

DEPARTMENT OF TRADITIONAL AFFAIRS

NOTICE 2851 OF 2024

INVITATION TO COMMENT ON THE DRAFT CUSTOMARY INITIATION REGULATIONS

The Department of Traditional Affairs hereby invites any interested person or body to provide written comments on the Draft Customary Initiation regulations contained in the Schedule hereto.

The closing date for comments is 60 calendar days from the date of publication of this notice in the *Gazette*. All comments must be submitted in the format indicated below:

NAME AND CONTACT DETAILS [Please provide the name of the person or body who submits the comment and contact details, preferably e-mail address]	CLAUSE COMMENTED ON [Please indicate which particular clause comments relate to]	PROPOSAL [Please provide a clear proposal on how the particular clause should be amended]	MOTIVATION [Please provide detailed motivation for the proposed amendment]

Please send your comments to:

Postal address: Director-General: Department of Traditional Affairs
Private Bag X22
ARCADIA
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(Attention: Dr S Singh)

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DRAFT CUSTOMARY INITIATION REGULATIONS
ARRANGEMENT OF REGULATIONS

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Definitions

1. In these Regulations, an expression, word or phrase to which a meaning has been assigned in the Customary Initiation Act, 2021 (Act No. 2 of 2021), bears the meaning so assigned and, unless the context otherwise indicates,—

“**appellant**” means a person who lodges an appeal as provided for in section 34(1) or (2) of the Act;

“**extraordinary circumstances**” means situations that are unusual, unforeseen, unexpected or of extreme urgency that could not be predicted and needs to be attended to immediately or prepared for forthwith;

“**HOD**” means the head of the provincial department or departments responsible for providing administrative and financial support to the relevant PICC as contemplated in section 17 of the Act;

“**provincial department**” means the provincial department or departments responsible for providing administrative and financial support to the relevant PICC as contemplated in section 17 of the Act;

“**the Act**” means the Customary Initiation Act, 2021 (Act No. 2 of 2021); and

“**transitional period**” means the period from the day after the expiry of the term of the NIOC in accordance with section 4(2) of the Act or the expiry of the term of a PICC in accordance with section 11(5) of the Act, as the case may be, until the day before the re-establishment of the NIOC in accordance with section 4(1) of the Act or the re-establishment of a PICC in accordance with section 11(1), (2) or (3) of the Act, as the case may be.

Establishment notices

2. (1) The notices contemplated in sections 4(1), 11(1), 11(2) and 11(3) of the Act must include the titles, initials and surnames of the persons designated as members of the NIOC or a PICC, as the case may be.

(2) The title, initials and surname of a person who is designated to fill a vacancy in the NIOC as contemplated in section 7 of the Act must be published in the *Gazette* by the Department after the Minister has been informed of the filling of such vacancy.

(3) The title, initials and surname of a person who is designated to fill a vacancy in a PICC as contemplated in section 13 of the Act must be published in the relevant provincial *Gazette* by the provincial department after the relevant Premier has been informed of the filling of such vacancy.

(4) A title as contemplated in this Regulation includes, where applicable, a customary title accorded to the person in terms of the customs of the particular community.

Transitional period

3. (1) (a) The NIOC and a PICC remain competent to function during the transitional period.

(b) A person who was a member of the NIOC or a PICC at the expiry of the term thereof, remains a member during the transitional period.

(c) A person who was elected as chairperson or deputy chairperson of the NIOC or a PICC, remains to be the chairperson or deputy chairperson thereof during the transitional period.

(2) (a) During the transitional period the Department is, in respect of the members of the NIOC contemplated in section 4(1)(a) of the Act, responsible for any expenses related to their attendance of meetings of the NIOC or the execution of functions of the NIOC.

(b) During the transitional period the provincial department is, in respect of the members of the PICC contemplated in section 11(1)(a), (2)(a) or (3)(a) of the Act, as the case may be, responsible for any expenses related to their attendance of meetings of the PICC or the execution of functions of the PICC.

