

(28 November 2019 – to date)

[This is the **current** version and applies as from **28 November 2019**, i.e. the date of commencement of the Traditional Leadership and Governance Framework Amendment Act 2 of 2019 – **to date**]

TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK ACT 41 OF 2003

(Government Notice 1838 in Government Gazette 25855 dated 19 December 2003. Commencement date: 24 September 2004 [Proc. No. R46, Gazette No. 26839]).

As amended by;

Traditional Leadership and Governance Framework Amendment Act 23 of 2009 - Government Notice 38 in Government Gazette 32904 dated 25 January 2010. Commencement date: 25 January 2010 – Chapter 6 comes into operation on 1 February 2010.

Traditional Leadership and Governance Framework Amendment Act 2 of 2019 - Government Notice 1552 in Government Gazette 42867 dated 28 November 2019. Commencement date: 28 November 2019.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 11 December 2003.)

ACT

To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide a statutory framework for leadership positions within the institution of traditional leadership, the recognition of traditional leaders and the removal from office of traditional leaders; to provide for houses of traditional leaders; to provide for the functions and roles of traditional leaders; to provide for dispute resolution and the establishment of the Commission on Traditional Leadership Disputes and Claims; to provide for a code of conduct; to provide for amendments to the Remuneration of Public Office Bearers Act, 1998; and to provide for matters connected therewith.

PREAMBLE

Prepared by:

WHEREAS the State, in accordance with the Constitution, seeks -

- * to set out a national framework and norms and standards that will define the place and role of traditional leadership within the new system of democratic governance;
- * to transform the institution in line with constitutional imperatives; and
- * to restore the integrity and legitimacy of the institution of traditional leadership in line with customary law and practices;

AND WHEREAS the South African indigenous people consist of a diversity of cultural communities;

AND WHEREAS the Constitution recognises -

- * the institution, status and role of traditional leadership according to customary law; and
- * a traditional authority that observes a system of customary law;

AND WHEREAS -

- * the State must respect, protect and promote the institution of traditional leadership in accordance with the dictates of democracy in South Africa;
- * the State recognises the need to provide appropriate support and capacity building to the institution of traditional leadership;
- * the institution of traditional leadership must be transformed to be in harmony with the Constitution and the Bill of Rights so that -
 - democratic governance and the values of an open and democratic society may be promoted; and
 - gender equality within the institution of traditional leadership may progressively be advanced; and
- * the institution of traditional leadership must -
 - promote freedom, human dignity and the achievement of equality and non-sexism;
 - derive its mandate and primary authority from applicable customary law and practices;
 - strive to enhance tradition and culture;

- promote nation building and harmony and peace amongst people;
- promote the principles of co-operative governance in its interaction with all spheres of government and organs of state; and
- promote an efficient, effective and fair dispute-resolution system, and a fair system of administration of justice, as envisaged in applicable legislation,

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

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CHAPTER 1 INTERPRETATION AND APPLICATION

1. Definitions and application

- (1) In this Act, unless the context indicates otherwise -

“area of jurisdiction” means the area of jurisdiction designated for a traditional community and traditional council that have been recognised as provided for in sections 2 and 3;

“code of conduct” means the code of conduct contained in the Schedule, and includes in respect of a particular province, a provincial code of conduct envisaged in section 27, if in existence;

“Commission” means the commission established by section 22 and includes a committee established by section 26A;

(Definition of “Commission” substituted by section 1(a) of Act 23 of 2009)

“customary institution or structure” means those institutions or structures established in terms of customary law;

“district municipality” means a district municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“headman or headwoman” means a traditional leader who -

- (a) is under the authority of, or exercises authority within the area of jurisdiction of, a senior traditional leader in accordance with customary law; and
- (b) is recognised as such in terms of this Act;

“headmanship” means the position held by a headman or headwoman;

“king or queen” means a traditional leader -

- (a) under whose authority, or within whose area of jurisdiction, senior traditional leaders exercise authority in accordance with customary law; and
- (b) recognised as such in terms of this Act;

“kingship or queenship” means a kingship or queenship established in terms of section 2A;

(Definition of “kingship or queenship” substituted for the definition of “kingship” by section 1(b) of Act 23 of 2009)

“kingship or queenship council” means a council established and recognised for a kingship or queenship in terms of section 3A;

(Definition of “kingship or queenship council” inserted by section 1(c) of Act 23 of 2009)

“local house of traditional leaders” means a local house of traditional leaders provided for in section 16(b);

“metropolitan municipality” means a metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“Minister” means the national Minister responsible for traditional leadership matters;

“principal traditional community” means a principal traditional community recognised as such in terms of section 2B;

(Definition of “principal traditional community” inserted by section 1(d) of Act 23 of 2009)

“principal traditional council” means a council established and recognised in terms of section 3B;

(Definition of “principal traditional council” inserted by section 1(d) of Act 23 of 2009)

“principal traditional leader” means a traditional leader -

- (a) under whose authority, or within whose area of jurisdiction, senior traditional leaders exercise authority in accordance with customary law;
- (b) recognised as such in terms of section 10A;

(Definition of “principal traditional leader” inserted by section 1(d) of Act 23 of 2009)

“provincial house of traditional leaders” means a provincial house of traditional leaders envisaged in section 16(a);

“regent” means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position in a temporary capacity until a successor to that position who is a minor, is recognised as contemplated in section 13(4);

“royal family” means the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community, who have been identified in terms of custom, and includes, where applicable, other family members who are close relatives of the ruling family;

“senior traditional leader” means a traditional leader of a specific traditional community who exercises authority over a number of headmen or headwomen in accordance with customary law, or within whose area of jurisdiction a number of headmen or headwomen exercise authority;

“senior traditional leadership” means the position held by a senior traditional leader;

“traditional community” means a traditional community recognised as such in terms of section 2;

“traditional council” means a council established in terms of section 3 and includes a traditional sub-council established in terms of section 4B;

(Definition of “traditional council” substituted by section 1(e) of Act 23 of 2009)

“traditional leader” means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position, and is recognised in terms of this Act;

“traditional leadership” means the customary institutions or structures, or customary systems or procedures of governance, recognised, utilised or practised by traditional communities;

“tribe” means a tribe that was established or recognised under legislation in force before the commencement of this Act.

- (2) Nothing contained in this Act may be construed as precluding members of a traditional community from addressing a traditional leader by the traditional title accorded to him or her by custom, but such

traditional title does not derogate from, or add anything to, the status, role and functions of a traditional leader as provided for in this Act.

- (3) Traditional leaders may acknowledge or recognise the different levels of seniority among themselves in accordance with customs, and none of the definitions contained in subsection (1) must be construed as conferring, or detracting from, such seniority.

CHAPTER 2

KINGSHIPS OR QUEENSHIPS, PRINCIPAL TRADITIONAL LEADERS, PRINCIPAL TRADITIONAL COMMUNITIES, TRADITIONAL COMMUNITIES, PRINCIPAL TRADITIONAL COUNCILS, KINGSHIP OR QUEENSHIP COUNCILS AND TRADITIONAL COUNCILS

(Heading of Chapter 2 substituted by section 2 of Act 23 of 2009)

2. Recognition of traditional communities

- (1) A community may be recognised as a traditional community if it -
 - (a) is subject to a system of traditional leadership in terms of that community's customs; and
 - (b) observes a system of customary law.
- (2)
 - (a) The Premier of a province may, by notice in the *Provincial Gazette*, in accordance with provincial legislation and after consultation with the provincial house of traditional leaders in the province, the community concerned, and, if applicable, the king or queen under whose authority that community would fall, recognise a community envisaged in subsection (1) as a traditional community.
 - (b) Provincial legislation referred to in paragraph (a) must -
 - (i) provide for a process that will allow for reasonably adequate consultation with the community concerned; and
 - (ii) prescribe a fixed period within which the Premier of the province concerned must reach a decision regarding the recognition of a community envisaged in subsection (1) as a traditional community.
- (3) A traditional community must transform and adapt customary law and customs relevant to the application of this Act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by -
 - (a) preventing unfair discrimination;

- (b) promoting equality; and
- (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.

2A. Recognition of kingships or queenships

- (1) Subject to subsection (2), a number of traditional communities that are grouped together may be recognised as a kingship or queenship if they-
 - (a) are recognised as such in terms of applicable provincial legislation;
 - (b) each have a recognised traditional council with a defined area of jurisdiction in terms of applicable provincial legislation;
 - (c) each have a senior traditional leader recognised in terms of the applicable provincial legislation;
 - (d) recognise a recognised senior traditional leader, who is of higher status than the other senior traditional leaders in terms of custom and customary law, as their king or queen;
 - (e) recognise themselves as a distinct group of traditional communities separate from principal traditional communities and all other traditional communities; and
 - (f) have a system of traditional leadership at a kingship or queenship level.
- (2) The traditional communities applying for recognition as a kingship or queenship must have a proven history of existence, with a recognised senior traditional leader of higher status as a king or queen in terms of customary law of succession.
- (3)
 - (a) The President may, by notice in the *Gazette*, on the recommendation of the Minister and after consultation with the relevant Premier, the provincial house of traditional leaders in the relevant province, the national house of traditional leaders and the senior traditional leaders of traditional communities who fall under the kingship or queenship being applied for, recognise a kingship or queenship envisaged in subsections (1) and (2) as a kingship or queenship.
 - (b) The President may-
 - (i) direct the Minister to conduct the consultation referred to in paragraph (a) in his or her stead; and

- (ii) prescribe a fixed period within which the Minister must finalise the consultation regarding the recognition of a kingship or queenship envisaged in subsections (1) and (2).
- (4) A kingship or queenship must transform and adapt customary law and customs relevant to the application of this Act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by-
 - (a) preventing unfair discrimination;
 - (b) promoting equality; and
 - (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.
- (5) The withdrawal of the recognition of a community as a kingship or queenship as provided for in this Act, may only be considered where-
 - (a) the majority of traditional communities under the jurisdiction of the kingship or queenship concerned request the President that the recognition of their kingship or queenship be withdrawn; and
 - (b) the President, on good cause shown, determines that the withdrawal of such a kingship or queenship is necessary.
- (6) The President may, before taking a decision in terms of subsection (5), cause an investigation to be conducted.
- (7) The withdrawal of the recognition of a community as a kingship or queenship must be done by the President on the recommendation of the Minister after consultation with the kingship or queenship council, the Minister, the National House of Traditional Leaders, the relevant Premier and the provincial house of traditional leaders concerned.
- (8) The withdrawal of a kingship or queenship must be done by way of a notice in the *Gazette*.
(Section 2A inserted by section 3 of Act 23 of 2009)

