

REPUBLIC OF SOUTH AFRICA

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# TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK AMENDMENT BILL

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*(As amended by the Select Committee on Co-operative Governance and Traditional Affairs  
(National Council of Provinces))  
(The English text is the official text of the Bill)*

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(MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B 57D—2008]

ISBN 978-1-77037-648-9

No. of copies printed ..... 1 800

## GENERAL EXPLANATORY NOTE:

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

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

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# BILL

To amend the Traditional leadership and Governance Framework Act, 2003, so as to substitute definitions and to insert definitions; to provide for the recognition of kingships or queenships and the withdrawal of such recognition by the President on the recommendation of the Minister; to provide for the establishment and recognition of principal traditional communities; to further regulate the establishment of traditional councils; to provide for the establishment and recognition of kingship or queenship councils; to provide for the establishment and recognition of principal traditional councils; to provide for the establishment of sub-traditional councils; to provide for the functions of traditional councils; to provide for regulatory powers; to provide for a principal traditional leadership as a forth position of traditional leadership to further regulate the recognition and removal of kings and queens; to provide for the recognition and removal of principal traditional leaders; to further regulate the recognition and appointments of regents, persons acting as traditional leaders and deputy traditional leaders; to further regulate the election of members of local houses of traditional leaders; to provide for a relationship between a provincial house and local houses; to further regulate the roles of traditional leaders; to provide for the reconstitution and operation of the Commission on traditional leadership Disputes and Claims; to provide anew for the transitional provisions relating to tribal authorities, community authorities and paramountcies; to amend the remuneration of Public Office Bearers Act, 1998, so as to make provision for the remuneration of non-traditional leader members of traditional councils, traditional sub-council, principal traditional councils and kingships or queenship councils; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Amendment of section 1 of Act 41 of 2003

1. Section 1(1) of the Traditional Leadership and Governance Framework Act, 2003 (hereinafter referred to as the principal Act), is hereby amended by—

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

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

- (b) the substitution for the definition of “kingship” of the following definition:  
“ ‘**kingship or queenship**’ means a kingship or queenship established in terms of section 2A;”;
- (c) the insertion after the definition of “kingship” of the following definition:  
“ ‘**kingship or queenship council**’ means a council established and recognised for a kingship or queenship in terms of section 3A;”; 5
- (d) the insertion after the definition of “**Minister**” of the following definitions:  
“ ‘**principal traditional community**’ means a principal traditional community recognised as such in terms of section 2B;  
“ ‘**principal traditional council**’ means a council established and recognised in terms of section 3B; 10  
‘**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; 15
  - (b) recognised as such in terms of section 10A; and
- (e) the substitution for the definition of “traditional council” of the following definition:  
“ ‘**traditional council**’ means a council established in terms of section 3 and includes a traditional sub-council established in terms of section 4B;”. 20

### Substitution of heading to Chapter 2 of Act 41 of 2003

2. The following heading is hereby substituted for the heading to Chapter 2 of the principal Act:

**“KINGSHIPS OR QUEENSHIPS, PRINCIPAL TRADITIONAL LEADERS, PRINCIPAL TRADITIONAL COMMUNITIES, TRADITIONAL COMMUNITIES, PRINCIPAL TRADITIONAL COUNCILS, KINGSHIP OR QUEENSHIP COUNCILS AND TRADITIONAL COUNCILS”.** 25

### Insertion of section 2A in Act 41 of 2003

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3. The following section is inserted in the principal Act after section 2:

#### **“Recognition of kingships or queenships**

**2A.** (1) Subject to subsection (2), a number of traditional communities that are grouped together may be recognised as a kingship or queenship if they— 35

- (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. 40

(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. 45

(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, 55

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*.”.

#### “Recognition of principal traditional communities

**2B.** (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 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*.”.

#### Amendment of section 3 of Act 41 of 2003

4. Section 3 of the principal Act is hereby amended by the substitution in subsection (2) for paragraphs (a) and (c) of the following paragraphs:

- “(a) A traditional council [**may have no more than 30 members, depending on the needs of the traditional community concerned**] 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*.
- (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.”.

#### Insertion of section 3A in Act 41 of 2003

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

##### “Establishment and recognition of kingship or queenship councils

**3A.** (1) Once the President has recognised a kingship or queenship, that kingship or queenship must, within one year of the recognition, establish a kingship or queenship council.

(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, by an electoral college consisting of all senior traditional leaders who fall under the kingship or queenship.