(3) (a) At the first meeting of the NIOC or a PICC as contemplated in section 5 or 12 of the Act, as the case may be, or at the meeting of the NIOC or a PICC following the first meeting, the chairperson and deputy chairperson of the previous NIOC or PICC must submit and present a report on the work done by the previous NIOC or PICC and also

inform the newly established NIOC or PICC of all outstanding and critical matters to be attended to.

(b) The provisions of sub-regulation (2)(a) and (b) apply to a meeting as contemplated in paragraph (a) of this sub-regulation.

Interim chairperson

4. (1) If both the chairperson and deputy chairperson of the NIOC are unable to execute or perform their duties, functions and responsibilities, or when both positions are vacant, the remaining members of the NIOC must, from amongst the members contemplated in section 4(1)(a), (b) or (c) of the Act, elect a member to act as chairperson while the said circumstances prevail.

(2) If both the chairperson and deputy chairperson of a PICC are unable to execute or perform their duties, functions and responsibilities, or when both positions are vacant the remaining members of the PICC must, from amongst the members contemplated in section 11(1)(a), 11(2)(a) or (b) or 11(3) of the Act, as the case may be, elect a member to act as chairperson while the said circumstances prevail.

(3) For the purposes of an election as contemplated in sub-regulations (1) or (2), the Director-General or HOD, as the case may be, must arrange a meeting of the NIOC or PICC and give notice of such meeting to the members of the NIOC or PICC at least two working days prior to such meeting.

(4) A meeting as contemplated in sub-regulation (3) may be held on a virtual platform.

(5) The Director-General or HOD, as the case may be, shall chair a meeting as contemplated in sub-regulation (3).

(6) The Director-General or HOD, as the case may be, may delegate the responsibilities provided for in sub-regulations (3) and (5) to a Deputy Director General or a Chief Director within their Departments.

(7) The provisions of sections 8(2)(a), (3) and (4) or 14(2)(a), (3) and (4) of the Act, as the case may be, apply with the necessary changes to a meeting contemplated in sub-regulation (3).

(8) If, during a meeting of the NIOC or a PICC, both the chairperson and deputy chairperson of the NIOC or a PICC become unable or unavailable to execute or perform their duties, functions and responsibilities, the remaining members of the NIOC or PICC must, from amongst themselves, elect a member to act as chairperson for the duration of the specific meeting: Provided that the remaining members must form a quorum as contemplated in sections 8(3) or 14(3) of the Act, as the case may be.

Meetings of NIOC or PICC

5. (1) (a) If a member of the NIOC or a PICC, as the case may be, is unable to attend any meeting of the NIOC or the relevant PICC, such member must submit a written apology to the chairperson of the NIOC or the PICC and the secretariat thereof, at least three working days before the meeting.

(b) If a member of the NIOC or a PICC, as the case may be, is absent from three consecutive meetings, whether with or without having submitted a written apology, the chairperson of the NIOC or the PICC, as the case may be, must inform such member in writing that if his or her absence persists, it will be reported to the Minister or Premier, as the case may be.

(c) If, after having written to a member as contemplated in paragraph (b), such member is absent from the next meeting of the NIOC or the PICC, as the case may be, the chairperson of the NIOC or the PICC must report such absence to the Minister or the Premier, as the case may be, and the Minister or Premier may, in writing, request the institution or department who designated such member, to replace the member.

(2) The NIOC or a PICC, as the case may be, must, during the consideration of the agenda of a meeting, indicate whether any item is of a confidential nature that will require a closed session and determine who will be allowed to attend such closed session and how such a matter is to be captured in the minutes of the meeting.

(3) (a) The NIOC may request a meeting with any or all PICCs to discuss any matter relating to the implementation of the Act: Provided that such meetings are limited to four physical meetings per PICC per calendar year and two physical meetings per calendar year in the case of a meeting with all PICCs or more than one PICC at a time.

