

Eastern Cape, South Africa

## Eastern Cape Traditional Leadership and Governance Act, 2017

Act 1 of 2017

Legislation as at 1 May 2017

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Eastern Cape Traditional Leadership and Governance Act, 2017 (Act 1 of 2017)

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# Eastern Cape South Africa

## Eastern Cape Traditional Leadership and Governance Act, 2017

Act 1 of 2017

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Assented to on 5 April 2017

Commenced on 15 June 2017 by [Eastern Cape Traditional Leadership and Governance Act, 2017: Commencement](#)

*[This is the version of this document from 1 May 2017 and includes any amendments published up to 6 December 2024.]*

### ACT

To consolidate laws governing traditional leadership institutions in the Province, to provide for the recognition of traditional communities, to provide for the establishment and recognition of principal traditional councils, to provide for the establishment and recognition of traditional councils, to provide for the recognition of traditional leaders, to provide for the functions of traditional leaders, to provide for the removal of a traditional leader from office, to provide for the recognition of regents, to provide for establishment of houses of traditional leaders, to provide for the repeal of certain laws; and to provide for matters incidental thereto.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows: —

#### Chapter 1

#### Definitions, application and interpretation of Act, guiding principles and transformation of traditional authorities into traditional councils and areas of jurisdiction

##### 1. Definitions

In this Act, unless the context indicates otherwise—

“**administrative area**” means an area of jurisdiction under the authority of headmanship or headwomanship and within the jurisdictional area of a senior traditional leader in accordance with customary law;

“**area of jurisdiction**” means the area of jurisdiction defined for a kingship or queenship council, principal traditional council, traditional council and district or metropolitan municipality;

“**chairperson**” means a chairperson, or a deputy chairperson elected or designated in terms of section 9, 56 and 76, and includes an acting chairperson;

“**Chief Magistrate**” means a Chief Magistrate appointed in terms of the Magistrate Courts Act, 1944 ([Act No. 32 of 1944](#)), and “Magistrate” has a corresponding meaning;

“**code of conduct**” means the code of conduct contained in Schedule 1;

“**Commission**” means the Commission established in terms of section 22 of the Traditional Leadership and Governance Framework Act, 2003 ([Act No. 41 of 2003](#)) as amended;

"**Constitution**" means the [Constitution of the Republic of South Africa](#), (1996);

"**customary institution or structure**" means those institutions or structures established in terms of customary law;

"**Department**" means the Department responsible for Traditional Affairs in the Province;

"**district municipality**" means a district municipality as defined in the Local Government: Municipal Structures Act, 1998 ([Act No. 117 of 1998](#));

"**executive committee**" means an executive committee established in terms of [section 56](#) or [section 76](#) of this Act;

"**Framework Act**" means the Traditional Leadership and Governance Framework Act, 2003 ([Act No. 41 of 2003](#));

"**Head of Department**" means the Head of the Department responsible for Traditional Affairs in the Province;

"**headman or headwoman**" means a traditional leader who—

- (a) is under the authority of, or exercises authority within, the area of jurisdiction of a senior traditional leader in accordance with customary law, and
- (b) is recognised as such in terms of [section 23](#) of this Act;

"**kingship or queenship**" means a kingship or queenship established in terms of section 2A of the Traditional Leadership and Governance Framework Act, 2003 ([Act No. 41 of 2003](#));

"**kingship or queenship council**" means a council established in terms of section 2B of the Traditional Leadership and Governance Framework Act, 2003 ([Act No. 41 of 2003](#));

"**Legislature**" means the Legislature of the Province as defined in the Constitution;

"**local house**" means a local house of traditional leaders established in terms of [section 48](#) of this Act;

"**MEC**" means the Member of the Executive Council responsible for Traditional Affairs in the Province;

"**Minister**" means the Minister responsible for traditional leadership matters;

"**Premier**" means the Premier of the Province;

"**prescribed**" means prescribed by the Premier by regulation in the *Provincial Gazette*;

"**President**" means the President of the Republic of South Africa;

"**principal traditional council**" means a council established in terms of [section 16](#) of this Act;

"**principal traditional leader**" means a person who has been recognised in terms of [section 22](#) of this Act;

"**Province**" means the Province of the Eastern Cape established by section 103 of the Constitution;

"**Provincial Gazette**" means the *Provincial Gazette* of the Province;

"**Provincial Government**" means the government of the Province of the Eastern Cape;

"**Provincial House**" means the House of Traditional Leaders established in terms of [section 66](#) of this Act;

"**regent**" means any person who, in terms of customary law of the relevant traditional community, holds a traditional leadership position in a temporary capacity until a successor to that position who is a minor, is recognised as contemplated in [section 25](#) of this Act;

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

“**this Act**” includes the regulations made in terms of this Act;

“**traditional community**” means a traditional community recognised as such in terms of section 2 of the Framework Act;

“**traditional council**” means a council established in terms of [section 6](#);

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

“**traditional leadership**” means the customary institution or structure, or customary system or procedures of governance recognised, utilized or practiced by traditional communities.

## 2. Interpretation of the Act

- (1) Any word or expression to which a meaning has been assigned in the Framework Act bears the meaning so assigned, unless the context indicates otherwise.
- (2) Nothing contained in this Act may be construed as precluding members of a traditional community from addressing a traditional leader by the traditional title accorded to him or her by custom, but such traditional title does not derogate from, or add anything to, the status, role and functions of a traditional leader as provided for in this Act.
- (3) Customs, tradition or customary laws relating to traditional leadership continue to operate, subject to the Constitution, the Framework Act and this Act.

## 3. Guiding Principles

- (1) The Province must respect, protect, and promote the institution of traditional leadership in accordance with the [Constitution of the Republic of South Africa, 1996](#).
- (2) All institutions of traditional leadership established in accordance with customary law and customs of traditional communities and recognised in this Act must be transformed and adapt customary law and customs so as to comply with 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.

## Chapter 2

### Principal traditional leaders, traditional communities, principal traditional councils and traditional councils

## 4. Recognition of traditional communities

- (1) A community may be recognised as a traditional community if it—
  - (a) has a system of traditional leadership at a senior traditional leadership level;
  - (b) observes a system of customary law; and
  - (c) has a minimum of five administrative areas.
- (2) A community may, in writing, apply to the Premier to be recognised as a traditional community.



- (3) An application referred to in subsection (2) must contain a description of the community, including the following particulars—
- (a) an indication of the size of the community;
  - (b) the generally accepted name of the community;
  - (c) the name of the senior traditional leader under whose authority the community falls;
  - (d) the names of persons that the community regard as its leaders and their designation in terms of applicable custom; and
  - (e) a description of the area within which the community generally resides.
- (4) The Premier must—
- (a) upon receipt of an application referred in subsection (2), consult with the—
    - (i) the king or queen under whose authority the community falls;
    - (ii) MEC;
    - (iii) relevant community;
    - (iv) local house in whose area of jurisdiction the community is located;
    - (v) Provincial House; and
  - (b) by notice in a local newspaper with wide circulation in the Province or by such other form of communication as determined by him or her, invite interested parties to submit comments on the application contemplated in subsection (2);
  - (c) consider the comments submitted to him or her in terms of paragraph (b) and take a decision on whether to recognise the community as a traditional community or not; and
  - (d) reach a decision contemplated in paragraph (c) regarding the recognition of a community within 12 months.
- (5) In the event the Premier—
- (a) approves the application, he or she must notify the relevant applicants, king or queen and the community of his or her decision in writing within 60 days, and publish a notice in the *Provincial Gazette*; and
  - (b) refuses the application, he or she must notify the relevant applicants, the king or queen and the community of the reasons for the refusal in writing within 60 days after the decision contemplated in subsection 4 (c)
- (6) The Premier must issue a certificate of recognition to a community that has been recognised as a traditional community.

## 5. Withdrawal of recognition of traditional community

- (1) The Premier may, after consultation with the King or Queen and Provincial House, consider withdrawal of the recognition of a traditional community as a traditional community where—
- (a) the majority of administrative areas of a relevant traditional community request the Premier in writing to withdraw its recognition as a traditional community;
  - (b) two or more traditional communities submit a written request for the review of the position of such communities that was or were divided or merged prior to 1994 in terms of applicable legislation; or
  - (c) two or more recognised traditional communities wish to be merged into a single traditional community.

- (2) The Premier must, before a withdrawal of the recognition of a traditional community, consult with the—
  - (a) king or queen under whose authority the community falls;
  - (b) MEC
  - (b) relevant community;
  - (c) local house in whose jurisdictional area the community is located; and
  - (d) Provincial House;
- (3) The Premier must consider a request referred to in subsection (1) (a-c) and must, subject to the provisions of this Act, grant or refuse a request for withdrawal of recognition of a traditional community or communities.
- (4) Where the Premier has decided to grant or refuse a request, he or she must advise such community or communities and the king or queen of his or her decision in writing.
- (5) Where the Premier has decided to grant a withdrawal of recognition or merger he or she must, by notice in the *Provincial Gazette*, withdraw the recognition of the community or merger of the relevant communities.
- (6) The notice referred to in subsection (5) must also provide for the withdrawal of the recognition of the traditional council established in terms of [section 6](#) for such traditional community.

## 6. Establishment and recognition of traditional councils

- (1) A traditional community that has been recognised as a traditional community in terms of [section 4](#) of this Act must establish a traditional council in terms of subsection (2).
- (2)
  - (a) The number of members of a traditional council consists of the number of members as determined by the Premier by the formula published by notice in the *Provincial Gazette* after consultation with the Provincial House.
  - (b) The members of a traditional council must comprise of—
    - (i) 60% traditional leaders and members of the traditional community selected by the senior traditional leader of the relevant traditional community; and
    - (ii) other members of the traditional community who are democratically elected as prescribed for a term of five years, aligned with the term of office of the National House and Provincial House of Traditional Leaders, and who must constitute 40% of members of the traditional council.
  - (c) At least one third of members of a traditional council must be women.
  - (d) Where it has been proved that an insufficient number of women are available to participate in a traditional council, the Premier may, by notice in the *Provincial Gazette*, determine a lower threshold regarding the particular traditional council than that required by paragraph (c).
- (3) A member of a traditional council must be a person who—
  - (a) is 18 years and above;
  - (b) has not been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine;
  - (c) is not an unrehabilitated insolvent;
  - (d) is a South African citizen; and

- (e) is ordinarily resident within the jurisdiction of the traditional council.
- (4) A senior traditional leader must submit the names of the members of the traditional council and the particulars of the establishment of that traditional council in terms of subsection (1).
- (5) If the Premier is satisfied that this section and section 3 of the Framework Act have been complied with, he or she must, by notice in the *Provincial Gazette*, recognise a traditional council and, after consultation with the community concerned, determine the area of jurisdiction.
- (6) The seat of the traditional council shall be at the place selected by the chairperson in consultation with members of the traditional council, within the area of jurisdiction of a relevant traditional council and, in case of a dispute, the matter must be referred to the principal traditional leader, king or queen, or Provincial House for intervention.

## 7. Term of office for members of traditional council and oath of office

- (1) A member of a traditional council holds office for a period of five years and is eligible for re-election.
- (2) A member of a traditional council must, before assuming office, make and subscribe to an oath or solemn affirmation as prescribed, before a Magistrate.
- (3) Members of the traditional council must be sworn in within 30 days from the date of which the results of the elections have been published in the *Provincial Gazette*.
- (4) In the event that the incoming members cannot be sworn in within the stipulated 30 days, the senior traditional leader concerned must apply for extension to the Premier.

