

REPUBLIC OF SOUTH AFRICA

TRADITIONAL AND KHOI-SAN LEADERSHIP BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 54224
of 26 February 2026)*
(The English text is the official text of the Bill)

(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

BILL

To provide for the recognition of traditional and Khoi-San communities, leadership positions and for the withdrawal of such recognition; to provide for the functions and roles of traditional and Khoi-San leaders, to provide for the recognition, establishment, functions, roles and administration of kingship or queenship councils, Khoi-San kingship councils, Khoi-San queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils, as well as the support to such councils; to provide for the establishment, composition and functioning of the National House of Traditional and Khoi-San Leaders; to provide for the establishment of provincial houses of traditional and Khoi-San leaders; to provide for the establishment and composition of local houses of traditional and Khoi-San leaders; to provide for the establishment and operation of the Commission on Khoi-San Matters; to provide for a code of conduct for members of the National House, provincial houses, local houses, traditional and Khoi-San councils and recognised traditional leaders; to provide for regulatory powers of the Minister and Premiers; to provide for transitional arrangements; to amend certain Acts; to provide for the repeal of legislation; and to provide for matters connected therewith.

PREAMBLE

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

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

AND WHEREAS the South African people consist of a diversity of traditional and Khoi-San communities;

AND WHEREAS the Constitution recognises—

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

AND WHEREAS—

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

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

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

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CHAPTER 1

INTERPRETATION AND GUIDING PRINCIPLES

Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “**area of jurisdiction**” means the area of jurisdiction defined for a kingship or queenship council, principal traditional council, traditional council and traditional sub-council; 5
- “**branch**” means a branch recognised as such in terms of section 5(7);
- “**branch head**” means a Khoi-San leader who is the head of a branch and who has been recognised as a branch head in terms of section 10; 10
- “**code of conduct**” means the code of conduct provided for in Schedule 1;
- “**Commission**” means the Commission on Khoi-San Matters established in terms of section 51;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**CTLDC**” means the Commission on Traditional Leadership Disputes and Claims established in terms of section 22 of the Traditional Leadership and Governance Framework Act as amended by the Traditional Leadership and Governance Framework Amendment Act, 2009 (Act No. 23 of 2009), with effect from 1 February 2010; 15
- “**customary law**” means the established norms, rules, traditions, practices, and dispute resolution mechanisms that have evolved organically within a specific traditional and Khoi-San community over time, and which are accepted and observed by its members as binding and authoritative in the regulation of their internal affairs, including the selection, roles, responsibilities and succession of their respective leaders; 20
- “**date of invalidity**” means 1 April 2021 and is the date on which the declaration of constitutional invalidity of the Traditional and Khoi-San Leadership Act may take effect; 25
- “**Department**” means the national department responsible for traditional and Khoi-San leadership and governance matters;
- “**district municipality**” means a district municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “**employer**” means any person, institution, organisation or an organ of state who employs or provides work to any person and remunerates or expressly or tacitly undertakes to remunerate that person as defined in the Labour Relations Act, 1995 (Act No. 66 of 1995); 30
- “**headman or headwoman**” means an elected or hereditary traditional leadership position contemplated in section 7 which— 35
- (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 customs; and
- (b) has been recognised as such in terms of section 8;
- “**headmanship or headwomenship**” means a headmanship or headwomenship recognised in terms of section 3; 40
- “**Independent Commission for the Remuneration of Public Office-bearers Act**” means the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);
- “**Khoi-San**” means any person who lives in accordance with the custom and customary law of the Cape-Khoi, Griqua, Korana, Nama or San people, or any subgrouping thereof, and is consequentially a member of a particular Khoi-San community as contemplated in section 5; 45
- “**Khoi-San community**” means a Khoi-San community recognised as such in terms of section 5; 50
- “**Khoi-San council**” means a council established in terms of section 18;
- “**Khoi-San king or Khoi-San queen**” means a person recognised as a Khoi-San king or Khoi-San queen in terms of section 10;
- “**Khoi-San leader**” means a person recognised as a Khoi-San king, Khoi-San queen, senior Khoi-San leader or a branch head in terms of section 10 and includes a regent, acting Khoi-San leader and deputy Khoi-San leader; 55
- “**king or queen**” means a person recognised as a king or queen in terms of section 8;