2B. Recognition of principal traditional communities

- (1) A number of traditional communities that are grouped together may be recognised as a principal traditional community if they-
 - (a) are recognised as such in terms of applicable provincial legislation;

- (b) each have a recognised traditional council with a defined area of jurisdiction in terms of applicable provincial legislation;
 - (c) each have a senior traditional leader recognised in terms of the applicable provincial legislation;
 - (d) recognise a recognised senior traditional leader, who is of higher status than the other senior traditional leaders in terms of custom and customary law, as their principal traditional leader;
 - (e) recognise themselves as a distinct group of traditional communities separate from kingships or queenships and all other traditional communities; and
 - (f) have a system of traditional leadership at a principal traditional leadership level recognised by other traditional communities.
- (2) The traditional communities applying for recognition as a principal traditional community must have a proven history of existence recognizing a senior traditional leader of higher status as a principal traditional leader in terms of customary law of succession.
- (3)
- (a) The Premier may, by notice in the *Provincial Gazette*, after consultation with the provincial house of traditional leaders, and the senior traditional leaders who form part of the principal traditional community being applied for, recognise the traditional communities envisaged in subsections (1) and (2) as a principal traditional community.
 - (b) The Premier may-
 - (i) direct the member of the Executive Council responsible for traditional affairs to conduct the consultation referred to in paragraph (a) in his stead; and
 - (ii) prescribe a fixed period within which the Member of the Executive Council responsible for traditional [sic] affairs must finalise the consultation regarding the recognition of a principal traditional community envisaged in subsections (1) and (2).
- (4) A principal traditional community must transform and adapt customary law and customs relevant to the application of this Act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by-
- (a) preventing unfair discrimination;
 - (b) promoting equality; and

- (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.
- (5) The withdrawal of the recognition of a community as a principal traditional community as provided for in this Act, may only be considered where-
 - (a) the majority of traditional communities under the jurisdiction of the principal traditional community concerned request the Premier that the recognition of their principal traditional community be withdrawn; and
 - (b) the Premier, for good cause shown determines that the withdrawal of such a principal traditional community is necessary.
- (6) The Premier may, before taking a decision in terms of subsection (5), cause an investigation to be conducted.
- (7) The withdrawal of the recognition of a community as a principal traditional community must be done by the Premier after consultation with the provincial house of traditional leaders, and the senior traditional leaders who form part of the principal traditional community.
- (8) The withdrawal of a principal traditional community must be done by way of a notice in the *Provincial Gazette*.

(Section 2B inserted by section 3 of Act 23 of 2009)

3. Establishment and recognition of traditional councils

- (1) Once the Premier has recognised a traditional community, that traditional community must establish a traditional council in line with principles set out in provincial legislation.
- (2)
 - (a) A traditional council consists of the number of members determined by the Premier by formula published in the *Provincial Gazette*, after consultation with the provincial house, in accordance with the guidelines issued by the Minister by notice in the *Gazette*.

(Section 3(2)(a) substituted by section 4 of Act 23 of 2009)
 - (b) At least a third of the members of a traditional council must be women.
 - (c) The members of a traditional council must comprise-
 - (i) traditional leaders and members of the traditional community selected by the senior traditional leader concerned who is an *ex officio* member and chairperson of the traditional council, for a term of five years aligned with the term of office of the National House of

Traditional Leaders, in terms of that community's customs, taking into account the need for overall compliance with paragraph (b); and

- (ii) other members of the traditional community who are democratically elected for a term of five years aligned with the term of office of the National House of Traditional Leaders and who must constitute 40% of the members of the traditional council.

(Section 3(2)(c) substituted by section 4 of Act 23 of 2009)

- (d) Where it has been proved that an insufficient number of women are available to participate in a traditional council, the Premier concerned may, in accordance with a procedure provided for in provincial legislation, determine a lower threshold for the particular traditional council than that required by paragraph (b).
- (3) The Premier concerned must, by notice in the *Provincial Gazette* and in accordance with the relevant provincial legislation, recognise a traditional council for that traditional community within a defined area of jurisdiction.

3A. Establishment and recognition of kingship or queenship councils

(1)

- (a) Once the President has recognised a kingship or queenship, that kingship or queenship must, within two years of the recognition, establish a kingship or queenship council.
- (b) A kingship or a queenship that has been confirmed by a decision of the Commission in accordance with this Act prior to its amendment by the Traditional Leadership and Governance Framework Amendment Act, 2009 (Act No. 23 of 2009), must, within two years from the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, establish a kingship or a queenship council.
- (c) A kingship or a queenship other than a kingship or queenship contemplated in paragraph (b) that has been recognised before the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, must, within two years of such commencement establish a kingship or queenship council.

(Section 3A(1) substituted by section 1(a) of Act 2 of 2019)

(2)

- (a) A kingship or queenship council consists of the number of members as determined by the Minister, after consultation with the kingship or queenship concerned, by formula published by notice in the *Gazette*.
- (b) At least a third of the members of a kingship or queenship council must be women: Provided that where it has been proved that an insufficient number of women are available to participate in a

kingship or queenship council, the Minister may determine a lower threshold for the particular kingship or queenship council than that contemplated in paragraph (a).

(c) The membership of a kingship or queenship council comprises-

(i) 60% of traditional leaders, including the king or queen who is an *ex officio* member and chairperson, and members of the traditional community selected by the king or queen in terms of that community's customs, taking into account the need for overall compliance with paragraph (b); and

(ii) 40% of members elected democratically as contemplated in paragraph (d).

(Section 3A(2)(c)(ii) substituted by section 1(b) of Act 2 of 2019)

(d) Each traditional council falling within the area of jurisdiction of the kingship or queenship concerned must elect one person from the elected members of that council to serve as a member referred to in paragraph (c)(ii): Provided that where the number of persons so elected are less than the number of persons contemplated in paragraph (c)(ii), the traditional councils must each elect one additional person from the elected members of that council: Provided further that where the number of persons so elected exceed the number of members contemplated in paragraph (c)(ii), the persons elected by the traditional councils must elect from amongst themselves the number of persons contemplated in paragraph (c)(ii).

(Section 3A(2)(d) substituted by section 1(c) of Act 2 of 2019)

- (3) The term of office of the kingship or queenship council is five years and must be aligned to the term of the National House established by section 2 of the National House of Traditional Leaders Act, 2009.
- (4) The Premier must, by notice in the *Provincial Gazette* and in accordance with this Act, recognise a kingship or queenship council for that kingship or queenship within a defined area of jurisdiction, whereafter the Premier must inform the President and the Minister of such establishment and recognition.
- (5) The kingship or queenship council meets at the king's or queen's great place or at any other place to be determined by the king or queen.
- (6) The quorum of the kingship or queenship council is the majority of the total number of the kingship or queenship council.
- (7) The kingship or queenship council must elect one of its members as a deputy chairperson who will act as the chairperson in the absence of the king or queen.

- (8) The kingship or queenship council must meet every two months: Provided that the king or queen may, in consultation with the Premier of the province concerned, call a special meeting of the kingship or queenship considers necessary.
- (9) The king or queen must give notice of not less than seven days for holding a special meeting to members of the kingship or queenship council.
- (10) A member of a kingship or queenship council vacates his or her office if-
- (a) he or she ceases to be a South African citizen;
 - (b) he or she has been convicted of an offence and sentenced to imprisonment for more than 12 months without the option of a fine;
 - (c) he or she tenders his or her resignation;
 - (d) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the kingship or queenship council;
 - (e) the period for which the member was selected or elected, as the case may be, has expired; or
 - (f) he or she becomes disqualified in terms of subsection (14).
- (11) If a member of a kingship or queenship council dies or vacates his or her office before the expiration of his or her term of office, such a vacancy must be filled in the manner envisaged in this Act within a reasonable period of the vacancy occurring.
- (12) A member appointed to fill a vacancy in terms of subsection (11) holds office for the remainder of his or her predecessor's term of office.
- (13) A vacancy arising at any time other than the close of a five-year cycle must be filled in the manner described in subsection (2)(d)(i) or (ii), as the case may be, within 14 days and 45 days, respectively.
- (14) A person may not be appointed as a member of a kingship or queenship council if that person-
- (a) is not a South African citizen;
 - (b) is under 18 years of age;
 - (c) has been convicted of an offence in respect of which he or she was sentenced to imprisonment for more than 12 months without the option of a fine;

- (d) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
- (e) is of unsound mind and has been so declared by a competent court;
- (f) is or becomes a member of a municipal council;
- (g) is elected as a member of a provincial legislature;
- (h) is elected as a member of the National Assembly;
- (i) is appointed as a permanent delegate in the National Council of Provinces; or
- (j) is elected to, or appointed in, a full-time position in any house of traditional leaders.