(d) Each traditional community falling within the area of jurisdiction of the kingship or queenship concerned must in the prescribed manner, elect one person to serve as a member referred to in paragraph (d)(ii): Provided that where the number of persons so elected exceed the number of members contemplated in paragraph (d)(ii), the persons elected by the traditional communities must elect from amongst themselves the number of persons contemplated in paragraph (d)(ii).

(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.”.

#### Insertion of section 3B in Act 41 of 2003

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

##### **“Establishment and recognition of principal traditional councils**

**3B.** (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, by an electoral college consisting of all senior traditional leaders who fall under the principal traditional council.

(d) The members referred to in paragraph (c)(ii) are elected from amongst persons nominated by each of the traditional councils falling under the jurisdiction of the principal traditional community, with each traditional council nominating two candidates.

(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.

#### Insertion of sections 4A and 4B in Act 41 of 2003

7. The following sections are hereby inserted in the principal Act after section 4:

#### **“Functions of kingship or queenship councils**

**4A.** (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). 5
- (2) A kingship or queenship council is required to—
- (a) keep proper records;
  - (b) have its financial statements audited; 10
  - (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 15
  - (e) advise and support all traditional councils falling under the authority of the king or queen. 20
- (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.”.

#### **Establishment and functions of traditional sub-councils** 25

- 4B.** (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. 30
- (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*. 35
- (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. 35
- (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. 40
- (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. 45

#### **Functions of principal traditional councils**

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

#### **Substitution of section 5 of Act 41 of 2003** 50

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

#### **“Partnerships between district and local municipalities and kingship and queenship councils, principal traditional councils and traditional councils**

5. (1) The national government and all provincial governments 55

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 No. 32 of 2000), and any other applicable legislation.”.

#### **Substitution of section 6 of Act 41 of 2003**

9. The following section is hereby substituted for section 6 of the principal Act:

##### **“Support to traditional councils principal traditional councils and kingship or queenship councils**

6. 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 their functions.”.

#### **Amendment of section 8 of Act 41 of 2003**

10. The following section is hereby substituted for section 8 of the principal Act:

##### **“Recognition of traditional leadership positions**

8. 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.

#### **Amendment of section 9 of Act 41 of 2003**

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

(a) the substitution in subsection (1)(a)(ii) for subparagraph (bb) of the following subparagraph:

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

(b) the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

“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”;

(c) the substitution in subsection (1)(b) of subparagraph (ii) of the following subparagraph:

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

(d) the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“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—”; and

(e) the substitution for subsection (4) of the following subsection:

“(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.”. 5

#### **Amendment of section 10 of Act 41 of 2003**

**12.** Section 10 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 10

“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—”.

#### **Insertion of Part 2A in Act 41 of 2003**

**13.** The following Part is hereby inserted in the principal Act after Part 2:

#### **Part 2A:** 15 **Principal traditional leaders**

##### **“Recognition of principal traditional leaders**

**10A** (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— 20

(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 25

(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 30  
(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— 35

(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; 40

(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 45

(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 50

(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 55

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*.

### **Removal of principal traditional leaders**

**10B** (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.

**Amendment of section 13 of Act 41 of 2003****14.** Section 13 of the principal Act is hereby amended by—

- (a) the substitution of the words preceding paragraph (a) of subsection (1) for the following words:
 

“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—”;
- (b) by the substitution of the words preceding paragraph (a) of subsection (5) for the following words:
 

“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—”.
- (c) the substitution of paragraphs (a) and (b) of subsection (5) for the following paragraphs:
 

“(a) in the case of a king or queen, be **[installed]** 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;

(b) in the case of a principal traditional leader or senior traditional leaders, headman or headwoman, be **[installed]** 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*; or”.
- (d) the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
 

“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—”.

**Amendment of section 14 of Act 41 of 2003****15.** Section 14 of the principal Act is hereby amended by—

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

“(1) A royal family **[may]** 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.”.
- (b) by the substitution of subsections (3) and (4) for the following subsections:
 

“(3) A person who has been **[appointed]** 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.

- (4) Where a person has been **[appointed]** 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 **[appointed]** identified as an acting king or queen or principal traditional leader.”.

#### **Amendment of section 15 of Act 41 of 2003**

**16.** Section 15 of the principal Act is hereby amended by—

- (a) the substitution of the words preceding paragraph (a) of the following words:
 

“(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—”
- (b) the substitution of subsections (3) and (4) for the following subsections:
 

“(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.

(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.”

