institutions, traditional communities or individual persons subject to the rules and principles of heraldry and in accordance with the officially established South African heraldic identity and tradition;
- (3) foster and advance public interest and research into national, cultural and

indigenous symbols, the transformation and progressive development of heraldry in South Africa, and the translation into indigenous languages of heraldic terms;

- (4) cooperate with the foreign national authorities, international organisations and associations in the fields of heraldry and related subjects.

## **6. Functions of the South African National Heraldic Authority**

The functions of the Authority shall be to-

- (1) receive and examine applications for registration, amendment or deletion of, and objections against the registration, amendment or deletion of heraldic representations, traditional cultural symbols, names and related designations and uniforms;
- (2) advise applicants and render assistance to them on devising registrable heraldic representations, traditional cultural symbols and distinctive names and related designations and uniforms;
- (3) establish, maintain, manage and control the National Registers of heraldic representations, traditional cultural symbols, names and related designations and uniforms;
- (4) establish and maintain inventories, indices, files, a library and all associated documents lodged by applicants and archival material and specialised publications and documents held by the Authority in terms of this Act;
- (5) devise, prepare and issue certificates of registration in conformity with established national and international standards of excellence in relation to such documents;
- (6) promote the awareness, appreciation, knowledge and utility of heraldic representations, traditional cultural symbols, emblems and other marks of identity,
- (7) publish guides on heraldic services provided by the Authority for the assistance of prospective applicants;
- (8) facilitate academic research, scholarship, achievements and proficiency in the fields of heraldry and heraldic art in all branches of heraldry;
- (9) encourage the publication of appropriate books, journals, reports or other publications whether printed, aural, visual, computerised or accessible on the internet;
- (10) administer the meetings of the National Council and technical and advisory committees and to provide effective secretariat facilities;
- (11) perform such other related duties as may be assigned to the Authority by the Minister or the National Heraldry Council in accordance with the provisions of this Act.

## **7. National Herald**

- (1) There shall be appointed, in accordance with the laws governing the Public

Service, a National Herald as head of the National Authority.

(2) **The functions** of the National Herald are to —

- (a) direct and control the operations and duties of the Authority;
- (b) advise the government on heraldry and related matters such as vexillology and flag protocol;
- (c) represent the Authority where appropriate inside South Africa and abroad;
- (d) direct and control the procedures for carrying out the provisions of this Act and establish and maintain standards in the preparation and depiction of heraldic representations, traditional cultural symbols, names and related designations, uniforms and other marks of identity in accordance with and the provisions of this Act;
- (e) register heraldic representations, traditional cultural symbols, names and related designations and uniforms and issue certificates to their owners;
- (f) participate and promote participation in international collaborative heraldic, genealogical or vexillological projects and conferences and negotiate and enter into international agreements approved by the Minister.

(3) The National Herald shall perform such appropriate additional functions in relation to the provision of heraldic services as may be assigned by the Minister or the National Heraldry Council in accordance with the provisions of this Act.

*Part B*

*National Heraldry Council and Technical Committees*

**8. National Heraldry Council**

- (1) A National Heraldry Council (hereafter referred to as 'the Council') is hereby established.
- (2) The Council shall be appointed for terms of three years.
  - (a) A Council member shall not be appointed for more than two consecutive terms.
  - (b) To ensure continuity the Minister, in consultation with the National Herald (who is an *Ex-Officio* member), shall select a maximum of one member of the previous Council (in addition to the National Herald) and five other (new) members to compose a new Council.
- (2) The Council shall comprise:
  - (a) the National Herald and the principal staff officer responsible for heraldic matters in the South African National Defence Force, both *ex officio*; and:

- (b) six other members, appointed by the Minister, and comprising :
  - (i) a person qualified to practice as an advocate or as an attorney of the High Court;
  - (ii) a person with specialised knowledge of South African indigenous culture; and
  - (iii) four members of whom two shall have knowledge of heraldry or any branch of heraldry.
- (3) Members of the Council, except the *ex officio* members, shall be appointed for terms of three years, on conditions determined by the Minister.
- (4) The functions of the Council shall be; subject to the provisions of the *Constitution, 1996*, and the *Promotion of Administrative Justice Act, 2000* to:
  - (a) Act in an advisory capacity and in consultation with the National Herald determine the rules of heraldry as applied in the South African context.
  - (b) consider and decide upon matters referred to it by the National Herald or the committees the Council may appoint;
  - (c) consider appeals lodged under Section 31;
  - (d) perform such appropriate additional functions in relation to heraldry and other functions of the Authority, as may be assigned to it by the Minister in accordance with the provisions of this Act, or as requested by a committee or the National Herald;

#### **9. Presiding Member of the Council**

- (1) The Minister shall designate one of the members of the Council, other than an *ex officio* member, to preside over the Council and its meetings.
- (2) If the presiding member chairperson vacates the position, for any reason, before the expiry of the period for which he or she was appointed, the Minister shall, after consultation with the National Herald and the members of the Council, appoint another member of the Council, other than an *ex officio* member, as chairperson for the remainder of the Council's term of office.
- (3) If the presiding member is absent from a meeting of the Council, the members present at such meeting shall elect one of their number to preside over the meeting.

#### **10. Removal of Members from the Council**

- (1) A member of the Council shall vacate office if :
  - (a) he or she
    - (i) resigns in writing;

- (ii) has been absent from three consecutive meetings of the Council without leave or explanation;
    - (iii) is an unrehabilitated insolvent;
    - (iv) is found to be of unsound mind by a court of law;
    - (v) is convicted of an offence involving dishonesty or bodily harm and is sentenced to imprisonment without the option of a fine;
    - (vi) materially breaches the Council's code of ethics; or
  - (b) the majority of the Council recommends on reasonable grounds, that the Minister removes that member from the Council.
- (2) Subject to the provisions of section 8(3), the Minister may appoint a member to the Council
- (a) to replace a member who has vacated office in terms of subsection (1) or who has died; or
  - (b) to act on behalf of a member who is indisposed or is unable to perform his or her duties for any other reason.

## 11. Committees

- (1) The Council, may establish technical committees which:
  - (a) may consider objections lodged in terms of Section 29 (2); and
  - (b) may appoint one or more other committees, to:
    - (i) act as sources of expert knowledge to advise the Council and the Authority;
    - (ii) consider applications and any other matters which the National Herald refers to it or for which the Council seeks guidance;
    - (iii) provide advice or views regarding applications or other matters referred to them.
- (3) The Council may appoint to any committee persons who are not members of the Council, but the majority of the members of a committee must be members of the Council. The National Herald as *ex officio* shall be a member of all technical committees.
- (4) Technical Committees shall comprise the presiding member of the Council and the National Herald who may co-opt staff members of the National Heraldic Authority for their technical expertise to assist and advise, depending on the heraldic matter being considered.
- (3) The Council shall designate a member of a committee to preside over that committee's meetings. If the chairperson is absent from a meeting of the committee, the members present at such meeting shall elect one of their

number to preside over the meeting.

- (4) The provisions of section 10 shall apply *mutatis mutandis* to the removal of members of a committee.

