

National Heritage Resources Act 25 of 1999 (NHRA)

Topic: Environmental, National Heritage, Buildings, Artifacts and Monuments

IN A CALABASH

Introduction

Our heritage is unique and precious and it cannot be renewed. It helps us to define our cultural identity and therefore lies at the heart of our spiritual well-being and has the power to build our nation. It has the potential to affirm our diverse cultures and, in so doing, shape our national character. The National Heritage Resources Act (NHRA) is the law applicable in South Africa which seeks to ensure that our national heritage is conserved and protected for future generations.

Objectives of the Act

The NHRA aims to protect and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations.

The NHRA sets out general principles for governing heritage resources management throughout the Republic, including an integrated system for the identification, assessment and management of the heritage resources of South Africa.

The NHRA has established the South African Heritage Resources Agency and its Council, which is tasked with—

- the co-ordination and promotion of the management of heritage resources at national level;
- setting norms and maintaining essential national standards for the management of heritage resources in the Republic;
- the protection of heritage resources of national significance;
- the control over the export of nationally significant heritage objects and the import into the Republic of cultural property illegally exported from foreign countries.

The NHRA enables the provinces to establish heritage authorities who must adopt powers to protect and manage certain categories of heritage resources and to provide for the protection and management of conservation-worthy places and areas by local authorities.

Application of the Act and its implication to Tourism

The NHRA applies to all persons and trading entities in South Africa, including the State.

In particular, the NHRA applies to those persons who own or occupy any protected area, heritage resource, or structure which is older than 60 years of age.

In relation to Tourism, it is important that all stakeholders are made aware of the various cultural sites, historical buildings and artifacts which have been identified and given specific protection under the Act.

These areas will be visited by tourists and South Africans, thus expanding the tourism industry.

Summary of the provisions of the Act

National estate

The NHRA defines "National Estate" to include all the heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations which have to be preserved.

Those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate and fall within the sphere of operations of heritage resources authorities.

A place or object is to be considered part of the national estate if it has cultural significance or other special value because of—

- its importance in the community or pattern of South Africa's history;
- its possession of uncommon, rare or endangered aspects of South Africa's natural or cultural heritage;
- its potential to yield information that will contribute to an understanding of South Africa's natural or cultural heritage;
- its importance in demonstrating the principal characteristics of a particular class of South Africa's natural or cultural places or objects;
- its importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- its importance in demonstrating a high degree of creative or technical achievement at a particular period;
- its strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- its strong or special association with the life or work of a person, group or organisation of importance in the history of South Africa; and
- its significance in relation to the history of slavery in South Africa.



In terms of the NHRA, the national estate may include–

- places, buildings, structures and equipment of cultural significance;
- places to which oral traditions are attached or which are associated with living heritage;
- historical settlements and townscapes;
- landscapes and natural features of cultural significance;
- geological sites of scientific or cultural importance;
- archaeological and palaeontological sites;
- graves and burial grounds, including–
 - o ancestral graves;
 - o royal graves and graves of traditional leaders;
 - o graves of victims of conflict;
 - o graves of individuals designated by the Minister by notice in the Gazette;
 - o historical graves and cemeteries; and
 - o other human remains which are not covered in terms of the Human Tissue Act 65 of 1983;
- sites of significance relating to the history of slavery in South Africa; and
- movable objects, including–
 - o objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects and material, meteorites and rare geological specimens;
 - o objects to which oral traditions are attached or which are associated with living heritage;
 - o ethnographic art and objects;
 - o military objects;
 - o objects of decorative or fine art;
 - o objects of scientific or technological interest; and
 - o books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in the National Archives of South Africa Act 43 of 1996.

Management of heritage resources

In terms of the NHRA, our heritage resources and the national estate are managed by all three tiers of government. The South African Heritage Resources Agency (SAHRA) is responsible at national level, the Provincial Heritage Resource Authorities (PHRA) are responsible at provincial level and the local authorities are responsible at local government level.

Grading and assessment criteria

In terms of the NHRA, the SAHRA has established a system of grading which will apply to those places and objects forming part of the national estate.

The system of grading covers three categories–

- Grade I: Exceptional heritage resources of special national significance;
- Grade II: Resources which are particularly significant within a province or region; and
- Grade III: Other heritage resources worthy of conservation.

