



PROVINCE OF THE EASTERN CAPE
IPHONDO LEMPUMA KOLONI
PROVINSIE OOS-KAAP

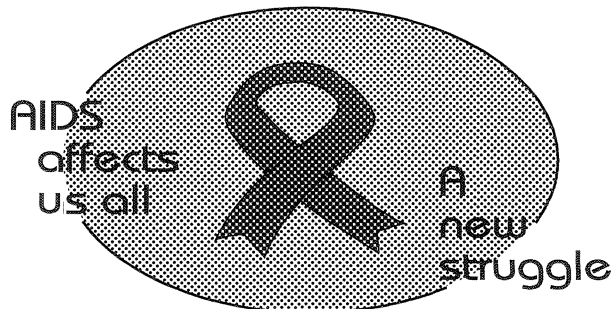
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No. 3236
(Extraordinary)

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DEPARTMENT OF HEALTH

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GENERAL NOTICE

NOTICE 220 OF 2014

DEPARTMENT OF LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS

PUBLICATION OF THE EASTERN CAPE TRADITIONAL LEADERSHIP AND GOVERNANCE BILL, 2014, IN COMPLIANCE WITH SECTION 154 (2) OF THE CONSTITUTION OF THE SOUTH AFRICA, 1996 (ACT NO. 108 OF 1996)

1. The Department of Local Government and Traditional Affairs hereby invites members of the public or body/organisation to provide written comments on the Eastern Cape Traditional Leadership and Governance Bill as contained in the schedule hereto.
2. The main objects of the Bill are-
 - ☐ to consolidate all Provincial legislation dealing with traditional leadership and accordingly repeals the Eastern Cape Traditional Leadership and Governance Act, 2005 (Act No. 4 of 2005) and the Eastern Cape House of Traditional Leaders Act, 1995 (Act No. 1 of 1995) and effect consequential amendments thereof.
 - ☐ further, the Bill seek to update/align Provincial legislation governing the institution of traditional leadership in order to ensure that it is consistent with the National legislation.
 - ☐ to make provision for the establishment of Local Houses.
3. The closing date for comments on the Bill is **30 calendar days** from the date of the publication of this notice in the *Gazette*.
4. Comments may be submitted in writing to:

Postal address: The Superintendent-General
Department of Local Governance and Traditional Affairs
Private Bag X0035
Bhisho
5605
5. Comments may also be-
 - (a) delivered by hand to: **Tyamzashe Building-Phalo Avenue, Bhisho, 5605;**
 - (b) sent by facsimile to: **0866647145/0862604257**
 - (c) sent by electronic mail to zingisa.mkabile@eclgta.gov.za & nangamso.mngoma@eclgta.gov.za
6. All comments must be clearly marked for the attention of-
Acting Deputy Director-General: Traditional Affairs
J.S. Mateta

PROVINCE OF THE EASTERN CAPE

**DRAFT EASTERN CAPE TRADITIONAL LEADERSHIP AND
GOVERNANCE BILL, 2014**

(As Introduced)

**(By the Member of the Executive Council responsible for Local
Government and Traditional Affairs)**

BILL

To provide for the recognition of traditional communities, to provide for the recognition kingships/queenships and the withdrawal of the recognition by the President, to provide for the recognition of principal traditional communities, and to provide for the establishment and recognition of principal traditional councils, to provide for the establishment of sub-traditional councils, to provide for the position of principal traditional leader as a fourth position of traditional leadership, to provide for the establishment and recognition of traditional councils, to provide for the establishment of kingship an queenship councils, to provide for the recognition of traditional leaders, and their roles and functions, to provide for the removal of a traditional leader from the office, to provide for the recognition of regents, to provide for Houses of Traditional Leaders, to provide for a Code of Conduct for traditional leader, to provided for the repeal of certain laws, to provide for incident matters, to provide for a Code of Conduct for Members of Houses of Traditional Leaders and Traditional Councils.

PREAMBLE

WHEREAS the Government of the Eastern Cape wishes to consolidate laws governing traditional leadership institutions in the Eastern Cape Province and to ensure alignment of all existing Provincial Legislations with the National Legislations impacting on traditional leadership institutions.

WHEREAS the Province of the Eastern Cape, in accordance with the Constitution of the Republic of South Africa and Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003). Acknowledges the existence of traditional communities in the Province, and seeks to;-

- (a) recognise, protect, transform and provide an enabling environment for the development of traditional communities, traditional leadership institutions, customary law and customs; and
- (b) transform the institution and role of traditional leadership to be in harmony with the system of democratic governance in South Africa;

AND WHEREAS the Provincial Government of the Eastern Cape wishes to enact a single piece of legislation on Traditional Leadership and Governance, in support of the principles and duties imposed upon it by the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003),

AND NOW THEREFORE BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows:-

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CHAPTER 1

DEFINITIONS, APPLICATION AND INTERPRETATION OF ACT, GUIDING PRINCIPLES AND TRANSFORMATION OF TRADITIONAL AUTHORITIES INTO TRADITIONAL COUNCILS AND AREAS OF JURISDICTION

Definitions

1. In this Act, unless the context indicates otherwise;-

“Administrative Area” means the area of jurisdiction defined for a headmanship or headwomanship under the authority and within the area of jurisdiction 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 sub-traditional council;

“Chairperson” means a Chairperson, or his or Deputy Chairperson elected or designated in terms of section 12, 67 and 87, and includes and acting chairperson;

“Chief Magistrate” means a Chief Magistrate appointed in terms of the Magistrate Courts Act, 1994 (Act No. 32 of 1994, and **“Magistrate”** has a corresponding meaning;

“Code of Conduct” means the Provincial Code of Conduct contained in schedule 1;

“Commission” means the commission established in terms of section 22 of the Framework Act;

“Customary Institution or Structure” means those institutions or structures established in terms of customary law;

“Constitution” means the Constitution of the Republic of South Africa, Act 108 of 1996;

“Department” means the Department of Local Government and Traditional Affairs in the Province;

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

“Executive Committee” means an executive committee established in terms of section 69 or section 89;

“Framework Act” means the Traditional Leadership and Governance Framework Act, 2003 (Act No.41 of 2003) as amended;

“Head of Department” means the head of administration of the Department of Local Government and Traditional Affairs;

“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 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) as amended;

“House” means both Local and Provincial House of Traditional Leaders as established in terms of section 59 and 77 respectively of this Act;

“iKumkani” means a **“King”** or **“Queen”** as defined in section 1 of the Framework Act, and **“iKumkanikazi”** has a corresponding meaning;

“iNKosi” means a Senior Traditional Leader” as defined in section 1 of the Framework Act, and **“Morena”** has a corresponding meaning;

“King’s Council” means a council consisting of an *iKumkani* or *iKumkanikazi* and other members of the Royal Family selected in accordance with custom to advise the *iKumkani* or *iKumkanikazi* and to consider and take decisions on matters pertaining to the Royal Family in accordance with custom;

“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);

“Legislature” means the Legislature of the Province of the Eastern Cape;

“Local House” means a house of Traditional Leaders established by section 59;

“MEC” means the Member of the Executive Council of the Provincial Government of the Eastern Cape responsible for Traditional Affairs;

“Minister” means the National Minister responsible for Traditional Leadership matters;

“Premier” means the Premier of the Province of the Eastern Cape;

“Prescribed” means prescribed by the MEC by regulation in the *Provincial Gazette*;

“President” means the President of the Republic of South Africa;

“Principal Traditional Community” means a principal traditional community recognised as such in terms of section 8;

“Principal Traditional Council” means a council established in terms of section 11;

“Principal Traditional Leader” means a Traditional Leader-

(a) Under whose authority, or within whose area of jurisdiction, Senior Traditional Leaders exercise authority in accordance with customary law;

(b) Recognised as such in terms of section 29;

“Province” means the Province of the Eastern Cape established by section 103 of the Constitution;

“Provincial Government” means the government of the Province of the Eastern Cape;

“Provincial Gazette” means the *Provincial Gazette* of the Province;

“Provincial Legislature” means the Legislature for the Province;

“Provincial House” means the House of Traditional Leaders as defined in section 1 of the Eastern Cape House of Traditional Leaders Act, 1995 (Act, No. 1 of 1995);

“Regent” means any person who, in terms of customary law of the Traditional Community concerned, holds a Traditional Leadership position in a temporary capacity until a successor to that position who is a minor, is recognised as contemplated in section 33;

“Remuneration Act” means the Remuneration of Public Office Bearers Act, 1998 (Act, No.20 of 1998);

“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;

“**Speaker**” means the Speaker of the Eastern Cape Provincial Legislature;
“**The Act**” includes the regulations issued 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 9;
“**Traditional Leader**” means any person who, in terms of customary law of the Traditional Community concerned, holds a Traditional Leadership position, and is recognised in terms of the Framework Act, and the Eastern Cape Traditional Leadership and Governance Act, 2005 (Act, No. 4 of 2005);
“**Traditional Leadership**” means the customary institution or structure, or customary system or procedures of governance recognised, utilized or practiced by Traditional Communities;
“**Traditional Leadership and Governance Act**” means the Eastern Cape Traditional Leadership and Governance Act, 2005 (Act No. 4 of 2005);
“**ubukhosi**” means Senior Traditional Leadership as recognised in accordance with custom; and
“**ubukumkani**” means kingship as recognised in accordance with custom

Application and Interpretation of the Act

2. (1) This Act is subject to the Constitution, the Framework Act and the Remuneration Act.
(2) 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.
(3) 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.
(4) Traditional Leaders may acknowledge or recognise the different levels of seniority among themselves in accordance with custom, and none of the definitions contained in section 1 must be construed as conferring, or detracting from, such seniority.
(5) Customs, tradition or customary laws relating to traditional leadership continue to operate, subject to the Constitution, the Framework Act and this Act.

Guiding Principles

3. (1) The Provincial Government must respect, protect, and promote the Institution of Traditional Leadership in accordance with the dictates of democracy in South Africa.
(2) All Institutions of Traditional Leadership established and recognised as contemplated in this Act, but established in accordance with the customary law and customs of traditional communities concerned, must be transformed and adapt customary law and customs so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by-

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

(2) The resources of any community, leader, council, house of traditional leaders, commission or committee recognised or established in accordance with a provision of this Act, may not be used to promote or prejudice the interest of any political party.

(3) Every traditional leadership institution and traditional leader and a member of traditional leadership institution recognised as contemplated in this Act must, in the carrying out, execution and performance of its roles, powers and functions-

- (a) apply the principles of co-operative government and intergovernmental relations as contemplated in Chapter 3 of the Constitution and any other law; and
- (b) uphold and implement the basic values and principles governing public administration as contemplated in Chapter 10 of the Constitution and any other law.

Transformation of Tribal Authorities into Traditional Councils and area of jurisdiction

4. (1) From 24 September 2004, all tribal authorities must be transformed into Traditional Councils in accordance with section 28(4) of the Framework Act.
- (2) The boundaries of the Traditional Councils referred in section (1) are those that existed in respect of the former tribal authorities prior to 24 September 2004.
- (3) The Premier may alter the boundaries of any Traditional Council referred to in section (1) in accordance with prescribed procedures.

CHAPTER 2

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

Recognition of traditional communities

5. (1) A community may be recognised as a Traditional Community if it-
- (a) is subject to the system of Traditional Leadership in terms of that community's customs; and
 - (b) observes a system of customary law.

(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 *iNkosi* under whose authority the community falls;
- (d) the names of persons who the community regards as their 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 within 12 months after receipt of an application referred to in subsection (2)-

(a) by notice in a local newspaper with wide circulation in the Province or area concerned in the Province, or by such other form of communication as determined by him or her, after consultation with the-

- (i) Provincial House;
- (ii) community concerned; and
- (iii) *iNkosi* or, where applicable, the *iKumkani* under whose authority the community falls.

Publish his or her intention to recognise a community envisaged in subsection (3), as a traditional community;

- (b) in the notice, referred to in subsection (4) (a), invite interested parties to submit their comments to him or her within a prescribed period;
- (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, and as such decision must be published by notice in the *Provincial Gazette*; and
- (d) inform the community concerned of the decision referred to in paragraph (c).

(5) The Premier may, subject to the provision of this Act, and the Framework Act, after consideration of the referred to in subsection 4(c), by notice in the *Provincial Gazette*, recognise a community as a traditional community.

(6) The Premier must, in terms of this section, issue a certificate of recognition to a community that has been recognised as a traditional community.

Withdrawal of recognition of traditional community

6. (1) The Premier may consider withdrawal of the recognition of a community as a traditional community where-

- (a) the traditional community concerned requests the Premier in writing to withdraw its recognition as a traditional community;

(b) the Premier has been requested by the traditional community or traditional communities concerned to review the position of that traditional community or traditional communities that was or were divided or merged prior to 1994 in terms of the applicable legislation; or

(c) two or more recognised traditional communities requested the Premier that they be merged into a single traditional community.