## 12. Meetings of the Council and Committees

- (1) (a) the National Herald shall determine the frequency of Council and Committee meetings, with a mandatory minimum of two meetings per calendar year; where it shall meet and the procedure and quorum at its meetings, including the number of votes required for a decision. Additional meetings may be called for by the National Herald as and when the need arises.
- (b) The presiding member of the Council or the National Herald may, when either of them considers it advisable, invite to Council meetings persons who are not Council members but who have special knowledge or particular contributions to make, or who represent particular interests of value to or of concern to the Council's deliberations.
- (2) (a) Subject to any directions by the Council, a committee shall determine the frequency of its meetings, where it shall meet, and the procedure and quorum at its meetings, including the number of votes required for a decision.
- (b) The chairperson of a committee may, when he or she considers it advisable, invite to committee meetings persons who are not committee members but who have special knowledge or particular contributions to make, or who represent particular interests of value to or of concern to the committee's deliberations.
- (2) Members of the Council or a Committee and any persons who attend meetings in terms of Section 8. (3) (d), who are not full-time employees of the State shall, out of moneys appropriated by Parliament for the purpose, be paid such allowances as the Minister in consultation with the Minister of Finance may determine:
- (a) for attendance at meetings as members of the Council or a Committee or on invitation in terms of Sub-Section (1) (b) ); or (2) (b); or
- (b) for work performed for, or services rendered to the Council or the Authority, but only if such work or services were mandated so by the Council.

### *Part C* *Annual Report and Regulations*

## 13. Annual Report

- (1) The National Herald shall report annually to the Minister on the activities of the Authority and the Council.
- (2) The Minister shall lay a copy of such report on the Table of Parliament within fourteen days of receiving it, if Parliament is then in session or; if Parliament is not then in session, within fourteen days after the commencement of the next ensuing session of Parliament.



- (3) Within five months after the report has been tabled, a delegation consisting of the National Herald and at least two other members of the Council must brief the Portfolio Committee on Arts and Culture.

#### **14. Regulations**

- (1) The Minister may, after consultation with, or on the advice of the Council, make regulations relating to –
  - (a) all matters which by this Act are required or permitted to be prescribed;
  - (b) all matters which the Minister considers necessary or expedient to prescribe to give effect to the provisions of this Act, or in order that the objects of this Act may be achieved;
  - (c) the form and content of notices, affidavits and declarations for the purposes of this Act;
  - (d) with the concurrence of the Minister of Finance the fees payable for acts performed in terms of this Act or for any certificate or other document issued for the purposes of this Act: and
  - (e) generally, any matter which by this Act is required or permitted to be prescribed or which he or she considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved or that the provisions of this Act may be effectively administered;
- (2) Such regulations may prescribe penalties for a contravention thereof.
- (3) Such regulations shall be published in the *Government Gazette*

### **CHAPTER 3**

#### **REGISTRATION OF HERALDIC REPRESENTATIONS, TRADITIONAL CULTURAL SYMBOLS, NAMES, RELATED DESIGNATIONS AND UNIFORMS**

##### *Part A National Registers*

#### **15. National Registers of heraldic representations, traditional cultural symbols names, related designations and uniforms.**

The Authority shall keep one or more registers in which the National Herald shall record such particulars as he or she determines, after consultation with the Council, in respect of:

- (1) the coat of arms of the Republic, the national flag of the Republic, the coats of arms of the provinces and any other heraldic representation instituted, constituted or created by any law, and any amendment thereof effected by any law;
- (2) any official heraldic representation granted by a competent authority, or adopted in terms of any law, before the commencement of this Act, including

those of the South African National Defence Force, South African Police Service, Metropolitan Police Services and other law enforcement agencies, Correctional Service, Home Affairs, South African Revenue Service and Emergency Services;

- (3) any official heraldic representation granted in terms of section 2 of the Heraldry Act 1962 prior to 7 November 1969, or adopted after the commencement of this Act in terms of any law, and any amendment thereof;
- (4) any other heraldic representation, name, related designation or uniform. the application for registration of which has been approved and any approved amendment thereof.

#### **16. Access to the Registers**

- (1) The Registers shall be open for inspection by the public
  - (a) during hours prescribed by the National Herald, and
  - (b) on payment of fees fixed by the Minister in consultation with the Minister of Finance, and
  - (c) subject to conditions prescribed by the National Herald.
- (2) The Authority may, at the request of any person, and on payment of the fees fixed by the Minister with the concurrence of the Minister of Finance, furnish such person with an extract from the Registers, or a reproduction of a registered heraldic representation, traditional cultural symbol, name, related designation or uniform.
- (3) The Authority may, at the request of the owner of any item recorded in the Registers, and with the approval of the Council and on payment of the fees fixed by the Minister in consultation with the Minister of Finance, issue to such owner a duplicate certificate of registration.