## 8. Functions of traditional council

- (1) The functions of a traditional council are to—
  - (a) administer the affairs of a traditional community in accordance with customs and tradition;
  - (b) assist, support and guide traditional leaders in the performance of their functions;
  - (c) work together with municipalities in the identification of community needs;
  - (d) facilitate the involvement of a traditional community in the development or amendment of the integrated development plan of a municipality in whose areas that community resides;
  - (e) recommend, after consultation with the relevant local house and the Provincial House of Traditional Leaders, appropriate interventions to Government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;
  - (f) participate in the development of policies and by-laws at local level;
  - (g) participate in the development of programmes of municipalities and of the provincial and national spheres of government;
  - (h) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
  - (i) promote indigenous knowledge systems for sustainable development and disaster management;
  - (j) alert the relevant municipality of any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction, and to contribute to disaster management in general;
  - (k) share information and co-operate with other traditional councils;

- (l) perform the functions conferred by customary law, customs consistent with the Constitution, and legislation;
  - (m) uphold the values of the traditional community; and
  - (n) promote social cohesion within the traditional community.
- (2) A traditional council must—
- (a) keep proper records;
  - (b) have its financial statements audited;
  - (c) disclose the receipt of gifts with a value in excess of the amount determined by the Premier;
  - (d) disclose the value of gifts from a single source which cumulatively exceed the amount determined by the Premier in one calendar year;
  - (e) co-operate with any structure established in terms of any legislation and operating within the jurisdiction of a traditional council; and
  - (f) adhere to the code of conduct.
- (3) A traditional council must#
- (a) co-operate with members of a ward committee established in terms of section 73 of the Local Government: Municipal Structures Act, 1998 ([Act No. 117 of 1998](#)); and
  - (b) convene at least two meetings a year with members of the traditional communities under its jurisdiction to give account of the activities and finances of the traditional council.
- (4) A traditional council and its resources must not be used to promote or prejudice the interest of any political party.

## 9. Designation of chairperson

- (1) The members of a traditional council must, from amongst themselves—
- (a) designate the senior traditional leader as the chairperson of a traditional council; or
  - (b) where there is no senior traditional leader in the traditional council, designate a headman or headwoman as the chairperson until such time that a senior traditional leader has been designated.
- (2) The member designated in terms of subsection (1) must serve as the chairperson for a period of five years.
- (3) A traditional council may—
- (a) in the event that the chairperson is unable to serve as such, designate any other member as the chairperson; or
  - (b) in the event that the chairperson is absent from a meeting of a traditional council, designate any other member as the chairperson.

## 10. Disqualification as a member of a traditional council

- (1) No person is eligible to become a member of a traditional council if he or she—
- (a) is not a South African citizen;
  - (b) is an unrehabilitated insolvent;
  - (c) is of unsound mind and has been so declared by a competent court;

- (d) is not an ordinary resident within the area of the relevant traditional council;
- (e) is under the age of 18 years;
- (f) is or becomes a full-time member of the municipal council;
- (g) is or becomes a full-time member of the Provincial Legislature or National Assembly;
- (h) is appointed as a permanent delegate in the National Council of Provinces;
- (i) is elected or becomes a full-time member of the local, Provincial or National House of Traditional Leaders; or
- (j) in case of a traditional leader, his or her recognition as a traditional leader has been withdrawn.

## 11. Vacation of seats and the filling of vacancies of traditional council

- (1) The seat of a member of a traditional council becomes vacant if he or she—
  - (a) dies;
  - (b) ceases to be a South African citizen;
  - (c) fails to attend three consecutive meetings of the traditional council without an apology or special leave;
  - (d) is absent from a traditional community for a period longer than six months without the special leave of the traditional council;
  - (e) tenders his or her resignation;
  - (f) is found guilty of misconduct in term of [section 31](#); or
  - (g) is convicted of an offence and liable to imprisonment for a period of twelve months or more without the option of a fine;
  - (h) has been removed from office in terms of the code of conduct; or
  - (i) is a selected member and he or she has been removed in terms section of 24 of this Act.
- (2) Where a vacancy occurs in terms of subsection (1), such vacancy must be filled within ninety days of the vacancy occurring from the category from which the vacancy arose: Provided that a vacancy which occurs 6 months prior to the end of the term of office of such a traditional council shall not be filled.
- (3) A member appointed to fill a vacancy in terms of subsection 2 holds office for the remainder of his or her predecessor's term of office.
- (4) The filling of vacancies must be facilitated by the Department in accordance with the regulations.

## 12. Meetings of traditional councils

- (1) Meetings of traditional councils must be held in accordance with such procedures and requirements as it may determine: Provided that meetings of traditional councils must be held at least once every two months.
- (2) Decisions of traditional council meetings must be taken by a general consensus, and where consensus cannot be reached, by majority votes of fifty percent plus one of the total members.
- (3) The chairperson may by notice, and must when required by the Premier or at least one-third of the total number of members of the traditional council
- (4) A special meeting must only consider the business specified in the notice of such special meeting.

- (5) The chairperson of the traditional council must give notice to every member—
  - (a) of the date and time of an ordinary meeting; and
  - (b) of the date and time of a special meeting and he or she must specify the purpose of such special meeting.
- (6) A traditional council may make rules for regulating the proceedings and for preserving order at meetings of the traditional council or any committee, including powers to exclude offending members.
- (7) The chairperson of a traditional council must ensure that minutes of meetings of the traditional council are kept.

### 13. Minutes of meetings

- (1) A traditional council must keep minutes of its meetings in which the following must be recorded—
  - (a) the date, time, and place of a meeting;
  - (b) the names of the members present;
  - (c) a summary of every decision taken at a meeting; and
  - (d) the signature of each member present in a meeting.
- (2) A copy of minutes must be forwarded to the Department within fifteen days after a meeting.

### 14. Staff of traditional council

- (1) The Head of Department may appoint such staff as may be necessary to perform the functions assigned to a traditional council in terms of this Act or any other law.
- (2) Staff referred to in subsection (1) must be appointed on such conditions, including remuneration, as may be determined by the Public Service Act, 1994, [Act No. 103 of 1994](#).
- (3) The Head of the Department may second any officer or employee in his or her Department to assist the traditional council in the execution of its functions, and may, after consultation with the senior traditional leader of the relevant traditional council, withdraw such secondment at any time.

### 15. Admission of individual into existing traditional communities

- (1) Any person may, after following the customary rules of a particular community, be admitted into a traditional community.
- (2) No person may be refused the right to reside in an area of any traditional community, unless there are justifiable grounds for such refusal.

### 16. Establishment and recognition of principal traditional councils

- (1) Where a principal traditional leader has been recognised in terms of [section 22](#) of this Act, the Premier must 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 a formula published by notice in the *Provincial Gazette*.
  - (b) At least a third of the members of the principal traditional council must be women.
  - (c) Where there is an insufficient number of women available to participate in a principal traditional council, the Premier may, by notice in the *Provincial Gazette*, determine a lower

threshold regarding the particular principal traditional council than that required by paragraph (b).

- (d) The members of a principal traditional council comprises—
    - (i) 60% of senior 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 custom, taking into account the need for overall compliance with paragraph (b); and
    - (ii) 40% of members elected democratically by an electoral college consisting of senior traditional leaders who fall under the principal traditional council.
  - (e) The members referred to in paragraph (d) 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 for a member of a principal traditional council is five years and is aligned to the term of office of the Provincial House.
  - (4) A principal traditional council meets at the principal traditional leader's great place or at any place to be determined by the principal traditional leader.
  - (5) Quorum of the principal traditional council is the majority of the total number of members of the principal traditional council.
  - (6) A 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.
  - (7) A principal traditional council must meet once every three months, but the principal traditional leader may, in consultation with the Premier, call a special meeting of the principal traditional council as he or she considers necessary.
  - (8) A principal traditional leader must give notice of not less than seven days for holding a special meeting to members of the principal traditional council.
  - (9) 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 elected or selected, as the case may be, has expired; or
    - (f) he or she is disqualified in terms of this Act.
  - (10) If a member of a principal traditional council dies or vacates his or her seat before the expiry of his or her term of office, such a vacancy must be filled in a manner envisaged in this Act, within a period of ninety days of the vacancy occurring.
  - (11) A member appointed to fill a vacancy in terms of subsection (10) holds office for the remainder of his or her predecessor's term of office.
  - (12) A person may not be selected or elected 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 member of a municipal council;
- (g) is elected as member of the Provincial Legislature;
- (h) is appointed as a member of the National Assembly;
- (i) is elected 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.

## 17. Functions of principal traditional councils

- (1) A principal traditional council must—
  - (a) administer the affairs of the principalship in accordance with customs and tradition;
  - (b) assist, support and guide senior traditional leaders and traditional councils falling within the jurisdiction of the relevant principalship in the performance of their functions;
  - (c) assist the principal traditional leader in performing customary functions in relation to the recognition of senior traditional leaders, where applicable;
  - (d) mediate in disputes between senior traditional leaders falling within the jurisdiction of the principalship;
  - (e) promote unity between traditional communities falling under the jurisdiction of the principalship; and
  - (f) assist the principal traditional leader in performing his or her roles and functions conferred upon him or her by the in terms of the regulations issued.
- (2) A principal traditional council is required to—
  - (a) keep proper records;
  - (b) have its financial statements audited;
  - (c) disclose the receipt of gifts;
  - (d) adhere to the code of conduct; and
  - (e) advise and support all traditional councils falling under the jurisdiction and authority of the principal traditional leader.
- (3) A principal traditional council and its resources must not be used to promote or prejudice the interest of any political party.

## 18. Meetings of traditional leaders

- (1) A principal traditional leader may, once in three months, convene a meeting with senior traditional leaders and headmen or headwomen who fall under his or her jurisdiction, to discuss matters affecting traditional communities.
- (2) A senior traditional leader and headmen or headwomen who fall under the jurisdiction of a principal traditional leader must, once in three months, table reports of meetings held in their respective communities in the meeting referred to in subsection (1).



- (3) A senior traditional leader must, once per quarter, convene one meeting with each headman or headwoman at the headman or headwoman's seat.
- (4) A senior traditional leader must table a report of the meetings that he or she has with headman or headwoman in the meeting of the traditional council.
- (5) A headman or headwoman must convene one meeting per month with community members that fall under his or her jurisdiction to deal with issues that affect members of the community.
- (6) A headman or headwoman must table a report on the meetings he or she has held with the community members in the meeting with a senior traditional leader.

### **Chapter 3**

#### **Partnership and governance**

#### **19. Partnership between municipalities and traditional leadership institutions**

- (1) The Provincial Government may promote partnership between municipalities and all traditional leadership institutions.
- (2) Any partnership envisaged in subsection (1) must be based on the principles of mutual respect and recognition of the status and roles of the respective parties.
- (3) 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.

#### **20. Support and capacity development of king or queen's councils, principal traditional councils and traditional councils**

- (1) The Department may adopt measures to support and strengthen the capacity of a king or queen's council, principal traditional councils and traditional councils within the Province to fulfil their functions.
- (2) The Department must—
  - (a) assess the training needs of the members of such king's or queen's, principal traditional councils or traditional councils; and
  - (b) provide or cause training to be provided to the members of king's or queen's councils, principal traditional councils or traditional councils.

### **Chapter 4**

#### **Traditional leadership positions**

#### **21. Recognition of traditional leadership positions**

The following traditional leadership positions are recognised—

- (a) kingship or queenship;
- (b) principal traditional leadership;
- (c) senior traditional leadership; and
- (d) headmanship or headwomanship.

## 22. Recognition of principal traditional leader

- (1) The Premier must recognise a person as a principal traditional leader where, pursuant to an investigation conducted in terms of section 25 (2) of the Traditional Leadership and Governance Framework Act, the Commission recommended that a paramountcy does not qualify to be recognised as a kingship or queenship and—
  - (a) the paramountcy has been vacant from 1 February 2010; or
  - (b) the king or queen who had permanently occupied the position, dies.
- (2) If any of the circumstances referred to in subsection (1) (a) and (b), become applicable, the Premier must request members of the royal family concerned to identify a suitable person in terms of [section 23](#) as a principal traditional leader.
- (3) The Premier must recognise a person identified by the royal family as a principal traditional leader in terms of subsection (1) and must at the same time recognise the community as a principal traditional community.