Levels of responsibility

The SAHRA is responsible for the identification and management of Grade I resources, being exceptional heritage resources of special national significance

The provincial authorities are responsible for Grade II sites, being resources which are significant within a province or region.

The local authorities are responsible for Grade III sites, being other heritage resources worthy of conservation.

Protected areas under the Act forming part of the national estate

National heritage sites

The SAHRA or a PHRA may by way of a notice in the Gazette declare any place which meets the criteria for heritage assessment a national heritage site. Any owner of such a place will have the opportunity to object to the declaration.

Once a place has been declared a national or provincial heritage site, the Registrar of Deeds and the Surveyor General must endorse the title deed and records in question to reflect this status.

Once a place has been declared as a national heritage site, a permit will be required before any such place or condition thereof may be altered, rebuilt, knocked down or removed from its original position.

A local authority may also designate an area to be a heritage area on the grounds of its environmental or cultural interest after consultation with the provincial heritage resources authority, owners of the property and any affected community and publication of a notice in the Gazette.

Structures

The NHRA prohibits any person from altering or demolishing any structure which is older than 60 years, except under the authority of a permit issued by the provincial heritage authority.

Archaeological and palaeontological sites and material and meteorites

The NHRA provides for the protection of archaeological and palaeontological sites and material and meteorites. These are all regarded as the property of the State and, as such, fall under the responsibility of SAHRA. Any discoveries of such objects during development activities must immediately be reported to the responsible heritage resources authority and no person may disturb such an object without a permit. The SAHRA may issue an order demanding that development be stopped or that certain

mitigatory steps be imposed when the responsible heritage resources authority has reasonable cause to believe that the development or activity will destroy or damage such a site or object.

At its discretion, the responsible heritage authority must, on behalf of the State, ensure that such objects are lodged with a museum or other public institution that has a collection policy acceptable to the heritage resources authority. In so doing, it may establish such terms and conditions as it sees fit for the conservation of such objects.

No person may—

- destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;
- destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;
- trade in, sell for private gain, export or attempt to export from the Republic any category of archaeological or palaeontological material or object or any meteorite; or
- bring onto or use any excavation equipment or any equipment which assists in the detection or recovery of metals or archaeological and palaeontological material or objects at an archaeological or palaeontological site, or use such equipment for the recovery of meteorites,

without a permit issued by the responsible heritage resources authority

Burial grounds and graves

Under the NHRA, graves are broadly defined to include any place of interment or anything associated with such place such as headstones or markers.

SAHRA has to identify graves of victims of conflict and any other graves which it deems to be of cultural significance.

A permit will be required to destroy, alter or remove a grave once it is protected under the NHRA.

A permit is required to destroy or remove any grave or burial ground which is situated outside a formal cemetery administered by a local authority and is older than 60 years.

A permit will only be granted if SAHRA is satisfied that the applicant has made satisfactory arrangements for the exhumation and re-interment of the contents and reached agreement with the affected communities regarding the future of such grave or burial ground.

Public monuments and memorials

Public monuments and memorials must be protected in the same manner as places which are entered in a heritage register, without the need to publish a notice to this effect.

Heritage objects

An object, collection of objects, type of object or list of objects, whether specific or generic, that is part of the national estate may be declared a heritage object.

Before declaring any object as a heritage object, SAHRA may give to the owner such prior opportunity for representations or submissions to be made in regard to the proposed declaration as may be practicable in the circumstances

An application to export or dispose of any heritage object must be made to the SAHRA.

Import of objects protected in terms of laws of foreign states

No person may import into South Africa any foreign cultural property other than through a customs port of entry. The export permit or other permission issued in the country of origin of such object must be produced to a customs officer before import to South Africa is allowed.

After a cultural property agreement between South Africa and a reciprocating state comes into force, no person may import into South Africa any foreign cultural property that has been illegally exported from a reciprocating state.

A customs officer who has reason to believe that a person is attempting to import an object in contravention of this provision may withhold the object concerned. Such object must be kept in the custody of SAHRA until such time as an investigation into the provenance of such object is completed, which must not exceed six months.

Register

Once any land, site, premises, buildings or objects have been declared to be a protected heritage resource in a particular province, this detail must be listed in a national and provincial register.