(2) The recognition of a community as traditional community is withdrawn where-

(a) the Premier accedes to the request of a community to withdraw the recognition of that community as a traditional community;

(b) a review envisaged by subsection (1)(b) indicates that-

(i) an existing traditional community that came about as a result of a merger prior to 1994 in terms of applicable legislation should be divided; or

(ii) two or more traditional communities that came about as a result of a division prior to 1994 in terms of applicable legislation should be merged; or

(iii) the Premier accedes to the request of two or more traditional communities to be merged into one traditional community.

(3) The Premier must consult with *iKumkani*, the Provincial House and any community that may be affected, before the withdrawal of the recognition of a traditional community that may be affected.

(4) The Premier must consider the request referred to in subsection (1)

(a), (b) and (c) and must, subject to the provision of this Act-

(a) decide to refuse or grant a request for withdrawal of recognition of a traditional community or communities;

(b) where the Premier has decided to refuse to grant a request, he or she must in writing advise such community or communities of his or her decision; and

(c) where the Premier has decided to grant a withdrawal of recognition, he or she must, by notice in the *Provincial Gazette*, withdraw or merge the community or communities concerned.

(5) The notice referred to in section (4) must also provide for the withdrawal of the recognition of the traditional council concerned at the same time of which the recognition of its traditional community is withdrawn.

Recognition of kingship or queenship

7. (1) The recognition of kingship or queenship shall be done in terms of the National Legislation.

Recognition of principal traditional communities

8. (1) A number of traditional communities that are grouped together may be recognised as principal traditional community if they-
- (a) are recognised as such in terms of applicable Provincial Legislation;
 - (b) each have a recognised Traditional Council with a defined area of jurisdiction in terms of applicable Provincial Legislation;
 - (c) each have a Senior Traditional Leader recognised in terms of the applicable Provincial Legislations;
 - (d) recognise a recognised Senior Traditional Leader, who is of higher status than the other Senior Traditional Leaders in terms of custom and customary law, as their Principal Traditional Leader;
 - (e) recognise themselves as a distinct group of traditional communities separate from kingship or queenships and all other traditional communities;
 - (f) have a system of traditional leadership at a principal traditional level recognised by other traditional communities.

(2) The traditional communities applying for recognition as a principal traditional community must have a proven history of existence recognising a Senior Traditional Leader of higher status as a principal traditional leader in terms of customary law of succession.

(3) (a) The Premier may, by notice in the Gazette, after consultation with the Provincial House, and the Senior Traditional Leaders who form part of the traditional community being applied for, recognise the traditional community envisaged in subsection (1) and (2) as a principal traditional community.

(b) The Premier may-

- (i) direct the MEC to conduct the consultation referred to in paragraph (a) in his or her stead;
- (ii) prescribe a fixed period within which the MEC must finalise the consultation regarding the recognition of a principal traditional community envisaged in subsection (1) and (2).

(4) The withdrawal of the recognition of a community as principal traditional community as provided for in this Act, may only be considered where-

- (a) the majority of traditional communities under the jurisdiction of the principal traditional community concerned request the Premier that the recognition of their principal traditional community be withdrawn; and
- (b) the Premier, for good cause shown determines that the withdrawal of such principal traditional community is necessary.

(5) The Premier may, before taking a decision in terms of subsection (4), cause an investigation to be conducted.

(6) The withdrawal of recognition of a community as a principal traditional community must be done by the Premier after consultation with the Provincial

House, and the Senior Traditional Leaders who form part of the principal traditional community.

(7) The withdrawal of a principal traditional community must be done by notice in the Gazette.

Establishment and recognition of traditional councils

9. (1) Once the Premier has recognised a traditional community in terms of section 5, that traditional community must within one month of such recognition establish a traditional council.
- (2) For a traditional community to have a recognised traditional council, it must have at least a minimum of five Administrative Areas.
- (3) The number of members of a traditional council-
- (a) consists of the number of members determined by the Premier in accordance with a formula published in the *Gazette*, after consultation with the Provincial House, according to the issued by the Minister by notice in the *Gazette*, which formula must take into account the population of the traditional community in question; and
 - (b) the members of a traditional council must comprise of-
 - (i) traditional Leaders and members of the traditional community selected by the Senior Traditional Leader concerned who is an ex-officio member and chairperson of the traditional council, for a term of five years aligned with the term of office of the National House and Provincial House of Traditional Leaders, in terms of the community's customs, taking into account the need for overall compliance with subsection (3); and
 - (ii) other members of the traditional community who are democratically elected for a term of five years aligned with the term of office of the National House and Provincial House of Traditional Leaders and who must constitute 40% of members of the traditional council.
 - (c) at least one third (1/3) of members of a traditional council must be women.
 - (d) where it has been proven that insufficient number of women are not available to participate in a traditional council, the Premier may, by notice in a Gazette, determine a lower threshold regarding the particular traditional council than that required by paragraph (c).
- (4) A member of a traditional council must be a person who-
- (a) is above the age of 21 years;
 - (b) has not been convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine; except where he or she completed five years after completion of a sentence;
 - (c) is not an unrehabilitated insolvent;
 - (d) is a South African citizen; and
 - (e) is ordinarily resident within the jurisdiction of the traditional council.

(5) The relevant *iNkosi* 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).

(6) 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 the traditional council and, after consultation with the community concerned, determine the area of jurisdiction.

(7) The seat of the traditional council shall be the place selected by the chairperson in consultation with members of the traditional council, within the area of jurisdiction of that traditional council, and in case of a dispute the matter must be referred to the Premier for an intervention.

Term of office for members of traditional council and oath of office

10. (1) A member of a traditional council holds office for a period of five years and is eligible for re-election.

(2) Members of traditional council must, before assuming office make and subscribe to an oath or solemn affirmation as prescribed, before a Magistrate.

(3) Members of traditional council must be sworn-in within thirty days after the *Gazetting* of the results of the elections or on the last day of the term of office of the outgoing members of traditional council. In the event that, the incoming members cannot be sworn-in within the stipulated thirty days, the *iNkosi* concerned must apply for extension to the Premier.

Functions of traditional council

11. (1) The functions of a traditional councils are to-

- (a) administer the affairs of the 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 traditional community in the development or reviewal 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 legislations 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 any 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 and statutory law consistent with the Constitution;
 - (m) uphold the values of the traditional community;
 - (n) Reject and proscribe such practices as the sowing of division based on tribalism;
 - (o) Promote social cohesion within the traditional community.

(2) In the execution of the functions listed in subsection (1), a traditional council must-

- (a) keep proper records;
- (b) have its financial statements audited by the Auditor-General;
- (c) disclose the receipt of gifts with a value in excess of R350.00;
- (d) disclose the value of gifts from a single source which cumulatively exceed the value of R350.00 in any calendar year;
- (e) hold an annual meeting with its traditional community to give account of the activities and finances of the traditional council; and
- (f) adhere to the Code of Conduct.

Designation of Chairperson and Deputy Chairperson

12. (1) The members of a traditional council must, from amongst themselves-

- (a) designate the *iNKosi* as the Chairperson of a traditional council; or
- (b) where there is no *iNKosi* in the traditional council, designate a headman or headwoman as the Chairperson until such time that an *iNKosi* 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.

Disqualification as a member of a traditional council

13. (1) No person is eligible to become a member of a traditional council if he or she-

- (a) at the time of the selection or election of members of the traditional council is serving a sentence of imprisonment;
- (b) is an unrehabilitated insolvent;

- (c) is suffering from a physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that person to function as such;
- (d) has been convicted of a criminal offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic of South Africa or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed;
- (e) is not a South African citizen;
- (f) is not a permanent resident within the area of the traditional council concerned;
- (g) is under the age of 18 years;
- (h) is or becomes a full-time member of the municipal council;
- (i) is or becomes a full-time member of the Provincial Legislature or National Assembly;
- (j) is appointed as a permanent delegate in the National Council of Provinces;
- (k) is elected or becomes a full-time member of the Local, Provincial or National House of traditional leaders; or
- (l) was wrongfully appointed or recognised or has transgressed a customary rule or principle that warrants removal.

Vacation of seats and the filling of vacancies of traditional council

14. (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 longer than six months without the special leave of the traditional council;
- (e) resign his or her seat;
- (f) is found guilty of misconduct in term of section 40; 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 selected member and he or she has been removed in terms of section 32 of this Act.

(2) A vacancy amongst-

- (a) the selected members of a traditional council must be filled within ninety days of the vacancy occurring by the *iNKosi* concerned in accordance with customs; or
- (b) the elected member of a traditional council must be filled within ninety days of a vacancy occurring in terms of the prescribed regulations.

(3) The filling of vacancies for both selected and elected members of the traditional council must be facilitated by the Department.

Meetings of traditional councils

15. (1) Meetings of traditional councils must be held in accordance with such procedures and requirements as determined by it: Provided that meetings of traditional council must be held at least once in 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) At any time the Chairperson may, and must when so required by the Premier or at least one-third of the total number of members of the traditional council, call a special meeting of the traditional council.
- (4) No business other than that specified in the notice must be dealt with at a special meeting.
- (5) The Chairperson of the traditional council must give notice to every member-
- (a) of the day and hour appointed for holding an ordinary meeting and such member is required to attend such ordinary meeting without further notice; and
 - (b) of the day and hour of any 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.

Minutes of meetings

16. (1) Every traditional council must keep minutes of its meetings in which the following must be recorded-
- (a) the date, time, and place of the meeting;
 - (b) the names of the members present;
 - (c) a summary of every decision taken at the meeting;
 - (d) if a member so requests, the fact that he or she voted against any decision taken; and
 - (e) a signature of each member present in the meeting.
- (2) A copy of the minutes must, within fifteen days after any meeting, be forwarded to an officer in the Department designated by the MEC.

Staff of traditional council

17. (1) A traditional council may, with the approval of the relevant Head of Department, 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 by the Premier after consultation with traditional councils in the Province.
- (3) The relevant Head of the Department may second any officer or employee in his or her Department, or of the Provincial Government, to assist the traditional council in the execution of its functions, and may, after consultation with Head of the relevant traditional council, withdraw such secondment at any time.
- (4) Any person referred to in subsection (3) must, whilst so seconded remain subject to the provisions of the Public Service Act, 1998 (Proclamation No. 103 of 1994).

Admission of individual into existing traditional communities

18. (1) An *iNkosi* of an existing traditional community may, in-council, admit any new individual into that community in compliance with rules and customs of that community and any prescribed powers of an *iNkosi* or headman or headwoman to admit individuals to a traditional community, subject the right to reside in an area of any traditional community.
- (2) In line with the rights accorded to citizens of South Africa in terms of the Constitution, no person may be refused the right to reside in an area of any traditional community.

Establishment and recognition of kingship or queenship council

19. (1) Establishment and recognition of kingship or queenship's council shall be done in terms of the National Legislation.

Establishment and recognition of principal traditional councils

20. (1) Once the Premier has recognised a principal traditional community, that principal traditional community must, within one year of the recognition, establish a principal traditional council.
- (2) (a) A principal traditional council consists of the number of members as determined by the Premier, after consultation with the principal traditional community concerned, by a formula published by notice in the *Gazette*.
- (b) At least a third of the members of the principal traditional council must be women, but where it has been proved that an insufficient number of women are available to participate in a principal traditional council, the Premier may determine a lower threshold for the particular principal traditional council than that required in paragraph (a).
- (c) The membership of principal traditional council comprises

- (I) 60% of traditional leaders, including the principal traditional leader who is an ex-officio member and Chairperson, and members of the principal traditional council selected by the principal traditional leader in terms of that community's custom, taking into account the need for overall compliance with paragraph (b);
- (II) 40% of members elected democratically by an electoral college consisting of senior traditional leader who fall under the principal traditional council.

(d) The members referred to in paragraph (c) are elected from amongst person 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 members of a principal traditional council is five years and is aligned to the term of office of the Provincial House, excluding principal traditional leader.

(4) The Premier must, by notice in the Gazette and in accordance with this Act, recognise a principal traditional council for that principal traditional community within a defined area of jurisdiction.

(5) The principal traditional council meets at the principal traditional leader's great place or at any place to be determined by the principal traditional leader.

(6) The quorum of the principal traditional council is the majority of the total number of members of the principal traditional council.

(7) The principal traditional council must elect one of its members as a deputy Chairperson who will act as the Chairperson in the absence of the principal traditional leader.

(8) The principal traditional council must meet once in 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.

(9) The principal traditional leader must give notice of not less than seven days for holding a special meeting to members of the principal traditional council.

(10) A member of a principal traditional council vacates his or her office if-

- (a) he or she ceases to be a South African citizen;
- (b) he or she has been convicted of an offence and sentenced to imprisonment for more than 12 months without the option of a fine;
- (c) he or she tenders his or her resignation;
- (d) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the principal traditional council;
- (e) the period for which the member was elected or selected, as the case may be has expired; and
- (f) he or she is disqualified in terms of this Act.