## 23. Recognition of a traditional leader

- (1) Whenever a position of a traditional leader is to be filled—
  - (a) the relevant royal family must, within 14 days after the position becomes vacant—
    - (i) identify a person who qualifies in terms of customs of the relevant traditional community, to assume the position in question after taking into account whether any grounds referred to in [section 24](#) (1) apply to that person; and
    - (ii) through the relevant customary structure, inform the Premier of the particulars of the person identified to fill the position and of the reasons for the identification of that person; and
  - (b)
    - (i) the Premier must, subject to subsection (5) by notice in the *Provincial Gazette*, invite comments on the intended recognition of the person identified by the royal family as a traditional leader; and
    - (ii) comments contemplated in subsection (b)(i), must be submitted within 21 days of the date of the publication of the notice.
- (2) The Premier must, within 60 days of the publication of the notice, consider and decide on the comments contemplated in subsection (1) (b) (ii) and, should circumstances permit, recognise a person identified by the royal family as a traditional leader.
- (3) Before the notice referred to in subsection (1) (b) is published, the Premier must inform the Provincial House in writing of the particulars of a person identified.
- (4) The Premier must, within 30 days after the date of recognition, issue to the person who has been identified in terms of subsection (1) (a), a certificate of recognition.
- (5) Where the Premier has received evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with provisions of this Act, the Premier may refer the matter to—
  - (a) the King or Queen;
  - (b) Provincial House for its recommendation; or
  - (c) may refuse to issue a certificate of recognition; and
  - (d) 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 (5) (c) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if he or she is satisfied that the reconsideration and resolution has been done in accordance with law.
- (7) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of section (5) (d) cannot be resolved, such matter must be referred to the King or Queen and the Provincial House of Traditional Leaders, which must seek to resolve the matter in accordance with its internal rules and procedures.
- (8)
  - (a) A traditional leader is deemed to retire from office upon his or her written request for retirement to the Premier.
  - (b) On retirement, a traditional leader ceases to be recognised in terms of this Act.
- (10) A traditional leader assumes office on the date on which he or she is recognised by the Premier.
- (11) In case of a newly recognised traditional community, a person may only be recognised as a senior traditional leader: Provided that such a traditional community has at least five or more administrative areas.
- (12) Headmen or headwomen may only be appointed for an administrative area of a traditional community with not less than 200 households.

#### 24. Removal of a traditional leader

- (1) A traditional leader may, subject to the provisions of the Promotion of Administrative Justice Act, 2000 ([Act No. 3 of 2000](#)), be removed from office on the grounds of—
  - (a) conviction for an offence with a sentence of imprisonment for more than 12 months without an option of a fine, however, removal is limited to the incumbent;
  - (b) physical incapacity based on acceptable medical evidence or mental infirmity declared by a competent court;
  - (c) wrongful appointment or recognition;
  - (d) breach of the code of conduct;
  - (e) misconduct as contemplated in [section 31](#); or
  - (f) a decision of the Premier on the recommendations of the Provincial Committee.
- (2) Whenever any of the grounds referred to in subsection (1) (a)-(e) come to the attention of—
  - (a) a royal family, such royal family may recommend the removal of a traditional leader and, within a reasonable time, furnish the Premier with the particulars of a traditional leader concerned and reasons for such recommendation; or
  - (b) any person, such person must inform the Premier and the Premier must—
    - (i) refer the matter to the royal family under whose jurisdiction the senior traditional leader or headman or headwoman falls, for investigation, a recommendation, and a report thereon; and
    - (ii) consider the report and act in terms of subsection (3).
- (3) Where it has been recommended by a royal family to remove a traditional leader in terms of subsection (2), the Premier must—
  - (a) advise the relevant traditional leader of such a recommendation and, in writing, call upon such a traditional leader to make representations to him or her as to why he or she may not be removed;

- (b) consider the representations submitted to him or her, and if he or she decides to remove such a traditional leader, he or she must withdraw the certificate of recognition;
  - (c) inform the royal family concerned, the affected traditional leader and the Provincial House of his or her decision to remove or not to remove such a traditional leader; and
  - (d) publish a notice with particulars of the removed traditional leader in the *Provincial Gazette*.
- (4) Where a traditional leader has been removed from office, a successor in terms of custom may assume the position, role and responsibilities, in terms of this Act.

## 25. Recognition of regent

- (1) The Premier must, where he or she has been advised by the royal family that it has identified—
- (a) the successor to the position of king or queen, principal traditional leader, senior traditional leader or headman or headwoman who is still regarded as a minor in terms of applicable customary law or customs; or
  - (b) a person who may in terms of applicable customary law or customs serve as a regent in respect of the position for which the successor has been identified until the successor has been recognised in terms of this Act, within a reasonable time, by notice in the *Provincial Gazette*, recognise the person identified in terms of paragraph (b) as a regent.
- (2) The Premier must, before a notice recognising a regent is published in the *Provincial Gazette*, inform the Provincial House of such recognition.
- (3) The Premier must, within a period of thirty days after the date of publication of the notice recognising a regent, issue to the person who is identified in terms of subsection (1) (a), a certificate of recognition.
- (4) The Premier must review the recognition of a regent—
- (a) at least once every three years; or
  - (b) immediately after the successor has attained the age of majority.
- (5) Where there is evidence or an allegation that the identification of a person as regent was not done in accordance with customary law or customs, the Premier—
- (a) may refer the matter to the Provincial House 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 (5) (c) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family, if the Premier is satisfied that the reconsideration and resolution by the royal family have been done in accordance with customary law.
- (7) As soon as the successor to the position of a traditional leader ceases to be minor in terms of the law, the regent recognised in terms of subsection (1) (b) must relinquish his or her position as a regent within 90 days from the date on which the minor attains majority, and the rightful heir must—
- (a) in the case of a king or queen, be recognised by the President in terms of section 9 (1) (b) of the Framework Act; or
  - (b) in the case of a principal traditional leader, senior traditional leader or headman or headwoman, be recognised by the Premier in terms of this Act.

- (8) Where a regent has been recognised in respect of the position of a king or queen, the Premier must inform the President and the Minister—
  - (a) of the particulars of the regent;
  - (b) when the regent is supposed to relinquish his or her position as a regent;
  - (c) of the date to review the regent capacity; and
  - (d) of the withdrawal of the recognition of the regent.

## 26. Person acting as king or queen, principal traditional leader, senior traditional leader or headman or headwoman

- (1) The royal family must identify a suitable person in terms of customary law and customs to act as a traditional leader where—
  - (a) a successor to the position of a traditional leader has not been identified by the royal family concerned;
  - (b) the identification of a successor to the position of king or queen, principal traditional leader, senior traditional leader or headman or headwoman is being considered and not yet resolved; and
  - (c) a king or queen, principal traditional leader, senior traditional leader or headman or headwoman as the case may be, is absent from his or her area of jurisdiction for a period of more than six months due to—
    - (i) illness;
    - (ii) study purposes; or
    - (iii) any other lawful purpose.
- (2) The Premier must, where the royal family has informed him or her of—
  - (a) the particulars of the person so identified to act as a king or queen, principal traditional leader, senior traditional leader or headman or headwoman; and
  - (b) the reason for the identification of that person, by notice in the *Provincial Gazette*, recognise an acting king or queen, principal traditional leader, senior traditional leader or headman or headwoman.
- (3) Before a notice recognising an acting king or queen, principal traditional leader, senior traditional leader or headman or headwoman is published in the *Provincial Gazette*, the Premier must inform the Provincial House of such recognition.
- (4) The Premier must, within 30 days after the date of publication of the notice recognising the acting king or queen, principal traditional leader, senior traditional leader or headman or headwoman, issue a certificate of recognition to the person so identified.
- (5) The Premier must review an acting appointment of an acting traditional leader every three years to establish whether the acting appointment is still necessary.
- (6) The procedure for the removal of an acting person shall be in terms of [section 24](#).
- (7) Where an acting person has been recognised in respect of the position of a king or queen, or principal traditional leader, the Premier must inform the President of the—
  - (a) particulars of the acting person;
  - (b) withdrawal of the recognition of the acting person; and
  - (c) reviewal date of the acting capacity.

- (8) A person who has been identified to act as king or queen, principal traditional leader, senior traditional leader or headman or headwoman in terms of this section, is responsible for the performance of the functions that are attached to the position of the relevant kingship or queenship, principal traditional leadership, senior traditional leadership, or headmanship or headwomanship, and is entitled to the salary and allowances attached to the relevant position.
- (9) A king or queen, principal traditional leader, senior traditional leader or headman or headwoman in whose stead a person has been recognised to act in terms of this section, is not entitled to any salary and allowances attached to the relevant position for the duration of the recognition of a person acting.
- (10) Whenever the successor to a traditional leadership position has been identified, or the circumstances referred to in subsection (1) (c) are no longer applicable, any recognition of acting capacity shall automatically lapse on the date on which the relevant person is identified and recognised by notice in the *Provincial Gazette*, or the date on which the traditional leader referred to in subsection (1) (c) resumes his or her responsibilities.
- (11) A king or queen, principal traditional leader, senior traditional leader or headman or headwoman in whose stead a person has been identified to act, must give three months' notice of his or her intention to resume the responsibilities of the position, to a person acting in his or her stead.

## 27. Deputy traditional leader

- (1) A king or queen, principal traditional leader, senior traditional leader or headman or headwoman, as the case may be, must, with concurrence of the relevant royal family, within thirty days of any of the circumstances set out in paragraph (a)-(e) occurring, appoint a deputy to act in his or her stead whenever that king or queen, principal traditional leader, senior traditional leader, or headman or headwoman—
  - (a) becomes a full-time member of a municipal council;
  - (b) is elected as a member of a Provincial Legislature;
  - (c) is elected as a member of the National Assembly;
  - (d) is appointed as a permanent delegate in the National Council of Provinces; or
  - (e) holds a full-time position in any House of Traditional Leaders.
- (2) Where a king or queen, principal traditional leader, senior traditional leader, or headman or headwoman has appointed a deputy traditional leader to act in his or her position in terms of subsection (1) and advised the Premier, the Premier must—
  - (a) within a reasonable time, by notice in the *Provincial Gazette*, recognise the person so appointed by the king or queen, principal traditional leader, senior traditional leader, or headman or headwoman as a deputy traditional leader;
  - (b) before the notice recognising a deputy traditional leader is published in the *Provincial Gazette*, inform the Provincial House of such recognition; and
  - (c) within 30 days after the date of publication of the notice recognising the deputy traditional leader, issue a certificate of recognition to the person who is appointed in terms of subsection (1).
- (3) The recognition referred to in subsection (2) lapses at the end of the membership, appointment or election of the king or queen, principal traditional leader, senior traditional leader, or headman or headwoman referred to in subsection (1).
- (4) The deputy traditional leader may be removed from office on the same grounds and following the same procedure as provided in [section 24](#).

- (5) A person who has been recognised as a deputy traditional leader in terms of this section is responsible for the performance of the functions that are attached to the position of king or queen, principal traditional leader, senior traditional leader, or headman or headwoman, and is entitled to the salary and allowances attached to the relevant position.
- (6) The incumbent king or queen, principal traditional leader, senior traditional leader, or headman or headwoman in whose stead a person has been recognised as deputy in terms of this section, is not entitled to any salary and allowances attached to the position for the duration of the recognition of such a deputy.
- (7) Where a king or queen, or principal traditional leader has appointed a deputy in terms of subsection (1), the king or queen, or principal traditional leader must inform the President, the Minister and Premier—
  - (a) of the particulars of the deputy;
  - (b) when the deputy is supposed to relinquish his or her position as a deputy; and
  - (c) of the withdrawal of the recognition of the deputy.