These places or objects will be accorded specific protection depending on their type, age and historical or cultural significance.

General duties

No person may damage any fence, wall, gate or sign erected by a heritage resources authority.

All reproduction rights, either in two or three dimensions, in respect of a heritage site, subject to any existing rights and the agreement of the owner of such site, belong to the State and vest in the heritage resources authority responsible for the protection of such site or, by agreement, with the authority or public institution responsible for the management of such site.

No person other than the owner of the site may make such reproduction for profit without a permit issued by SAHRA or a provincial heritage resources authority. Such permit may prescribe the fees payable in respect of such reproduction to be deposited in a trust fund dedicated to the conservation of such site or of heritage resources in general.

Notification of development

Any person who intends to undertake—

- the construction of a road, wall, powerline, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length;

- the construction of a bridge or similar structure exceeding 50m in length;
- any development or other activity which will change the character of a site–
 - o exceeding 5 000m² in extent;
 - o involving three or more existing erven or subdivisions thereof; or
 - o involving three or more erven or divisions thereof which have been consolidated within the past five years;
- a development which costs will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority;
- the re-zoning of a site exceeding 10 000m² in extent; or
- any other category of development provided for in regulations by SAHRA or a provincial heritage resources authority,

must at the very earliest stages of initiating such a development, notify the responsible heritage resources authority and furnish it with details regarding the location, nature and extent of the proposed development.

Heritage agreements

SAHRA or a provincial heritage resources authority may negotiate and agree with a provincial authority, local authority, conservation body, person or community for the execution of a heritage agreement to provide for the conservation, improvement or presentation of a clearly defined heritage resource, provided that the consent of the owner of such resource must be given.

Such a heritage agreement must be in the form of a binding contract.



A heritage agreement may include such terms and conditions as the parties think fit, including provision for public access and for financial or other assistance from the heritage authority concerned.

A heritage agreement may be expressed to have effect in perpetuity or for any specified term, or to terminate upon the happening of a specific event.

A heritage agreement may, with the consent of the owner of the resource concerned, be varied or cancelled by agreement between the parties.

The heritage agreement may provide for–

- the maintenance and management of the place;
- the custody of the place and the duties of any person who may be employed in connection therewith;
- the occupation or use of the place by the owner or otherwise;
- the restriction of the right of the owner or occupier to do certain acts or things on or near the place;
- the facilities of access to be permitted to the public and to persons authorised by the guardian to inspect or maintain the place;
- the presentation of the place;

- the notice to be given to the guardian in case the owner intends to offer the land on which the place is situated for sale, lease or other disposal and the right to be reserved to the guardian to have first refusal of such sale, lease or other disposal;
- the payment of any expenses incurred by the owner or by the guardian in connection with the maintenance of the place;
- any other matter connected with the protection or management of the place which is agreed to by the owner and the guardian;
- the duration of the agreement, with provision for the earlier termination thereof by any party thereto; and
- the procedure for the resolution of any dispute arising out of the agreement.

A heritage agreement in respect of a place attached to the land is binding on the owner of the place, as at the date of execution of the agreement and while the agreement remains in force.

The owner of a national heritage site, a provincial heritage site or a place listed in a heritage register may, by a heritage agreement entered into with the heritage resources authority, local authority responsible for the protection of such place or any person or body approved by such authority, appoint the heritage resources authority, the local authority or the person or body concerned as the guardian of the place.

The owner of a place which is under guardianship shall, except as expressly provided by this Act, continue to have the same estate, right, title and interest in and to the place as before.

Presentation of protected resources

Heritage resources authorities and local authorities must, wherever appropriate, co-ordinate and promote the presentation and use of places of cultural significance and heritage resources which form part of the national estate and for which they are responsible for public enjoyment, education, research and tourism, including—

- the erection of explanatory plaques and interpretive facilities such as interpretive centres and visitor facilities;
- the training and provision of guides;
- the mounting of exhibitions;
- the erection of memorials; and
- any other means necessary for the effective presentation of the national estate.

When a formally protected heritage resource is to be presented, the person wishing to undertake such presentation must, at least 60 days prior to the institution of interpretive measures or manufacture of associated material, consult with the heritage resources authority who is responsible for the protection of such heritage resource regarding the contents of interpretive material or programmes.