#### **17. Correction of Registers or documents**

Subject to the provisions of Section 3. (a), the National Herald or the Council may

- (1) upon a written request which is accompanied by the prescribed fees, or
- (2) without such request,

authorise the correction of any clerical error in any document lodged or issued in terms of this Act or in the Registers.

#### *Part B*

#### *Applications for registration*

#### **18. Items which may be Registered**

The following may be registered under this Act:

- (1) heraldic representations;
- (2) traditional cultural symbol badges;
- (3) related designations and uniforms.

**19. Applicant for registration**

The following persons may apply to register items referred to in Section 18:

- (1) official authorities, i.e. national or provincial governments, municipalities;
- (2) traditional communities;
- (3) associations;
- (4) institutions;
- (5) persons.

**20. Application for registration, or for amendment, or deletion of registration**

- (1) An official authority, traditional community, association, institution or person may apply to the Authority for the registration in its name of a heraldic representation (other than a traditional cultural symbol) or for the amendment or deletion of any existing registration of a heraldic registration in its name.
- (2) A traditional community may, through the traditional council established for it, apply to the Authority
  - (a) for the registration in its name of a traditional cultural symbol in a unique design configuration, or
  - (b) for the amendment or deletion of any existing registration of a traditional cultural symbol in its name;

provided that a traditional community shall not have any exclusive right to or exclusive ownership of any natural animal or object which forms part or the whole of the traditional cultural symbol.

- (3) An official authority, a traditional community an association or institution may apply to the Authority for the registration in its name of
  - (a) a name or a related designation;
  - (b) a uniform; or
  - (c) for the amendment or deletion of any existing registration of a name, related designation or uniform in its name.
- (4) An official authority, association, institution or person situated or resident in a foreign country may apply for the registration in its, his or her name of a heraldic representation, or for the amendment or deletion of any existing registration in its, his or her name; provided that the Council is satisfied that such representation does not conflict with the provisions of this Act.

- (5) The Authority may, at its discretion and subject to any policy that may be determined by the Council, receive an application referred to in subsections (1) to (5), and evidence of an applicant's right to the heraldic representation, traditional cultural symbols, name, related designation or uniform concerned, in good faith; provided that the application shall remain subject to the provisions of Parts C, D and E of this chapter.

## **21. Prior approval of official heraldic representations**

Before any official authority, including the South African National Defence Force, South African Police Service, Metropolitan Police Services and other law enforcement agencies, Correctional Service, Department of Home Affairs, South African Revenue Service and any Emergency Service, adopts an official heraldic representation in accordance with the provisions of any law, it shall consult the South African National Heraldry Authority as to the acceptability and registrability of such representation and such heraldic representation shall be subjected to the same registration procedures as are set out in part C of this Chapter for other applications.

## **22. Devolution of Arms**

A natural person in whose name a heraldic representation has been registered may apply to the National Herald for such representation to be re-registered, with or without differencing, as may be determined by the National Herald,

- (1) in his or her lifetime or after death, in the name of any of his or her descendants who bear his or her surname; or
- (2) after his or her death, in the name of any other person who bears the registered owner's surname provided that the registered owner has not been survived by any descendant.

## **23. Descendants or Heirs**

Any descendant of a natural person who lawfully bears or bore a particular personal heraldic representation, who bears the same surname as that person, may apply to the National Herald for the registration, with or without differencing, of that personal heraldic representation in his or her name.

## **24. Legal Successors**

A national, provincial or local, government authority, traditional community, association or institution which is the legal successor to any national or provincial authority, local government authority, traditional community, association or institution which no longer exists may apply to the National Herald for the re-registration in its name, of any heraldic representation, name, related designation or uniform which has been registered in the name of its legal predecessor.