(Section 3A inserted by section 5 of Act 23 of 2009)

3B. Establishment and recognition of principal traditional councils

- (1) Once the Premier has recognised a principal traditional community, that principal traditional community must, within one year of the recognition, establish a principal traditional council.
- (2)
 - (a) A principal traditional council consists of the number of members as determined by the Premier, after consultation with the principal traditional community concerned, by formula published by notice in the *Provincial Gazette*.
 - (b) At least a third of the members of a principal traditional council must be women: Provided that where it has been proved that an insufficient number of women are available to participate in a principal traditional council, the Premier may determine a lower threshold for the particular principal traditional council than that required by paragraph (a).
 - (c) The membership of a principal traditional council comprises-
 - (i) 60% of traditional leaders, including the principal traditional leader who is an ex officio member and chairperson, and members of the principal traditional council selected by the principal traditional leader in terms of that community's customs, taking into account the need for overall compliance with paragraph (b); and
 - (ii) 40% of members elected democratically as contemplated in paragraph (d).
- (d) Each traditional council falling within the area of jurisdiction of the principal traditional community concerned must elect one person from the elected members of that council to serve as a member

(Section 3B(2)(c)(ii) substituted by section 2(a) of Act 2 of 2019)

referred to in paragraph (c)(ii): Provided that where the number of persons so elected are less than the number of persons contemplated in paragraph (c)(ii), the traditional councils must each elect one additional person from the elected members of that council: Provided further that where the number of persons so elected exceed the number of members contemplated in paragraph (c)(ii), the persons elected by the traditional councils must elect from amongst themselves the number of persons contemplated in paragraph (c)(ii).

(Section 3B(2)(d) substituted by section 2(b) of Act 2 of 2019)

- (3) The term of office of members of the principal traditional council is five years, and is aligned to the term of office for the National House of Traditional Leaders established in terms of the National House of Traditional Leaders Act, 2009, excluding the principal traditional leader.
- (4) The Premier must, by notice in the *Provincial Gazette* and in accordance with this Act, recognise a principal traditional council for that principal traditional community within a defined area of jurisdiction.
- (5) The principal traditional council meets at the principal traditional leader's great place or at any other place to be determined by the principal traditional leader.
- (6) The quorum of the principal traditional council is the majority of the total number of members of the principal traditional council.
- (7) The principal traditional council must elect one of its members as a deputy chairperson who will act as the chairperson in the absence of the principal traditional leader.
- (8) The principal traditional council must meet every two months: Provided that the principal traditional leader may, in consultation with the Premier of the province concerned, call a special meeting of the principal traditional council as he or she considers necessary.
- (9) The principal traditional leader must give notice of not less than 7 days for holding a special meeting to members of the principal traditional council.
- (10) A member of a principal traditional council vacates his or her office if-
 - (a) he or she ceases to be a South African citizen;
 - (b) he or she has been convicted of an offence and sentenced to imprisonment for more than 12 months without the option of a fine;
 - (c) he or she tenders his or her resignation;
 - (d) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the principal traditional council;

- (e) the period for which the member was selected or elected, as the case may be, has expired; and
 - (f) he or she becomes disqualified in terms of subsection (13).
- (11) If a member of a principal traditional council dies or vacates his or her office before the expiration of his or her term of office, such a vacancy must be filled in the manner envisaged in this Act within a reasonable period of the vacancy occurring.
- (12) A member appointed to fill a vacancy in terms of subsection (11) holds office for the remainder of his or her predecessor's term of office.
- (13) A person may not be appointed as a member of a principal traditional council if that person-
- (a) is not a South African citizen;
 - (b) is under 18 years of age;
 - (c) has been convicted of an offence in respect of which he or she was sentenced to imprisonment for more than 12 months without the option of a fine;
 - (d) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
 - (e) is of unsound mind and has been so declared by a competent court;
 - (f) is or becomes a full-time member of a municipal council;
 - (g) is elected as a member of a provincial legislature;
 - (h) is elected as a member of the National Assembly;
 - (i) is appointed as a permanent delegate in the National Council of Provinces; or
 - (j) is elected to, or appointed in, a full-time position in any house of traditional leaders.

(Section 3B inserted by section 6 of Act 23 of 2009)

4. Functions of traditional councils

- (1) A traditional council has the following functions:
- (a) Administering the affairs of the traditional community in accordance with customs and tradition;

- (b) assisting, supporting and guiding traditional leaders in the performance of their functions;
 - (c) supporting municipalities in the identification of community needs;
 - (d) facilitating the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose area that community resides;
 - (e) recommending, after consultation with the relevant local and provincial houses of traditional leaders, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;
 - (f) participating in the development of policy and legislation at local level;
 - (g) participating in development programmes of municipalities and of the provincial and national spheres of government;
 - (h) promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
 - (i) promoting indigenous knowledge systems for sustainable development and disaster management;
 - (j) alerting any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction, and contributing to disaster management in general;
 - (k) sharing information and co-operating with other traditional councils; and
 - (l) performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.
- (2) Applicable provincial legislation must regulate the performance of functions by a traditional council by at least requiring a traditional council to -
- (a) keep proper records;
 - (b) have its financial statements audited;
 - (c) disclose the receipt of gifts; and
 - (d) adhere to the code of conduct.

- (3) A traditional council must -
- (a) co-operate with any relevant ward committee established in terms of section 73 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); and
 - (b) meet at least once a year with its traditional community to give account of the activities and finances of the traditional council and levies received by the traditional council.
- (4) A traditional council and its resources may not be used to promote or prejudice the interest of any political party.

4A. Functions of kingship or queenship councils

- (1) A kingship or queenship council has the following functions:
- (a) Administering the affairs of the kingship or queenship in accordance with customs and tradition;
 - (b) assisting, supporting and guiding senior traditional leaders and traditional councils falling within the jurisdiction of the kingship or queenship concerned in the performance of their functions;
 - (c) assisting the king or queen in performing customary functions in relation to the recognition of senior traditional leaders, where applicable;
 - (d) mediating in disputes between senior traditional leaderships falling within the jurisdiction of the kingship or queenship;
 - (e) promoting unity between traditional communities falling under the jurisdiction of the kingship or queenship; and
 - (f) assisting the king or queen in performing his or her roles and functions conferred upon him or her by the President in terms of the regulations issued under section 9(5).
- (2) A kingship or queenship council is required to-
- (a) keep proper records;
 - (b) have its financial statements audited;
 - (c) disclose the receipt of gifts;
 - (d) adhere to the code of conduct contained in the applicable provincial legislation for all traditional leaders and traditional councils: Provided that where a member of a kingship or queenship council

has to be disciplined for the breach of the code of conduct, the king or queen must inform the Premier of such fact and also of the outcome of the inquiry; and

- (e) advise and support all traditional councils falling under the authority of the king or queen.
- (3) A kingship or queenship council and its resources may not be used to promote or prejudice the interest of any political party.
- (4) Provincial legislation may provide for a relationship between kings or queens and provincial houses as contemplated in section 14 of the National House of Traditional Leaders Act, 2009."

(Section 4A inserted by section 7 of Act 23 of 2009)

4B. Establishment and functions of traditional sub-councils

- (1)
 - (a) Despite the provisions of section 3, the Premier may, in cases where a traditional community occupies two or more geographical areas within a province, establish a traditional sub-council for that section of the community which is resident outside the area in which the great place is located.
 - (b) The traditional sub-council must consist of the number of members as determined by the Premier, after consultation with the main traditional council concerned, by formula published by notice in the *Provincial Gazette*.
- (2) The Premier must, in the *Provincial Gazette*, recognise the traditional sub-council as part of the main traditional council, and define the area of its jurisdiction.
- (3) The provisions of section 3 (2) apply to the constitution and composition of the traditional sub-council.
- (4) The chairperson of the traditional sub-council must be appointed by a senior traditional leader, in consultation with the royal family.
- (5) A chairperson appointed in terms of subsection (4) must be a member of the main traditional council selected by the senior traditional leader in terms of section 3(2)(c)(i).
- (6) A traditional sub-council performs such functions listed in section 4 as may be delegated to it by the main traditional council.

(Section 4B inserted by section 7 of Act 23 of 2009)

4C. Functions of principal traditional councils

The provisions of section 4A apply, with the necessary changes, to principal traditional councils.

(Section 4C inserted by section 7 of Act 23 of 2009)

5. Partnerships between district and local municipalities and kingship and queenship councils, principal traditional councils and traditional councils

- (1) The national government and all provincial governments must promote partnerships between district municipalities and kingship or queenship councils and principal traditional councils through legislative or other measures.
- (2) The national government and all provincial governments must promote partnerships between local municipalities and traditional councils through legislative or other measures.
- (3) Any partnership contemplated in subsections (1) and (2) must-
 - (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and
 - (b) be guided by and based on the principles of co-operative governance.
- (4) A traditional council may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), and any other applicable legislation.

(Section 5 substituted by section 8 of Act 23 of 2009)

6. Support to traditional councils principal traditional councils and kingship or queenship councils

The national government and a provincial government may adopt such legislative or other measures as may be necessary to support and strengthen the capacity of traditional councils principal traditional councils and kingship or queenship councils within the province to fulfill *[sic]* their functions.

(Section 6 substituted by section 9 of Act 23 of 2009)

7. Withdrawal of recognition of traditional communities

- (1) The withdrawal of the recognition of a community as a traditional community as provided for in section 2, may only be considered where -
 - (a) the community concerned requests the Premier of a province that its recognition as a traditional community be withdrawn;
 - (b) the provincial government concerned is requested to review the position of a community or communities that was or were divided or merged prior to 1994 in terms of applicable legislation;or

- (c) two or more communities so recognised, request the Premier of a province that they be merged into a single traditional community.
- (2)
- (a) The withdrawal of the recognition of a community as a traditional community must be done by the Premier of a province in accordance with applicable provincial legislation.
 - (b) The provincial legislation referred to in paragraph (a) must -
 - (i) provide for the withdrawal of the recognition of a traditional council at the same time that the recognition of its traditional community is withdrawn as provided for in paragraph (a); and
 - (ii) make provision for consultation by the Premier with the provincial house of traditional leaders concerned, any community that may be affected, and, if applicable, the king or queen under whose authority such a community falls, before the withdrawal of the recognition of a traditional community may be effected by way of a notice in the *Provincial Gazette*.
- (3) The Premier of a province must, in terms of section 2, consider the recognition of separate traditional communities or a merged traditional community where a review of the division or merger of communities envisaged by subsection (1)(b) indicates that newly constituted traditional communities must be recognised.

CHAPTER 3

LEADERSHIP POSITIONS WITHIN INSTITUTION OF TRADITIONAL LEADERSHIP

Part 1

Introduction

8. Recognition of traditional leadership positions

The following leadership positions within the institution of traditional leadership are recognised:

- (a) Kingship or queenship;
- (aA) principal traditional leadership;
- (b) senior traditional leadership; and
- (c) headmanship.