(11) If a member of a principal traditional council dies or vacate his or her seat before the expiry of his or her term of office, such a vacancy must be filled in manner envisaged in this Act, within a reasonable period of the vacancy occurring.

(12) A member appointed to fill a vacancy in terms of subsection (11) holds office for the remainder of his or her predecessor's term of office.

(13) A person may not be 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 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;

Functions of king or queen's council

21. (1) King or queen's council shall perform all functions in accordance with the National Legislation.

Functions of principal traditional councils

22. (1) A principal traditional council has the following functions;-

- (a) administering the affairs of the principalship in accordance with customs and tradition;
- (b) assisting, supporting and guiding senior traditional leaders and traditional councils falling within the jurisdiction of the principalship concerned in the performance of their functions;
- (c) assisting the principal traditional leader in performing customary functions in relation to the recognition of senior traditional leaders, where applicable;
- (d) mediating in disputes between senior traditional leaders falling within the jurisdiction of the principalship;
- (e) promoting unity between traditional communities falling under the jurisdiction of the principalship; and
- (f) assisting the principal traditional leaders in performing his or her roles and functions conferred upon him or her by the Premier 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 contained in the applicable Provincial Legislation for all traditional leaders and traditional councils, but where a member of a principal traditional council has been disciplined for the breach of the Code of Conduct, the Premier must inform the President of such fact and also of the outcome of the inquiry; and
- (e) advice and support all traditional councils falling under the jurisdiction and authority of the principal traditional leader.

(3) A principal traditional council and its resources may not be used to promote or prejudice the interest of any political party.

Meetings with traditional leaders

23. (1) An *iKumkani* or *iKumkanikazi* may once in three months hold meeting with *iNKosi* and headman or headwoman who fall under his or her jurisdiction, to discuss matters affecting traditional communities.
- (2) *iNKosi* and headman or headwoman who fall under the jurisdiction of *iKumkani* or *iKumkanikazi* must once in three months table reports of meetings held in their respective communities in the meeting referred to in subsection (1).
- (3) An *iNKosi* must once per month hold one meeting with each headman or headwoman at the headmen or headwomen's seat.
- (4) The headman or headwoman must hold one meeting per month at the localities that fall under his or her jurisdiction.
- (5) An *iNKosi* must table a report of the meetings that he or she has with headman or headwoman at the meeting of the traditional council.
- (6) The headman or headwoman must table a report of the meetings he or she has held at the localities at the meeting with *iNKosi*.

CHAPTER 3

CO-OPERATIVE GOVERNANCE

Partnership between district and local municipalities and kingship or queenship councils, principal traditional councils and traditional councils

24. (1) The Provincial Government must promote partnership between district municipalities and kingship or queenship councils, principal traditional councils and traditional councils through legislative and other measures.
- (2) The Provincial Government must promote partnership between local municipalities and traditional councils through legislative and other measures.
- (3) Any partnership envisaged in subsection (1) must be;-

- (a) based on the principles of mutual respect and recognition of the status and roles of the respective parties; and
- (b) guided and based on principles of co-operative governance.

(4) Without derogating the generality of subsection (1), a traditional council may submit a proposal to the municipal council to adopt a by-law, which the traditional council may consider to be necessary in respect of any matter directly affecting the area of its jurisdiction.

(5) The proposal envisaged in subsection (3), may be accompanied by a draft of the proposed by-law and must be motivated in writing.

(6) The municipal council must consider the proposed by-law at its next council meeting and may request comments from its municipal manager.

(7) In the event that the municipal council does not accept the proposed by-law, the municipal council must, in writing, inform the traditional council concerned of its decision and must give reasons for its decision.

(8) 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.

Support and capacity development of king or queen's councils, principal traditional councils and traditional councils

25. (1) The Department or the relevant municipal council may adopt such legislative or other measures as may be necessary to support and strengthen the capacity of king or queen's councils, principal traditional councils and traditional councils within the Province to fulfil their functions.

(2) The Department or the relevant municipal council may, within that sphere of government's available resources, give a king or queen's councils, principal traditional councils or traditional councils, support to enable the councils to perform their function.

(3) The support envisaged in this section may include transport assistance where it is feasible taking into consideration budgetary constraints.

(4) The Department must within a period of six months from the date of recognition of a king or queen's councils, principal traditional councils or traditional councils;-

- (a) assess the training needs of the members of such king or queen's councils, principal traditional councils or traditional councils;
- (b) provide or cause training to be provided to the members of king or queen's councils, traditional councils or traditional councils using prescribed mechanisms.

Trans-provincial issues

26. (1) The Provincial Government may enter into an agreement with any other Provincial Government on matters of a mutual nature relating to traditional leadership and traditional communities operating within or residing in, the two Provinces.

CHAPTER 4

LEADERSHIP POSITIONS WITHIN THE INSTITUTION OF TRADITIONAL LEADERSHIP

Recognition of traditional leadership positions

27. (1) The following leadership positions within the institution of traditional leadership are recognised;-

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

Recognition of principal traditional leader

28. (1) Whenever the position of a principal traditional leader is to be filled, the following process must be followed;-

- (a) The Royal Family must, within a reasonable time after the need arises for the position of a principal traditional leader to be filled, and with due regards to applicable customary law-
 - (i) identify a person who in terms of their customary law qualifies to assume the position of a principal traditional leader, as the case may be, after taking into consideration whether any of the grounds referred to in section 21 (13) (a)-(j);
 - (ii) through relevant customary structures-
 - (aa) inform the Premier of the particulars of the person so identified to fill the position of a principal traditional leader;
 - (bb) provide the Premier with reasons for identification of that person as a principal traditional leader; and
- (b) The Premier must, according to Provincial Legislation and subject to subsection (2) and (3), recognise a person so identified in terms of paragraph (a) (i) as a principal traditional leader, taking into account-
 - (i) the need to establish uniformity in the Republic in respect of the status
 - (ii) afforded to a principal traditional leader;
 - (iii) whether a recognised kingship or queenship exists-
 - (aa) that comprises the area of jurisdiction of a substantial number of senior traditional leaders that fall under

- authority of such principal traditional leader;
- (bb) in terms of which the king or queen is regarded and recognised in terms of customary law and customs as a traditional leader of higher status than the senior traditional leaders referred to in subparagraph (aa); and
- (cc) where the principal traditional leader has a customary structure to represent the traditional councils and senior traditional leaders that fall under the authority of the king or queen.

(2) A principal traditional leader to be recognised in terms of subsection (1) (b) must be a senior traditional leader of a specific traditional community who exercises authority over a number of senior traditional leaders according to custom and customary law.

(3) The Provincial legislation referred to in subsection (1) (b) must at least provide for-

- (a) notice in the *Gazette* recognising the person identified as the principal traditional leader in terms of subsection (1);
- (b) a certificate of recognition to be issued to the person identified; and
- (c) the Provincial House to be informed of the recognition of the principal traditional leader.

(4) (a) The Premier may, by notice in the *Gazette* make regulations concerning-

- (i) the traditional ceremonial role of a principal traditional leader;
- (ii) the responsibilities of a principal traditional leader in respect of nation building; and
- (iii) the other functions or roles of a principal traditional leader;
- (iv) regulations made in terms of subparagraph (a) must be tabled in the Legislature after their publication in the *Gazette*.

Removal of principal traditional leader

29. (1) A principal traditional leader may be removed from office on the grounds of:-

- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
- (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for the principal traditional leader to function as such;
- (c) wrongful appointment or recognition;
- (d) a transgression of customary rule or principle that warrants removal;
- (e) a breach of Code of Conduct;
- (f) guilty of misconduct as contemplated to in section 40;

(g) absent from the principal traditional community for more than 3 months without informing the Premier, members of the Royal Family and principal traditional council.

(2) Whenever any of the ground referred to in subsection (1) (a)-(g), come to the attention of the Royal Family and the Royal Family decides to remove a principal traditional leader, the Royal Family must, within reasonable time and through the relevant customary structure-

(a) inform the Premier, of the particulars of the principal traditional leader to be removed from the office;

(b) furnish reasons for such removal.

(3) Where it has been decided to remove a principal traditional leader in terms of subsection (2), the Premier must-

(a) withdraw the certificate of recognition with effect from the date of removal;

(b) publish a notice with particulars of the removed principal traditional leader in the *Gazette*; and

(c) inform the Royal Family concerned, and the removed principal traditional leader of such removal.

(4) Where the principal traditional leader is removed from office, a successor in line in terms of customs may assume the position, roles and responsibilities.

(5) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done according to customary law, customs or processes, 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 so identified by the Royal Family if he or she is satisfied that the reconsideration and resolution by the Royal Family has been done in accordance with customary law.

Recognition of an *iNkosi* or headman or headwoman

30. (1) Whenever the position of an *iNkosi* or headman or headwoman is to be filled-

(a) The Royal Family concerned must within 14 days after the position becomes vacant, and with due regard to applicable customary law;-

- (I) identify a person who qualifies in terms of customary law to assume the position in question, after taking into account whether any of the requirements referred to in section 9 (4) apply to that person; and
 - (II) through the relevant customary structure, inform the Premier of the
 - (III) particulars of the person so identified to fill the position and of the reasons for the identification of that person.
- (b) The Premier must, subject to subsection (5) of this section, by notice in the *Provincial Gazette*, recognise the person so identified by the Royal Family as an *iNkosi* or headman or headwoman, as the case may be.
- (c) Headman or headwoman shall be appointed over an administrative area of a traditional community with not less than 200 households.
- (2) Before a notice recognising an *iNkosi* or headman or headwoman is published in the *Provincial Gazette*, the Premier must in writing inform the Provincial House of such recognition.
- (3) The Premier must, within a period of 30 days after the date of publication of the notice recognising an *iNkosi* or headman or headwoman issue to the person who have been identified in terms of subsection (1) (a) (i), a certificate of recognition.
- (4) 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, customary law or custom the Premier-
- (a) must refer the matter back to the Royal Family concerned for reconsideration and resolution where the certificate of recognition has been refused;
 - (b) may refuse to issue a certificate of recognition; and
 - (c) may refer the matter to the Provincial House for its recommendation.
- (5) Where the matter has been referred back to the Royal Family for reconsideration and resolution in terms of subsection (4) (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 customary law.
- (6) (a) An *iNkosi* or headman or headwoman is deemed to retire from the office upon his or her written request for retirement to the Premier;
- (b) On retirement, an *iNkosi* or headman or headwoman ceases to be recognised and appointed in terms of this Act;
- (c) The date of commencement of the office by an *iNkosi* or headman or headwoman is the date of recognition in terms of subsection (1) (b).

Removal of *iNkosi* or headman or headwoman

31. (1) An *iNkosi* or headman or headwoman may 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, removal is limited to the incumbent;
- (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that *iNkosi* or headman or headwoman to function as such;
- (c) wrongful appointment or recognition;
- (d) a transgression of a customary rule or principle that warrant removal;
- (e) breach of the Code of Conduct; or
- (f) misconduct as contemplated in section 40.

(2) Whenever any of the grounds referred to in subsection (1) (a)-(f) come to the attention of-

(a) The Royal Family and the Royal Family decides to remove an *iNkosi* or headman or headwoman, the Royal Family concerned must, within a reasonable time and through the relevant customary structure-

- (I) inform the Premier of the particulars of the *iNkosi* or headman or headwoman to be removed from the office;
- (II) furnish reasons for such removal.

(b) Any person, such a person must inform the Premier and the Premier must-

- (I) refer the matter to the Royal Family under whose jurisdiction the *iNkosi* or headman or headwoman falls, for an investigation and a decision, and a report thereon; and
- (II) consider the report and act in terms of subsection (3).

(3) Where it has been decided by a Royal Family to remove an *iNkosi* or headman in terms of subsection (2), the Premier must-

- (a) advise the *iNkosi* or headman or headwoman of such decision and, in writing, call upon such *iNkosi* or headman or headwoman to make representations to him or her as to why the decision to remove him or her should not be given effect to;
- (b) consider the representations submitted to him or her and withdraw the certificate of recognition with effect from the date of removal if the decision to remove him or her is in accordance with custom;
- (c) inform the Royal Family concerned, the removed *iNkosi* or headman or headwoman, and the Provincial House of such removal; and
- (d) publish a notice with particulars of the removed *iNkosi* or headman or headwoman in the *Provincial Gazette*.

(4) Where an *iNkosi* or headman or headwoman has been removed from office, a successor in terms custom may assume the position, role and responsibilities, subject to the provision of this Act.