*Application process***25. Manner of application**

An application for

- (1) registration of a heraldic representation, traditional cultural symbol, name, related designation or uniform or
- (2) any amendment or the deletion of a registered heraldic representation, traditional cultural symbol, name, related designation or uniform,

shall be made to the National Herald on the prescribed form and shall be accompanied by such documents and designs as the National Herald may determine and by the fees determined by the Minister with the concurrence of the Minister of Finance.

**26. Examination of applications**

- (1) After receipt of an application submitted in the prescribed manner, the National Herald shall examine it to determine whether or not the design complies with the requirements for registration prescribed by this Act, and, in the case of a heraldic representation (other than a traditional cultural symbol), conforms to the principles and rules of heraldry, and may -
  - (a) accept or reject the application;
  - (b) refer it to a Committee for advice or to the Council for advice or a decision; or
  - (c) request the applicant to furnish any further information or particulars as he or she, a Committee or the Council may require before proceeding with the examination.
- (2) The National Herald may reject an application for registration or amendment if he or she is of the opinion that -
  - (a) in the case of a heraldic representation (other than a personal heraldic representation) it is not differenced from
    - (i) another heraldic representation that is already registered under this Act;
    - (ii) a heraldic representation which he or she knows to have been granted or registered by an authority in another country; or
    - (iii) an unregistered heraldic representation which, to the knowledge of the applicant or the National Herald, is already borne by another person in the Republic; or
    - (iv) any South African national emblem;
  - (b) in the case of a heraldic representation (other than a traditional cultural symbol), its design does not accord with the internationally accepted principles of heraldry or cannot be clearly and consistently described and blazoned according to the internationally accepted principles and

rules of heraldry, and is not inherently characteristic;

- (c) in the case of a heraldic representation, it does not include or closely resemble any South African national emblem;
- (d) in the case of a name, a related designation or a uniform, it, or any substantial part thereof, is already registered under this Act, or any other law;
- (e) the application does not comply with the provisions of this Act or is defective in other respects;
- (f) the applicant does not furnish the further information or particulars referred to in Section 26. (1) (c).

## **27. Consideration of applications by a Committee**

Whenever the National Herald refers an application or an application together with an objection by himself or herself or by a member of the public to a Committee, the Committee may, subject to the provisions of Section 3(a),

- (a) recommend the approval of the application; or
- (b) support the objection and recommend the rejection of the application.

## **28. Notice of Application**

After examining an application the National Herald shall give notice thereof in the *Gazette* and state in such notice the period within which an objection to the registration, amendment or deletion shall be lodged with the Authority.

## **29. Objections**

Any **interested** official authority, traditional community, association, institution, or person may for good reason

- (1) object to the registration of any heraldic representation, traditional cultural symbol, name, related designation or uniform, or to its amendment or deletion of a registered heraldic representation, traditional cultural symbol, name, related designation or uniform on the grounds that such registration, amendment or deletion would
  - (a) encroach upon rights to which the objector is legally entitled or may be entitled; or
  - (b) materially and adversely affect the objector's rights or legitimate interests.
- (2) An objector shall lodge an objection with the Authority in such manner and within such period as the National Herald may determine by notice in the *Gazette*.

## **30. Consideration of objection**



If any objection is lodged against the registration of such heraldic representation, traditional cultural symbol, name, related designation, or uniform or any amendment or the deletion of any such item, the National Herald shall refer the application and the objection to the committee established under this Act .