(Section 8 substituted by section 10 of Act 23 of 2009)

Part 2
Kings and queens

9. Recognition of kings and queens

(1) Whenever the position of a king or a queen is to be filled, the following process must be followed:

(a) The royal family must, within a reasonable time after the need arises for the position of a king or a queen to be filled, and with due regard to applicable customary law -

(i) identify a person who qualifies in terms of customary law to assume the position of a king or a queen, as the case may be, after taking into account whether any of the grounds referred to in section 10(l)(a), (b) and (d) apply to that person; and

(ii) through the relevant customary structure -

(aa) inform the President, the Premier of the province concerned and the Minister, of the particulars of the person so identified to fill the position of a king or a queen;

(bb) provide the President and the Minister with reasons for the identification of that person as king or queen;

(Section 9(1)(a)(ii)(bb) substituted by section 11(a) of Act 23 of 2009)

(cc) give written confirmation to the President that the Premier of the province concerned and the Minister have been informed accordingly; and

(b) The President must, on the recommendation of the Minister and subject to subsection (3), recognise a person so identified in terms of paragraph (a)(i) as king or queen, taking into account

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(Words in section 9(1)(b) preceding subparagraph (i) substituted by section 11(b) of Act 23 of 2009)

(i) the need to establish uniformity in the Republic in respect of the status afforded to a king or queen;

(ii) whether a kingship or queenship has been recognised in terms of section 2A.

(Section 9(1)(b)(ii) substituted by section 11(c) of Act 23 of 2009)

(iii) the functions that will be performed by the king or queen.

(2) The recognition of a person as a king or a queen in terms of subsection (1)(b) must be done by way of

-

- (a) a notice in the *Gazette* recognising the person identified as king or queen; and
 - (b) the issuing of a certificate of recognition to the identified person.
- (3) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in terms of customary law, customs or processes, the President on the recommendation of the Minister -
- (Words in section 9(3) preceding paragraph (a) substituted by section 11(d) of Act 23 of 2009)*
- (a) may refer the matter to the National House of Traditional Leaders for its recommendation; or
 - (b) may refuse to issue a certificate of recognition; and
 - (c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.
- (4) Where the matter that has been referred back to the royal family for recognition and resolution in terms of subsection (3) has been reconsidered and resolved, the President on the recommendation of the Minister must recognise the person identified by the royal family if the President is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law.
- (Section 9(4) substituted by section 11(e) of Act 23 of 2009)*
- (5)
- (a) The President may, by notice in the *Gazette*, make regulations concerning -
 - (i) the traditional or ceremonial role of a king or queen;
 - (ii) the responsibilities of a king or queen in respect of nation building; and
 - (iii) other functions or roles of a king or queen.
 - (b) Regulations made in terms of paragraph (a) must be tabled in Parliament after their publication in the *Gazette*.

10. Removal of kings or queens

- (1) A king or queen may be removed from office on the grounds of -
- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;

- (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for the king or queen to function as such;
 - (c) wrongful appointment or recognition; or
 - (d) a transgression of a customary rule or principle that warrants removal.
- (2) Whenever any of the grounds referred to in subsection (1)(a), (b) and (d) come to the attention of the royal family and the royal family decides to remove a king or queen, the royal family must, within a reasonable time and through the relevant customary structure -
- (a) inform the President, the Premier of the province concerned and the Minister, of the particulars of the king or queen to be removed from office;
 - (b) furnish reasons for such removal; and
 - (c) give written confirmation to the President that the Premier of the province concerned and the Minister have been informed accordingly.
- (3) Where it has been decided to remove a king or queen in terms of subsection (2), the President on the recommendation of the Minister must -
- (Words in section 10(3) preceding paragraph (a) substituted by section 12 of Act 23 of 2009)*
- (a) withdraw the certificate of recognition with effect from the date of removal;
 - (b) publish a notice with particulars of the removed king or queen in the *Gazette*; and
 - (c) inform the royal family concerned, and the removed king or queen of such removal.
- (4) Where a king or queen is removed from office, a successor in line with customs may assume the position, role and responsibilities, subject to section 9.

Part 2A:

Principal traditional leaders

10A. Recognition of principal traditional leaders

- (1) Whenever the position of a principal traditional leader is to be filled, the following process must be followed:
- (a) The royal family must, within a reasonable time after the need arises for the position of a principal traditional leader to be filled, and with due regard to applicable customary law-

- (i) identify a person who qualifies in terms of custom and customary law to assume the position of principal traditional leader, after taking into account whether any of the grounds referred to in section 10B(1)(a), (b) and (d) apply to that person; and
- (ii) through the relevant customary structure-
 - (aa) inform the Premier of the province, of the particulars of the person so identified to fill the position of a principal traditional leader; and
 - (bb) provide the Premier with the reasons for the identification of that person as a principal traditional leader.
- (b) The Premier must, in accordance with provincial legislation and subject to subsections (2) and (3), recognise a person so identified in terms of paragraph (a)(i) as a principal traditional leader, taking into account-
 - (i) the need to establish uniformity in the Republic in respect of the status afforded to a principal traditional leader;
 - (ii) whether a recognised principal traditional community exists-
 - (aa) that comprises the areas of jurisdiction of a substantial number of senior traditional leaders that fall under the authority of principal traditional leader;
 - (bb) in terms of which the principal traditional leader is regarded and recognised in terms of customary law and customs as a traditional leader of higher status than the senior traditional leaders referred to in subparagraph (aa); and
 - (cc) where the principal traditional leader has a customary structure to represent the traditional councils and senior traditional leaders that fall under the authority of the principal traditional leader; and
 - (iii) the functions that will be performed by the principal traditional leader.
- (2) A principal traditional leader to be recognised in terms of subsection (1) must be senior traditional leader of a specific traditional community who exercises authority over a number of senior traditional leaders in accordance with custom and customary law.
- (3) The provincial legislation referred to in subsection (1)(b) must at least provide for-

- (a) notice in the *Provincial Gazette* recognising the person identified as a principal traditional leader in terms of subsection (1);
 - (b) a certificate of recognition to be issued to the identified person; and
 - (c) the relevant provincial house of traditional leaders to be informed of the recognition of a principal traditional leader.
- (4)
- (a) The Premier may, by notice in the *Provincial Gazette*, make regulations concerning-
 - (i) the traditional or ceremonial role of a principal traditional leader;
 - (ii) the responsibilities of a principal traditional leader in respect of nation building; and
 - (iii) other functions or roles of a principal traditional leader.
 - (b) Regulations made in terms of paragraph (a) must be tabled in provincial legislature after their publication in the *Provincial Gazette*.

(Section 10A inserted by section 13 of Act 23 of 2009)

10B. Removal of principal traditional leaders

- (1) A principal traditional leader may be removed from office on the grounds of-
 - (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;
 - (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for the principal traditional leader to function as such;
 - (c) wrongful appointment or recognition; or
 - (d) a transgression of a customary rule or principle that warrants removal.
- (2) Whenever any of the grounds referred to in subsection (1)(a), (b) and (d) come to the attention of the royal family and the royal family decides to remove a principal traditional leader, the royal family must, within a reasonable time and through the relevant customary structure-
 - (a) inform the Premier of the province concerned, of the particulars of the principal traditional leader to be removed from office; and

- (b) furnish reasons for such removal.
- (3) Where it has been decided to remove a principal traditional leader in terms of subsection (2), the Premier must-
- (a) withdraw the certificate of recognition with effect from the date of removal;
 - (b) publish a notice with particulars of the removed principal traditional leader in the *Provincial Gazette*; and
 - (c) inform the royal family concerned, and the provincial traditional leader of such removal.
- (4) Where a principal traditional leader is removed from office, a successor may be recognized subject to section 10A.
- (5) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with customary law, customs or processes, the Premier-
- (a) may refer the matter to the relevant royal family for its recommendation; or
 - (b) may refuse to issue a certificate of recognition; and
 - (c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.
- (6) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (3) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law.

(Section 10B inserted by section 13 of Act 23 of 2009)

(Part 2A inserted by section 13 of Act 23 of 2009)

Part 3

Senior traditional leaders, headmen and headwomen

11. Recognition of senior traditional leaders, headmen or headwomen

- (1) Whenever the position of senior traditional leader, headman or headwoman is to be filled -
- (a) the royal family concerned must, within a reasonable time after the need arises for any of those positions to be filled, and with due regard to applicable customary law -

- (i) identify a person who qualifies in terms of customary law to assume the position in question, after taking into account whether any of the grounds referred to in section 12(1)(a), (b) and (d) apply to that person; and
 - (ii) through the relevant customary structure, inform the Premier of the province concerned of the particulars of the person so identified to fill the position and of the reasons for the identification of that person; and
 - (b) the Premier concerned must, subject to subsection (3), recognise the person so identified by the royal family in accordance with provincial legislation as senior traditional leader, headman or headwoman, as the case may be.
- (2)
- (a) The provincial legislation referred to in subsection (1)(b) must at least provide for -
 - (i) a notice in the *Provincial Gazette* recognising the person identified as senior traditional leader, headman or headwoman in terms of subsection (1);
 - (ii) a certificate of recognition to be issued to the identified person; and
 - (iii) the relevant provincial house of traditional leaders to be informed of the recognition of a senior traditional leader, headman or headwoman.
 - (b) Provincial legislation may also provide for -
 - (i) the election or appointment of a headman or headwoman in terms of customary law and customs; and
 - (ii) consultation by the Premier with the traditional council concerned where the position of a senior traditional leader, headman or headwoman is to be filled.
- (3) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with customary law, customs or processes, the Premier -
- (a) may refer the matter to the relevant provincial house of traditional leaders for its recommendation; or
 - (b) may refuse to issue a certificate of recognition; and
 - (c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.

- (4) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (3) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law.