## **28. Support to kingship or queenship councils, principal traditional councils and traditional councils**

The Provincial Government may adopt measures as may be necessary to support and strengthen the capacity of kingship's or queenship's councils, principal traditional councils and traditional councils within the Province to fulfil their functions.

## **Chapter 5**

### **Roles and functions of royal family and traditional leaders**

## **29. Roles and functions of a royal family**

- (1) A royal family must—
  - (a) in accordance with the provision of [section 23](#) of this Act, applicable customs and practice of a traditional community, identify a suitable person who is the rightful incumbent and or a successor to a traditional leadership position of a traditional community concerned; and
  - (b) keep records of all the proceedings of any meeting where any matter arising from this Act or the Framework Act is discussed.
- (2) The records referred to in subsection (1) (b) must reflect—
  - (a) the date, time and venue of the meeting;
  - (b) the names of the members of the royal family who were present, and the positions or designations they hold in accordance with custom; and
  - (c) the decisions taken in a meeting.
- (3) A person designated by the Premier must inspect the records regularly and must, for this purpose, be granted access thereto by the royal family.

## **30. Roles and functions of traditional leader**

- (1) A traditional leader must—
  - (a) perform the functions provided for by the custom and customary law of the relevant traditional community, this Act, the Framework Act, and any other applicable legislation;

- (b) uphold the Constitution and the law, and ensure that the members of his or her traditional community enjoy the rights enshrined in the Constitution, including the right to freedom of political activities and freedom of association;
  - (c) promote democracy and unity within his or her traditional community;
  - (d) carry out customary functions in accordance with national and provincial legislation; and
  - (e) perform such additional functions as may be assigned by the National Government or the Provincial Government in terms of section 20 of the Framework Act.
- (2) In addition to the functions contemplated in subsection (1), a traditional leader, in consultation with members of a traditional council must—
- (a) administer the affairs of a relevant traditional community;
  - (b) convene and report to meetings of his or her traditional council at least every two months;
  - (c) convene and report to a meeting of his or her traditional community at a meeting called every three months;
  - (d) attend special consultative meetings of the Provincial House when such meetings are called;
  - (e) participate in municipal councils if identified to do so in terms of section 81 of the Local Government: Municipal Structures Act, 1998 ([Act, No. 117 of 1998](#));
  - (f) carry out any functions for traditional leaders as may from time to time be determined by the Premier by notice in the *Provincial Gazette*;
  - (g) maintain law and order and, without delay, report to the Premier any matter or concern, including any condition of unrest or dissatisfaction;
  - (h) report forthwith to the relevant department or municipality, or any other relevant authority—
    - (i) the death of any person from violence or any other unnatural causes;
    - (ii) the outbreak of any contagious or infectious diseases;
    - (iii) any cruelty to animals;
    - (iv) any misuse of government property; and
    - (v) any irregular receipt or use of public moneys.
  - (i) at the request of any government department or relevant municipality, make known to all residents of relevant traditional communities the provision of any new law and or government programmes;
  - (j) when so required by law, impound any livestock pastured illegally or found straying within, or introduced unlawfully or under suspicious circumstances into, his or her area, and report the matter to a competent authority; and
  - (k) generally, seek to promote the interest of his or her traditional community and of the region, and to actively support and initiate measures for the advancement of the community.
- (3) A traditional leader may not become a member, or take part in any activities, or in any manner which promotes the object of any organisation whose aims or activities involve—
- (a) the unconstitutional overthrow of the Government;
  - (b) propaganda for war;
  - (c) the incitement of imminent violence or disobedience to any law; or



- (d) the advocacy of hatred that is based on race, ethnicity, gender or religion, and that which constitutes incitement to cause harm.

### 31. Enquiry into misconduct

- (1) Whenever there is a reason to believe that a traditional leader committed an act of misconduct in that he or she—
  - (a) fails or refuses to comply with the provisions of this Act or any other law which it is his or her duty to comply with;
  - (b) has breached the code of conduct;
  - (c) disobeys, disregards or wilfully defaults in carrying out a lawful order given to him or her by a competent authority;
  - (d) conducts him or herself in a disgraceful, improper, or unbecoming manner;
  - (e) displays insubordination;
  - (f) abuses his or her powers or extorts, or by the use of compulsion or arbitrary means obtains any tribute, fee, reward or gift;
  - (g) is negligent or indolent in the discharge of his or her duties;
  - (h) has been convicted of an offence; or
  - (i) has been absent from the jurisdiction of his or her traditional community for more than three months without informing members of his or her royal family, or traditional council, and without obtaining approval from the Premier, the Premier must appoint an initiator to investigate and make findings into the alleged misconduct.
- (2) The initiator must compile a report on the investigation and submit such report to the Premier.
- (3) If the report contemplated in subsection (2) reveals evidence of the alleged misconduct on the part of a traditional leader and, in the discretion of the Premier, warrants the institution of a disciplinary enquiry, the Premier must direct that formal charges of misconduct be brought against the traditional leader.
- (4) The charge referred to in subsection (3) must—
  - (a) set out particulars of the allegations which have been made against the traditional leader and the main evidence on which he or she will rely;
  - (b) give a traditional leader notice of enquiry at least seven days before the date of an enquiry with details of the time, place and venue of the enquiry; and
  - (c) inform a traditional leader of his or her right to make representation, either personally or through a legal representative, and that he or she may bring witnesses to the enquiry.
- (5) The Premier must appoint a chairperson to preside over the enquiry.
- (6) The chairperson must keep a record of the notice of an enquiry and its proceedings.
- (7) The initiator of the enquiry must lead evidence on the conduct giving rise to the enquiry.
- (8) The chairperson may subpoena any person to attend the enquiry and to give evidence relating to the allegations against the traditional leader.
- (9) Any person subpoenaed in terms of subsection (3) who fails to attend the enquiry without a valid reason at the time, date and place specified in the subpoena, commits an offence and may be criminally charged.

- (10) If a traditional leader fails to attend the enquiry, either personally or by a legal representative, and the chairperson concludes that a traditional leader did not have a valid reason, the enquiry may continue in his or her absence.
- (11) If the chairperson makes a finding that a traditional leader has committed an act of misconduct, he or she must inform a traditional leader of the findings and the reasons for it within 10 days.
- (12) Before deciding on the sanction, the chairperson must give the traditional leader an opportunity to present relevant circumstances in mitigation. Aggravating evidence may also be led.
- (13) The chairperson must pronounce a sanction, taking into account the nature of the case, the seriousness of the misconduct, the traditional leader's previous record of misconduct, his or her personal circumstances and any other mitigating or aggravating factors.
- (14) The chairperson may impose on a traditional leader one or more of the following sanctions—
  - (a) a formal warning;
  - (b) a final written warning;
  - (c) a reprimand;
  - (d) a suspension without pay for no longer than three months;
  - (e) a fine not exceeding an amount equal to three months remuneration, which may be recovered from the remuneration paid to a traditional leader concerned in terms of the Remuneration of Public Office Bearers Act, 1998 ([Act No. 20 of 1998](#)), in such instalments as may be determined, which must be paid into the Provincial Revenue Fund; or
  - (f) referral of the matter to the royal family with an instruction that the matter be dealt with in accordance with [section 24](#) of this Act, if a presiding officer is satisfied that the matter falls within the ambit of the referred section.
- (15) Any sanction referred to in subsection (11) must be published by the Premier by notice in the *Provincial Gazette*.
- (16) The Premier may not implement the sanction during an appeal by a traditional leader.
- (17) A traditional leader who has been warned, reprimanded, or suspended, or whose matter has been referred to the royal family in terms of paragraph (a), (b), (c), (d), (e), or (f) of subsection (14), may within seven days of having been notified of the decision of the presiding officer, appeal to the Premier in writing, setting out the reasons on which the appeal is based.
- (18) The Premier may, after having considered the appeal, confirm, set aside or vary the decision of the presiding officer and inform the relevant traditional leader as well as the presiding officer of the outcome of the appeal.

### **32. Suspension of a traditional leader**

- (1) The Premier may, after consultation with the Provincial House, suspend from office a traditional leader who is alleged to have committed an act of misconduct pending the finalisation of proceedings in terms of [section 31](#) of this Act if—
  - (a) a traditional leader is alleged to have committed a serious offence; and
  - (b) the Premier is of the opinion that, if such a traditional leader remains in his or her position, it might jeopardise any investigation into the alleged misconduct.
- (2) A suspension of this kind is a precautionary measure that does not constitute a judgment and must be on full pay.

- (3) The Premier may request the royal family of a relevant traditional leader to identify a person in accordance with the provisions of this Act, to act in the position of a suspended traditional leader: Provided that such an acting person shall not be entitled to any remuneration whatsoever.

### **33. Powers of the Premier to engage traditional leaders**

- (1) The Premier may request a traditional leader in writing for purposes of engaging such traditional leader on—
  - (a) any matter which is harming or is likely to harm a traditional community;
  - (b) any matter of importance or concern which directly or indirectly affects such traditional leader in his or her capacity as such, or which affects the Provincial Government in the performance of its functions; or
  - (c) any other matter likely to prejudicially affect the administration of the Provincial Government in the area of the traditional community.

### **34. Absence of a traditional leader**

- (1) A traditional leader may not absent himself or herself from the area of his or her traditional community for a period longer than thirty consecutive days without—
  - (a) the prior approval of the Premier or a designated officer ; and
  - (b) informing members of his or her royal family and relevant traditional council of the intended absence.
- (2) A traditional leader must make provision for the proper performance of his or her duties during any absence.

## **Chapter 6**

### **Consideration of the recommendation of the Provincial Committee on claims and disputes and dispute resolution procedures**

#### **35. Consideration of the recommendation of the Provincial Committee by the Premier**

- (1) The recommendation of the Provincial Committee must be submitted to the Premier within 14 days after being made.
- (2) Before the Premier takes a decision on the recommendation of the Provincial Committee, he or she may request the affected parties to make written representations.
- (3) The Premier must, within 60 days from the date of receipt of the recommendation and after considering representations referred to in subsection (2), make a decision on the recommendation.
- (4) The Premier may refer the recommendation of the Provincial Committee to the Provincial House or any other relevant body or organisation for advice before making a decision.
- (5) If the Premier takes a decision that differs from the recommendation of the Provincial Committee, he or she must provide written reasons for such decision.

#### **36. Dispute resolution procedure**

- (1) Whenever a dispute concerning customary law or custom arises within a traditional community or between traditional communities or other customary institutions on a matter arising from the implementation of this Act, members of such community and traditional leaders within the relevant traditional communities or customary institutions, must seek to resolve the dispute internally and in accordance with their customs, culture and practice.

- (2) (a) A dispute referred to in subsection (1) that cannot be resolved as provided for in that section, must be referred to the relevant king or queen's council, or principal traditional council.
- (b) A king or queen's council, or principal traditional council must seek to resolve the dispute in accordance with its internal rules and procedures.
- (c) If a king or queen's council, or principal traditional council is for whatever reason unable to resolve the dispute as provided for in paragraph (a), the dispute must be referred to the Provincial House of Traditional Leaders, which must seek to resolve the dispute in accordance with its internal rules and procedures.
- (d) If for whatever reasons the Provincial House of Traditional Leaders is unable to resolve the dispute as provided for in paragraph (a), the dispute must be referred to the Premier, who must seek to resolve the dispute after having consulted the —
- (i) parties involved in the dispute;
  - (ii) king or queen's council, or principal traditional council; and
  - (iii) Provincial House of Traditional Leaders.
- (3) In areas where there is no kingship, queenship or principal traditional leadership, if a dispute referred to in subsection (1) (a) cannot be resolved as provided for in that subsection, such dispute must be referred to the Provincial House of Traditional Leaders, which must seek to resolve the dispute in accordance with subsection (2) (c) and (d) (i) (ii).