(b) A PICC may request a meeting with the NIOC to discuss any matter relating to the implementation of the Act: Provided that such meetings are limited to two physical meetings per calendar year.

(c) A PICC may request a meeting with any other PICC to discuss any matter relating to the implementation of the Act: Provided that such meetings are limited to two physical meetings per calendar year per other PICC.

(d) The provisions of sections 8(2)(a) and (b) and (4)(a) and (b) and 14(2)(a) and (b) and (4)(a) and (b) of the Act, as the case may be, apply with the necessary changes to a meeting as contemplated in this sub-regulation.

(4) (a) Any meeting of the NIOC or a PICC or any joint meeting as contemplated in sub-regulation (3) may be held on a virtual platform.

(b) The limits in respect of the number of meetings as contemplated in sub-regulation (3) do not apply in the case of virtual meetings.

(c) A virtual meeting must be recorded by the secretariat of the NIOC or PICC, as the case may be.

(d) The secretariat of the NIOC or PICC, as the case may be, must download the electronic attendance register of a virtual meeting if the relevant virtual platform provides for such register: Provided that if a virtual platform does not provide for an attendance register, the relevant secretariat must list the names of attendees manually.

(e) The provisions of sections 8(2)(a) and (4)(a) and (b) and 14(2)(a) and (4)(a) and (b) of the Act, as the case may be, apply with the necessary changes to a meeting as contemplated in this sub-regulation.

(5) (a) In extraordinary circumstances the chairperson of the NIOC or a PICC, as the case may be, may give a minimum of 24 hours' notice of a special meeting of the NIOC or PICC to all members of the NIOC or the PICC, to attend to any urgent matters: Provided that if a member of the NIOC or a PICC, as the case may be, is unable to attend any such special meeting, such member must submit a written apology to the chairperson of the NIOC or the PICC and the secretariat thereof, at least 12 hours before the meeting.

(b) A special meeting as contemplated in paragraph (a) may only be held on a virtual platform and the provisions of sub-regulation (4)(c) and (d) apply to such special meeting.

(6) In extraordinary circumstances the Minister or Director-General may give a minimum of 24 hours' notice of a special meeting of the NIOC to all members of the NIOC, to attend to any urgent matters and the provisions of sub-regulation (4)(c) and (d) apply to such meeting: Provided that if a member of the NIOC is unable to attend any such meeting, such member must submit a written apology to the Minister or Director-General, as the case may be, and the secretariat of the NIOC, at least 12 hours before the meeting.

(7) In extraordinary circumstances the Premier, relevant MEC or HOD may give a minimum of 24 hours' notice of a special meeting of the PICC to all members of the PICC, to attend to any urgent matters and the provisions of sub-regulation (4)(c) and (d) apply to such meeting: Provided that if a member of the PICC is unable to attend any such meeting, such member must submit a written apology to the Premier, MEC or HOD, as the case may be, and the secretariat of the PICC, at least 12 hours before the meeting.

(8) The NIOC or a PICC that requests a physical meeting as contemplated in sub-regulation (3)(a), (b) or (c) is responsible for the cost related to the venue and catering of such meeting.

Assignment of tasks

6. (1) The NIOC or a PICC, as the case may be, may, at a duly constituted meeting, assign a task related to the functions, duties and responsibilities of the NIOC or the PICC to a member or members of the NIOC or the PICC who are present at the particular meeting.

(2) The assignment of a task as contemplated in sub-regulation (1) must—

(a) indicate the timeframe within which the member or members must complete the task and report to the NIOC or PICC, as the case may be; and

(b) be captured in the minutes of the meeting.

Inspections, investigations and closing of initiation schools

7. (1) Any member of the NIOC or a PICC who has to conduct an investigation or inspection as contemplated in the Act, must, if such investigation or inspection requires of such person to have access to an initiate or initiates or to an area of the relevant initiation school other than the area contemplated in section 21(7) of the Act, be a person who has undergone initiation himself or herself.