“ kingship or queenship ” means a kingship or queenship recognised in terms of section 3;	
“ kingship or queenship council ” means a kingship or queenship council contemplated in section 16;	
“ Local Government: Municipal Structures Act ” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);	5
“ local house ” means a local house of traditional and Khoi-San leaders contemplated in section 50;	
“ local municipality ” means a local municipality as defined in section 1 of the Local Government: Municipal Structures Act;	10
“ MEC ” means the Member of the Executive Council of a province who is responsible for traditional affairs;	
“ metropolitan municipality ” means a metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act;	
“ Minister ” means the national Minister responsible for traditional and Khoi-San leadership and governance matters;	15
“ National House ” means the National House of Traditional and Khoi-San Leaders established in terms of section 27;	
“ Premier ” means the Premier of a province;	
“ prescribe ” means prescribed by regulation in terms of section 60;	20
“ principal traditional community ” means a community deemed to be a principal traditional community in terms of section 28(9)(c) of the Traditional Leadership and Governance Framework Act prior to the repeal of that Act, or as contemplated in section 63(8)(c) of this Act;	
“ principal traditional council ” means a council established and recognised in terms of section 16;	25
“ principal traditional leader ” means a person deemed to be a principal traditional leader in terms of section 28(9)(c) of the Traditional Leadership and Governance Framework Act, 2003, prior to the repeal of that Act, or as contemplated in section 63(8)(c) of this Act, or a successor to such person as contemplated in section 8;	30
“ provincial house ” means a provincial house of traditional and Khoi-San leaders as contemplated in section 49;	
“ regent ” means any person who, in terms of section 12, holds a traditional or Khoi-San leadership position in a temporary capacity until the identified or elected leader to such position, who is a minor, becomes a major as contemplated in section 17 of the Children’s Act, 2005 (Act No. 38 of 2005) and is recognised in terms of this Act;	35
“ resources ” means any financial, administrative, infrastructural, material, or human support made available by any organ of state to a traditional leader or Khoi-San leader, council, Commission, National House, provincial house or local house in order to enable the performance of their functions, duties, or responsibilities in terms of this Act or any applicable legislation;	40
“ royal family ” means a historical customary institution or structure consisting of immediate relatives of the ruling family within a traditional or Khoi-San community, which has been identified in terms of customary law and customs, and includes, where applicable, other members who are close relatives of the ruling family;	45
“ rules and orders ” means rules and orders of the National House as contemplated in section 46;	
“ Secretary ” means the Secretary of the National House appointed in terms of section 37;	
“ senior Khoi-San leader ” means a person recognised as a senior Khoi-San leader in terms of section 10;	50
“ senior traditional leader ” means a person recognised as a senior traditional leader in terms of section 8;	
“ this Act ” includes any regulations made in terms of any relevant provision of this Act;	
“ traditional community ” means a traditional community recognised as such in terms of section 3 under the leadership of a recognised leader in terms of this Act;	55
“ traditional council ” means a traditional council contemplated in section 16 and includes a traditional sub-council contemplated in section 17;	
“ traditional leader ” means a person who has been recognised as a king or queen, principal traditional leader, senior traditional leader or headman or headwoman in terms of section 8 and includes regents, acting traditional leaders and deputy traditional leaders;	60

“traditional leadership” means the institutions or structures established in terms of customary law or customs, or customary systems or procedures of governance, recognised, utilised or practiced by traditional communities;

“Traditional and Khoi-San Leadership Act” means the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);

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

“traditional sub-council” means a traditional sub-council contemplated in section 17.

(2) Nothing contained in this Act may be construed as precluding members of a traditional or Khoi-San community from addressing a traditional or Khoi-San leader by the customary designation accorded to him or her by custom, but such customary designation does not derogate from or add anything to the status, role and functions of a traditional or Khoi-San leader as provided for in this Act.

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

(4) Any provision of this Act that requires the consultation of a provincial or local house of traditional and Khoi-San leaders must be complied with only in instances where such a house has been established.

(5) To avoid doubt, in instances where a provincial or local house of traditional and Khoi-San leaders has not been established, the requirement for such house to be consulted does not apply and has no effect on any action or decision taken in terms of the relevant provision of this Act.

(6) The provisions of this Act relating to the recognition of a traditional or Khoi-San community or leader must not be construed as bestowing upon such a community or leader any special indigenous, first nation or any other similar status.