Recognition of regent

32. (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 *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman who is still regarded as a minor in terms of applicable customary law or customs; and
 - (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; and
 - (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, customs or processes, the Premier-
- (a) must refer the matter back to the Royal Family for reconsideration and resolution where the certificate of recognition has been refused;
 - (b) may refuse to issue a certificate of recognition; or
 - (c) may refer the matter to the Provincial House for its recommendation.
- (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 *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman ceases to be minor in terms of customary 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 an *iKumkani* or *iKumkanikazi* be recognised by the President on the recommendation of the Minister in terms of section (9) (b), of the Traditional Leadership and Governance Framework Act, (Act,

- No. 41 of 2003) as amended, and a certificate of recognition referred to in section 9 (20 of that Act, must be issued after his or her names has been published in the *Gazette*; or
- (b) in the case of a principal traditional leader, *iNkosi* or headman or headwoman be recognised by the Premier in terms of this Act and a certificate of recognition contemplated in section 31 (3) must be issued by the Premier after his or her names has been published in the *Gazette*.
- (8) Where a regent has been recognised in respect of the position of an *iKumkani* or *iKumkanikazi*, the Premier must inform the President and the Minister-
- (a) of the particulars of the regent;
- (b) when the regent is suppose to relinquish his or her position as a regent;
- (c) of the date to review the regent capacity;
- (d) of the withdrawal of the recognition of the regent.

Person acting as *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman

33. (1) The Royal Family must, according to Provincial legislation, identify a suitable person in terms of customary law and customs to act as *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman, as the case may be, where-
- (a) the successor to the position of *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman has not been identified by the Royal Family concerned;
- (b) the identification of a successor to the position of *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman is being considered and not yet resolved;
- (c) an *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman as the case may be, is absent from his or her area of jurisdiction under the following circumstances for a period of more than six months due to-
- (I) illness;
- (II) study purposes;
- (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 an *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman; and
- (b) the reason of the identification of that person,
- by notice in the *Provincial Gazette*, recognising an acting *iKumkani* or *iKumkanikazi*, principal traditional leaders, *iNkosi* or headman or headwoman.

(3) Before a notice recognising an acting *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* 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 a period of 30 days after the date of publication of the notice recognising the acting *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman issue a certificate of recognition to the person so identified.

(5) The Premier must every three years review the acting appointment, the Premier in exceptional cases, may waive the review period.

(6) The procedure for the removal of an acting person shall be in terms of section 30 and 32.

(7) Where an acting person has been recognised in respect of the position of an *iKumkani* or *iKumkanikazi*, principal traditional leader, the Premier must inform the President of-

- (a) the particulars of the acting person;
- (b) the withdrawal of the recognition of the acting person; and
- (c) the review date of the acting capacity.

(8) A person who has been identified to act as *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman in terms of this section, is responsible for the performance of the functions that are attached to the relevant *ubuKumkani* or *ubuKumkanikazi*, principal traditional leadership, *ubuKhos*i or headmanship or headwomanship and is entitled to the salary and allowances attached to the relevant position: Provided that *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* 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 the person acting.

(9) Despite subsection (1), the Premier may, where there is a dispute regarding the appointment of an acting *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman, intervene and in consultation with the relevant King or queen's council, principal traditional council or traditional council appoint an acting *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman.

(10) The Premier may, whenever an *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman has died, within 14 days of such death, appoint an acting *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman.

Deputy traditional leader

34. (1) An *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman, as the case may be, must, with concurrence of the relevant Royal Family, within 30 days of any of the circumstances set out in paragraph (a) to (e) occurring, appoint a deputy to act in his or her stead whenever that *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* 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 leader.

(2) Where an *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* 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 *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* 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;
- (c) within a period of 30 days after the date of publication of the notice recognising the deputy traditional leader, issue a certificate to the person who is appointed in terms of subsection (1), a certificate of recognition.

(3) The recognition referred to in subsection (2) lapses at the end of the membership, appointment or election of the *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman referred to in subsection (1).

(4) The deputy traditional leader may be removed from the office on the same grounds and following the same procedure as in section 30 and 32.

(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 relevant *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman and is entitled to the salary and allowances attached to the relevant position: Provided that the *iKumkani* or *iKumkanikazi*, principal traditional leader, *iNkosi* or headman or headwoman in who stead a person has been recognised as deputy 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 such deputy.

(6) Where an *iKumkani* or *iKumkanikazi* or a principal traditional leader in terms of subsection (1), the *iKumkani* or *iKumkanikazi* or principal traditional leader must inform the President, the Minister or Premier-

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

Support to kingship or queenship councils, principal traditional councils and traditional councils

35. (1) The Provincial Government may adopt such legislative or other measures as may be necessary to support and strengthen the capacity of kingship or queenship 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****Roles and functions of a Royal Family**

36. (1) A royal family must, when discharging its functions in terms of this Act and the Framework Act-
- (a) act in accordance with the law, the applicable custom and customary law of the traditional community concerned;
 - (b) keep minute books and record all the proceedings of any meeting at which matters arising from this Act or the Framework Act is discussed; and
 - (c) initiate the identification and removal of a traditional leader.
- (2) The minute book must reflect-
- (a) the date on which, and the place where, a specific meeting was held;
 - (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 decision taken.
- (3) A person designated by the Premier must inspect the minute book regularly and must, for this purpose, be granted access thereto by the royal family.

Deemed royal families

37. (1) In areas where it is beyond any contestation that headmanship or headwomanship have always resided in one family for a period in excess of three generations and were not on an acting or regent capacity, before the commencement of this Act, regardless of whether the said family is a recognised royal family or not, such a family shall be deemed to be a royal

family for the area concerned, and it shall have powers to identify a headman or headwoman subject to the recommendation of the iNkosi concerned.

Roles and functions of traditional leaders

38. (1) A traditional leader must-

- (a) perform the functions provided for by the custom and customary law of the traditional community concerned, 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 have the rights enshrined in the Constitution, including the right to freedom of political activities and freedom to association;
- (c) promote democracy, promote unity and uphold National and Provincial legislations;
- (d) carry out customary functions not inconsistent with National and Provincial legislations, and consistent with an open democratic society; 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) A traditional council must-

- (a) convene and report to meetings of his or traditional council at least every two months;
 - (b) convene and report to a meeting of his or her traditional community at a meeting called every three months;
 - (c) attend special consultative meetings of the Provincial house when such meetings are called;
 - (d) participate in municipal councils if identified to do so in terms of section 81 of the Local Government: Municipal Structure Act, 1998 (Act, No. 117 of 1998);
 - (e) carry out any functions for traditional leaders as may from time to time be determined by the Premier by notice in the *Gazette*;
 - (f) maintain law and order and report to the Premier without delay, any matter or concern, including any condition of unrest or dissatisfaction;
 - (g) ensure the protection of life, persons and property and the safety of travellers within his or her area of jurisdiction, and report forthwith to the relevant department in the Provincial Government 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 misuse of government property;
 - (IV) any irregular receipt or use of public moneys; and

- (V) the commission of any offence, which does not fall, to be dealt with under his or her own jurisdiction.
- (h) ensure that members of his or her traditional community may, peacefully and unarmed, exercise their Constitutional rights of free political activities and choice, freedom of association, and freedom of religion, belief and opinion;
- (i) make known to the residents of his or her area the requirements of any new law;
- (j) ensure compliance with all laws and orders and instructions of the competent authority;
- (k) prevent cruelty to animals;
- (l) 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
- (m) 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 promote 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 constitute incitement to cause harm.

(4) If a traditional leader fails to comply with National or Provincial legislation, or refuse to carry out any duty required of him or her by this Act, he or she must be subject to an enquiry referred to in section 40.

Inquiry into misconduct

39. (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 with which it is his or her duty to comply;
- (b) has breached the Code of Conduct;
- (c) disobey, 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) uses intoxicants or drugs excessively;
- (g) abuses his or her powers or extorts, or by the use of compulsion or arbitrary means obtains any tribute, fee, reward or gift;

- (h) tries or punishes any person without the necessary authority to do so;
- (i) is negligent or indolent in the discharge of his or her duties;
- (j) has been convicted of an offence; or
- (k) 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, traditional council and without obtaining approval from the Premier.

the Premier must charge the traditional leader in writing with such misconduct.

(2) The charge referred to in subsection (1) must-

- (a) set out particulars of the allegations which have been made against the traditional leader; and
- (b) direct the traditional leader to respond to the allegations in writing within , 21 days, which response must be an admission or denial of the allegations, and which may be accompanied by a written explanation of the circumstances surrounding the matter.

(3) If the traditional leader denies the charge or fails to respond thereto within the specified time, the Premier must appoint a presiding officer to conduct an enquiry into the allegations.

(4) The presiding officer appointed in terms of subsection (3) above must convene an enquiry into the allegations, and must give the traditional leader who has been charged no less than 14 days notice of the date, time and place of the enquiry.

(5) At the enquiry, the traditional leader charged must be granted the right to be heard, either personally or through a legal representative, and may cross-examine any person called as a witness by the presiding officer conducting the enquiry, inspect any document produced in evidence, give evidence in person, and call any other persons as witness.

(6) The presiding officer must keep a record of the proceedings of the enquiry.

(7) The presiding officer may subpoena any person to attend the enquiry and to add evidence relating to the charge against the traditional leader.

(8) Any person subpoenaed in terms of subsection (7) who fails to attend the enquiry at the time, date and place specified in the subpoena commits an offence, and may on conviction be sentenced to a fine not exceeding (R10, 000.00), or to imprisonment not exceeding a period of six months.

(9) The failure of the traditional leader charged to attend the enquiry without a valid reason, either personally or by a legal representative, does not invalidate the proceedings against him or her.

(10) At the conclusion of the enquiry the presiding officer must forward to the Premier his or her findings, the records of the proceedings, any observations and recommendations which he or she may wish to make, and (if applicable) any recommended sanction.

(11) The Premier may, after considering the findings of misconduct, any comments and recommendations of the presiding officer, together with any representations made by the traditional leader concerned, notify the Premier

to impose on that traditional leader either one or more of the following sanctions-

- (a) a formal written warning;
- (b) a suspension order without remuneration for a period not exceeding three months;
- (c) 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, (Act No. 20 of 1998), in such instalments as the Premier may determine, and which must be paid into the Provincial Revenue Fund;
- (d) compel a traditional leader to go for rehabilitation for alcoholism or drug dependency;
- (e) refer the matter to the royal family with an instruction that the matter be dealt with in accordance with section 32 of this Act, if the Premier is satisfied that the matter falls within the ambit of the said section.

(12) Any sanction referred to in section (11) must be published by the Premier by notice in the *Provincial Gazette*.

(13) The findings of the presiding officer and the sanction imposed by the Premier are final.

Suspension of a traditional leader

40. (1) The Premier may, after consultation with the Provincial House, suspend from office any traditional leader who is suspected of misconduct pending the finalisation of proceedings in terms of section 40 of this Act.

(2) A traditional leader who has been suspended under this section is not entitled to any remuneration during the period of his or her suspension: Provided that the Premier may, for good and sufficient reason, and upon representations from the said traditional leader, order payment of the whole or a portion of the remuneration due to that traditional leader during his or her suspension.

(3) The Premier may, after consultation with the Provincial House, withdraw the suspension of a traditional leader.

(4) An acting traditional leader may be appointed in accordance with the provision of this Act to act for any suspended traditional leader where the Premier deems it necessary.

Powers of the Executive Council to summon traditional leaders

41. (1) The Executive Council may, whenever he or she deem it necessary, summon any traditional leader in writing to appear before him or her in order to investigate-

- (a) any matter which is harming or is likely to harm the traditional community concerned;
 - (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 concerned.
- (2) The Executive Council may, after he or she has considered the matter-
- (a) direct the traditional leader to take certain steps to resolve the problem;
 - (b) instruct the Provincial or local house to institute an inquiry in terms of section 40 whenever there is a reason to believe that the traditional leader concerned is guilty of misconduct.

Absence of a traditional leader

42. (1) A traditional leader may not absent him or herself from the area of his or her traditional community for a period longer than thirty days without-
- (a) the prior approval of the Premier or an officer in the Department designated by the Premier, and must make provision for the proper performance of his or her duties during any absence;
 - (b) informing members of his or her royal family and traditional council.

CHAPTER 6

DISPUTE RESOLUTION PROCEDURES AND THE ESTABLISHMENT OF THE EASTERN CAPE PROVINCIAL COMMITTEE OF THE COMMISSION ON DISPUTES AND CLAIMS

Dispute resolution

43. (1) (a) 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 traditional community or customary institution (e.g. royal family) concerned 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) (a) that cannot be resolved as provided for in that section must be referred to the relevant king or queen's council, principal traditional council, which the king or queen's council, principal traditional council must seek to resolve the dispute in accordance with its internal rules and procedures;
- (b) If a king or queen's council, 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;

(c) If whatever reason 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-

- (I) the parties involved to the dispute;
- (II) the king or queen's council, principal traditional council; and
- (III) the Provincial house of traditional leaders.

(c) In areas where there are no kingdom or principal traditional council, if a dispute referred 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) (b) and (c) (i) (ii) and (d) (i) (ii) (iii).

(4) The Premier may refer the matter to the Provincial Committee of the Commission for investigation and recommendation prior to his or her final decision.

Establishment of the Eastern Cape Provincial Committee on disputes and claims

44. The establishment of Eastern Cape Provincial Committee on disputes and claims, its composition and functions shall be done in terms of the National Legislation.