## **Chapter 7**

### **Condition of service**

#### **37. Allowance for members of traditional councils**

- (1) A member of a traditional council may be paid such allowances as may be determined by the Premier in consultation with the MEC for Finance.
- (2) A member of a traditional council who is in the full-time employment of the state is not entitled to the allowances referred to in subsection (1), but is entitled to be reimbursed for actual expenses incurred.

#### **38. Code of conduct**

The code of conduct contained in Schedule 1 applies to all traditional leaders and members of the houses of traditional leaders and traditional councils in the Province.

## **Chapter 8**

### **Financial matters**

#### **39. Funding**

The money required for the performance of the roles and functions of traditional leaders and institutions in terms of this Act may be paid out of the funds appropriated by the Provincial Legislature for this purpose.

#### **40. Funds for traditional councils**

- (1) Funds of a traditional council consist of—
- (a) all monies which, in accordance with the customs and customary law of the relevant traditional community, are payable to the traditional council;

- (b) fines collected by a traditional leader or traditional council in accordance with the traditional community's customs and customary law;
  - (c) all monies derived from any property in the possession of the relevant traditional community;
  - (d) any donations made by any person for the benefit of the relevant traditional community which the donor had directed should be deposited into the account of a traditional council; and
  - (e) any monies paid to the traditional council under this Act or any other law.
- (2) The funds referred to in section (1) must be utilised for the benefit of the traditional community.

#### **41. Levies**

A traditional council must not impose any levy on any member of the traditional community or on any section of the traditional community.

#### **42. Voluntary contributions**

- (1) A traditional council may request members of a traditional community, or any section of a traditional community, to make voluntary contributions.
- (2) No contribution must be collected unless the majority of the members of such traditional community have, at a meeting convened for this purpose, consented to the payment of such voluntary contribution.
- (3) Voluntary contributions must only be made for the purpose of financing a specific project.

#### **43. Opening of accounts for finances of traditional councils**

- (1) The Head of Department may cause to be opened for each traditional council an account into which all monies shall be received in terms of [section 40](#), and from which all expenditure incurred by a traditional council must be met.
- (2) The control of the account referred to in subsection (1) vests in the Head of Department: Provided that the Head of Department may, on such conditions as the Head of Department may determine, delegate any powers with regard to the said account to the relevant traditional council.
- (3) A traditional council may invest any surplus funds from a traditional council's account with an accredited financial institution or body corporate: Provided that no surplus funds from the funds appropriated by the Legislature may be invested by a traditional council.
- (4) The Head of Department may prescribe conditions on which such surplus funds should be invested.

#### **44. Financial control**

The Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)), applies to the management of all funds of a traditional council.

#### **45. Accounting officer for finances of traditional council**

The Head of Department is the accounting officer for the funds of traditional councils in terms of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)).

#### **46. Financial reports**

A traditional council must, within ten days after the end of each quarter, submit to the Department financial reports in terms of the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)).

#### 47. Keeping records

- (1) A traditional council must keep proper records of all its activities and income as well as its expenditure.
- (2) A traditional council must make records referred to in subsection (1) available for audit purposes.

### Chapter 9 Local houses

#### 48. Establishment of local houses of traditional leaders

- (1) There is hereby established a local house in an area of jurisdiction of each district or metropolitan municipality where there are five or more traditional councils, in accordance with section 17 (1) of the Framework Act.
- (2) The name of the local house established by subsection (1) will be determined by the relevant traditional communities.
- (3) A local house must be established for a term of office of five years aligned to the term of office of the National and Provincial House of Traditional Leaders.

#### 49. Seat and meetings of local houses

- (1) A local house must meet in the district or metropolitan municipality under whose area of jurisdiction it falls.
- (2) A local house must convene at least one ordinary session in every three months.
- (3) Subject to subsection (2) and (4) a local house sits during such periods, days and hours as it may determine.
- (4) The executive committee of a local house may at times call a special sitting of a relevant local house on a day to be determined by the executive committee, and at such special sitting only matters that necessitated the calling of the special sitting may be dealt with.
- (5) The Premier may, in consultation with a relevant local house, call a special sitting of the local house to consider urgent matters.
- (6) Only matters which necessitated the Premier to call the special sitting must be discussed in such a sitting.

#### 50. Qualification for membership of a local house

Subject to [section 51](#) (2) (a) and (b), only persons recognised as traditional leaders in terms of this Act are eligible to become members of a local house.

#### 51. Membership and composition of a local house

- (1) The Premier must, by notice in the *Provincial Gazette* determine the formula for the total number of members of each local house.
- (2) (a) Members of a local house are elected by an electoral college established in each district or metropolitan municipality consisting of—
  - (i) kings or queens, principal traditional leaders or their representatives residing within the area of jurisdiction of the district or metropolitan municipality;

- (iii) 60% senior traditional leaders residing within the area of jurisdiction of the district or metropolitan municipality; and
    - (iii) 40% headmen or headwomen residing within the area of jurisdiction of the district or metropolitan municipality.
  - (b) At least one third of the members of a local house must consist of women drawn from both 60% of senior traditional leaders and 40% of headmen or headwomen.
  - (a) The electoral college must ensure that members of a local house are broadly representative of the different traditional leadership positions falling within the relevant district or metropolitan municipality.
  - (b) Members of the electoral college must ensure that all traditional councils within the jurisdiction of a district or metropolitan municipality are fairly represented within the local house.
  - (c) An electoral college must, in electing members of a local house in terms of paragraph (a), follow the prescribed procedure.
  - (d) No person shall be a member of more than one electoral college.
- (3) The Premier must determine the total number of members for each local house, but such number of members may not be less than five and not more than ten
- (4) Despite subsection (3), the Premier may request the Minister to determine a higher number of members where there are more than thirty five traditional councils within the area of jurisdiction of a district or metropolitan municipality, but such number may not exceed twenty members.
- (5) The Premier may, in consultation with a local house, determine that certain members be full-time members of a local house.

## 52. Disqualification for membership of the local house

A person is disqualified to be a member of a local house if he or she—

- (a) is not a traditional leader recognised as such in terms of this Act;
- (b) is not a member of a traditional council established and recognised as such in terms of [section 6](#) of this Act;
- (c) is an unrehabilitated insolvent;
- (d) is of unsound mind and has been so declared by a competent court;
- (e) at the time of the election of members of a local house, is serving a sentence of more than 12 months imprisonment without the option of a fine;
- (f) does not permanently reside within the jurisdiction of a relevant district or metropolitan municipality; or
- (g) is not a South African citizen.

## 53. Vacation of seats

The seat of a member becomes vacant—

- (a) upon the death of such a member;
- (b) if, without having obtained a leave of absence in accordance with the rules and orders of a relevant local house, the member absents himself or herself voluntarily from sittings of such local house or any other forum of such local house of which he or she is a member, for three consecutive sittings or meetings;

- (c) if the member tenders his or her resignation in writing;
- (d) if the member ceases to possess the qualifications mentioned in [section 50](#) or becomes disqualified in terms of [section 52](#);
- (e) if the relevant local house, by resolution on good cause shown, withdraws the member's membership of such local house and informs the Premier;
- (f) upon the expiry of his or her term of office;
- (g) if a member is removed from the local house for breach of the code of conduct; or
- (h) becomes a full-time member of Parliament, the Provincial Legislature or the municipal council.
- (i) a member is elected to represent his/her local house in the Provincial House
- (j) if a member is elected to participate in the municipal council as part of the 20% traditional council

#### **54. Filling of vacancies**

- (1) Whenever a vacancy occurs in a local house, the chairperson of such a local house must, within 14 days, inform the Premier of such vacancy: Provided that a vacancy which occurs 6 months prior to the end of the term of office of such a local house shall not be filled.
- (2) The Premier must, within 60 days after being informed of such vacancy, convene a meeting of all members of the electoral college of a relevant local house for the election of a member to fill the vacancy.
- (3) A member elected to fill a vacancy in terms of subsection (2), holds the membership for the remainder of his or her predecessor's term of office.

#### **55. Functions of a local house**

- (1) A local house must—
  - (a) advise a relevant district or metropolitan municipality on—
    - (i) matters pertaining to customary law, customs, culture, traditional leadership, and the traditional communities within the relevant district or metropolitan municipality;
    - (ii) the development of planning frameworks that impact on traditional communities within the relevant district or metropolitan municipality; or
    - (iii) the development of by-laws that impact on traditional communities within the relevant district or metropolitan municipality;
  - (b) participate in local programmes that have the development of rural communities within the Province as an object; and
  - (c) participate in local initiatives that are aimed at monitoring, reviewing or evaluating the Provincial Government and municipalities in rural communities within the Province.
- (2) A local house must, in respect of any function performed in terms of subsections (1), forthwith inform the Provincial House in writing, and keep the Provincial House so informed on a continuous basis.
- (3) A local house may exercise any powers and must perform any functions as may be conferred or imposed on it under any other law.

#### **56. Chairperson and deputy chairperson**

- (1) At the first meeting of a local house after it has been established in terms of [section 48](#), a local house with the Premier or any person designated by him or her as the chairperson, must elect one



of its members as the chairperson and must thereafter elect another of its members as the deputy chairperson.

- (2) A local house with more than ten members shall have a standing executive committee consisting of the chairperson, deputy chairperson and three additional members, and the chairperson must preside over the election of three additional members of the standing executive committee.
- (3) The elections referred to in subsection (1) and (2) must be conducted in accordance with the procedure set out in [section 51](#).
- (4) The chairperson of a local house must preside over meetings of such a local house, and is further vested with all the powers and functions assigned to him or her by this Act and the rules and orders of a local house.
- (5) While presiding at a meeting of a local house, the chairperson has a deliberative vote, and must exercise a casting vote in the case of an equality of votes.
- (6) If the chairperson is absent or for any other reason unable to perform his or her functions, or when the office of the chairperson is vacant, the deputy chairperson must act as chairperson until the chairperson returns or is again able to perform his or her functions, or until a new chairperson is elected.
- (7) If any of the circumstances described in subsection (8) apply simultaneously to both the chairperson and the deputy chairperson, a member of the relevant local house as designated in terms of the rules and orders of such local house must act as the chairperson while the circumstances contemplated in subsection (8) prevail.
- (8) The deputy chairperson or the member designated in terms of subsection (8), while acting as the chairperson, may exercise the powers and must perform the functions vested in the office of the chairperson.
- (9) The chairperson or deputy chairperson—
  - (a) must vacate office if he or she ceases to be a member of a local house;
  - (b) may be removed from office by a vote of no confidence supported by a 75% majority of the total members of a local house; and
  - (c) may resign by written notice to the Premier.
- (10) If the position of the chairperson or deputy chairperson becomes vacant, the Premier, or any person designated by the Premier, must preside over the election of a member of a local house to fill the vacancy: Provided that the chairperson must in such event preside over the election of the deputy chairperson.

## **57. Election of representatives to the Provincial House**

- (1) A local house must, in its first sitting which must take place within fourteen days of its election, elect senior traditional leaders as representatives to the Provincial House, in accordance with the formula determined by the Premier in the notice.
- (2) At least one of the representatives of the local house must be a woman.
- (3) Where it has been proven that there is an insufficient number of women on the level of senior traditional leader, the Premier may, after consultation with the members of a relevant local house, determine a lower threshold for such a local house other than that required by subsection (2).

## **58. Rules and orders of local houses**

A local house must make rules and orders in connection with the conduct of its business and proceedings, including rules and orders regulating—

- (a) the establishment, constitution, powers and functions, procedures and duration of committees;

- (b) the procedure to be followed in the meetings of such a local house and its committees;
- (c) restrictions on access to such committees;
- (d) the competency of any committee of the local house to perform or dispose of its business and proceedings at venues other than the seat of such local house;
- (e) the designation of members to preside over meetings of the committees of such a local house; and
- (f) the attendance of any meeting or proceedings of a local house by any person who is not a member of such a local house, and the status of such a person at such meeting or proceedings.