12. Removal of senior traditional leaders, headmen or headwomen

- (1) A senior traditional leader, headman or headwoman may be removed from office on the grounds of -
- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;
 - (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that senior traditional leader, headman or headwoman to function as such;
 - (c) wrongful appointment or recognition; or
 - (d) a transgression of a customary rule or principle that warrants removal.
- (2) Whenever any of the grounds referred to in subsection (1)(a), (b) and (d) come to the attention of the royal family and the royal family decides to remove a senior traditional leader, headman or headwoman, the royal family concerned must, within a reasonable time and through the relevant customary structure -
- (a) inform the Premier of the province concerned of the particulars of the senior traditional leader, headman or headwoman to be removed from office; and
 - (b) furnish reasons for such removal.
- (3) Where it has been decided to remove a senior traditional leader, headman or headwoman in terms of subsection (2), the Premier of the province concerned must, in terms of applicable provincial legislation -
- (a) withdraw the certificate of recognition with effect from the date of removal;
 - (b) publish a notice with particulars of the removed senior traditional leader, headman or headwoman in the *Provincial Gazette*; and
 - (c) inform the royal family concerned, the removed senior traditional leader, headman or headwoman, and the provincial house of traditional leaders concerned, of such removal.

- (4) Where a senior traditional leader, headman or headwoman is removed from office, a successor in line with customs may assume the position, role and responsibilities, subject to section 11.

Part 4

General provisions regarding traditional leaders

13. Recognition of regents

- (1) Where the successor to the position of king, queen, principal traditional leader, senior traditional leader, headman or headwoman identified in terms of section 9, 9A or 11 is still regarded as a minor in terms of applicable customary law or customs -

(Words in section 13(1) preceding paragraph (a) substituted by section 14(a) of Act 23 of 2009)

- (a) the royal family concerned must, within a reasonable time -
- (i) identify a regent to assume leadership on behalf of the minor; and
 - (ii) through the relevant customary structure, inform the Premier of the province concerned of the particulars of the person identified as regent and the reasons for the identification of that person; and
- (b) the Premier concerned must, with due regard to applicable customary law or customs, and subject to subsections (2) and (3), recognise the regent identified by the royal family in accordance with provincial legislation.
- (2) The provincial legislation referred to in subsection (1)(b) must at least provide for -
- (a) a notice in the *Provincial Gazette* recognising the person identified as regent in terms of subsection (1);
 - (b) a certificate of recognition to be issued to the identified regent;
 - (c) the recognition of a regent to be reviewed by the Premier at least every three years; and
 - (d) the relevant provincial house of traditional leaders to be informed of the recognition of a regent.
- (3) Where there is evidence or an allegation that the identification of a person as regent was not done in accordance with customary law, customs or processes, the Premier -
- (a) may refer the matter to the relevant provincial house of traditional leaders for its recommendation;
- or

- (b) may refuse to issue a certificate of recognition; and
 - (c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.
- (4) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (3) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family have been done in accordance with customary law.
- (5) As soon as the successor to the position of king, queen, principal traditional leader, senior traditional leader, headman or headwoman ceases to be a minor in terms of customary law, the regent recognised in terms of subsection (1) must relinquish his or her position as regent, and the rightful successor must -

(Words in section 13(5) preceding paragraph (a) substituted by section 14(b) of Act 23 of 2009)

- (a) in the case of a king or queen, be recognised by the President on the recommendation of the Minister in terms of section 9(1)(b), and a certificate of recognition contemplated in section 9(2)(b) must be issued after his or her name has been published in the *Gazette*; or

(Section 13(5)(a) substituted by section 14(c) of Act 23 of 2009)

- (b) in the case of a principal traditional leader or senior traditional leaders, headman or headwoman, be recognised by the Premier in terms of section 9A or 11(1)(b), and a certificate of recognition contemplated in section 9A(6) or 11(2)(a)(ii) must be issued after his or her name has been published in the *Provincial Gazette*.

(Section 13(5)(b) substituted by section 14(c) of Act 23 of 2009)

- (6) Where a regent has been recognised in respect of the position of a king or queen, the Premier concerned must inform the President and Minister -

(Words in section 13(6) preceding paragraph (a) substituted by section 14(d) of Act 23 of 2009)

- (a) of the particulars of the regent;
- (b) when the regent is supposed to relinquish his or her position as regent; and
- (c) of the withdrawal of the recognition of the regent.

14. Persons acting as traditional leader

- (1) A royal family must, in accordance with provincial legislation, identify a suitable person to act as a king, queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be, where -

- (a) a successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman or headwoman has not been identified by the royal family concerned in terms of section 9(1), 9A(1) or 11(1);
- (b) the identification of a successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman or headwoman is being reconsidered and resolved in terms of section 9(3), 9A(3) or 11(3); or
- (c) a king, queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be, would be absent from his or her area of jurisdiction under circumstances other than those provided for in section 15 and for a period of more than six months for -
 - (i) the treatment of illness;
 - (ii) study purposes; or
 - (iii) any other lawful purpose.

(Section 14(1) substituted by section 15(a) of Act 23 of 2009)

- (2) An acting appointment in terms of subsection (1) must be made in accordance with provincial legislation, which legislation must at least provide for -
 - (a) a certificate of appointment in an acting position to be issued by an appropriate authority;
 - (b) a review of the acting appointment on a regular basis;
 - (c) the removal of a person who has been appointed in an acting position; and
 - (d) the relevant provincial house of traditional leaders to be informed of such an acting appointment.
- (3) A person who has been identified as an acting king, queen, principal traditional leader, senior traditional leader, headman or headwoman in terms of subsection (1) may perform the functions that are attached to the kingship, queenship, principal traditional leadership, senior traditional leadership or headmanship in question.

(Section 14(3) substituted by section 15(b) of Act 23 of 2009)

- (4) Where a person has been identified as an acting king or queen, principal traditional leader, the authority referred to in subsection (2)(a) must inform the President, Minister and Premier of -
 - (a) the acting appointment; and

- (b) the removal of the person who has been identified as an acting king or queen or principal traditional leader.

(Section 14(4) substituted by section 15(b) of Act 23 of 2009)

15. Deputy traditional leaders

- (1) A king, queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be, may, after consultation with the royal family, appoint a deputy to act in his or her stead whenever that king, queen, principal traditional leader, senior traditional leader, headman or headwoman -

(Words in section 15(1) preceding paragraph (a) substituted by section 16(a) of Act 23 of 2009)

- (a) becomes a full-time member of a municipal council;
 - (b) is elected as a member of a provincial legislature;
 - (c) is elected as a member of the National Assembly;
 - (d) is appointed as a permanent delegate in the National Council of Provinces; or
 - (e) is elected to, or appointed in, a full-time position in any house of traditional leaders.
- (2) An appointment in terms of subsection (1) must be made in accordance with provincial legislation, which legislation must at least provide for -
 - (a) the removal of a person who has been appointed as a deputy;
 - (b) a certificate of appointment to be issued to a deputy by an appropriate authority; and
 - (c) the relevant provincial house of traditional leaders to be informed of such an appointment.
- (3) A person who has been appointed as a deputy in terms of subsection (1) may perform the functions that are attached to the kingship or queenship or principal traditional leadership, senior traditional leadership or headmanship in question.

(Section 15(3) substituted by section 16(b) of Act 23 of 2009)

- (4) Where a king or queen or a principal traditional leader, has appointed a deputy in terms of subsection (1), the king or queen or principal traditional leader must inform the President, Minister or Premier of such appointment.

(Section 15(4) substituted by section 16(b) of Act 23 of 2009)

CHAPTER 4

HOUSES OF TRADITIONAL LEADERS

16. Houses of traditional leaders in Republic

- (1) The houses of traditional leaders in the Republic are -
 - (a) a national house of traditional leaders and provincial houses of traditional leaders as provided for in section 212(2)(a) of the Constitution; and
 - (b) local houses of traditional leaders established in accordance with the principles set out in section 17.
- (2) A house of traditional leaders and its resources may not be used to promote or prejudice the interest of any political party.
- (3) Provincial legislation must provide for -
 - (a) mechanisms or procedures that would allow a sufficient number of women -
 - (i) to be represented in the provincial house of traditional leaders concerned; and
 - (ii) to be elected as representatives of the provincial house of traditional leaders to the National House of Traditional leaders; and
 - (b) the alignment of the term of provincial houses of traditional leaders with the term of the National House of Traditional Leaders.

(Section 16(3) substituted by section 17 of Act 23 of 2009)

17. Local houses of traditional leaders

- (1)
 - (a) A local house of traditional leaders must be established for a term of office of five years aligned to the term of office of the National House of Traditional Leaders in accordance with provincial legislation for the area of jurisdiction of a district municipality or metropolitan municipality where more than one traditional council exists in that district municipality or metropolitan municipality.
 - (b) The electoral college mentioned in subsection (2)(b) must ensure that members of a local house of traditional leaders are broadly representative of the different traditional leadership positions and also of the areas falling within the district municipality or metropolitan municipality in question.

(Section 17(1) substituted by section 18(a) of Act 23 of 2009)

(2)

Prepared by:

- (a) The number of members of a local house of traditional leaders may not be less than five and may not be more than 10, or such other higher number not exceeding 20 as may be determined by the Minister where there are more than 35 traditional councils within the area of jurisdiction of a district municipality or metropolitan municipality.
 - (b)
 - (i) Only persons recognised as traditional leaders excluding kings and queens and principal traditional leaders must be elected as members of a local house of traditional leaders.
 - (ii) Members of a local house are elected by an electoral college consisting of all kings or queens, principal traditional leader *[sic]* or their representatives, and senior traditional leaders residing within the district municipality or metropolitan municipality in question.
(Section 17(2)(b) substituted by section 18(b) of Act 23 of 2009)
 - (c) The electoral college referred to in paragraph (b) must seek to elect a sufficient number of women to make the local house of traditional leaders representative of the traditional leaders within the area of jurisdiction in question.
- (3) The functions of a local house of traditional leaders are -
- (a) to advise the district municipality or metropolitan municipality in question on -
 - (i) matters pertaining to customary law, customs, traditional leadership and the traditional communities within the district municipality or metropolitan municipality;
 - (ii) the development of planning frameworks that impact on traditional communities; or
 - (iii) the development of by-laws that impact on traditional communities;
 - (b) to participate in local programmes that have the development of rural communities as an object; or
 - (c) to participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in rural communities.
- (4) Where a local house of traditional leaders cannot be established in terms of subsection (1), the functions of a local house of traditional leaders referred to in subsection (3) are performed by the traditional council within the district municipality or metropolitan municipality concerned.
- (5) Provincial legislation must provide for a relationship between a provincial house and local houses as contemplated in section 15 of the National House of Traditional Leaders Act, 2009.
(Section 17(5) inserted by section 18(c) of Act 23 of 2009)

18. Referral of Bills to National House of Traditional Leaders

(1)

- (a) Any parliamentary Bill pertaining to customary law or customs of traditional communities must, before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House of Traditional Leaders for its comments.
- (b) The National House of Traditional Leaders must, within 30 days from the date of such referral, make any comments it wishes to make.