CHAPTER 7

CONDITION OF SERVICE

Condition of service for traditional leaders

45. Traditional leaders and members of the provincial house and local houses of traditional leaders must be paid such salaries and allowances as determined by the President in terms of the Remuneration of Public Service Act, (Act, No.20 of 1998).

Allowance for members of traditional councils

46. (1) A member of a traditional council must be paid such allowances as may be determined by the President in terms of the Remuneration Act.

(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 such benefits as his or her conditions of service provide for.

Code of conduct

47. The code of conduct contained in schedule 1 applies to every traditional leader and members of the houses of traditional leaders and traditional councils in the Province.

CHAPTER 8

FINANCIAL MATTERS

Funding

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

Funds for traditional councils

49. (1) funds of a traditional council consist of-

- (a) all monies which in accordance with the customs and customary law of the traditional community concerned 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 traditional community concerned;
- (d) any donations made by any person for the benefit of the traditional community concerned 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 such purposes of carrying out the purpose of this Act.

Levies

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

Voluntary contributions

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

- (3) Such voluntary contributions must only be made for purpose of financing a specific project.

Opening of accounts for finances of traditional councils

52. (1) The Premier must cause to be opened for each traditional council an account into which all monies shall be received in terms of section 50 and from which all expenditure incurred in connection with any matter within the power of the traditional council concerned must be met.
- (2) The control of the account referred to in subsection (1) vests in the Premier: Provided that the Premier may on such conditions as the Premier may deem fit, delegate any powers with regard to the said account to the traditional council concerned.
- (3) Subject to the concurrence of the Premier, a traditional council may invest any surplus funds from a traditional council's account with any financial institution or body corporate: Provided that the Premier may prescribe conditions as he or she may deem fit in connection with such investment.

Financial control

53. The Public Finance Management Act, 1999 (Act No.1 of 1999), applies to the management of the traditional councils.

Accounting officer for finances of traditional council

54. The Superintendent-General of the Department of Local Government and Traditional Affairs is the accounting officer for the funds of traditional councils in terms of the Public Management Act, 1999 (Act, No.1 of 1999).

Financial reports

55. Each traditional council must in respect of each financial year, within 10 days after the end of each quarter, submit to the Department, financial reports in terms of the Public Management Act, 1999 (Act No.1 of 1999).

Keeping records

56. (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 to be audited by the Auditor-General.

Auditing of financial statements of traditional council

57. (1) The financial statements of every traditional council must be audited by the Auditor-General.
- (2) The Auditor-General must as soon as possible after an audit of the financial statements of a traditional council, submit a copy of his or her report on the books and account of such a traditional council concerned to the

Premier and to such traditional council: Provided that the Auditor-General may at any time, if he or she consider it desirable, submit a special report on any matter connected with his or her powers and duties under this Act to the Premier and to such a traditional council.

(3) In the execution of any audit in terms of subsection (1) of the financial statements of any traditional council, the provision of the Public Audit Act, 2004 (Act, No. 25 of 2004) and section 188 of the Constitution is applicable.

CHAPTER 9 LOCAL HOUSES

Establishment of local houses of traditional councils

58. (1) There is hereby established within the area of jurisdiction of each of the district municipalities mentioned in schedule 1, as contemplated in section 17 (1) if the Framework Act, a local house of traditional leaders.

(2) The name of the local houses 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 for the area of jurisdiction of a district municipality or metropolitan municipality where there are five or more traditional councils in that district municipality or metropolitan municipality.

Seat and meetings of local houses

59. (1) A local house must meet in the district municipality or metropolitan municipality of which such local house has been established and at the seat as may be determined by the Chairperson of the local house concerned.

(2) There must be an ordinary session of the local house at least once in 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 time, call a special sitting of the local house concerned 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 local house call a special sitting of the local house to consider urgent matters, only matters necessitated the Premier to call the special sitting may be discussed.

Qualification for membership of a local house

60. Subject to section 62 (1) (2) (a) (b) only persons recognised as traditional leaders in terms of section 1 of this Act are eligible to become a member of a local house.

Membership and composition of a local house

61. (1) A person must be a traditional leader in order to qualify to be a member of a local house of traditional leaders.

(2) (a) Members of a local house are elected by an electoral college established of each district municipality or metropolitan municipality consisting of-

- (I) *iiKumkani* or *iiKumkanikazi*, principal traditional leaders or their representatives residing within the area of jurisdiction of the district or metropolitan municipality;
- (II) 60% senior traditional leaders residing within the area of jurisdiction of the district or metropolitan municipality;
- (III) 40% headman or headwoman residing within the area of jurisdiction of the district municipality or metropolitan municipality.

(b) At least one third of the members of a local house must consist of woman which should be drawn from both 60% of senior traditional leader and 40% of headman or headwoman: Provided that if the Premier is satisfied that there is an insufficient number of woman to be elected to the local house, the Premier must in consultation with the relevant electoral college of a local house concerned determine and approve the appointment or selection of a number of woman from royal families of senior traditional leaders to be members of the local house, who must form part of the electoral college and be eligible for election to such local house, at the date of elections of members of such local house.

(c) The Electoral College must ensure that members of a local house are broadly representative of the different traditional leadership positions failing within the district municipality or metropolitan municipality in question.

(d) Members of the Electoral College must ensure that all traditional councils within the jurisdiction of a district municipality or metropolitan municipality are fairly represented within the local house.

(e) An electoral college must in electing members of a local house in terms of paragraph (a) follow the prescribed procedure.

(f) 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 10.

(4) Despite subsection (3), the Premier may determine a higher number of members where there are more 35 traditional councils within the area of jurisdiction of a district or metropolitan, but such number may not exceed 20 members.

(5) The Premier may in consultation with a local house, determine that certain members are full-time members of the local house.

Person disqualified

62. (1) A person is not qualified to be a member of a local house if he or she-

- (a) at the time of the election of the first Provincial Legislature held under the Constitution was serving a sentence of imprisonment of more than 12 months without the option of a fine;
- (b) at any time after the promulgation of the Constitution, is convicted of an offence outside the Republic if the conduct constituting such offence would have constituted an offence in the Republic, and for which he or she has been sentenced to imprisonment for a period of more than 12 months without the option of a fine, but a disqualification under this paragraph ends five years after the sentence has been completed;
- (c) is an unrehabilitated insolvent;
- (d) is of unsound mind or has been so declared by a competent court;
- (e) is not permanently resident within the district; or
- (f) is not a South African citizen.

(2) For the purpose of subsection (1) (b), a person is not regarded as having been convicted of an offence until an appeal against the sentence has been heard and finalised, or if no appeal against the sentence has been noted, the time for noting such an appeal has expired.

Vacation of seats

63. (1) The seat of a member becomes vacant-

- (a) upon the death of such a member;
- (b) if, without having obtained leave of absence in accordance with the rules and orders of the local house concerned, the member absent 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 on which the said local house or any such forum sat;
- (c) if the member resigns his or her seat by written notice under his or her own hand writing and signed under oath without being forced or unduly influenced to do so, submitted to the secretary of the local house concerned;
- (d) if the member ceases to possess the qualifications mentioned in section 62 or becomes disqualified in terms of section 63;
- (e) if the local house concerned, by resolution, on good cause shown, withdraw 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, Provincial Legislature or the Municipal Council.

(2) If a member vacates his or her seat, the vacancy must be filled as soon as possible according to section 65.

Filling of vacancies

64. (1) If a member vacates his or her seat as referred to in section 64, the vacancy must be filled in as soon as possible, according to prescribed procedure.
- (2) A member elected to fill a vacancy in terms of subsection (1), holds the membership for the remainder of his or her predecessor's term of office.
- (3) In the event of a vacancy in a local house-
- (a) the chairperson of the local house concerned must, within 14 days of such vacancy, notify the Premier in writing of such vacancy; and
 - (b) the Premier must, within 15 days after receipt of the notice referred to in paragraph (a), or after becoming aware of a vacancy in the local house concerned, convene, by written invitation to all members of the electoral college of a local house concerned, a meeting of such electoral college in accordance with the prescribed procedure.
- (4) A vacancy in a local house must be filled in within 45 days by the election of a member for unexpired portion of the term of office of the member in whose place he or she is elected, and in the same manner in which the previous member was elected.

Powers and functions of a local house

65. (1) A local house has powers and functions to advise and make proposals in writing to the provincial house in respect of matters relating to traditional councils, customary law or the traditions and customs of traditional communities within the jurisdiction of a district municipality or metropolitan municipality concerned.
- (2) In addition to subsection (1), the powers and functions of the respective local house are to-
- (a) advise the district municipalities within which their respective local house are situated, on-
 - (I) matters pertaining to customary law, customs, culture, traditional leadership, and the traditional communities within the district or metropolitan municipality concerned;
 - (II) the development of planning frameworks that impact on traditional communities within the district municipality or metropolitan municipality concerned; or
 - (III) the development of by-laws that impact on traditional communities within the district municipality or metropolitan municipality concerned.

- (b) participate in local programmes that have the development of rural communities within the Province as an object; and
- (c) participating in local initiatives that are aimed at monitoring, reviewing or evaluating the Provincial Government in rural communities within the Province.

(3) A local house must, in respect of any power of function exercised or performed referred to in sections (2), forthwith inform the provincial house, in writing, thereof and, on a continuous basis, keep the provincial house so informed.

(4) A local house may exercise such other powers and must perform such functions as may be conferred or imposed on it under any other law including the Constitution.

Chairperson and Deputy Chairperson

66. (1) At the first meeting of a local house after its establishment, the local house concerned, with the Premier or any person designated by him or her as the Chairperson, must elect one of its members as the Chairperson and another as the Deputy Chairperson.
- (2) A local house with more than 10 members shall have a standing executive committee consisting of Chairperson, Deputy Chairperson and three additional members, the Chairperson of a local house 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 69.
- (4) The Chairperson and Deputy Chairperson hold office for a period of not more than five years from the date on which they were respectively elected by members of a local house to such office, but the period of such term of office may not exceed such person's membership of such local house.
- (5) The Chairperson and Deputy Chairperson are eligible for re-election when their respective term of office as Chairperson and Deputy Chairperson have expired, however, their re-election shall be limited to two consecutive terms.
- (6) 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 the local house.
- (7) 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
- (8) If the Chairperson is absent or for any other reason unable or unwilling 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 during the Chairperson's absence, unwillingness or inability or until a Chairperson or a Chairperson is elected.
- (9) If any of the circumstances described in subsection (8) applies simultaneously with reference to both the Chairperson and the Deputy Chairperson, a member of the local house concerned, as designated in terms of the rules and orders of such local house, must act as the Chairperson while the said circumstances prevail.

(10) 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.

(11) The Chairperson or Deputy Chairperson must vacate his or her office if he or she-

- (a) loses membership of that local house because he or she ceases to possess the qualifications mentioned in section 62 or becomes disqualified in terms of section 63;
- (b) is removed from office by resolution of that local house; or
- (c) resigns by lodging his or her resignation in writing with the secretary of that local house.

(12) If the office of the Chairperson or Deputy Chairperson becomes vacant, the local house concerned, with the Premier or any person designated by him or her acting as Chairperson, must elect a member to fill the vacancy in accordance with the procedure set in section 67: Provided that the Chairperson must in such event preside over the election of the Deputy Chairperson.

Election of representatives to the Provincial house

67. (1) A local house must, in its first sitting which must take place within fourteen days of its election, elect its representatives in the Provincial house.

(2) At least one of the representatives of the local house must be a woman, if there is insufficient number of woman in positions of traditional leadership within the local house, the Premier after consultation with the local house concerned, request members of such local house to elect woman members who have been selected from royal families of senior traditional leaders as elected, to be part of the representatives of such local house in the provincial house.

Rules and orders of local houses

68. (1) A local house may 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 consisting of such local house, but provision must be made for local houses with more than 10 members to have a standing executive committee consisting of the Chairperson, Deputy Chairperson and three additional members designated by such local house;
- (b) restrictions on access to committees of the local house concerned; and
- (c) the competency of any committee of the local house concerned to perform or dispose of its business and proceedings at venues other than the seat of such local house.

Quorum and decisions of local house

69. The presence of at least one third, or when a vote is taken on a Bill, of at least half, of all members other than the Chairperson or other presiding member is necessary to constitute a quorum of a meeting of a local house.

Requisite majorities

70. All decisions of the local house must be taken by the majority of members constituting the meeting of the local house: Provided that where a decision to remove the Chairperson or Deputy Chairperson must be taken, such a decision shall require two third of the total membership of the local house.

Moneys payable to members of local houses

71. There must be paid from moneys appropriated by the Provincial Legislature for this purpose to a member of a local house as determined by the Premier, such remuneration and allowances in terms of the Remuneration of Public Office Bearers Act, 1998 (Act, No. 20 of 1998).