### **59. Quorum and decisions of a local house**

The presence of at least half of the total membership other than the chairperson or other presiding member is necessary to constitute a quorum of a meeting of a local house.

### **60. Requisite majorities**

- (1) All decisions of the local house must be taken by the majority of members constituting the meeting of the local house.
- (2) Where a decision to remove the chairperson or deputy chairperson must be taken, such a decision shall require two thirds of the total membership of the local house.

### **61. Allowance for members of local houses**

A member of a local house may be paid such allowances as may be determined by the Premier in consultation with the MEC for Finance, or as determined in terms of the Remuneration of Public Office Bearers Act, 1998 ([Act No. 20 of 1998](#)).

### **62. Administration of local houses**

- (1) The Department, in consultation with members of a local house, may designate an official from the Department as the administrative head of a House to support a House in the performance of its functions.
- (2) Other administrative staff may be seconded to perform or provide support to a local house in terms of applicable laws governing the public service.

### **63. Responsibilities and accountability of a local house**

A local house must—

- (a) keep proper records;
- (b) have its financial statements audited annually;
- (c) disclose the receipt of awards, gifts and favours of its members as contemplated in Schedule 2 of this Act;
- (d) in addition to quarterly meetings, convene an annual meeting with traditional councils within its jurisdiction to give account of the activities and finances of the local house;
- (e) enforce adherence to the code of conduct provided for in Schedule 1 of this Act;
- (f) establish clear relationships, and facilitate co-operation and communication between itself, traditional councils and municipalities within its jurisdiction;
- (g) maximise the efficiency of communication and decision-making within the administration of the local house;

- (h) create and provide an equitable, fair, open, non-discriminatory and supportive environment for all traditional councils; and
- (i) submit an annual report to the Provincial House on the performance of its responsibilities.

#### **64. Dissolution of a local house**

- (1) A local house must be dissolved—
  - (a) on the expiry of the term of office of a local house; or
  - (b) after a vote supported by a two-third majority of the membership of such a local house in a meeting called for that purpose: Provided that in such instance a local house must be reconstituted in accordance with the provisions of [section 51](#), and such reconstituted local house shall function for the unexpired term of the dissolved local house.
- (2) Notwithstanding the dissolution of a local house by virtue of the provisions of subsection (1), the Premier may, by proclamation in the *Provincial Gazette*, summon members of a local house to an extraordinary sitting for the consideration of urgent business and for this purpose—
  - (a) every person who, on the date of the dissolution of a local house is a member of the local house, remains a member of such a local house; and
  - (b) such a local house remains competent to function.

#### **65. Oath or confirmation by chairperson and deputy chairperson and members of local houses**

The members of a local house must, before assuming the functions of a local house, take an oath or solemn affirmation before a Magistrate.

### **Chapter 10 Provincial House of Traditional Leaders**

#### **66. Eastern Cape Provincial House of Traditional Leaders**

There is hereby established a provincial house of traditional leaders to be known as the Eastern Cape Provincial House of Traditional Leaders.

#### **67. Seat and meetings of the Provincial House**

- (1) The seat of the Provincial House shall be at the Eastern Cape House of Traditional Leaders building, unless the chairperson of the Provincial House, in consultation with the Premier, determines the seat to be elsewhere in the Province in accordance with the rules and orders of the House.
- (2) The Provincial House must meet at least once in every quarter during the sitting of the Provincial Legislature.
- (3) Subject to subsection (2) and (4), a Provincial House will sit during such period and on such days and such hours as it may determine.
- (4)
  - (a) The Executive Committee may, subject to the approval of the Premier, call special sitting on a date and time it may determine.
  - (b) Such special sitting referred to in paragraph (a) will only consider such matters that the Premier has agreed to.
  - (c) The Executive Committee must, if so directed by the Premier, call a special sitting, and only such matters which necessitated the calling of the special sitting must be dealt with.

## 68. Membership and composition of the Provincial House

- (1) The Provincial House consists of—
  - (a) kings or queens, or their representatives who must be senior traditional leaders; and
  - (b) members elected from local houses in terms of the rules and orders.
- (2) The Premier must, by notice in the *Provincial Gazette*, determine the number of representatives of each local house in the Provincial House, and such representatives must take into consideration the number of traditional leaders and traditional councils under the relevant district or metropolitan municipality of a local house.
- (3) A local house whose member is a representative in the Provincial House may, on good cause shown and after following due process, revoke the election of such a member and will thereupon elect another member.
- (4) The king or queen may at any time withdraw a representation of a member referred to in subsection (1).
- (5) A member of the Provincial House shall hold office for a period of five years, subject to subsection (3) and (4).
- (6) The Premier must, after consultation with the Provincial House, determine which members will be full-time and part-time, but the chairperson and the deputy chairperson elected in terms of [section 76 \(1\)](#), must be full-time members.
- (7) Despite subsection (5), the term of office of a member will terminate on dissolution of the Provincial House in terms of [section 69](#).

## 69. Dissolution of the Provincial House

[Section 64](#) applies with the necessary changes to the dissolution of the Provincial House.

## 70. Oath or affirmation by the chairperson, deputy chairperson and members of the Provincial House

The members of the Provincial House must, before assuming their functions in the Provincial House, take an oath or solemn affirmation as prescribed, before a Judge President of the Province or any designated Judge.

## 71. Qualification for membership of the Provincial House

A person is eligible to be elected as member of a Provincial House if he or she is—

- (a) a senior traditional leader;
- (b) a South African citizen over the age of 21 years;
- (c) a member of a local house of traditional leaders; and
- (d) permanently resident within the Province.

## 72. Disqualification for membership of a Provincial House

The provision of [section 53](#) applies, with the necessary changes to members disqualified to be a member of a Provincial House.

### 73. Vacation of seats

The seat of a member of the Provincial House shall become vacant—

- (a) upon the death of such a member;
- (b) if, without having obtained a leave of absence in accordance with the rules and orders of the Provincial House, the member absents himself or herself voluntarily from sittings of the Provincial House, or any other committee of the Provincial House of which he or she is a member, for three consecutive sittings;
- (c) if the member tenders his or her written resignation;
- (d) if the member ceases to possess the qualifications mentioned in [section 71](#) or becomes disqualified in terms of [section 72](#);
- (e) if the Provincial House, by resolution on good cause shown and after having followed due process, withdraws the member's membership of the Provincial House and informs the Premier;
- (f) upon expiry of his or her term of office;
- (g) if the member is removed from the Provincial House for breach of the code of conduct;
- (h) becomes a full-time member of Parliament, Provincial Legislature or the municipal council; or
- (i) in case of a representative of a king or queen, if a king or queen through written notice to the Premier, recalls his or her representative in the Provincial House.

### 74. Filling of vacancies

[Section 54](#) applies, with the necessary changes, to the filling of vacancies in the Provincial House.

### 75. Powers and duties of the Provincial House

- (1) The Provincial House has the roles, powers and functions conferred upon it by this Act and any other law.
- (2) The functions of the Provincial House are—
  - (a) to work with the National House of Traditional Leaders, to promote—
    - (i) the role of traditional leadership within a democratic constitutional dispensation;
    - (ii) nation building;
    - (iii) peace, stability and cohesiveness of communities;
    - (iv) the preservation of the moral fibre and regeneration of society;
    - (v) the preservation of the culture and traditions of communities;
    - (vi) socio-economic development and service delivery; and
    - (vii) the social well-being and welfare of communities; and
  - (b) to enhance co-operation between the Provincial House and various local houses with a view to address matters of common interest.
- (3) The Provincial House—
  - (a) must consider Bills referred to it by the Speaker of the Provincial Legislature;

- (b) may advise the Provincial Government and make recommendations relating but not limited to the following—
  - (i) matters relating to policy and legislation impacting on traditional leadership;
  - (ii) the role of traditional leaders;
  - (iii) customary law; and
  - (iv) the customs of communities observing systems of customary law;
- (c) may investigate and make available information on traditional leadership, traditional communities, customary law and customs;
- (d) must at the request of a member of the Provincial Executive Council, advise him or her in connection with any matter referred to in this section;
- (e) must complement and support the work of the Provincial Government;
- (f) must form cooperative relations and partnership with all spheres of government in the development of communities and the provision of services to communities;
- (g) may participate in any national and provincial programmes geared towards the development of rural communities;
- (h) may participate in the provincial initiatives meant to monitor, review and evaluate government programmes in rural communities; and
  - (i) must perform tasks as may be determined by a member of the Provincial Executive Council, or as may be provided for in national or provincial legislation.
- (4) The Provincial House must provide for mechanisms to maintain oversight of—
  - (a) local houses; and
  - (b) traditional councils.

## 76. Chairperson and deputy chairperson

- (1) At its first meeting after it has been convened, the Provincial House with the Premier as the chairperson or any person designated by the Premier, must elect one of its members as chairperson and thereafter elect another member as the deputy chairperson of the House.
- (2) Once the chairperson has been elected, he or she must preside over the election of other members of the Executive Committee which shall consist of four members.
- (3) The chairperson has all the powers and functions delegated and assigned to him or her by the rules and orders of the House.
- (4) If the chairperson is absent or for any reason unable to exercise or perform the powers or functions vested in the office of the chairperson, or when the office of the chairperson is vacant, the deputy chairperson must act as the chairperson until the chairperson resumes his or her functions and duties, or is elected.
- (5) If any of the circumstances referred to in subsection (4) apply to both the chairperson and the deputy chairperson, a member of the Provincial House designated in terms of the rules and orders of the Provincial House must act as the chairperson whilst the circumstances prevail.
- (6) The deputy chairperson or the member designated in terms of subsection (4), when acting as the chairperson, may exercise the powers or perform functions vested in the office of the chairperson.
- (7) The chairperson, deputy chairperson or any other member designated for that purpose in terms of the rules and orders of the Provincial House must preside over the meetings of the Provincial House.

- (8) While presiding at the meeting of the Provincial House, the chairperson, deputy chairperson or any other member presiding will not have a deliberative vote but will have a casting vote in the event of an equality of votes.
- (9) The chairperson or deputy chairperson must vacate his or her office if he or she—
  - (a) ceases to be a member of the Provincial House in terms of [section 71](#);
  - (b) is removed from office by the resolution of the Provincial House; or
  - (c) tenders his or her written resignation with the Premier.
- (10) If the office of the chairperson or deputy chairperson becomes vacant, the Provincial House with the Premier or a person designated by the Premier presiding, must elect a member to fill the vacancy, but the chairperson must preside over the election of the deputy chairperson.

## **77. Election of representatives to the National House**

- (1) The Provincial House must, in its first sitting, elect its representatives to serve in the National House of Traditional Leaders in accordance with the provisions of section 4 of the National House of Traditional Leaders Act, 2009 ([Act No. 22 of 2009](#)).
- (2) At least one of the representatives of the Provincial House in the National House must be a woman, unless the Premier, after consultation with the Provincial House, establishes that there is no woman within the Provincial House.

## **78. Rules and orders**

The Provincial House may, subject to the provisions of this Act, make rules and orders for the conduct of its business and proceedings, including rules and orders regulating—

- (a) the establishment, composition, powers and functions, procedures and duration of the committees of the Provincial House, but provision must be made for an executive committee consisting of the chairperson, deputy chairperson and four other members elected by the Provincial House;
- (b) restriction on access to such committees; and
- (c) the designation of members as presiding officers to preside over meetings of the Provincial House, as and when the chairperson requires.

## **79. Quorum and decisions**

The presence of at least one third, or when a vote is taken on a Bill, of at least half, of all the members other than the chairperson or other presiding member is necessary to constitute a meeting of the Provincial House.