- (2) A provincial legislature or a municipal council may adopt the same procedure referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law to a provincial house of traditional leaders or a local house of traditional leaders, as the case may be.

CHAPTER 5 ROLES AND FUNCTIONS OF TRADITIONAL LEADERSHIP

19. Functions of traditional leaders

A traditional leader performs the functions provided for in terms of customary law and customs of the traditional community concerned, and in applicable legislation.

20. Guiding principles for allocation of roles and functions

- (1) National government or a provincial government, as the case may be, may, through legislative or other measures, provide a role for traditional councils or traditional leaders in respect of -
- (a) arts and culture;
 - (b) land administration;
 - (c) agriculture;
 - (d) health;
 - (e) welfare;
 - (f) the administration of justice;
 - (g) safety and security;

- (h) the registration of births, deaths and customary marriages;
- (i) economic development;
- (j) environment;
- (k) tourism;
- (l) disaster management;
- (m) the management of natural resources; and
- (n) the dissemination of information relating to government policies and programmes.
- (o) Education.

(Section 20(1)(o) added by section 19 of Act 23 of 2009)

(2) Whenever an organ of state within the national government or a provincial government considers allocating a role for traditional councils or traditional leaders in terms of subsection (1), that organ of state must -

- (a) seek the concurrence of -
 - (i) the Minister if it is an organ of state in the national sphere of government; or
 - (ii) the Member of the Executive Council responsible for traditional affairs in the province concerned if it is an organ of state of that province;
- (b) consult with -
 - (i) the relevant structures of traditional leadership; and
 - (ii) the South African Local Government Association;
- (c) ensure that the allocation of a role or function is consistent with the Constitution and applicable legislation;
- (d) take the customary law and customs of the respective traditional communities into account;
- (e) strive to ensure that the allocation of a role or function is accompanied by resources and that appropriate measures for accounting for such resources are put in place;

- (f) ensure, to the extent that it is possible, that the allocation of roles or functions is implemented uniformly in areas where the institution of traditional leadership exists; and
 - (g) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery through the allocation of roles and functions.
- (3) Where an organ of state has allocated a role or function to traditional councils or traditional leaders as envisaged by subsection (1), the organ of state must monitor the implementation of the function and ensure that -
- (a) the implementation of the function is consistent with the Constitution; and
 - (b) the function is being performed.
- (4) Where a traditional council does not perform an allocated function as envisaged in subsection (3), any resources given to a traditional council to perform that function may be withdrawn.

CHAPTER 6

DISPUTE AND CLAIM RESOLUTION AND COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

21. Dispute and claim resolution

- (1)
- (a) Whenever a dispute or claim concerning customary law or customs arises between or within traditional communities or other customary institutions on a matter arising from the implementation of this Act, members of such a community and traditional leaders within the traditional community or customary institution concerned must seek to resolve the dispute or claim internally and in accordance with customs before such dispute or claim may be referred to the Commission.
 - (b) If a dispute or claim cannot be resolved in terms of paragraph (a), subsection (2) applies.
- (2)
- (a) A dispute or claim referred to in subsection (1) that cannot be resolved as provided for in that subsection must be referred to the relevant provincial house of traditional leaders, which house must seek to resolve the dispute or claim in accordance with its internal rules and procedures.
 - (b) If a provincial house of traditional leaders is unable to resolve a dispute or claim as provided for in paragraph (a), the dispute or claim must be referred to the Premier of the province concerned, who must resolve the dispute or claim after having consulted-

- (i) the parties to the dispute or claim; and
- (ii) the provincial house of traditional leaders concerned.

(c) A dispute or claim that cannot be resolved as provided for in paragraphs (a) and (b) must be referred to the Commission.

(3) Where a dispute or claim contemplated in subsection (1) has not been resolved as provided for in this section, the dispute or claim must be referred to the Commission.

(Section 21 substituted by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

22. Establishment of Commission

(1) There is hereby established, with effect from the date of coming into operation of the Traditional Leadership and Governance Framework Amendment Act, 2009, a commission known as the Commission on Traditional Leadership Disputes and Claims.

(2) The Commission must carry out its functions in a manner that is fair, objective and impartial.

(Section 22 substituted by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

23. Appointment of members of Commission

(1)

(a) The Minister must, after consultation with the National House, appoint a chairperson and not more than four persons, for a period not exceeding five years, as members of the Commission who are knowledgeable regarding customary law, customs and the institution of traditional leadership.

(b) The Minister must publish in the *Gazette* the name of the chairperson, the deputy chairperson and of every person appointed as a member of the Commission, together with the date from which the appointment takes effect.

(2) A member of the Commission is either a full-time or part-time member, as may be determined by the Minister.

(3) The Minister must designate one of the members of the Commission deputy chairperson of the Commission to act as chairperson in the absence of the chairperson of the Commission.

(4) If a member of the Commission dies or vacates office before the expiry of the period for which he or she was appointed, the Minister must appoint in terms of subsection (1) a person to fill the vacancy for the unexpired term for which such member had been appointed.

(5) The Minister may remove a member of the Commission on the grounds of-

- (a) conviction by a criminal court without an option of a fine;
- (b) physical incapacity;
- (c) such member having been declared insolvent by a court; and
- (d) such member having been declared to be of unsound mind by a court.

(Section 23 substituted by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

24. Vacancies

A vacancy occurs whenever a member of the Commission-

- (a) resigns by giving written notice to the Minister;
- (b) is removed in terms of section 23 (5); or
- (c) becomes a member of the National Assembly, a provincial legislature or a full-time member of a municipal council, or becomes a permanent delegate to the National Council of Provinces.

(Section 24 substituted by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

24A. Conditions of appointment of members of Commission

- (1) The Minister must, after consultation with the Minister of Finance, determine the conditions of appointment of the members of the Commission, taking into account-
 - (a) the role, duties and responsibilities of a member of the Commission;
 - (b) affordability in relation to the responsibilities of the Commission; and
 - (c) the level of expertise and experience required for a member of the Commission.
- (2) Conditions of appointment may differ in respect of-
 - (a) the chairperson, and other members of the Commission;
 - (b) full-time and part-time members; and
 - (c) any other appropriate circumstances.

(Section 24A inserted by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

24B. Support to and reports by Commission

(1)

- (a) The National Department responsible for traditional affairs must provide administrative and financial support to the Commission so as to enable the Commission to perform all the functions assigned to it.
- (b) The Commission may subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), appoint a person or an institution to conduct research on its behalf.

(2) The Commission must quarterly, or when requested by the Minister, provide a comprehensive report on its activities to the Minister.

(Section 24B inserted by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

25. Functions of Commission

(1) The Commission operates nationally in plenary and provincially in committees and has authority to investigate and make recommendations on any traditional leadership dispute and claim contemplated in subsection (2).

(2)

- (a) The Commission has authority to investigate and make recommendations on-
 - (i) a case where there is doubt as to whether a kingship or, principal traditional leadership, senior traditional leadership or headmanship was established in accordance with customary law and customs;
 - (ii) a case where there is doubt as to whether a principal traditional leadership, senior traditional leadership or headmanship was established in accordance with customary law and customs;
 - (iii) a traditional leadership position where the title or right of the incumbent is contested;
 - (iv) claims by communities to be recognised as kingships, queenships, principal traditional communities, traditional communities, or headmanships;
 - (v) the legitimacy of the establishment or disestablishment of 'tribes' or headmanships;
 - (vi) disputes resulting from the determination of traditional authority boundaries as a result of merging or division of 'tribes';

- (viii) *[sic]* all traditional leadership claims and disputes dating from 1 September 1927 to the coming into operation of provincial legislation dealing with traditional leadership and governance matters; and
- (ix) *[sic]* gender-related disputes relating to traditional leadership positions arising after 27 April 1994.

- (b) A dispute or claim may be lodged by any person and must be accompanied by information setting out the nature of the dispute or claim and any other relevant information.
- (c) The Commission may decide not to consider a dispute or claim on the ground that the person who lodged the dispute or claim has not provided the Commission with relevant or sufficient information or the provisions of section 21 have not been complied with.

(3)

- (a) When considering a dispute or claim, the Commission must consider and apply customary law and the customs of the relevant traditional community as they applied when the events occurred that gave rise to the dispute or claim.
- (b) The Commission must-
 - (i) in respect of a kingship or queenship, be guided by the criteria set out in section 2A(1) and 9(1); and
 - (ii) in respect of a principal traditional leadership, senior traditional leadership or headmanship, be guided by the customary law and customs and criteria relevant to the establishment of a principal traditional leadership, senior traditional leadership or headmanship, as the case may be.
- (c) Where the Commission investigates disputes resulting from the determination of traditional authority boundaries and the merging or division of 'tribes', the Commission must, before making a recommendation in terms of section 26, consult with the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998) where the traditional council boundaries straddle municipal and or provincial boundaries.

(4) Subject to subsection (5) the Commission-

- (a) may only investigate and make recommendations on those disputes and claims that were before the Commission on the date of coming into operation of this chapter; and
- (b) must complete the matters contemplated in paragraph (a) within a period of five years, which period commences on the date of appointment of the members of the Commission in terms of

section 23, or any such further period as the Minister may determine.