Administration of local houses

72. (1) The Chairperson of the local house must in consultation with the executive committee, appoint a secretary as may be necessary for the discharge of the work of the local 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 such local house; and
 - (b) subject to the directions of such local house, perform the work incidental to the exercise and performance of the powers and functions of the local house concerned.
- (2) The secretary of a local house must be assisted in the exercise and performance of his or her powers and functions by those officers who are appointed for that purpose.
- (3) There may be seconded, according to the laws governing the public service such administrative staff that are necessary to perform the functions and duties of a local house.
- (4) Persons appointed under this section are remunerated out of and as a charge to the revenue fund, and their conditions of services are governed by an Act of the Parliament.

Responsibilities and accountability of the local houses

73. The local house must-
- (a) keep proper records;
 - (b) have its financial statements audited annually by the Auditor-General;

- (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, hold an annual meeting with traditional councils within its jurisdiction to give account of the activities and finances of the local house; and
- (e) adhere and enforce the code of conduct provided for in the schedule 1 of this Act;
- (f) be responsive to the needs of local house within the Province;
- (g) established clear relationships, and facilitate co-operation and communication between local houses;
- (h) quarterly inform traditional councils within the jurisdiction of the local house, of how the local house is managed, costs involved and the person in charge;
- (i) maximise the efficiency of communication and decision-making within the administration of the local house;
- (j) involve the secretary of the local house in decisions impacting on the overall management of the local house, as far as is practicable;
- (k) provide an equitable, fair, open, non-discriminatory and supportive environment for all traditional councils; and
- (l) submit an annual report to the Provincial house on the performance of its responsibilities.

Duration and dissolution of the local house

74. (1) Subject to subsection (2), the local house shall continue for a period of five years as from the date on which the first sitting of the local house after its constitution takes place.

(2) Notwithstanding the dissolution of the local house by virtue of the provisions of subsection (1), the Premier may, by proclamation in the *Provincial Gazette*, summon the local house to an extraordinary sitting for the consideration of urgent business and-

- (a) every person who at the date of the dissolution is a member of the local house shall remain a member thereof; and
- (b) the local house shall remain competent to exercise or to perform its powers and functions during the period following such dissolution up to and including the day immediately preceding the day on which the first sitting of the local house after such dissolution takes place.

Oath or confirmation by Chairperson and Deputy Chairperson and members of local houses

75. The Chairperson, Deputy Chairperson and every member of a local house, before taking his or her seat, must make and subscribe to an oath or solemn affirmation as prescribed, before a Judge of the High Court.

CHAPTER 10

PROVINCIAL HOUSE OF TRADITIONAL LEADERS

Eastern Cape Provincial House of Traditional Leaders

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

Seat and meetings of the Provincial house

77. (1) The Provincial house will have its seat at the Eastern Cape House of Traditional Leaders building, unless the Chairperson of the House in consultation with the Premier determines that the seat be held somewhere else in the Province in accordance with the rules and orders of the House.
- (2) There must, with the approval of the Premier, be an ordinary session of the House at least once a year during the session of the Provincial Legislature.
- (3) Subject to subsection (2) and (4), the Provincial house will seat during such period and on such days and such hours as it may determine.
- (4) (a) The executive committee may, call a special sitting at any time on a date to be determined by the said committee with the approval of the Premier and such special sitting only such matters as are placed before the Provincial house and agreed to by the Premier will be dealt with.
- (b) 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.

Composition of the Provincial house

78. (1) The Provincial House, subject to the provision of this Act, consists of-
- (a) members elected from local houses in terms of the rules and orders referred to in subsection (3);
 - (b) representatives of *iikumkani* as ex officio members, who must be designated as such by *iikumkani* or *iikumkanikazi* in writing.
- (2) The election contemplated in subsection (1) must, subject to customary law and custom, be held according to the procedure referred to in subsection (3).
- (3). The Premier must make rules and orders with regard to-
- (a) the way in which the elections will be conducted in order to ensure full participation by local houses in the process of electing representatives to the Provincial house;
 - (b) the fair distribution among the various local houses in the Province of representatives in the Provincial house; and
 - (c) any other procedural matter relating to the election of members.

(4) A local house of which a member is a representative off in the Provincial house may, subject to customary law and custom, at any time revoke the election of a member and will thereupon elect another member in terms of the rules and orders referred to in subsection (2).

(5) Members of the Provincial house will hold office for a period of five years.

(6) The Premier must, after consultation with the Provincial house, determine which members will be full-time and which members will be part-time, but the Chairperson and the Deputy Chairperson, elected in terms of section 87 (1), must become 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 80.

Duration and dissolution of the Provincial house

79. (1) Subject to subsection (2), the Provincial house shall continue for a period of five years as from the date on which the first sitting of the House after its consultation takes place.

(2) Notwithstanding the dissolution of the Provincial house by virtue of the provisions of subsection (1), the Premier may, by proclamation in the *Provincial Gazette*, summon the house to an extraordinary sitting for the consideration of urgent business, and-

- (a) every person who at the date of the dissolution is a member of the house shall remain a member thereof; and
- (b) the House shall remain competent to exercise or to perform its powers and functions during the period following such dissolution up to and including the day immediately preceding the day on which the first sitting of the House after such dissolution takes place.

Oath or affirmation by the Chairperson, Deputy Chairperson and members of the Provincial House

80. The Chairperson, Deputy Chairperson and every member of the Provincial house, before taking his or her seat, must make and subscribe to an oath or solemn affirmation as prescribed, before a Judge President.

Qualification for membership of the Provincial house

81. 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.

Person disqualification

82. (1) No person is eligible to become a member of the Provincial house if he or she is-

- (a) at the time of the election of the first Provincial Legislature held under the Constitution was serving a sentence of imprisonment of more than 12 months without the option of a fine.
- (b) at any time after the promulgation of the Constitution, is convicted of an offence outside or inside the Republic if the conduct constituting such an offence would have constituted an offence in the Republic, and for which he or she has been sentenced to imprisonment for a period of more than 12 months without the option of a fine;
- (c) is an unrehabilitated insolvent;
- (d) is of an unsound mind or has been so declared by a competent court;
- (e) is not a member of a local house, nor representative of *iKumkani* or *iKumkanikazi*;
- (f) is not a South African citizen;
- (g) is not permanently resident within the Province; or
- (h) is a member of a Municipal Council, Provincial Legislature or a member of Parliament.

(2) For the purpose of subsection (1) (b), a person is not regarded as having been convicted of an offence until an appeal against the sentence has been heard and finalised, or if no appeal against the sentence has been noted the time for noting such an appeal has expired.

Vacation of seats

83. (1) The seat of a member of the Provincial house becomes vacant-

- (a) upon the death of such a member;
- (b) if, without having obtained leave of absence in accordance with the rules and orders of the local house concerned, the member absent 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 on which on which the said local house or any such forum sat;
- (c) if the member resigns his or her seat by written notice under his or her own hand writing and signed under oath without being forced or unduly influenced to do so, submitted to the secretary of the local house concerned;
- (d) if the member ceases to possess the qualifications mentioned in section 82 or becomes disqualified in terms of section 83;
- (e) if the Provincial house by resolution, on good cause shown, withdraw 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 Provincial house for breach of the code of conduct; or

(h) becomes a full-time member of Parliament, Provincial Legislature or the Municipal Council.

(2) If a member vacates his or her seat the vacancy must be filled as soon as possible according to section 85.

Filling of vacancies

84. (1) If a member vacates his or her seat as referred to in section 84, the vacancy must be filled in as soon as possible, according to prescribed procedure.

(2) A member elected to fill a vacancy in terms of subsection (1), holds the membership for the remainder of his or her predecessor's term of office.

(3) In the event of a vacancy in the Provincial house-

(c) the chairperson of the Provincial house concerned must, within 14 days of such vacancy, notify the Premier in writing of such vacancy; and

(d) the Premier must, within 15 days after receipt of the notice referred to in paragraph (a), or after becoming aware of a vacancy in the local house concerned, convene, by written invitation to all members of the electoral college of a local house concerned, a meeting of such electoral college in accordance with the prescribed procedure.

(4) A vacancy in the Provincial house must be filled in within 45 days by the election of a member for unexpired portion of the term of office of the member in whose place he or she is elected, and in the same manner in which the previous member was elected.

Powers and duties of the Provincial house

85. (1) The Provincial house is entitled to advise and make proposals to the Provincial Legislature in respect of any matter relating to traditional authorities, indigenous law or traditions and customs of traditional communities within the Province.

(2) Any Provincial Bill pertaining to traditional leadership, indigenous law or traditions and customs, or any other matter having a bearing thereon must be referred to by the Speaker of the Provincial Legislature to the Provincial house for its comments before the Bill is passed by the Legislature.

(3) The Provincial house must, within 30 days from the date of referral, indicate by written notification to the Provincial Legislature its support, or opposition to the Bill, together with comments it wishes to make.

(4) If the House indicates in terms of subsection (3) that it is opposed to the Bill, the Provincial Legislature must not pass the Bill before a period of 30 days has elapsed from the date of receipt by the Speaker of such notification and after lapsing of such period the Provincial Legislature may proceed with the Bill.

(5) If the Provincial house fails to indicate within the period referred to in subsection (3) whether it support or opposes the Bill, the Provincial Legislature may proceed with the Bill.

(6) The Provincial house may exercise such other powers, duties and functions as are or may be conferred or imposed on it under any other law including the Constitution.

(7) The Provincial house may exercise its powers, functions and duties according to the provisions of this Act or any other law, including the Constitution.

(8) The Provincial house must provide for mechanism to maintain oversight of-

- (a) local houses; and
- (b) traditional councils

Chairperson and Deputy Chairperson

86. (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 and Deputy Chairperson must, subject to the Constitution, hold office for a period of five years and they will at the expiry of the term be eligible for re-election.

(4) The Chairperson has all the powers and functions delegated and assigned to him or her by this Act and the rules and orders of the House.

(5) 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.

(6) If any of the circumstances referred to in subsection (5) 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.

(7) The Deputy Chairperson or the member designated in terms of subsection (5), when acting as the Chairperson, may exercise the powers or perform functions vested in the office of the Chairperson.

(8) 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.

(9) 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.

(10) 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 according to section 82;

- (b) is removed from the office by the resolution of the Provincial house ; or
- (c) resign in writing with the secretary of the Provincial house.

(11) If the office of the Chairperson or Deputy Chairperson becomes vacant, the Provincial House, under the Chairpersonship of the Premier or a person designated by the Premier must elect a member to fill the vacancy, but the Chairperson must preside over the election of the Deputy Chairperson.

Election of representatives to the National House

87. (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.

Rules and orders of the Provincial house

88. The Provincial house may, subject to the provisions of this Act and the Constitution, make rules and orders for the conduct of its business and proceedings, including rules and orders regulating-
- (a) the establishment, constitution, 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 five other members elected by the Provincial house;
 - (b) restriction on access to such committees;
 - (c) the competency of such committees to perform or dispose of its business and proceedings at venues other than the seat of the Provincial house; and
 - (d) the designation of members as presiding officers to preside over meetings of the Provincial House, as and when the Chairperson requires.

Quorum and decisions

89. 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.

Requisite majorities

90. All decisions of the Provincial house must be taken by the majority of members constituting the meeting of the Provincial house: Provided that where a decision to remove the Chairperson or Deputy Chairperson must be taken, that decision requires two third of the total membership of the Provincial house.

Moneys payable to members

91. 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).

Administration of the Provincial house

92. (1) The Premier must, after 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;
 - (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.
- (2) Persons appointed under this section are remunerated out of and as a charge to the revenue fund, and their conditions of service are governed by an Act or Parliament.
- (3) The Provincial house must submit an annual report to the Provincial Legislature through the Department on the performance of its responsibilities.

Responsibilities of the Provincial house

93. The Provincial house must-
- (a) keep proper records;
 - (b) have its financial statements audited annually by the Auditor-General;
 - (c) in addition to quarterly meetings, hold an annual meeting with local houses to give account of the activities and finances of the Provincial house;
 - (d) enforce 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

Establishment and composition of local electoral college

94. (1) There is hereby establishment of an electoral college in respect of each district municipality or metropolitan municipality within the Province of the Eastern Cape.
- (2) An electoral college contemplated in subsection (1) shall consists of-
- (a) all *iiKumkani* or *iiKumakanikazi*, principal traditional leaders or their representatives;
 - (b) 60% of senior traditional leaders;
 - (c) 40% of headman or headwoman; and
 - (d) one third of woman residing within the jurisdiction of a district municipality or metropolitan municipality concerned.
- (3) In areas where there no woman in the position of traditional leadership or shortage of woman to constitute the one third woman representation, the Premier in consultation with the electoral college of the concerned district or metropolitan municipality must, through regulations, determine the number of woman to be drawn from the royal families of senior traditional leaders to be selected as candidates of an electoral college and be eligible for election of such local house , at the date of the election of members of such a local house: Provided that such number of woman will be eligible to be elected as representatives of the local house in the Provincial house.
- (4) All recognised traditional councils, must participate in the selection/nomination of candidates to constitute an electoral college within the jurisdiction of their district municipality or metropolitan municipality.
- (5) 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 municipality or metropolitan municipality and the needs of such district municipality or metropolitan municipality.
- (6) No traditional council may select or nominate candidates to participate in more than one district or metropolitan municipality, a traditional council that falls within two district or metropolitan municipality, shall participate in the district or metropolitan municipality where at least 60% of its administrative areas fall within.