## **80. Requisite majorities**

- (1) All decisions of the Provincial House must be taken by the majority of members constituting the meeting of the Provincial House.
- (2) Where a decision to remove the chairperson or deputy chairperson must be taken, such a decision must be taken by two thirds of the total membership of the Provincial House.

## **81. Moneys payable to members**

The remuneration and benefits of members of the Provincial House are determined in terms of the Remuneration of Public Office Bearers Act, 1998 ([Act No. 20 of 1998](#)).

## **82. Administration and accountability of the Provincial House**

- (1) The Premier must, in consultation with the Provincial House and subject to the laws governing the public service, second staff as may be necessary to discharge the work of the Provincial House.
- (2) The Premier must, in terms of the laws governing the public service, and with the concurrence of the Provincial House, appoint a person as Secretary to the Provincial House who must—
  - (a) exercise and perform the powers and functions conferred upon or assigned to him or her by this Act and the rules and orders of the Provincial House; and
  - (b) subject to the direction of the Provincial House, perform the work incidental to the exercise and performance of the powers and functions of the Provincial House.
- (3) The Secretary must be supported in the exercise or performance of his or her powers and functions by officers of the Department designated for that purpose in terms of subsection (1).

## **83. Responsibilities of the Provincial House**

The Provincial House of Traditional Leaders must—

- (a) keep proper records;
- (b) have its financial statements audited annually;
- (c) in addition to quarterly meetings, convene an annual meeting with local houses to give account of the activities and finances of the Provincial House;
- (d) ensure adherence to the code of conduct;
- (e) establish clear relationships with, and facilitate co-operation and communication between itself and local houses as well as between local houses;
- (f) hold the Secretary of the Provincial House accountable for the overall performance and administration of the Provincial House ;
- (g) maximise the efficiency of communication and decision-making within the administration of the Provincial House;
- (h) assign clear responsibilities for the management and co-ordination of the administration of the Provincial House ;
- (i) involve the Secretary of the Provincial House in decisions impacting on the overall management of the Provincial House, as far as it is practicable;
- (j) promote an equitable, fair, open, non-discriminatory and supportive environment for all local houses; and
- (k) provide an equitable, fair, open, non-discriminatory and supportive environment for the Provincial House.

## **Chapter 11 General provisions**

### **84. Establishment and composition of local electoral college**

- (1) There is hereby established an electoral college in respect of each district or metropolitan municipality within the Province.



- (2) An electoral college contemplated in subsection (1) shall consist of—
  - (a) all kings or queens, principal traditional leaders, or their representatives;
  - (b) 60% of senior traditional leaders; and
  - (c) 40% of headmen or headwomen.
- (3) All recognised traditional councils must participate in the selection or nomination of candidates to constitute an electoral college within the jurisdiction of a district or metropolitan municipality.
- (4) The Premier must, through regulations, determine the number of candidates for each traditional council to be selected or nominated to constitute an electoral college, taking into consideration the number of traditional councils within each district or metropolitan municipality and the needs of such district or metropolitan municipality.
- (5) A traditional council may not select or nominate candidates to participate in more than one district or metropolitan municipality.
- (6) A traditional council that falls within the boundaries of two districts or metropolitan municipalities shall participate in a district or metropolitan municipality within which at least 60% of its administrative areas fall.

## **85. Regulations**

The Premier may make regulations relating to—

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (b) any matter that may be necessary to ensure the effective functioning of traditional leaders, traditional councils, local houses and the Provincial House; and
- (c) any administrative or procedural matter necessary to give effect to the provisions of this Act, including the manner in which all elections contemplated in this Act are to be conducted.

## **86. Immunities and privileges of members of houses of traditional leaders**

- (1) A House has the authority to control, regulate and dispose of its internal affairs.
- (2) Subject to the rules and orders of both the Provincial and local house, there must be freedom of speech and debate in or before such a House and any committee of the House.
- (3) Members of the Provincial or Local House are not liable to civil or criminal proceedings, arrest, and imprisonment or damages for—
  - (a) anything that they said in, produced before or submitted to the House or any of its committees; or
  - (b) anything revealed as a result of anything that they have said in, produced before or submitted to the House or its committees.

## **87. Support to houses of traditional leaders**

The Provincial Government must adopt measures as may be necessary to support and strengthen the capacity of the Houses to fulfil their functions, and such support may include the provision of—

- (a) infrastructure;
- (b) finances;
- (c) human resources;
- (d) skills development programmes; and

- (e) administrative systems.

### **88. Delegation of powers**

- (1) The Premier may, subject to such conditions as he or she may determine in writing, delegate any powers conferred on him or her by this Act to the MEC, excluding powers to make regulations.
- (2) The delegation referred to in subsection (1) does not preclude the Premier from exercising any such delegated powers.

### **89. Relationship between the Provincial House and kings or queens**

The Provincial House may, on a biannual basis, hold a meeting with all kings and queens in the Province to discuss—

- (a) the activities and programmes of the Provincial House;
- (b) matters of interest to kings and queens;
- (c) matters relating to service delivery and development of traditional communities; or
- (d) any other business identified and proposed by either party and agreed upon by both parties.

### **90. Relationship between the Provincial House and local houses**

- (1) The Provincial House must investigate matters referred to it by the local houses and make recommendations thereon.
- (2) The Provincial House must advise local houses regarding the administration of their affairs.
- (3) The Provincial House must, on a biannual basis, hold meetings with local houses to discuss progress on matters relating to the general interest and welfare of traditional communities.
- (4) Where the Provincial House wishes to interact with a traditional council, such interaction must be done in consultation with the relevant local house.
- (5) The chairperson of the Provincial House may establish a body of secretaries of local houses to interact with the Provincial House on a regular basis on issues of mutual interest.

### **91. Relationship between houses of traditional leaders and traditional councils**

- (1) The Houses must, in consultation with traditional councils, advise the Provincial Government and the municipalities on matters of general interest and welfare of traditional communities.
- (2) The Houses must investigate matters referred to it by the traditional councils and make recommendations.
- (3) The Houses must advise traditional councils regarding the administration of their affairs.
- (4) Members of the Houses must report on the progress on matters of general interest and welfare of traditional councils on a quarterly basis to their respective traditional councils.
- (5) Members must table the reports referred to in subsection (4) at the first meeting of the Provincial or Local House, as the case may be, after the reports have been submitted to the respective traditional councils.

### **92. Relationship between local houses and municipal councils**

- (1) The speaker of a municipal council may refer all draft by-laws to a local house for comments.
- (2) A local house may consider and comment on the draft by-laws referred to in subsection (1).

### 93. Offences and penalties

- (1) A person is guilty of an offence if that person—
  - (a) purports to be a traditional leader in terms of this Act without having been recognised in terms of this Act or any law repealed by this Act in terms of [section 95](#); or
  - (b) willfully obstructs the carrying out, performance or execution of any role, power, function or duty vested in the Provincial House, or any local house in terms of this Act or any other law.
- (2) A person convicted of an offence referred to in subsection (1) is liable to a fine or imprisonment not exceeding twelve months, or both a fine and imprisonment.

### 94. Transitional arrangements

- (1) Any traditional leader who was appointed as such in terms of applicable legislation, and was still recognised as a traditional leader before the commencement of this Act is deemed to have been recognised as such in terms of [section 23](#) of this Act, subject to the decision of the Provincial Committee of the Commission on Disputes and Claims.
- (2) Any person who, before the commencement of this Act, was appointed as an acting traditional leader, and was still recognised as such is deemed to have been recognised as such in terms of [section 26](#) of this Act.
- (3) An administrative area established in terms of applicable legislation before the commencement of this Act, is deemed to have been recognised as such in terms of [section 1](#) of this Act.
- (4) Any tribal authority established in terms of applicable legislation shall continue to be recognised as such until it is substituted by the newly reconstituted traditional council contemplated in [section 6](#) of this Act.
- (5) Any traditional council established and recognised in terms of section 6 of the Traditional Leadership and Governance Act, 2005 ([Act No. 4 of 2005](#)) (Eastern Cape), and was recognised as such before the commencement of this Act, is deemed to have been recognised as such in terms of [section 6](#) of this Act.
- (6) Any traditional community established in terms of applicable legislations and was still recognised as such before the commencement of this Act, is deemed to be a traditional community contemplated in [section 4](#) of this Act, subject to—
  - (a) the withdrawal of its recognition in accordance with the provision of [section 5](#) of this Act; or
  - (b) a decision or recommendations of the Commission or Committee of the Commission on Disputes and Claims in terms of section 26 of the Framework Act as amended.
- (7)
  - (a) The Premier must, by notice in the *Provincial Gazette*, within one year of the commencement of this Act, disestablish all regional authorities that have been established in terms of applicable legislation before the commencement of this Act.
  - (b) A notice disestablishing regional authorities must regulate the legal, practical and other consequences of the disestablishment, including but not limited to—
    - (i) the transfer of assets, liabilities, administrative and other records to an appropriate provincial department, or municipality or local house of traditional leaders, or traditional community and traditional councils as circumstance may require;
    - (ii) the vacation of office bearers of such regional authority; and
    - (iii) the transfer of staff of such regional authority.

- (c) If the timeframe of one year referred to in paragraph (a) is not met in respect of any regional authority, the Premier may take the necessary steps to ensure that the provisions of this section are met.
- (8) Notwithstanding the provision of [section 48](#) (c), a local house of traditional leaders established after the commencement of this Act and before the end of the current term of offices of both the National and Provincial House of Traditional Leaders, shall exist until the end of term of such Houses, whereupon the term of such a local house must be in compliance with [section 48](#) (c) of this Act.

## 95. Repeals and savings

- (1) The laws listed in column 1 of Schedule 5 are hereby repealed to the extent indicated in column 2 thereof.
- (2) Notwithstanding the repeal of laws referred to in subsection (1), anything or act done in terms of such laws must be deemed to have been done in terms of the corresponding provisions of this Act.

## 96. Short title and commencement

- (1) The Act is called the Eastern Cape Traditional Leadership and Governance Act, 2017, and comes into operation on the date fixed by the Premier by proclamation in the *Provincial Gazette*.
- (2) Different dates may be so determined in terms of subsection (1) in respect of different provisions of this Act.

# Schedule 1

## Code of conduct for traditional leaders and traditional councils

### 1. General code of conduct for a traditional leader

A traditional leader —

- (a) must perform the functions allocated to him or her in good faith, diligently, honestly and in a transparent manner;
- (b) may not conduct himself or herself in a disgraceful, improper or unbecoming manner, such as—
  - (i) being involved in fighting;
  - (ii) using insults and unacceptable language;
  - (iii) excessive use of alcohol;
  - (iv) engaging in acts considered abusive to members of the public and that of his or her family;
  - (v) sexually harassing other members of the traditional council, the House of Traditional Leaders, or the public in general; or
  - (vi) domestic violence against women and children;
- (c) must dress in a presentable manner;
- (d) must respect and uphold tradition and culture at all times;
- (e) must comply with any applicable legislation;
- (f) must act in the best interest of the traditional community or communities that he or she serves;
- (g) must promote unity amongst traditional communities;

- (h) may not embark on action that would create division within or amongst traditional communities;
- (i) must promote nation building;
- (j) may not refuse to provide a service to a person on political or ideological grounds;
- (k) must foster good relations with the organs of state with whom he or she interacts;
- (l) must promote the principles of a democratic and open society; and
- (m) must disclose gifts received.

## 2. General conduct of traditional councils

A traditional council must—

- (a) perform the functions allocated to it in good faith, diligently, honestly and in a transparent manner;
- (b) execute its duties in an efficient manner;
- (c) comply with any applicable legislation;
- (d) act in the best interest of the traditional community it serves;
- (e) give effect to the principles governing public administration set out in section 195 of the Constitution; and
- (f) foster good relations.