A person may only erect a plaque or other permanent display or structure associated with such presentation in the vicinity of a place protected in terms of the Act in consultation with the heritage resources authority responsible for the protection of the place.

Compulsory repair order

When the heritage resources authority responsible for the protection of a heritage site considers that such site–

- has been allowed to fall into disrepair for the purpose of–
 - o effecting or enabling its destruction or demolition;
 - o enabling the development of the designated land; or
 - o enabling the development of any land adjoining the designated land; or
- is neglected to such an extent that it will lose its potential for conservation,

the heritage resources authority may order the owner to repair or maintain such site to the satisfaction of the heritage resources authority within a reasonable period of time as specified in the order. The heritage resources authority must specify only such work as, in its opinion, is necessary to prevent any further deterioration in the condition of the place.

Upon failure of the owner to comply with the terms of an order within the specified time, the authority may take such steps as may be necessary for the repair or maintenance thereof and recover the costs from the owner.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Any person who fails to protect any heritage object or contravenes the NHRA is guilty of an offence and liable to a fine or imprisonment or both a fine and imprisonment for a period of up to five years.

Any person who fails to protect any structures, archaeology, palaeontology, meteorites, burial grounds or graves or who exports or imports objects protected in terms of laws of foreign states is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment for a period of up to three years.

Any person who fails to protect any heritage area or structures is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment for a period of up to two years.

Any person who fails to comply with any notice in connection with a national heritage site or provincial heritage site, heritage object, structures, archaeology, palaeontology, meteorites, burial ground or grave is guilty of an offence and liable to a fine or imprisonment or both such fine and imprisonment for a period of up to one year.

Admission of guilt fines and daily fines for not complying with permit conditions

The Minister or the MEC may make regulations in terms of which the magistrate of the district concerned may–

- levy admission of guilt fines up to a maximum amount of R10 000 for infringement of the Act for which such heritage resources authority is responsible; and

- serve a notice upon a person who is contravening a specified provision of the Act or has not complied with the terms of a permit issued by such authority, imposing a daily fine of R50 for the duration of the contravention, subject to a maximum period of 365 days.

Damages

When any person has been convicted of any contravention of the Act which has resulted in damage to or alteration of a protected heritage resource, the court may order such person to remedy the result of the act of which he or she was found guilty in a specified manner and time.

In addition to other penalties, if the owner of a place has been convicted of an offence in terms of the NHRA involving the destruction of or damage to a place, the Minister on the advice of SAHRA or the MEC on the advice of a provincial heritage resources authority may order the owner that no development of such place may be undertaken, except to fix the damage and maintain the cultural value of the place, for a period of up to 10 years. The Minister, on the advice of SAHRA, may reconsider an order of no development and may amend or repeal such order.

Vandalism

In any case involving vandalism, and whenever else a court deems it appropriate, community service involving conservation of heritage resources may be substituted for or instituted in addition to a fine or imprisonment.

Forfeiture order

Where a court convicts a person of an offence in terms of the NHRA, it may order the forfeiture of a vehicle, craft, equipment or any other thing used or otherwise involved in the committing of the offence to SAHRA or the provincial heritage resources authority concerned. Such object may be sold or otherwise disposed of as the heritage resources authority concerned deems fit.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Awareness of structures that may be protected;
- Application for a permit where required and compliance with conditions of a permit–
 - o to alter, change or demolish a heritage site or structure over 60 years old;
 - o for archaeological or palaeontological site or any meteorite;
 - o heritage objects;
 - o to export a heritage object;
 - o wrecks; and
 - o burial grounds;
- Compliance with standards of curation;
- Submission of reports, where required;
- Compliance with guidelines; and
- Allowing any heritage inspector or other authorised representative of SAHRA at any reasonable time to inspect any site or object for which a permit has been issued or for which a permit is being applied.

FURTHER INFORMATION

Regulators

South African Heritage Resources Agency (SAHRA) which, together with its SAHRA Council, will co-ordinate and promote the management of heritage resources at the national level.

A separate National Heritage Council Act 11 of 1999 has also been promulgated, which provides for the establishment of a Council to protect the national heritage and co-ordinate heritage management at the national, provincial and local level.

Website

www.sahra.org.za