- (5) Any claim or dispute contemplated in this Chapter submitted after six months after the date of coming into operation of this chapter may not be dealt with by the Commission.
- (6) The Commission-
 - (a) may delegate any function contemplated in this section excluding a matter related to kingships or queenships to a committee referred to in section 26A; and
 - (b) must coordinate and advise on the work of the committees referred to in section 26A.
- (7) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), apply, with the necessary changes, to the Commission.
- (8) The Commission may adopt rules for the conduct of the business of the Commission as well as committees referred to in section 26A.
- (9) Provincial legislation must provide for a mechanism to deal with disputes and claims related to traditional leadership: Provided that such a mechanism must not deal with matters to be dealt with by the Commission.

(Section 25 substituted by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

26. Recommendations of Commission

- (1) A recommendation of the Commission is taken with the support *[sic]* of at least two thirds of the members of the Commission.
- (2) A recommendation of the Commission must, within two weeks of the recommendation having been made, be conveyed to-
 - (a) the President and the Minister where the position of a king or queen is affected by such a recommendation; and
 - (b) the relevant provincial government and any other relevant functionary to which the recommendation of the Commission applies in accordance with applicable provincial legislation in so far as the consideration of the recommendation does not relate to the recognition or removal of a king or queen in terms of section 9, 9A or 10.
- (3) The President or the other relevant functionary to whom the recommendations have been conveyed in terms of subsection (2) must, within a period of 60 days make a decision on the recommendation.

- (4) If the President or the relevant functionary takes a decision that differs with *[sic]* the recommendation conveyed in terms of subsection (2), the President or the relevant functionary as the case may be must provide written reasons for such decision.
- (5)
- (a) The Premiers must, on an annual basis and when requested by the Minister, provide the President and the Minister with a report on the implementation of their decisions on the recommendations of the Commission.
- (b) A copy of the report referred to in paragraph (a) must be submitted to the relevant provincial house for noting.

(Section 26 substituted by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

26A. Committees of Commission

- (1) There is hereby established provincial committees to deal with disputes and claims relating to traditional leadership.
- (2)
- (a) Each provincial committee contemplated in subsection (1) consists of as many members as the Premier concerned may determine after consultation with the Minister and the Commission and such members are appointed by the Premier, by the notice in the *Provincial Gazette*, for a period not exceeding five years.
- (b) The term of office of committee members must be linked to that of members of the Commission contemplated *[sic]* in section 23(1)(a).
- (c) The committee members of the Commission must have the same knowledge as the members of the Commission as contemplated in section 23(1)(a).
- (3) Each provincial committee contemplated in subsection (1) must be chaired by a member of the Commission designated by the Minister after consultation with the Premier concerned and the Commission: Provided that a member of the Commission may chair more than one committee.
- (4) The provisions of sections 24, 24A, 24B and 25(2) to (5) and (7) apply, with the necessary changes, to provincial committees.
- (5) A provincial committee must perform such functions as delegated to it by the Commission in terms of section 25(6) after a review as contemplated in section 28(10).
- (6) A provincial committee may make final recommendations on all matters delegated to it in terms of 25(6): Provided that where a committee is of the view that exceptional circumstances exist it may refer the matter to the Commission for advice.

- (7) The provisions of section 26(2)(b) apply, with the necessary changes, to the recommendations of a committee.
- (8) Each provincial committee must, on a quarterly basis or when requested by the Commission, submit a report to the Commission on all disputes and claims dealt with by such provincial committee during the period covered by the report.

(Section 26A added by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

(Chapter 6 substituted by section 20 of Act 23 of 2009 with effect from 1 February 2010.)

CHAPTER 7

GENERAL PROVISIONS

27. Code of conduct

- (1) The code of conduct contained in the Schedule applies to every traditional leader and traditional council and must, in respect of a particular province, be read together with the relevant provincial code as envisaged by subsection (2)(a).
- (2)
 - (a) Provincial legislation may prescribe a provincial code of conduct for traditional leaders and traditional councils in the province concerned that complements the code of conduct contained in the Schedule.
 - (b) A provincial code of conduct envisaged in paragraph (a) may -
 - (i) further regulate or define the ambit of a matter mentioned in item 1 or 2 of the Schedule; or
 - (ii) prescribe any other matter that a traditional leader or a traditional council must adhere to.
- (3) Applicable provincial legislation must at least provide for -
 - (a) mechanisms to deal with any breach of the code of conduct; and
 - (b) fines that may be imposed for a breach of the code of conduct, and in respect of a traditional leader also other penalties that do not include the removal of the traditional leader; and
 - (c) an acting position during the period that a traditional leader is suspended for a breach of the code of conduct, if such a penalty is provided for.

27A. Regulatory powers

Prepared by:

- (1) The Minister may, by notice in the *Gazette*, make regulations regarding-
 - (a) any matter that must or may be prescribed in terms of this Act;
 - (b) any ancillary or administrative matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Before any regulations are made under this section, the President must-
 - (a) consult-
 - (i) the Minister responsible for local government;
 - (ii) the National House of Traditional Leaders;
 - (iii) the provincial house of traditional leaders; and
 - (iv) the provincial departments responsible for traditional leadership.
 - (b) publish the draft regulations in the *Gazette* for public comment; and
 - (c) submit the draft regulations to Parliament for parliamentary scrutiny at least one month before their promulgation.

(Section 27A inserted by section 21 of Act 23 of 2009)

28. Transitional arrangements

- (1) Any traditional leader who was appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to have been recognised as such in terms of section 9 or 11, subject to a decision of the Commission in terms of section 26.
- (2) A person who, immediately before the commencement of this Act, had been appointed and was still recognised as a regent, or had been appointed in an acting capacity or as a deputy, is deemed to have been recognised or appointed as such in terms of section 13, 14 or 15, as the case may be.
- (3) Any “tribe” that, immediately before the commencement of this Act, had been established and was still recognised as such, is deemed to be a traditional community contemplated in section 2, subject to -
 - (a) the withdrawal of its recognition in accordance with the provisions of section 7; or

- (b) a decision of the Commission in terms of section 26.

(4)

- (a) A tribal authority that, immediately before the commencement of this Act, had been established and was still recognised as such, is deemed to be a traditional council contemplated in section 3 and must perform the functions referred to in section 4: Provided that such a tribal authority must be reconstituted to comply with the provisions of section 3(2) within two years of the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018.
- (b) If, prior to the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, any tribal authority was reconstituted as contemplated in paragraph (a), but such reconstitution did not comply with all the requirements of section 3(2), such tribal authority is deemed to be a traditional council and must, within two years of the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, be reconstituted in full compliance with the provisions of section 3(2).
- (c) If the timeframes contemplated in paragraph (a) or (b) are not met, the Minister may, within one year after the timeframes have lapsed and after consultation with the relevant Premier, take the necessary steps to ensure that the tribal authorities and traditional councils contemplated in paragraphs (a) and (b) are reconstituted as provided for in this subsection.
- (d) A Premier must give notice in the *Provincial Gazette* of any reconstitution done in terms of this subsection.
- (e) If a Premier has not issued a formula in accordance with section 3(2)(a), any guidelines that have been issued by the Minister as contemplated in that section shall be deemed to be such formula for the purposes of any reconstitution as contemplated in this subsection.
- (f) The term of office of any tribal authority or traditional council that has been reconstituted in accordance with this subsection must, with effect from such reconstitution, be aligned with the term of the National House of Traditional Leaders.
- (g) Following the reconstitution of any tribal authority or traditional council in terms of paragraph (a), (b) or (c), and taking into account the provisions of paragraph (f), any subsequent reconstitution from 2022 onwards, must be done in accordance with the provisions of section 3(2) and (3).

(Section 28(4) substituted by section 22(a) of Act 23 of 2009)

(Section 28(4) substituted by section 3(a) of Act 2 of 2019)

(5)

- (a) Any community authority that had been established in terms of applicable legislation and still existed as such immediately before the commencement of this Act, continues to exist until it is,

subject to paragraphs (b), (c) and (d), disestablished in accordance with provincial legislation, which disestablishment must take place by notice in the *Provincial Gazette* within two years of the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, except where the traditional leadership related to that community authority is still under investigation by the Commission in terms of section 25(2) in which case the community authority concerned must be administered as if the relevant establishing legislation had not been repealed.

- (b) In the absence of provincial legislation as contemplated in paragraph (a), the Premier of a province may, after consultation with any relevant member of the executive council of the province, the relevant community authority and the provincial house of traditional leaders, by notice in the *Provincial Gazette* disestablish such community authority.
- (c) A notice contemplated in paragraphs (a) and (b) must regulate the legal, practical and other consequences of the disestablishment, including—
 - (i) the transfer of assets, liabilities and administrative and other records to an appropriate authority;
 - (ii) the vacation of office of any office bearer of such a community authority; and
 - (iii) the transfer of staff of such a community authority in accordance with applicable legislation.
- (d) If the timeframe contemplated in this subsection is not met, the Minister may, within one year after the timeframe has lapsed and after consultation with the relevant Premier, community authority and provincial house of traditional leaders, take the necessary steps to ensure that the relevant community authority is disestablished in accordance with the provisions of this subsection.

(Section 28(5) substituted by section 22(b) of Act 23 of 2009)

(Section 28(5) substituted by section 3(b) of Act 2 of 2019)

- (6)
 - (a) The member of the Executive Council of a province responsible for traditional affairs must, by notice in the *Provincial Gazette*, within one year of the commencement of this Act disestablish any regional authority, Ibandla Lamakhosi, Council of Chiefs and ward authority functioning under tribal authorities that have been established in terms of applicable legislation before the commencement of this Act.
 - (b) The notice disestablishing a regional authority Ibandla Lamakhosi, Council of Chiefs or ward authority must regulate the legal, practical and other consequences of the disestablishment, including -

- (i) the transfer of assets, liabilities and administrative and other records to an appropriate provincial department, a municipality or local house of traditional leaders, as circumstances may require;
 - (ii) the vacation of office of any office bearer of such a regional authority; and
 - (iii) the transfer of staff of such a regional authority.
- (7) The Commission must, in terms of section 25(2), investigate the position of paramountcies and paramount chiefs that had been established and recognised, and which were still in existence and recognised, before the commencement of this Act, before the Commission commences with any other investigation in terms of that section.
- (8)
 - (a) Where, pursuant to an investigation conducted in terms of subsection (7), the Commission has decided that a paramountcy qualifies to be recognised as a kingship or queenship, such a paramountcy is deemed to be recognised as a kingship or queenship in terms of section 3A.
 - (b) The incumbent paramount chiefs, in respect of the kingships and queenships contemplated in paragraph (a), who were recognised before the commencement of this Act, are deemed to be kings or queens, subject to investigation and recommendation of the Commission in terms of section 25 (2).