### **31. Appeal against decision of National Herald**

- (1) (a) An applicant whose application has been rejected by the National Herald or the a committee may within six weeks after the Authority has informed him, her or it thereof, appeal to the Council in writing and specify the grounds of appeal against the rejection of the application.
- (b) The Council may, subject to the provisions of subsections (3),
  - (i) uphold the appeal and approve the application concerned, or
  - (ii) reject the appeal.
- (2) (a) A person whose objection to an application, lodged in terms of section 29, was overruled by the Council may within six weeks after the Authority has informed him, her or it thereof, appeal to the Council in writing and specify the grounds of appeal against the rejection of the objection.
- (b) The Council may subject to the provisions of section 31 (3) and (4)
  - (j) uphold the appeal and the objection and reject the application, or
  - (ii) reject the appeal.
- (1) At the hearing of any such appeal against the rejection of an application or objection, the National Herald and the personnel of the Authority shall not take part in the decision.

#### *Part D*

#### *Registration, amendment or deletion of registration*

### **32. Registration, amendment or deletion**

If an application for the registration, amendment or deletion of a heraldic representation, traditional cultural symbol, name, related designation or uniform is approved by the National Herald or Council -

- (1) the National Herald shall, in the case of an application for registration or amendment,
  - (a) enter in the register the particulars determined by the National Herald in respect of that heraldic representation, traditional cultural

symbol, name, related designation or uniform;

(b) give notice in the *Gazette* of the registration or amendment; and

(c) issue to the applicant a certificate of registration in the form determined by the National Herald;

(2) the National Herald shall, in the case of an application for deletion, delete the particulars concerned from the Register and give notice thereof in the *Gazette*:

**33. Deletions of registrations of heraldic representations, traditional cultural symbols, names, related designations or uniforms.**

Registrations continue in perpetuity and no registered heraldic representation, traditional cultural symbols, name, related designation or uniform may be transferred into the name of any other person nor may it be deleted from the Registers of the National Heraldry Authority except as provided for in this Act.

*Part E*  
*Certificate of Authenticity*

**34. Certificate of Authenticity**

(1) Any person may apply to the National Herald for a certificate stating that the heraldic representation to which the certificate relates is a true representation of the personal coat of arms lawfully borne by the person named therein.

(2) When considering an application for such certificate, the National Herald

(a) may require the applicant to submit evidence of the correctness of any allegations to which the application applies;

(b) shall take into consideration evidence that the representation concerned is a representation of a personal coat of arms which

(i) was granted by a competent authority to a person with the family name in question, or

(ii) was lawfully borne by any such person.

**CHAPTER 4**

**NATIONAL EMBLEMS OF THE REPUBLIC OF SOUTH AFRICA**

**35. National Emblems.** The identity of the Republic of South Africa is distinguished heraldically by the following national emblems –

(1) the National Flag of the Republic as provided for in Section 5 of the *Constitution of the Republic of South Africa, 1996*; and

(2) the National Coat of Arms of the Republic.

**36. Ownership.**

- (1) The Republic of South Africa, as defined in section 1 of the *Constitution, 1996*, is the sole and exclusive owner of the national emblems.
- (2) The use of national emblems in connection with a mark or trademark or with a trade, business, profession or occupation shall be in accordance with the provisions of the *Merchandise Marks Act, 1941*, the *Unauthorised Use of Emblems Act, 1961*, the *Trade Marks Act, 1993* and any other applicable laws.