#### **Amendment of section 16 of Act 41 of 2003**

**17.** Section 16 of the Principal Act is hereby amended by the substitution of subsection (3) for the following subsection:

- “(3) Provincial legislation must provide for—
- (a) mechanisms or procedures that would allow a sufficient number of women—
    - [(a)] (i) to be represented in the provincial house of traditional leaders concerned; and
    - [(b)] (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.

#### **Amendment of section 17 of Act 41 of 2003**

**18.** Section 17 of the principal Act is hereby amended by—

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

“(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 **[senior traditional leadership]** 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.”;
- (b) the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(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 or their representatives, and senior traditional leaders residing within the district municipality or metropolitan municipality in question.”[;] and

(c) the insertion of a new subsection (5):

(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.”.

### **Amendment of section 20 of Act 41 of 2003**

19. Section 20 of the principal Act is hereby amended by the addition in subsection (1) after paragraph (n) of the following paragraph:

(o) Education.

### **Substitution of Chapter 6 of Act 41 of 2003**

20. The following Chapter is hereby substituted for Chapter 6 of the principal Act:

#### **“CHAPTER 6**

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

##### **Dispute and claim resolution**

21. (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.

##### **Establishment of Commission**

22. (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.

### Appointment of members of Commission

- 23.** (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. 5
- (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. 10
- (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. 15
- (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— 20
- (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. 25

### Vacancies

- 24.** 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. 30

### Conditions of appointment of members of Commission

- 24A.** (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— 35
- (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. 40
- (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. 45

### Support to and reports by Commission

- 24B.** (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. 50
- (2) The Commission must quarterly, or when requested by the Minister, provide a comprehensive report on its activities to the Minister.

## Functions of Commission

**25.** (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) 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) 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 5
- (b) must coordinate and advise on the work of the committees referred to in section 26A. 10

(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. 15

### Recommendations of Commission

**26.** (1) A recommendation of the Commission is taken with the support 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— 20

- (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. 25

(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. 30

(4) If the President or the relevant functionary takes a decision that differs with 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. 35

(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. 40

### Committees of Commission

**26A.** (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. 45

(b) The term of office of committee members must be linked to that of members of the Commission contemplated in section 23(1)(a). 50

(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. 55

(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.”.

### Insertion of section 27A in Act 41 of 2003

21. The following section is hereby inserted in the principal Act after section 27:

#### “Regulatory powers

**27A.** (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.”.

### Amendment of section 28 of Act 41 of 2003

22. (1) Section 28 of the principal Act is amended by—

- (a) the substitution for subsection (4) of the following subsection:

“(4) 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 comply with section 3(2) within [one year] seven years of the commencement of this Act.”;

- (b) the substitution for subsection (5) of the following subsection:

“(5) 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 disestablished in accordance with provincial legislation, which disestablishment must take place within [two] five years of the commencement of this Act, 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.”;

- (c) the addition of the following subsections:

“(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).

(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.

(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.

(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.

### Validation of decisions

**23.** Despite the expiration of the term provided in the transitional arrangements, the actions and decisions taken by any community authority and tribal authority in terms of the applicable legislation, which was provided for in section 28 of the principal Act, at any time from 24 September 2005 to the date on which this Act takes effect, are hereby validated and declared to have been lawfully done.

### Amendment of long title of Act 20 of 1998, as amended by Act 21 of 2000 and section 29 of Act 41 of 2003

**24.** The Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended by 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, non-traditional leader members of traditional councils, non-traditional leader members of kingship or queenship councils, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; 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.”.

#### Amendment of section 1 of Act 20 of 1998

25. Section 1 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended—

- (a) by the substitution for the definition of “benefits” of the following definition:
- “**‘benefits’** means in respect of a traditional leader, non-traditional leader member of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a kingship or queenship council; non-traditional members of kingship or queenship councils, 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)”;
- (b) the substitution for 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 non-traditional leader member of a traditional council, a member of a kingship or queenship council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; 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)”.

#### Substitution of section 5 of Act 20 of 1998

26. The following section is substituted for section 5 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998):

**“Salaries, allowances and benefits of traditional leaders, non-traditional leader members of traditional councils, members of kingship or queenship councils, 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, non-traditional leader members of any traditional council, non-traditional leader members of any kingship or queenship council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; 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, non-traditional leader members of traditional councils, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; members of kingship or queenship councils, non-traditional members of kingship or queenship councils, 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 non-traditional leader member of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a kingship or queenship council, 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 non-traditional leader member of a traditional council, a member of a kingship or queenship council, non-traditional members of kingship or queenship councils, 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, non-traditional leader members of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; members of a kingship or queenship council, non-traditional members of kingship or queenship councils; 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, non-traditional leader members of traditional councils, the members of

kingship or queenship councils, non-traditional members of kingship or queenship councils members of local Houses of Traditional Leaders and members of provincial houses of Traditional Leaders, as the case may be.