(Section 28(8) added by section 22(c) of Act 23 of 2009)
- (9)
 - (a) Where, pursuant to an investigation conducted in terms of subsection (7), the Commission has decided that a paramountcy does not qualify to be recognised as a kingship or queenship, such a paramountcy will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a kingship or queenship in terms of section 2A.
 - (b) Where, pursuant to an investigation conducted in terms of subsection (7), the Commission has decided that a paramount chief does not qualify to be recognised as a king or queen, such a paramount chief, regent or acting paramount chief will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a king or queen in terms of section 9 or a regent or acting king or queen in terms of sections 13 and 14 respectively.
 - (c) A kingship or queenship and a king or queen recognised in terms of paragraph (a) and (b) lapses-
 - (i) if, on the date of the coming into operation of the Traditional Leadership and Governance Framework Amendment Act, 2009, the position is vacant;

- (ii) on the death of the incumbent king or queen where the position of such king or queen is occupied by a permanent incumbent;
- (iii) where the position of the incumbent king or queen is occupied by a regent or an acting incumbent, on the death of such regent or acting incumbent or on the date of the recognition of a successor,

where after the kingship or queenship and the king or queen will be deemed to be a principal traditional community and principal traditional leader respectively, as contemplated in sections 2B and 10A.

(Section 28(9) added by section 22(c) of Act 23 of 2009)

- (10) The Commission must review all claims and disputes that have not been disposed of on the date of the coming into operation of the Traditional Leadership and Governance Framework Amendment Act, 2009 and if the Commission is of the opinion that any such claim or dispute should not be dealt with by the Commission or a provincial committee, subject to section 21 refer the claim or dispute to the relevant province for resolution of the claim or dispute and inform the parties to the matter concerned accordingly.

(Section 28(10) added by section 22(c) of Act 23 of 2009)

(11)

- (a) The Commission established by section 22 as amended by the Traditional Leadership and Governance Framework Amendment Act, 2009 (hereinafter referred to as 'new Commission'), is the successor in law of the Commission as it existed immediately before that Amendment Act (hereinafter referred to as 'old Commission').
- (b) All disputes and claims that were before the old Commission are deemed to have been lodged with the new Commission.

(Section 28(11) added by section 22(c) of Act 23 of 2009)

- (12) The term of office of a kingship or queenship council established in accordance with the provisions of section 3A(1) must, with effect from the date of such establishment, be aligned with the term of the National House of Traditional Leaders.

(Section 28(12) added by section 3(c) of Act 2 of 2019)

29. Amendment of Act 20 of 1998, as amended by Act 21 of 2000

The Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended by -

- (a) the substitution for the Long Title of the following Long Title:

“To provide for a framework for determining the salaries and allowances of the President, members of the National Assembly, permanent delegates to the National Council of

Provinces, Deputy President, Ministers, Deputy Ministers, traditional leaders, members of local Houses of Traditional Leaders, members of provincial Houses of Traditional Leaders and members of the National House of Traditional Leaders; to provide for a framework for determining the upper limit of salaries and allowances of Premiers, members of Executive Councils, members of provincial legislatures and members of Municipal Councils; to provide for a framework for determining pension and medical aid benefits of office bearers; to provide for the repeal of certain laws; and to provide for matters connected therewith.”;

(b) the substitution in section 1 for -

(i) the definition of “benefits” of the following definition:

“ ‘benefits’ means in respect of a traditional leader, a member of a local House of Traditional Leaders, a member of a provincial House of Traditional Leaders and a member of the National House of Traditional Leaders those benefits which the President may determine in terms of section 5(3), and in respect of all other office bearers, the contributions contemplated in sections 8(2) and (5) and 9(2) and (5); (xii)”;

(ii) the definition of “office bearer” of the following definition:

“ ‘office bearer’ means a Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate, a Premier, a member of an Executive Council, a member of a provincial legislature, a traditional leader, a member of a local House of Traditional Leaders, a member of a provincial House of Traditional Leaders, a member of the National House of Traditional Leaders and a member of a Municipal Council; (ii)”;

(iii) the definition of “traditional leader” of the following definition:

“ ‘traditional leader’ means **[any person identified in terms of section 5(5)]** a traditional leader as defined in section 1 of the Traditional Leadership and Governance Framework Act, 2003. (ix)”;

(c) the substitution for section 5 of the following section:

Salaries, allowances and benefits of traditional leaders, members of local Houses of Traditional Leaders, members of provincial Houses of Traditional Leaders and members of National House of Traditional Leaders

5. (1) Traditional leaders, members of any local House of Traditional Leaders, members of any provincial House of Traditional Leaders and members of the National House of Traditional Leaders shall, despite anything to the contrary in any other law contained, be entitled to such salaries and allowances as may from time to time be

determined by the President after consultation with the Premier concerned by proclamation in the *Gazette*, after taking into consideration -

- (a) any recommendations of the Commission;
 - (b) the role, status, duties, functions and responsibilities of different categories of traditional leaders, different members of the local Houses of Traditional Leaders, different members of the Houses of Traditional Leaders in the various provinces and different members of the National House of Traditional Leaders;
 - (c) the affordability of different levels of remuneration of public office bearers;
 - (d) the current principles and levels of remuneration in society generally;
 - (e) the need for the promotion of equality and uniformity of salaries and allowances for equal work performed;
 - (f) the enhancement of co-operation, unity and understanding between traditional communities nationally;
 - (g) the extent of the role and functions of traditional leaders across provincial borders; and
 - (h) inflationary increases.
- (2) Despite the provisions of subsection (1), a traditional leader, a member of a local House of Traditional Leaders, a member of a provincial House of Traditional Leaders or a member of the National House of Traditional Leaders who holds different public offices simultaneously, is only entitled to the salary, allowances and benefits of the public office for which he or she earns the highest income, but -
- (a) this subsection shall not preclude the payment of out of pocket expenses for the performance of functions other than those for which such office bearer receives such highest income; and
 - (b) where only an allowance has been determined in terms of subsection (1) in respect of a traditional leader's membership of a local House of Traditional Leaders, a provincial House of Traditional Leaders or the National House of Traditional Leaders, such a traditional leader shall be entitled to such an allowance in addition to his or her salary, allowances and benefits as a traditional leader.

- (3) (a) The President may, if he or she deems it expedient after consultation with the Minister and the Premier concerned, by proclamation in the *Gazette* determine any benefits to which a traditional leader, a member of any local House of Traditional Leaders, a member of any Provincial House of Traditional Leaders or a member of the National House of Traditional Leaders shall be entitled, subject to such conditions as the President may prescribe.
- (b) If the President decides to determine such benefits, the criteria listed in paragraphs (a) to (h) of subsection (1) shall be applicable, with the necessary changes.
- (4) The amount payable in respect of salaries, allowances and benefits to traditional leaders, members of local Houses of Traditional Leaders, members of provincial Houses of Traditional Leaders and members of the National House of Traditional Leaders shall be paid from monies appropriated for that purpose by Parliament in respect of the National House of Traditional Leaders and by a provincial legislature in respect of traditional leaders, **[and]** members of local Houses of Traditional Leaders and members of provincial Houses of Traditional Leaders, as the case may be.
- [(5) A traditional leader is a person identified by the Minister after consultation with the Premier concerned by notice in the *Gazette* for the purposes of this Act.]**
- (6) Despite the provisions of subsection (1), a member of the National House of Traditional Leaders shall be entitled to an allowance as determined by the President by proclamation in the *Gazette* for actual work performed with effect from 10 April 1997 until a determination is made in terms of subsection (1).”;

(d) the substitution in section 8 for subsection (6) of the following subsection:

“(6) The provisions of this section shall, subject to section 5(3), not apply to a traditional leader, a member of a local House of Traditional Leaders, a member of a provincial House of Traditional Leaders and a member of the National House of Traditional Leaders.”; and

(e) the substitution in section 9 for subsection (6) of the following subsection:

“(6) The provisions of this section shall, subject to section 5(3), not apply to a traditional leader, a member of a local House of Traditional Leaders, a member of a provincial House of Traditional Leaders and a member of the National House of Traditional Leaders.”.

30. Short title and commencement

Prepared by:

This Act is called the Traditional Leadership and Governance Framework Act, 2003, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE CODE OF CONDUCT

1. General conduct of traditional leader

A traditional leader -

- (a) must perform the functions allocated to him or her in good faith, diligently, honestly and in a transparent manner;
- (b) must fulfil his or her role in an efficient manner;
- (c) may not conduct himself or herself in a disgraceful, improper or unbecoming manner;
- (d) must comply with any applicable legislation;
- (e) must act in the best interest of the traditional community or communities he or she serves;
- (f) must promote unity amongst traditional communities;
- (g) may not embark on actions that would create division within or amongst traditional communities;
- (h) must promote nation building;
- (i) may not refuse to provide any service to a person on political or ideological grounds;
- (j) must foster good relations with the organs of state with whom he or she interacts;
- (k) must promote the principles of a democratic and open society; and
- (l) must disclose gifts received.

2. General conduct of traditional council

A traditional council must -

- (a) perform the functions allocated to it in good faith, diligently, honestly and in a transparent manner;

- (b) execute its duties in an efficient manner;
- (c) comply with any applicable legislation;
- (d) act in the best interest of the traditional community it serves;
- (e) give effect to the principles governing public administration set out in section 195 of the Constitution; and
- (f) foster good relations with the organs of state with whom it interacts.