(2) For the purposes of an investigation or inspection as contemplated in the Act, the NIOC or PICC, as the case may be, may request the relevant Provincial Commissioner of SAPS to designate a member or members of SAPS to accompany the member or members of the NIOC or PICC.

(3) If a PICC has not been established in a particular province, the NIOC must give written notice of its intention to conduct an inspection or investigation as contemplated in section 9(1)(b)(i), (ii) or (vi) of the Act to the HOD, at least three working days before the envisaged inspection or investigation, and inform the Director-General accordingly.

(4) (a) The NIOC must, for the purposes of the first proviso to section 9(1)(b) of the Act, inform the relevant PICC in writing of its intention to conduct an inspection or investigation, at least three working days before the envisaged inspection or investigation, and indicate the period within which the PICC must designate a member as contemplated in the said proviso.

(b) The failure of a PICC to designate a member as contemplated in the first proviso to section 9(1)(b) of the Act within the period indicated by the NIOC, does not prevent the NIOC from conducting such inspection or investigation: Provided that in such instances the NIOC must, prior to the relevant inspection or investigation, give written notice thereof to the HOD, at least one working day before the envisaged inspection or investigation, and inform the Director-General accordingly.

(5) For the purposes of the closing of an initiation school as contemplated in the Act, the relevant PICC may request the relevant Provincial Commissioner of SAPS to designate a member or members of SAPS to accompany the member or members of the PICC.

Reports

8. (1) (a) The NIOC may, in writing, request a report from a PICC in respect of any of the functions, duties and responsibilities assigned to the PICC in terms of the Act, including any statistics kept by a PICC, which report must be submitted to the NIOC within a period indicated in the request.

(b) If a PICC has not been established in a particular province, the NIOC may submit a request as contemplated in paragraph (a) to the HOD.

(2) (a) A PICC must, within two working days from receipt of information as contemplated in section 31(1)(c) of the Act, submit a detailed report on such information to the NIOC.

(b) A report as contemplated in paragraph (a) must include the full names, identity number, age, gender, ethnic group and cause of death of the particular initiate: Provided that if the cause of death is not known at the time of the report, the PICC must submit an updated report to the NIOC within two working days of being informed of the cause of death.

(3) (a) A PICC must, within one month after an initiation season has ended, prepare and submit an initiation season report to the NIOC: Provided that if a PICC has not been established in a particular province, the HOD must prepare and submit such report.

(b) The NIOC must, within two months from the commencement of these Regulations, inform all PICCs and, where applicable, the HOD, in writing of the minimum information to be included in an initiation season report.

(c) The NIOC may, from time to time, review the minimum information to be included in an initiation season report and inform all PICCs and, where applicable, the HOD, of any changes.

Directives by Minister

9. (1) A directive by the Minister as contemplated in section 9(1)(a)(vii) of the Act must be in writing and may be issued through a letter or email addressed to the chairperson and deputy chairperson of the NIOC.

(2) In extraordinary circumstances the Minister may issue a directive to the chairperson of NIOC telephonically and must subsequently confirm such directive in writing through a letter or email addressed to the chairperson.

(3) A directive issued by the Minister must indicate the period within which the NIOC has to perform the specific task and how the NIOC has to report on such task to the Minister.

(4) Upon receipt of a directive from the Minister, the chairperson of the NIOC must forthwith inform all members of the NIOC accordingly through a letter or email addressed to such members.

Assistance by traditional leaders

10. A request by the NIOC or a PICC to a traditional leader for assistance as contemplated in section 20(1)(e) of the Act must be in writing, stipulate the nature of assistance required and indicate how the traditional leader has to report on the assistance provided to the NIOC or PICC.