Regulations

95. (1) The Premier may, after consultation with the Provincial house, make regulations relating to-
- (a) any matter which in terms of this Act is required or permitted to be prescribed; and
 - (b) any matter which is considered necessary or expedient to prescribe for achieving the object of this Act, including rules and procedures for the appointment of persons to traditional councils and rules for the conduct of meetings of traditional councils.
- (2) Regulations made in terms of the Transkei Authorities Act, 1965 9Act No. 4 of 1965) and in terms of Administrative Authorities Act, 1984 (act No. 37 of 1984) (Ciskei) shall remain in force until superseded by regulations made in terms of this Act.
- (3) Any regulations made in terms of this section must be duly promulgated in the *Provincial Gazette*.

Term of office of the Houses of Traditional Leaders

96. The term of office for both the Provincial and local houses of traditional leaders shall be five years and must be aligned with the term of office of the National House of Traditional Leaders.

Immunities and privileged of members

97. (1) The Provincial or local house of traditional leaders must have full powers to control, regulate and dispose of its internal affairs and must have all such other powers, privileges and immunities as may, subject to the Constitution, be prescribed by law.
- (2) Subject to the rules and orders of the both the Provincial or local house, there must be freedom of speech and debate in or before such house and any committee of the house of traditional leaders, and such freedom must not be impeached or questioned in any court.
- (3) A member of the Provincial house or local house must not be liable for any civil or criminal proceedings, arrest, and imprisonment by reason of anything which the member has said, produced or submitted in or before or such house or any committee of the house.

Support of traditional leaders

98. The Premier may, by notice in the *Gazette* and after consultation with the Provincial house prescribe mechanisms to support traditional leaders, on attaining the age of majority, before assuming the roles of a traditional leader to ensure that they have the required skills to rule the community.

Support to houses of traditional leaders

99. The Provincial Government must adopt such legislative or other measures as may be necessary to support and strengthen the capacity of the houses to fulfil their functions, and as such support may include the provision of-

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

Delegation of powers

100. (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 any official or employee of the Provincial Government, but the powers to make regulations may only be delegated to the MEC.

(2) The delegation referred to in subsection (1), does not preclude the Premier from exercising any such delegated powers.

(3) The Premier may set aside, or withdraw, at any time, any decision of the delegate made in the exercise of such powers.

Dissolution of community authorities

101. (1) The Premier must, in the *Provincial Gazette*, within one year of the commencement of this Act, disestablish any regional authority, or community that has been established in terms of applicable legislations before the commencement of this Act.

(2) The notice disestablishing a regional authority or community authority must regulate the legal, practical and other consequences of the disestablishment, including-

- (a) the transfer of assets, liabilities and administrative and other records to an appropriate Department, a municipality or local house of traditional leaders, as the circumstances may require;
- (b) the vacation of any office of any office-bearer of such regional authority or community authority; and
- (c) the transfer of staff of such regional authority, tribal authority or community authority.

Relationship between the Provincial house and kings and queens

102. (1) The Provincial house must, 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 by both parties.

Relationship between the provincial house and local houses

- 103.** (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 matter 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.

Relationship between houses of traditional leaders and traditional councils

- 104.** (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.
- (6) Where the Provincial House wishes to interact with a traditional council such interaction must be done in consultation with a local house under whose jurisdiction the traditional council is located.

Relationship between local houses and municipal councils

- 105.** (1) The Speaker of a municipal council must refer all by-laws that relate to traditional communities, customary law, traditions or customs of traditional communities in the municipality's jurisdiction, to a local house for comments.
- (2) A local house must consider and comments on the draft by-laws referred to in subsection (1).

(3) A written notification of a local house's support or opposition of the draft by-laws referred to it, together with comments, must be submitted to the Speaker within 30 days of such referral.

(4) Despite subsection (1) a Speaker may refer any by-law to a local house for comments.

Repeals and savings

106. (1) The laws listed in column 1 of schedule 2 are hereby repealed to the extent indicated in column 2 thereof.

(2) Despite 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.

(3) Any right acquired, power exercised, obligation or liability incurred or duty performed under any provision of a law repealed by subsection (1), is deemed to have been acquired, exercised, incurred or performed under the corresponding provision or provisions of this Act.

(4) Despite the repeal of the laws referred to in subsection (1)-

- (a) traditional leaders, on the termination date, either by death or resignation, shall be eligible for payment of gratuity equal to the 50% of the traditional leader's monthly salary paid for each completed year of service for the first ten years, and thereafter one third of the monthly salary;
- (b) traditional leaders with less than ten years of service, shall be entitled to receive one third of their monthly salary for completed year of service;
- (c) all benefits and allowances for traditional leaders shall be paid in terms of the interim Constitution Act, 1993;
- (d) the Provincial House of Traditional Leaders (Eastern Cape) established by section 2 of the Eastern Cape House of Traditional Leaders Act, 1995 (Act No.5 of 1995), continues to function, as if it has been established in terms of this Act, until the dissolution of the current term of the National House referred in section 3 of the National House of Traditional Leaders Act, 1997 (Act No. 10 of 1997);
- (e) the rules and orders of the House of traditional leaders (Eastern Cape) established by section 2 of the Eastern Cape House of Traditional Leaders Act, 1995 (Act No 5 of 1995), remains in place as the rules and orders of the Eastern Cape Provincial House of Traditional Leaders, until new rules and orders are made in terms of section 89 of this Act;
- (f) any person dully appointed or seconded as the secretary to, or officer or employee of, the Provincial house in terms of such a law, remains in such position as if he or she has been appointed or seconded in terms of this Act.

(5) The Premier must, within one year after the commencement of this Act, issue certificates of recognition to all traditional communities recognised in terms of any law repealed by this Act.

Offences and penalties

107. (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 107;
- (b) wilfully obstructs the carrying out, performance or execution of any role, power, function or duty vested in, the Provincial house, any local house in terms of this Act or any other law;
- (c) contravenes any provision of this Act.

(2) A person convicted of an offence referred to in subsection (1) is liable to a fine or imprisonment not exceeding 12 months, both such fine and imprisonment.

Transitional arrangements

108. (1) Any traditional leader who was appointed as such in terms of applicable legislations 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 31 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 in terms of the Provincial legislation, is deemed to have been recognised as such in terms of section 35 of this Act.

(3) An administrative area established in terms of applicable legislations 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 legislations shall continue to be recognised as such until it is substituted by the newly reconstituted traditional council contemplated in section 9 of this Act.

(5) Any traditional council established and recognised in terms of section 6 of Traditional Leadership and Governance Act, 2005 (Act No. 4 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 9 of this Act.

(6) Any traditional community before the commencement of this Act, 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 5 of this Act, subject to-

- (a) the withdrawal of its recognition in accordance with the provision of section 6 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 legislations 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 and 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 so required;
- (II) the vacation of office bearers of such regional authority;
- (III) the transfer of staff of such regional authority.

Short title and commencement

109. (1) The Act is called the Eastern Cape Traditional Leadership and Governance Act, 2014 (Act No..... of 2014), 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

General code of conduct for a traditional leader

1. 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; as-

- (I) involved in fighting;
- (II) use insults and unacceptable language;
- (III) excessive use of alcohol;
- (IV) engage 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, House of Traditional Leaders or public in general;
- (VI) domestic violence against women and children;
- (VII) should dress in a presentable manner;
- (VIII) should respect and uphold tradition & culture at all times.

- (c) must comply with any applicable legislation;
- (d) must comply with applicable legislations;
- (e) must act in the best interest of the traditional community or communities he or she serves;
- (f) must promote unity amongst traditional communities;
- (g) may not embark on action that would create division within or amongst traditional communities;
- (h) must promote nation building;
- (i) may not refuse to provide a service to a person on political or ideological grounds;
- (j) must foster good relations with the organs of state with whom he or she interacts;
- (k) must promote the principles of a democratic and open society; and
- (l) must disclose gifts received.

General conduct of traditional councils

2. 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
2. General code of conduct of members
3. Attendance at meetings
4. Sanctions for non-attendance of meetings
5. Conflict of interest
6. Personal gains
7. Gifts, rewards and favours
8. Gifts, benefits to be disclosed
9. Disclosure of financial interest
10. Unauthorised disclosure of confidential information
11. Use of property belonging to the house or council
12. Improper use of influence
13. Breach of code of conduct by a member of the provincial house, local house or council

Definitions

1. In this Schedule, unless the context indicate otherwise-
 - (a) “**House**” means the provincial house or local house of traditional leaders;
 - (b) “**member**” means a member of a house or council;
 - (c) “**council**” means a principal traditional council or traditional council.

General code of conduct of members of houses and councils

2. A member-
 - (a) must perform his or her functions in good faith and in 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 another 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.

Attendance at meetings

3. 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;
 - (b) a member of the House or council or committee of the House or council in terms of the rule and orders of the House or council withdrew from the meeting.

Sanctions for non-attendance of meetings

4. (1) A house or council or a committee of the house or the council, may impose sanctions to 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 a such member is required to attend in terms of item 3;
 - (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 in terms of section 10. Must be removed as a member;
- (2) Proceedings for the removal of 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).

Conflicts of interest

3. (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 a 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 the member is required to take a decision as a or 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 whose authority the council falls, whatever the case may be, decide 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/partner, business associates or close family member, acquired or stand to acquire direct benefits from a contract conducted with house or council must disclose full particulars of the benefits of which 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, the above paragraph does not apply to an interest or benefit of which a member or a spouse/partner, business associates or close family member has acquire in common with other residents of the jurisdiction of the House or that of a Traditional Council.

Personal Gains

4. (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 be part to or stand to benefit under a contract for-

- (a) the provision of goods or services to the house or council;
- (b) the performance of any work other than as a member of the house or council;
- (c) obtain financial interest in any business of the house or council; or
- (d) for 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 the 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 MEC for Local Government and Traditional Affairs.

Gifts, Rewards & Favours

5. (1) A member of the house or council may not solicit or accept a gift of benefit which-

- (a) is in return for any benefit received from a member of the house or council, except gifts recognised by customs;
 - (b) constitute improper influence on the part of a member of the house or council; or
 - (c) constitute 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 he or she is a member of;
 - (b) persuading the house or council or a committee of the house or that of 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 that of a council; or
 - (d) disclosing privileged or confidential information.

Gifts, Benefits to be disclosed

6. A member elected to the house or council must disclose-

- (a) gifts by describing the value and source of the gifts with a value of more than R350.00;
- (b) the value of the gifts from a single source which cumulatively exceed the value of R350.00 in any calendar year;
- (c) hospitality intended as a personal gift and with a value of more than R350.00; and
- (d) hospitality intended as a personal gift and received from a single source and which cumulatively exceed R350.00 in any calendar year.

Disclosure of Financial Interest

7. (1) An appointed or a member elected 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 MEC the following financial interest held by him or her with regard to-

- (a) shares and securities in any company;
- (b) membership of any close 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

- (i) pensions or
 - (j) 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 declare in writing to the officer referred to in sub-item (1).
- (3) Members of the house or council must determine which of the financial interest referred in sub-item 1. (a-g) must be made public, having regards to the need for confidentiality and the public interest for disclosure.

Unauthorised Disclosure of Confidential Information

8. (1) A member of the house or council may not disclose or release by any means to any member of the public, any confidential information acquired by virtue of being a member of the house or council or of a committee of the house or council in either oral or written form without the approval or permission of the house or council or a committee of the house or council which he or she is a member;
- (2) A member of the house or council may not use confidential information for personal or private gain, or for the gain of a relative or any person or corporate;
- (3) Confidential information include among others, information in the possession of, or receive in confidence by the house or council of which he or she is either prohibited from disclosing, or is required to refuse to disclose as determined by the house or council to be privileged or confidential;
- (4) For the purpose of this Act "privilege or confidential information" include any information-
- (a) under litigation, negotiation, or personnel matters;
 - (b) discussed in close sessions (camera) by the house or council or committee of the house or council, no member of the house or council or committee of the house or council shall disclose the content of such matter, or the substance of deliberations of the close session, until the house or council or Committee of the house or council, discusses such information at a meeting which is open to the public, or releases the information in the public;
 - (c) information that infringes on the rights of others, and violate their Constitutional rights to privacy; or
 - (d) declare to be privileged, confidential or secret in terms of law or deemed to be personal.

- (5) However, this item does not derogate or deprive the right of any person to access to information in terms of the national legislation.

Use of property belonging to the Houses of Traditional Leaders or Traditional Council

9. (1) A member of the house or council, may not use or permit to use facilities, equipments, 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 should take, acquire or benefit, obtain person financial gain from the use of any property or assets owned, controlled or managed by house or council, since all properties remain exclusively that of the house or council.