(5) . . . . .

(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).”.

#### **Amendment of section 8 of Act 20 of 1998**

**27.** Section 8 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended by the substitution 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 non-traditional leader member of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a kingship or queenship council, non-traditional members of kingship or queenship councils, 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.”.

#### **Amendment of section 9 of Act 20 of 1998**

**28.** Section 9 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended by the substitution 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 non-traditional leader member of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a kingship or queenship council, non-traditional members of kingship or queenship councils, 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.”.

#### **Short title**

**29.** This Act is called the Traditional Leadership and Governance Framework Amendment Act, 2009, and Chapter 6 comes into operation on 1 February 2010.

## **MEMORANDUM ON THE OBJECTS OF THE TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK AMENDMENT BILL, 2008**

### **1. BACKGROUND**

The Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) was passed in December 2003, and came into operation on 24 September 2004.

Since then, the Act has been implemented and through careful analysis of the Act and assessment of its implementation it has emerged that there is a need to effect certain amendments to address the current gaps and legal uncertainties in respect of the following areas highlighted in this Bill:

- (a) Recognition of kingships or queenship and withdrawal of such recognition;
- (b) Recognition of principal traditional communities;
- (c) Determination of number of members of traditional councils by formula;
- (d) Establishment and recognition of kingship or queenship as well as principal traditional councils;
- (e) Establishment of traditional sub-councils;
- (f) To provide for partnerships between district and local municipalities and kingship or queenship, principal traditional and traditional councils;
- (g) Support to all traditional leadership councils;
- (h) Recognition and removal of principal traditional leaders;
- (i) Reconstitution of the Commission in a national component and provincial committees, as well as for the streamlining of the modus operandi of the Commission;
- (j) Further amendment of the transitional provisions relating to tribal authorities, community authorities and paramountcies that did not qualify to be kingships or queenships; and
- (k) Amendment of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) to make provision for the remuneration of non-traditional leader members of traditional councils and kingship or queenship councils.

### **2. PARTIES CONSULTED**

The following parties have been consulted during the drafting of this Bill:

- (1) National House of Traditional Leaders;
- (2) Provincial houses of traditional leaders;
- (3) Provincial departments responsible for traditional leadership;
- (4) Traditional leaders; and
- (5) CONTRALESA.

### **3. CLAUSE BY CLAUSE EXPLANATION OF THE BILL**

#### **Clause 1**

Clause 1 provides for definition of certain terms used in the amendment to be effected to the principal Act.

#### **Clause 2**

Clause 2 provides for the amendment of the heading of Chapter 2 of the principal Act to include kingships or queenships, principal traditional leaders, principal traditional communities, traditional communities, kingship or queenship, principal and traditional councils.

#### **Clause 3**

Clause 3 provides for the addition of section 2A to the principal Act so as to provide for the criteria and procedure for the recognition of kingships or queenship. The Act currently does not provide for the recognition of kingships or queenship, it provides only for the recognition of the incumbents to leadership positions of kingships or queenships.

#### **Clause 4**

Clause 4 provides for the amendment of section 3 of the principal Act so as to—

- (a) provide for the determination of the number of members of a traditional council by formula;

- (b) determine that the term of office of members of traditional councils is five years, and this applies to both selected as well as elected members.

#### **Clause 5**

Clause 5 provides for the process to establish and recognise kingship or queenship councils as a formal structure to assist kings or queens to administer the affairs of their kingships or queenships.

#### **Clause 6**

Clause 6 provides for the establishment and recognition of principal traditional councils to assist principal traditional leaders to administer the affairs of their communities.

#### **Clause 7**

Clause 7 provides for the addition of sections 4A, 4B and 4C to the principal Act to provide for the functions of kingship or queenship councils as well as the establishment and the functions of a sub-traditional council and functions of principal traditional councils. A sub-traditional council is to be established in areas where one traditional community exists in more than one geographical area. This situation is prevalent in certain areas of KwaZulu-Natal and North West where there currently exists a legal vacuum regarding these communities. There are historical and customary reasons why these communities were divided and ended up in more than one geographical location.