## CHAPTER 5

### REMEDIES OFFENCES AND PENALTIES

#### **37. Remedies for misuse of registered heraldic representations, names, related designation or uniforms.**

- (1) Subject to the provisions of section 20(2), registration of a heraldic representation, name, related designation or uniform confirms the owner's right of property in it and his, her or its exclusive right to its use, including
  - (a) the use of a substantial part of it, and any reproduction or adaption thereof which is not differenced from it, and
  - (b) wearing, selling, bartering or otherwise trading in it or any goods or services exhibiting it.
- (2) No person may wear, use, sell, barter or otherwise trade in any registered name, related designation or uniform, or a substantial part of it, or any reproduction or adaption of it, unless he or she or it
  - (a) is the registered owner of the registered item, or
  - (b) is a member of an association or institution which is the registered owner, or
  - (c) has obtained the registered owner's written authority to do so.
- (3) No person may wear, use, sell, barter or otherwise trade in any registered heraldic representation, or a substantial part of it, or any reproduction or adaptation thereof which is not differenced from it, unless he or she or it
  - (a) has a lawful reason to do so, or
  - (b) is the registered owner of the item concerned, or
  - (c) has obtained written authority to do so from the registered owner or, in the case of a personal heraldic representation whose registered owner has died, from that owner's surviving spouse or descendant.
- (4) If any person contravenes subsection (2) or (3), the registered owner concerned or, if the registered owner of a personal heraldic representation has died, that owner's surviving spouse or descendant, may sue the person in any court of law for:
  - (a) (i) an amount not less than twice the current fee (at the time the action is brought) for the registration of the heraldic representation, name, related designation or uniform concerned, without having to prove damages, and

- (ii) the cost of the action; or
- (b) (i) damages or an interdict or the delivery up of infringing goods, or any combination of these, and
- (ii) the cost of the action.

### **38. Penalties for misuse of registered items**

- (1) No person may sell, barter or use for gain, or otherwise trade in a registered official heraldic representation or any reproduction or adaption thereof which is not differenced from it, unless he or she or it –
  - (a) has a lawful reason to do so, or
  - (b) is the registered owner of the registered item, or
  - (c) has obtained the registered owner's written permission to do so.
- (2) No person may use a registered name, related designation (or abbreviation of it) or uniform in such a manner that it could reasonably be inferred that he, she or it is the registered owner or lawful user of it, or a member of the association or institution which is the registered owner, unless he, she or it
  - (a) is the registered owner or a lawful user of the item, or
  - (b) is a member of an association or institution which is the registered owner, or
  - (c) has obtained the registered owner's written permission to do so.
- (3) If any person contravenes subsection (1) or (2), he, she or it may be prosecuted, and shall be liable on conviction to a fine.

### **39. Offensive behaviour toward the national emblems**

Any person who uses or treats a national emblem in a manner that is intended to show contempt or hatred or to be in any way abusive, insulting, belittling, disparaging, or demeaning of any or all of them, shall be guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

### **40. False entries.** Any person who, knowing the actions to be wrongful –

- (1) makes or causes to be made a false entry in the register;
- (2) makes or causes to be made any document falsely purporting to be a copy of an entry in the register or of any certificate issued under this Act;
- (3) produces or tenders or causes to be produced or tendered as evidence any such entry or copy thereof; or
- (4) makes any false statement or representation for the purpose of deceiving the National Herald or the Council in the execution of the provisions of this Act,

shall be guilty of an offence and liable on conviction to a fine or in default of payment to Imprisonment for a period determined by the Court, and the National Herald shall delete from the register any false entry referred to in Subsection (1).

#### 41. Furnishing representations of personal Arms

- (1) (a) Any person or body who furnishes another person with any heraldic representation which he or she or it alleges, or which on the face of it purports to be a true representation of a personal coat of arms which can be, or was or could have been lawfully borne by any person with a particular family name, must
  - (i) first obtain a certificate of authenticity as provided for in **Section 34**, and
  - (ii) provide a certified copy of such certificate to the person to whom he or she or it furnishes the representation.
- (b) Failure to do so shall be an offence, for which he or she or it shall be liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- (2) If in any prosecution for a contravention of subsection (1) it is proved that the accused furnished a representation which on the face of it purports to be a true representation of a family coat of arms, a statement, made by the accused in connection with the furnishing of the representation, to the effect that it is not claimed or implied that the representation concerned is such a true representation, shall not be a defence to the charge.