## Schedule 2

### Code of conduct for members of houses, traditional leaders, principal traditional councils and traditional councils

#### 1. Definitions

In this Schedule, unless the context indicates otherwise—

- (a) “**house**” means the Provincial House of Traditional Leaders or a local house of traditional leaders;
- (b) “**member**” means a member of a house of traditional leaders or a council; and
- (c) “**council**” means a principal traditional council or traditional council.

#### 2. General code of conduct of members of houses and councils

A member—

- (a) must perform his or her functions in good faith and in an honest, non-discriminatory and transparent manner;
- (b) must at all times act in the best interest of the house or council, and in such a way that the credibility and integrity of the House or council are not compromised;
- (c) may not deliberately do anything calculated to unjustly injure the reputation of other members;
- (d) may not use the power of his or her office to seek or obtain special advantage for personal benefit that is not in the public interest; and
- (e) may not disclose confidential information acquired in the course of his or her duties, unless required by law to do so, or by circumstances to prevent substantial injury to third persons.

### 3. Attendance at meetings

A member must attend each meeting of the House or council and of a committee of the house or council of which he or she is a member, except where—

- (a) a letter of apology is tendered in terms of an applicable law or as determined by the rules and orders of the House or council or that of a committee of the house or council; or
- (b) a member of the House or council or committee of the House or council withdraws from the meeting in terms of the rules and orders of the House or council.

### 4. Sanctions for non-attendance of meetings

- (1) A House or council, or a committee of the House or the council, may impose sanctions on a member of the House or council or committee of the House or council as prescribed or determined by rules and orders of the House or council—
  - (a) for not attending a meeting which such member is required to attend in terms of item 3; or
  - (b) a member of the House or council, or committee of the House or council, who is absent for three or more consecutive meetings of the House or council, or committee of the House or council, of which he or she is a member, must be removed as a member.
- (2) Proceedings for the removal of a member of the House or council or committee of the House or council must be conducted in accordance with a uniform standing procedure which the House or council must adopt for the purpose of this item and in accordance with Promotion of Administrative Justice Act, 2000 ([Act No. 3 of 2000](#)).

### 3. Conflicts of interest

- (1) A member of the House or council, or committee of the House or council, must declare any personal or private financial or business interest that he or she may have in a matter—
  - (a) that is before the House;
  - (b) that is before the council;
  - (c) that is before a committee on which a member serves; or
  - (d) in relation to which a member is required to take a decision as a member of the House or council or committee.
- (2) A member must withdraw from any committee of the House or council which is considering a matter in which a member has any personal or private financial or business interest, unless the chairperson of the House or council under whose authority the council falls, whatever the case may be, decides that a member's interest is trivial or not relevant.
- (3) If a member of the House or council is required to adjudicate upon or decide a matter in which he or she has a personal or private financial interest or business interest, he or she must declare such interest to the chairperson of the House or council, and seek the permission of the chairperson to adjudicate upon or decide the matter.
- (4) A member who or whose spouse or partner, business associates or close family members acquired, or stand to acquire, direct benefits from a contract conducted with the House or council must disclose full particulars of the benefits that the member is aware of at the first meeting of the House or council, or of a committee of the House or council in which he or she is member.
- (5) However, sub-paragraph (4) does not apply to an interest or benefit of which a member or a spouse or partner, business associates or close family members have acquired together with other residents of the jurisdiction of the House or that of a traditional council.

#### 4. Personal gains

- (1) A member of the House or council or committee of the House or council may not use the position or privileges of being a member, or confidential information obtained as a member, for private gain or to improperly benefit another person.
- (2) Except with the consent of the House or a council, a member may not—
  - (a) be part of, or stand to benefit under, a contract for the provision of goods or services to the House or council;
  - (b) be part of, or stand to benefit under, a contract for the performance of any work other than as a member of the House or council;
  - (c) obtain a financial interest in any business of the House or council; or
  - (d) be paid a fee or other consideration appear on behalf of any person before the House or council.
- (3) If more than one quarter of the total members of the House or council object to consent being given to a member in terms of the above item, such consent may only be given to the member with the approval of the Premier.

#### 5. Gifts, rewards & favours

- (1) A member of the House or council may not solicit or accept a gift or benefit which—
  - (a) is given in return for any benefit received from a member of the House or council, except gifts recognised by customs;
  - (b) constitutes improper influence on the part of a member of the House or council; or
  - (c) constitutes an attempt to influence a member of the House or council in the performance of his or her duties.
- (2) A member of the House or council may not request or accept any reward, gift or favour for—
  - (a) voting or not voting in a particular manner on any matter before the House or council, or a committee of the House or council of which he or she is a member;
  - (b) persuading the House or council, or a committee of the House or council with regard to the exercise of any power, function or duty;
  - (c) making a representation to the House or council, or committee of the House or council; or
  - (d) disclosing privileged or confidential information.

#### 6. Gifts, benefits to be disclosed

A member elected to the House or council must disclose—

- (a) gifts valued more than R1000.00 by describing the value and source of the gifts;
- (b) the value of the gifts from a single source which cumulatively exceed the value of R1000.00 in any calendar year;
- (c) hospitality with a value of more than R1000.00 intended as a personal gift; and
- (d) hospitality intended as a personal gift and received from a single source, and which cumulatively exceeds R1000.00 in any calendar year.

## 7. Disclosure of financial interest

- (1) An appointed or elected member to the House or council must, within 60 days after being appointed or elected, declare in writing to the officer of the House or council designated by the Premier, the following financial interest held by him or her—
  - (a) shares and securities in any company;
  - (b) membership of any closed corporation;
  - (c) interest in any trust;
  - (d) directorships;
  - (e) partnerships;
  - (f) other financial interests in any business undertakings;
  - (g) employment and remuneration;
  - (h) interest in property; or
  - (i) subsidies, grants and sponsorship by any organisation.
- (2) Any changes in the nature or details of the financial interests of a member of the House or council must be declared in writing to the officer referred to in sub-item (1).
- (3) Members of the House or council must determine which of the financial interests referred to in sub-item 1 (a)-(g) must be made public, having regard for the need for confidentiality and the need to disclose in the public interest.

## 8. Unauthorised disclosure of confidential information

- (1) A member may not without the permission of the House or a council or a committee of the House or a council, disclose any privileged or confidential information of the House or a council or such committee to any unauthorised person.
- (2) For the purposes of this item “privileged or confidential information” includes any information—
  - (a) classified by the House or a council or a committee of the House or a council, to be privileged or confidential;
  - (b) discussed in closed session by the House or a council or a committee of the House or a council;
  - (c) of which the disclosure would violate a person's right to privacy; or
  - (d) declared to be privileged, confidential or secret in terms of law.
- (3) This item does not derogate or deprive the right of any person to apply for access to the information in terms of national legislation.

## 9. Use of property belonging to the Houses of traditional leaders or traditional council

- (1) A member of the House or council may not use or permit anyone to use facilities, equipment, supplies, services or other resources belonging to the House or council, for activities other than that of the House or council.
- (2) No member of the House or council may take, acquire or benefit, or obtain person financial gain from the use of any property or assets owned, controlled or managed by the House or council, as all property remain exclusively that of the House or council.



## 10. Improper use of influence

- (1) A member of the House or council or committee of the House or council may not use the influence of his or her position for any purpose other than for the exercise of his or her official duties.
- (2) Improper use of influence includes, but is not limited to, improperly influencing the decision of another person or other members of the House or council or committee of the House or council, as well as departmental officials, for the benefit of oneself, or one's relatives, spouse or partner, staff members of the House or traditional council, friends, associates or business or others, to benefit from employment or being elected to the House or council.

## 11. Breach of code of conduct by a member of the House or council

- (1) If the House or council, on reasonable suspicion, is of the opinion that a provision of the code of conduct has been breached, the House or council must establish an investigative committee to—
  - (a) establish facts and circumstances of the alleged breach;
  - (b) give a member a reasonable opportunity to reply in writing regarding the alleged breach; and
  - (c) make recommendations and report on the matter in a meeting of the House after (a) and (b) have been compiled with.
- (2) The house or council must inform the Premier of the outcome of the investigation.
- (3) The secretary of the House or chairperson of the council must ensure that each member of the House or council, when taking office, is given a copy of the code of conduct, and that a copy of the code of conduct is available in every room or place where the House or council meets.
- (4) If the investigation committee finds that a member of the House or council has breached a provision of this part of the code of conduct, such House or council may—
  - (a) issue a formal warning to such a member;
  - (b) reprimand the member;
  - (c) request the Premier to suspend the member for a period determined by the Premier; or
  - (d) request the Premier to remove such a member from office.
- (5)
  - (a) The Premier may appoint a person or a committee to investigate any alleged breach of a provision of the code of conduct and to make recommendations as to the appropriate sanction in terms of sub-item (2), if the House or council does not have an investigation conducted as contemplated in sub-item (1) and the Premier considers it necessary: Provided that, in the event of an alleged breach of the code of conduct by the chairperson of the such House or council, the provision of this item must be applied by the Premier.
  - (b) If the Premier is of the opinion that a member of a House or council has breached a provision of the code of conduct, and that such contravention warrants a suspension or removal from office, the Premier may—
    - (i) issue a formal warning to such a member;
    - (ii) reprimand the member;
    - (iii) suspend the member from office for a period, and on such conditions, as he or she may determine; or
    - (iv) remove a member from office: Provided that, in the case of the chairperson of a council, any such removal from the office is subject to the relevant provision of the Act dealing with the withdrawal of recognition of the leadership position concerned.

- (6) The Commission Act, 1947 ([Act No. 8 of 1947](#)) or, where appropriate, applicable provincial legislation, may be applied to an investigation conducted in terms of sub-item (4).
- (7) Any investigation in terms of this item must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 ([Act No. 3 of 2000](#)).

### Schedule 3

#### **Oath by members of the Houses of Traditional Leaders, principal traditional councils and traditional councils**

I, \_\_\_\_\_ (name of a member),

do swear that I will be faithful to the House of Traditional Leaders, principal traditional council or traditional council and do solemnly and sincerely promise at all times to promote that which will advance, and to oppose all that may harm, the House, principal traditional council or traditional council; to obey, observe, uphold and maintain the laws, rules, orders and procedures of the House, principal traditional council or traditional council and all other laws of the Republic of South Africa; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice unto all; and to devote myself to the well-being of the House of Traditional Leaders, principal traditional council or traditional council and its members.

May the Almighty God by His grace guide and sustain me in keeping this oath with honour and dignity.

So help me God

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Date

### Schedule 4

#### **Affirmation by members of the House of Traditional Leaders, principal traditional councils and traditional councils**

I, \_\_\_\_\_ (name of a member),

do solemnly affirm that I will be faithful to the House of Traditional Leaders, principal traditional council or traditional council and do solemnly and sincerely promise at all times to promote that which will advance, and to oppose all that may harm, the House, principal traditional council or traditional council; to obey, observe, uphold and maintain the laws, rules, orders and procedures of the House or traditional council and all other laws of the Republic of South Africa; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice unto all; to devote myself to the well-being of the House of Traditional Leaders, principal traditional council or traditional council and its members.

May the ancestors guide and sustain me in keeping this affirmation with honour and dignity.

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Date

**Schedule 5**  
**Laws repealed**

Act	Extent of repeal
1. House of Traditional Leaders Act, 1995 ( <a href="#">Act No. 1 of 1995</a> )	The whole
2. House of Traditional Leaders Amendment Act, 2001 ( <a href="#">Act No. 9 of 2001</a> )	The whole
3. House of Traditional Leaders Amendment Act, 2005 ( <a href="#">Act No. 3 of 2005</a> )	The whole
4. Eastern Cape Traditional Leaders and Governance Act, 2005 ( <a href="#">Act No. 4 of 2005</a> )	The whole