Guiding principles

2. (1) In the application of this Act, the following guiding principles must be taken into account:

- (a) A kingship or queenship, Khoi-San kingship or Khoi-San queenship, principal traditional community, traditional community, headmanship, headwomanship and Khoi-San community must transform and adapt customary law and customs relevant to the application of this Act, so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, and other applicable law, in particular by—
- (i) preventing unfair discrimination on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth as set out in section 9 of the Constitution;
 - (ii) promoting equality;
 - (iii) seeking to progressively advance gender representation in the succession to traditional and Khoi-San leadership positions; and
 - (iv) promoting resolution of succession disputes by keeping, in writing, a record of genealogy which includes ruling family tree, succession decision-making practice, structures and clear historical and customary law of succession in respect of leadership positions that require recognition by government; and
- (b) the resources of any community, leader, council, house, Commission or committee recognised or established in accordance with this Act—
- (i) must not be used to promote or prejudice the interest of any political party or any grouping of such party or to promote or prejudice any candidate in any election, irrespective of whether such election is an internal election within the relevant party or an external election; and
 - (ii) may only be used for purposes of the functions, duties and responsibilities allocated by this Act to such community, leader, council, house, Commission or committee.

CHAPTER 2
LEADERSHIP AND GOVERNANCE

Part 1

Traditional communities

Recognition of kingship or queenship, traditional community, headmanship or headwomanship 5

3. (1) Two or more traditional communities may apply to the President, by written submission to the Minister, to be recognised as a kingship or queenship if the traditional communities—

- (a) are individually recognised as traditional communities in terms of subsection (4); 10
- (b) each has a recognised traditional council with a defined area of jurisdiction as contemplated in section 16;
- (c) each has a recognised senior traditional leader as contemplated in section 8;
- (d) recognise as their king or queen, a specific recognised traditional leader who, in terms of custom and customary law, is regarded to be of a higher status than other traditional leaders, in terms of the custom and customary law of the community concerned; 15
- (e) recognise themselves as a distinct group of traditional communities with a proven history of existence, from a particular point in time up to the present, distinct from principal traditional communities and other traditional communities; 20
- (f) have a historical system of traditional leadership at a kingship or queenship level; and
- (g) have an existence of distinctive cultural heritage manifestations. 25

(2) An application contemplated in subsection (1) must be accompanied by—

- (a) a resolution of each traditional council referred to in subsection (1)(b) indicating that such council forms part of the kingship or queenship being applied for;
- (b) an application for the recognition of the position of a king or queen as contemplated in section 8; and 30
- (c) the respective communities' written customary law of succession and relevant genealogies, for purposes of recognition and withdrawal of leadership positions applicable within their respective communities.

(3)(a) The Minister may, upon receipt of an application contemplated in subsection (2), investigate whether the relevant traditional communities comply with the criteria set out in subsection (1). 35

(b) The Minister must, in respect of an application contemplated in subsection (1), consult the Premier, the National House, the provincial house and the senior traditional leaders of the traditional communities who fall under the kingship or queenship applied for. 40

(c) The investigation and consultations contemplated in paragraphs (a) and (b) must be completed within six months from the date of receipt of the application contemplated in subsection (1) after which the Minister must submit a report to the President.

(d) The President may, upon receipt of a report contemplated in paragraph (c), by notice in the *Gazette*, recognise the traditional communities contemplated in subsection (1) as kingship or queenship, as the case may be. 45

(4) A community may apply to the Premier to be recognised as a traditional community if the community—

- (a) has a system of traditional leadership at a senior traditional leadership level recognised by other traditional communities; 50
- (b) observes a system of customary law;
- (c) recognises itself as a distinct traditional community with a proven history of existence, from a particular point in time up to the present, distinct and separate from other traditional communities; 55
- (d) occupies a specific geographical area;
- (e) has an existence of distinctive cultural heritage manifestations; and
- (f) where applicable, has a number of headmanship or headwomanship.

(5) An application contemplated in subsection (4) must be accompanied by an application for the recognition of the position of a senior traditional leader contemplated in section 8.