#### 42. Savings

- (1) Nothing in this Act shall prevent any person from using any registered heraldic representation, name, related designation or uniform in the course of, or for the purpose of, any stage play, historical pageant or other form of performance or entertainment or in any cinema or television or video or other electronic medium, provided it is not used in such a manner or under such circumstances as to bring it into ridicule or contempt.
- (2) Nothing in this Act shall prevent the continued use of any mark registered under the Trade Marks Act, 1993, any design registered under the Designs Act, 1993, or any mark or design not protected under those Acts but which has been bona fide used as a trade mark or design before the commencement of this Act: Provided that the onus of proving such *bona fide* use shall be upon the person making such claim.
- (1) Nothing in this Act shall deprive any person of the right to use any heraldic representation, traditional cultural symbol, name, related designation or uniform which at the commencement of this Act is not unlawfully in regular use by such person: Provided that the onus of proving such use shall be upon the person making such claim.
- (4) Nothing in this Act shall deprive any person of the right to use any heraldic representation, traditional cultural symbol, name, related designation or

Uniform, the use of which he or she has become entitled by reason of his or her membership or past membership of an association or institution, within or outside the Republic: Provided that the onus of proving such right shall be upon the person claiming such right.

## Chapter 6

### Repeal of Laws

#### 43. Repeal of Laws and Transitional Provisions

- (1) **Repeal of Laws.** Subject to subsections (2) and (3), the laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.
- (2) **Corresponding Provisions of Acts.** Any regulation or notice issued or appointment made or anything done under the provisions of any law repealed by Section 1, must be regarded as having been issued, made or done under the corresponding provisions of this Act, and must be construed as if provided for under this Act.
- (3) **References to Previous Act.** A reference in any law to a provision of the *Heraldry Act, 1962* (Act No. 18 of 1962), as amended, must be construed as a reference to the corresponding provision of this Act.
- (4) **Previous Registrations.** All registrations in accordance with the provisions contained in the *Heraldry Act, 1962*, (Act No. 18 of 1962), and the *Protection of Names, Uniforms and Badges Act, 1935* are deemed to have been registered and protected by the provisions of this Act.
- (2) **Register.** The existing Register becomes the National Register provided for in this Act.
- (3) **Pending Applications.** All applications for registration pending at the time this Act comes into effect shall be finalized in accordance with the provisions of this Act.
- (4) **Authority and Personnel.** On the date this Act comes into effect the Bureau of Heraldry becomes the South African National Heraldic Authority and its personnel retain their positions, ranks, salaries and all other benefits.
- (8) **National Heraldry Council.** The Heraldry Council shall become the National Heraldry Council and the Chairperson and members continue to serve for the remainder of their current terms of appointment.

44. **Short Title and commencement of the Act.** This Act shall be called the *National Heraldry Act, 2015*, and shall come into operation on a date to be fixed by the President by proclamation in the *Government Gazette*.



**SCHEDULE****Laws repealed or amended by Section 44.**

Serial No.	Act	Extent of Repeal
	The Heraldry Act, 1962 (Act No. 18 of 1962)	The whole
	Heraldry Amendment, 1969 (Act No. 54 of 1969)	The whole
	Heraldry Amendment Act, 1980 (Act No. 63 of 1980)	The whole
	Heraldry Amendment Act, 1982 (Act No. 22 of 1982)	The whole
	Education and Heraldry Laws Amendment Act, 1984 (Act No. 6 of 1984)	Sections 1 and 2
	General Law Amendment Act, 1996 (Act No. 49 of 1996)	Section 1
	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996 (Act No. 88 of 1996)	Section 25???
	Cultural Laws Amendment Act, 2001 (Act No. 36 of 2001)	Sections 1, 2 and 3?

**LAWS AMENDED?**

No. and year of law	Short title	Extent of amendment
Act No 11 of 1999	National Heritage Council Act	Amend section 5 (1) (c) (iii) by inserting the word 'National' in front of 'Heraldry Council'.
Act No 25 of 1999	National Heritage Resources Act	Amend section 2 (xxviii) by substituting the words "Section 36. of the Heraldry Act, <u>20xx</u> (Act No <u>xx</u> of <u>20xx</u> )" for "Section 5 of the Heraldry Act 1963 (Act No 18 of 1963)".