Improper use of influence

10. (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 include but not limited to, improperly influencing the decision of another person/s 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 relative/s, spouse/partner, staff members of the House or Traditional Council, friends, associates or business or others, to benefit in the form of employment, elected to the house or council.

Breach of code of conduct by a member of the provincial house, local house or a council

11. (1) If the provincial house, local house or council on reasonable suspicion, is of the opinion that, a provision of the code of conduct has been breached, the house must establish an investigative committee to-
- (a) to 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 the matter in a meeting of the house after (a) & (b) have been compiled with.
- (2) A house or council must inform the Premier of the outcome of the investigation.
- (a) 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 is available in every room or place where the house or council meets.

- (3) 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, the relevant house or council may-
- (a) issue a formal warning to such a member;
 - (b) reprimand the or member;
 - (c) request the Premier to suspend the member for a period determine by the Premier; or
 - (d) request the Premier remove the member of the House from office.
- (4) (a) The Premier may appoint a person or a committee to investigate any alleged breached of a provision of this code of conduct and to make recommendations as to the appropriate sanction in terms of sub-item (2), if the relevant 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 relevant house, 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 this code of conduct and that such contravention warrant a suspension or removal from office, the Premier may-
- (I) issue a formal warning to such a member;
 - (II) reprimand the or member;
 - (III) suspend the member from the office for a period and conditions as he or she determine; or
 - (IV) remove the member office: Provided that in the case of the chairperson of a council, any such removal from office is subject to the relevant provision of the Act dealing with the withdrawal of recognition of the leadership position concerned.
- (5) The commission Act, 1947 (Act No. 8 of 1947), or where appropriate, applicable provincial legislation, may be applied to an investigation in terms of sub-item (4).
- (6) 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
AND TRADITIONAL COUNCIL**

I,..... (name of member),

do swear that I will be faithful to the House of Traditional Leaders/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/Traditional Council; to obey, observe, uphold and maintain the laws, rules, orders and procedures of the House/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/Traditional Council and its members.

**May the Almighty God by His Grace and/or the ancestors 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 HOUSES OF TRADITIONAL
LEADERS AND TRADITIONAL COUNCIL**

I,(name of member),

do solemnly affirm that I will be faithful to the House of Traditional Leaders/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/Traditional Council; to obey, observe, uphold and maintain the laws, rules, orders and procedures of the House/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/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**
(Section)

ACT	EXTENT OF REPEAL
1. House of Traditional Leaders Act, 1995 (Act No. 1 of 1995)	The whole
2. House of Traditional Leaders Amendment Act, 2001 (Act No. 9 of 2001)	The whole
3. House of Traditional Leaders Amendment Act, 2005 (Act, No 3 of 2005)	The whole
4. Eastern Cape Traditional Leaders and Governance Act, 2005 (Act No. 4 of 2005)	The whole

**EXPLANATORY MEMORANDUM
ON THE OBJECTS OF
EASTERN CAPE TRADITIONAL LEADERSHIP AND GOVERNANCE BILL
2014**

1. BACKGROUND

This Bill is intended to consolidate legislation dealing with traditional leadership and governance, the Provincial House and local houses of traditional leaders in the Province of the Eastern Cape into one piece of legislation.

Accordingly, the Bill repeals the Eastern Cape Traditional Leadership and Governance Act, 2005 and the Eastern Cape House of Traditional Act, 1995 (Act No.1 of 1995).

Further, the Bill is intended to update Provincial legislation governing the institution of traditional leadership in order to ensure that it is consistent with National legislation.

2. OBJECTS OF THE BILL

The objects of the Bill is among others to provide for-

- (a) recognition of traditional communities
- (b) recognition of principal traditional communities
- (c) recognition of kingship or queenships and their withdrawal
- (d) establishment and recognition of kingship or queenship's councils
- (e) establishment and recognition of principal traditional councils
- (f) establishment and recognition of traditional councils
- (g) establishment of traditional sub-councils
- (h) positions of traditional leadership
- (i) recognition of traditional leaders and their roles
- (j) removal of traditional leaders
- (k) recognition of regents
- (l) recognition of acting traditional leaders
- (m) recognition of deputy traditional leaders
- (n) houses of traditional leader
- (o) code of conduct for traditional leaders and traditional councils
- (p) code of conduct for members of houses of traditional leaders, principal traditional council and traditional councils
- (q) repeal of certain laws
- (r) incident matters

3. CONSTITUTIONAL IMPLICATIONS

This Bill falls within a functional area of concurrent National and Provincial legislative competence as set out in Schedule 4 to the Constitution of the Republic of South Africa, 1996.

4. CONSULTATIONS AND PUBLIC PARTICIPATION

The Department of Traditional Affairs conducted consultation sessions with key stakeholders on the first draft Bill namely-

- Members of the Executive Committee of the Provincial House
- Members of the Provincial Executive Committee of CONTRALESA (Eastern Cape)
- Members of King's Councils
- Traditional leaders in general from all constituencies/regions
- Top management of the Department and officials from both Head office and Regional Offices.

The Department on its endeavour to ensure wide participation of all affected parties will further embark on another consultation process with the stakeholders including traditional leadership institutions and civic organisations before the publication of the Bill in the Provincial Gazette.

This process will be followed by statutory processes for publication in the Provincial Gazette in terms of the Standing Rules of Legislature for public comments and further processes of the Legislature.

5. TRANSLATION

The Bill will be translated into applicable official languages of the Province (e.g. Xhosa and Sotho) once it has been endorsed by the Executive Council and has to be published in the Provincial Gazette for public comment.

6. CLAUSE BY – CLAUSE ANALYSIS

Clause

1. provides for definitions
2. provides for the application and interpretation
3. provides for the guiding principles
4. provides for transformation of traditional authorities into traditional councils and areas of jurisdiction
5. provides for the recognition of traditional communities
6. provides for the withdrawal of recognition of traditional communities
7. provides for the recognition of kingship or queenships
8. provides for the establishment and recognition of principal traditional communities
9. provides for the establishment and recognition of traditional councils

10. provides for the terms of office for members of traditional councils and oath of office
11. provides for the functions of traditional councils
12. provides for the designation of chairperson and deputy chairperson of the traditional council
13. provides for the disqualification as a member of a traditional council
14. provides for the vacation of seat and filling of vacancies of traditional council
15. provides for the meetings of traditional councils
16. provides for the minutes of meetings of traditional councils
17. provides for the staff of traditional councils
18. provides for the establishment and functions of traditional sub-councils
19. provides for the admission of individuals into existing traditional communities
20. provides for the establishment and recognition of kingship or queenship's councils
21. provides for the establishment and recognition of principal traditional councils
22. provides for the functions of kingship or queenship's council
23. provides for the functions of principal traditional councils
24. provides for the meetings with traditional leaders
25. provides for the partnership between traditional councils, local and district municipalities, kingship or queenship councils, principal traditional councils
26. provides for the support and capacity development of king or queen's councils, principal traditional councils and traditional councils
27. provides for the trans-provincial issues
28. provides for the recognition of traditional leadership positions
29. provides for the recognition of principal traditional leader
30. provides for the removal of principal traditional leader
31. provides for the recognition of an *iNkosi* or headman or headwoman
32. provides for the removal of *iNkosi* or headman or headwoman
33. provides for the recognition of a regent
34. provides for the person acting as *iKumkani* or *iKumkanikazi*, *iNkosi*, or headman or headwoman
35. provides for the deputy traditional leaders
36. provides for the support to traditional councils, principal traditional councils and kingship or queenship's councils
37. provides for the roles and functions of a royal family
38. provides for the deemed royal families
39. provides for the roles and functions of traditional leaders
40. provides for the inquiry into misconduct
41. provides for the suspension of a traditional leader
42. provides for the MEC to summon a traditional leader
43. provides for the absence of a traditional leader
44. provides for disputes resolution procedures
45. provides for the establishment of the Eastern Cape Provincial Committee of the Commission on disputes and claims
46. provides for the condition of service of traditional leaders
47. provides for the allowances for members of traditional councils
48. provides for the code of conduct for traditional leaders and members of houses of traditional leaders, principal traditional councils and traditional councils

49. provides for the funding of traditional councils
50. provides for the funds of traditional councils
51. provides for the levies of traditional councils
52. provides for the voluntary contributions
53. provides for the opening of accounts for finances of traditional councils
54. provides for the financial controls of traditional councils
55. provides for the accounting officer for finances of traditional councils
56. provides for financial reports of traditional councils
57. provides for the keeping of records of traditional councils
58. provides for the auditing of books and accounts of traditional councils
59. provides for the establishment of local houses of traditional leaders
60. provides for the seat and meetings of local houses
61. provides for the qualification for membership of a local house
62. provides for the membership and composition of a local house
63. provides for the person disqualification as a member of a local house
64. provides for the vacation of seats of local houses
65. provides for the fillings of vacancies in local houses
66. provides for the powers and functions of a local house
67. provides for the election of chairperson and deputy chairperson of a local house
68. provides for the election of representatives to the Provincial house of traditional leaders
69. provides for the rules and orders of local houses
70. provides for the quorum and decisions of a local house
71. provides for the requisite majorities of local houses
72. provides for the moneys payable to members of local houses
73. provides for the administration of local houses
74. provides for the responsibilities and accountability of local houses
75. provides for the duration and dissolution a local house
76. provides for the oath or affirmation by chairperson and deputy chairperson and members of local houses
77. provides for the Eastern Cape Provincial house of traditional leaders
78. provides for the seat and meetings of the Provincial house
79. provides for the composition of the Provincial house
80. provides for the duration and dissolution of the Provincial house
81. provides for the oath or affirmation by the chairperson and deputy chairperson and members of the Provincial house of traditional leaders
82. provides for the qualification for members of the Provincial house
83. provides for the person disqualification as a member of the Provincial house
84. provides for the vacation of seat of the Provincial house
85. provides for the filling of vacancies of the Provincial house
86. provides for the powers and functions of the Provincial house
87. provides for the election of chairperson and deputy chairperson and members of the executive committee of the Provincial house
88. provides for the election of representatives to the National House
89. provides for the rules and orders of the Provincial house
90. provides for the quorum and decision of the Provincial house
91. provides for the requisite and majorities of the Provincial house
92. provides for the moneys payable to members of the Provincial house

93. provides for the administration of the Provincial house
94. provides for the responsibilities of the Provincial house
95. provides for the establishment and composition of a local electoral college
96. provides for the regulations
97. provides for the term of office for houses of traditional leaders
98. provides for the immunities and privileges for members of houses of traditional leaders
99. provides for the support to traditional leaders
100. provides for the support to houses of traditional leaders
101. provides for the delegation or powers
102. provides for the dissolution of community authorities
103. provides for the relationship between the Provincial house and kings or queens
104. provides for the relationship between the Provincial house and local houses of traditional leaders
105. provides for the relationship between houses of traditional leaders and traditional councils
106. provides for the relationship between local houses and municipal councils
107. provides for the repeal and savings
108. provides for the offences and penalties
109. provides for the transitional arrangements
110. provides for the short title and commencement of this Act

SCHEDULE 1

Schedule 1 of the Bill contain the Code of Conduct for Traditional Leaders and Traditional Councils

SCHEDULE 2

Schedule 2 of the Bill contain Code of Conduct for members of Houses of Traditional Leaders, Principal Traditional Council and Traditional Councils

SCHEDULE 3

Schedule of the Bill contain oath by the members of the Houses of Traditional Leaders

SCHEDULE 4

Schedule 4 of the Bill contain oath by members of Traditional Councils

SCHEDULE 5

Schedule 5 of the Bill contain laws repealed

NOTICE – CHANGE OF TELEPHONE NUMBERS: GOVERNMENT PRINTING WORKS

As the mandated government security printer, providing world class security products and services, Government Printing Works has adopted some of the highly innovative technologies to best serve its customers and stakeholders. In line with this task, Government Printing Works has implemented a new telephony system to ensure most effective communication and accessibility. As a result of this development, our telephone numbers will change with effect from 3 February 2014, starting with the Pretoria offices.

The new numbers are as follows:

- Switchboard : 012 748 6001/6002
- Advertising : 012 748 6205/6206/6207/6208/6209/6210/6211/6212
- Publications Enquiries : 012 748 6052/6053/6058 GeneralEnquiries@gpw.gov.za
 - Maps : 012 748 6061/6065 BookShop@gpw.gov.za
 - Debtors : 012 748 6060/6056/6064 PublicationsDebtors@gpw.gov.za
 - Subscription : 012 748 6054/6055/6057 Subscriptions@gpw.gov.za
- SCM : 012 748 6380/6373/6218
- Debtors : 012 748 6236/6242
- Creditors : 012 748 6246/6274

Please consult our website at www.gpwonline.co.za for more contact details.

The numbers for our provincial offices in Polokwane, East London and Mmabatho will not change at this stage.