Appeals

11. (1) An appeal as contemplated in section 34 of the Act must be in writing and may be lodged with the Premier or Minister, as the case may be, through electronic mail, registered mail services or may be delivered by hand or through a courier service.

(2) (a) In the case of an appeal as contemplated in section 34(1) of the Act, an appellant must, within three working days of having lodged the appeal, submit a copy thereof to—

- (i) the MEC or MECs responsible for customary initiation in the particular province;
- (ii) the HOD; and
- (iii) the relevant traditional council or PICC.

(b) In the case of an appeal as contemplated in section 34(2) of the Act, an appellant must, within three working days of having lodged the appeal, submit a copy thereof to the Director-General and the NIOC.

(c) The relevant traditional council, PICC or the NIOC must, in writing and within three working days of having received a copy of the appeal, submit details of the decision against which the appeal is lodged to the Premier or Minister, as the case may be.

(3) An appeal must—

- (a) include information on the decision against which the appeal is lodged;
- (b) indicate the grounds of the appeal; and
- (c) include any documentation and evidence that is in support of the appeal.

Conduct of members of NIOC and PICCs

12. (1) A member of the NIOC or a PICC—

- (a) must carry out his or her functions, duties and responsibilities in a manner that is fair, objective, impartial, non-discriminatory and transparent; and
- (b) must at all times act in the best interest of the NIOC or PICC, as the case may be, and in such a way that the credibility and integrity of the NIOC or PICC, as the case may be, are not compromised.

(2) If any person, on reasonable grounds, is of the opinion that a member of the NIOC may be guilty of—

- (a) breaching a provision of the Act or these Regulations;
- (b) misconduct; or
- (c) a failure to perform his or her functions, duties or responsibilities in terms of the Act or these Regulations,

such person may, in writing, report such breach, misconduct or failure to the Minister.

(3) (a) Upon receipt of a report as contemplated in sub-regulation (2), the Minister must request the particular member of the NIOC to reply in writing and within 30 calendar days to the alleged breach, misconduct or failure.

(b) Upon receipt of the response of the particular member of the NIOC or if no response is received within the 30-day period, the Minister must appoint an investigative committee consisting of at least two persons to investigate and make a finding on the alleged breach, misconduct or failure and to submit a report with recommendations in respect of an appropriate sanction or sanctions to the Minister: Provided that—

- (i) a person appointed as a member of an investigative committee may not be a member of the NIOC or a PICC;

- (ii) an investigation must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
- (iii) an investigation must be finalised and the report submitted within 30 calendar days from the appointment of the investigative committee.

(4) The Minister must inform the Minister or institution who, in accordance with section 4(1) of the Act designated the particular member of the NIOC, of the alleged breach, misconduct or failure and the appointment of an investigative committee.

- (5) Upon receipt of a report from an investigative committee, the Minister may—
- (a) issue a formal warning to such member;
 - (b) reprimand such member;
 - (c) suspend such member for a period specified by the Minister; or
 - (d) subject to sub-regulation (6), request that such member be removed and replaced:

Provided that the Minister must, in writing, inform the particular member, the NIOC and the Director-General of the findings of the investigative committee and the sanction.

(6) (a) The Minister must submit the report of an investigative committee to the Minister or institution who, in accordance with section 4(1) of the Act designated the particular member of the NIOC, and inform such Minister or institution of the sanction instituted against such member.

(b) In an instance where the Minister requests that the particular member of the NIOC be removed and replaced, the relevant Minister or institution as contemplated in section 4(1) of the Act, must in writing inform the particular member of his or her removal and must, within 30 calendar days from such removal, inform the Minister of the details of the person who is to replace the removed member.

(7) The provisions of sub-regulations (2) to (6) apply to members of a PICC and any reference to the Minister or the NIOC shall, respectively, be construed as a reference to the relevant Premier or PICC.

Short title

13. These Regulations are called the Customary Initiation Regulations, 2024, and will come into operation on the date of promulgation in the *Gazette*.