#### **Clause 8**

Clause 8 provides for the amendment of section 5 of the principal Act so as to provide for partnerships between district and local municipalities and all traditional leadership councils.

#### **Clause 9**

Clause 9 amends section 6 of the principal Act so as to provide for the support to kingship or queenship councils as well as principal traditional councils as is the case with traditional councils.

#### **Clause 10**

Clause 10 provides for the amendment of section 8 of the principal Act so as to provide for the recognition of principal traditional leadership positions where this position exists in terms of custom and customary law.

#### **Clause 11**

Clause 11 amends section 9 of the principal Act, so as to provide for a role for the Minister in the process of the recognition of kings or queens and kingships or queenships.

#### **Clause 13**

Clause 13 provides for the addition of section 10A and 10B to the principal Act so as to provide for the criteria and procedure for the recognition and removal of principal traditional leaders. The Act currently does not provide for the recognition of principal traditional leaders.

#### **Clause 14, 15 and 16**

Clauses 14, 15 and 16 amend sections 13, 14 and 15 of the principal Act so as to provide for recognition of regents, acting and deputy principal traditional leaders.

#### **Clause 17**

Clause 17 amends section 26 of the principal Act so as to provide for the enhancement of the representation of women in the provincial and national houses, as well as for the alignment of the term of provincial houses with the term of the national house.

#### **Clause 18**

- Clause 18 provides for the amendment of section 17 of the principal Act so as to—
- (a) allow for the electoral college on the election of members of local houses to ensure that the members of local house are broadly representative of the

different leadership positions and also of the areas falling within the district or metro municipality;

- (b) provide for the exclusion of kings or queens and principal traditional leaders as members of a local house;
- (c) provide for that provincial legislation must provide for a relationship between a provincial house and local houses.

#### **Clause 20**

Clause 20 provides for the substitution of Chapter 6 of the principal Act, so as to—

- (a) provide for the reconstitution of the Commission in a national component consisting of five members and provincial committees with the same mandate as the current Commission;
- (b) provide that all claims and disputes submitted to the old Commission are deemed to have been submitted to the reconstituted Commission;
- (c) provide that any claim or dispute submitted after six months after 1 February 2010 may not be dealt with by the Commission;
- (d) provide that the Commission no longer makes decisions but only recommendations.

#### **Clause 21**

Clause 21 provides for the addition of section 27A in the principal Act so as to provide for the making of regulations by the Minister.

#### **Clause 22**

Clause 22 provides for the amendment of section 28 of the principal Act relating to transitional arrangements on the following areas:

- (a) To provide for the extension of the period within which traditional authorities must be reconstituted and community authorities must be disestablished from one to seven years and from two to five years respectively;
- (b) To provide that—
  - (i) those paramountcies and paramount chiefs that did not qualify to be kingships or queenships and kings or queens respectively, to be deemed to be recognised as kingships or queenships and kings or queens respectively.
  - (ii) the recognition of a kingship or queenship and a king or queen lapses—
    - (aa) if, on the date of coming into operation of this amendment Act, the position is vacant;
    - (bb) on the death of the incumbent king or queen where the position is occupied by a permanent incumbent; and
    - (cc) where the position is occupied by a regent or 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 a king or queen will be deemed to be a principal traditional community and principal traditional leader respectively.
- (c) To provide for the review of all claims and disputes in order to determine whether such claims or disputes should be dealt with by the Commission or a provincial committee.
- (d) To provide that the reconstituted Commission is the successor in law to the current Commission and to provide that all claims and disputes are deemed to have been lodged with the reconstituted Commission.

#### **Clause 24**

Clause 24 provides for the amendment of section 29 of the principal Act which amends the Remuneration of the Public Office Bearers Act, 1998 (Act No. 20 of 1998) so as to provide for the payment of sitting allowances to non-traditional leader members of all traditional leadership councils.

#### **Clause 29**

Clause 29 provides for the short title and that Chapter 6 will come into operation on 1 February 2010.

#### **4. FINANCIAL IMPLICATIONS**

It is estimated that the financial implications in respect of sitting allowances to non-traditional leader members of traditional leadership councils will amount to R36,7 million. This figure is based on estimated sitting allowances as these have not been determined by the Commission on the Remuneration of Public Office Bearers.

#### **5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers and the Department of Cooperative Governance and Traditional Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution.

5.2 The State Law Advisers are of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains provisions pertaining to customary law or customs of traditional communities.