(6) The Premier may, after consultation with the provincial house, and by notice in the provincial *Gazette*, recognise the community referred to in subsection (4) as a traditional community. 5

(7) A portion of a traditional community may, through the relevant traditional council, apply to the Premier for the recognition of a headmanship or headwomanship if that portion of the traditional community—

- (a) has a system of traditional leadership at a headmanship or headwomanship level and is recognised as such by the relevant traditional community; 10
- (b) consists of an area within the area of jurisdiction of the traditional council of the relevant traditional community; and
- (c) will contribute to the more effective and efficient administration of the relevant traditional council. 15

(8) If the traditional council is of the view that the portion of the traditional community referred to in subsection (7) does not meet the criteria set out in that subsection, the traditional council must inform the community and the Premier accordingly and provide reasons for such view.

(9) Notwithstanding subsection (8), the Premier may, after consultation with the traditional council referred to in that subsection, and by notice in the provincial *Gazette*, recognise the headmanship or headwomanship contemplated in subsection (7). 20

(10) Before giving the recognition contemplated in subsections (6) and (9), the Premier may, in writing, direct the MEC to investigate whether a traditional community or portion of a traditional community, as the case may be, complies with the criteria set out in subsection (4) or (7), whichever applies, as well as the guiding principles set out in section 2. 25

(11)(a) A Premier must, on an annual basis or when requested and in a format determined by the Minister, provide the Minister with a report on the recognition of traditional communities and headmanship or headwomanship. 30

(b) A copy of the report referred to in paragraph (a) must be submitted to the relevant provincial house for noting.

Withdrawal of recognition of kingship or queenship, principal traditional community, traditional community, headmanship or headwomanship

4. (1) A traditional community may apply— 35
- (a) in the case of a kingship or queenship, to the President; or
 - (b) in the case of a principal traditional community, to the Premier, to withdraw the recognition of the kingship or queenship or of the principal community, as the case may be.

(2)(a) An application contemplated in subsection (1)(a) must be made by written submission to the Minister by the traditional community falling under the jurisdiction of the kingship or queenship concerned. 40

(b) An application contemplated in subsection (1)(b) must be made directly to the Premier by the traditional community falling under the jurisdiction of the principal traditional community concerned. 45

(3) An application contemplated in subsection (1)(a) or (b) must set out the grounds on which the application is based and must be accompanied by a resolution of the traditional council of the traditional community making the application.

(4) In the case of an application for the withdrawal of the recognition of a kingship or queenship, the Minister must— 50

- (a) cause an investigation to be conducted to establish whether sufficient cause exists for the withdrawal of the recognition of the kingship or queenship; and
- (b) consult the kingship or queenship council concerned, the National House, the Premier and the provincial house.

(5)(a) The investigation and the consultations contemplated in subsection (4)(a) and (b) must be completed within six months from the date of receipt of the application contemplated in subsection (2)(a). 55

(b) Upon completion of the investigation and the consultations as contemplated in paragraph (a), the Minister must forthwith submit a report to the President together with the application contemplated in subsection (2)(a). 60

- (6) If the President, after considering the report and the application submitted to him by the Minister as contemplated in subsection (5)(b), is satisfied that sufficient cause exists for the withdrawal of kingship or queenship, he or she may, by notice in the *Gazette* withdraw the recognition of the kingship or queenship, as the case may be.
- (7)(a) In the case of an application for the withdrawal of the recognition of a principal traditional community, the Premier must— 5
- (i) in writing, direct the MEC to investigate whether sufficient cause exists for the withdrawal of the recognition of the principal traditional community; and
 - (ii) consult the provincial house, any community that may be affected and the senior traditional leaders who form part of the principal traditional community. 10
- (b) The Premier may, in writing, direct the MEC to conduct the consultations referred to in paragraph (a)(ii) and determine a period within which such consultations must be finalised.
- (8)(a) A traditional community may apply to the Premier to withdraw its recognition as a traditional community. 15
- (b) If the traditional community forms part of a kingship or queenship or a principal traditional community, it must consult the kingship or queenship council or principal traditional council before it makes the application contemplated in paragraph (a).
- (9)(a) A kingship or queenship council or a principal traditional council may apply to the Premier to withdraw the recognition of a traditional community which forms part of such kingship or queenship or principal traditional community. 20
- (b) The kingship or queenship council or the principal traditional council must consult the relevant traditional community before it makes the application contemplated in paragraph (a).
- (10) An application for the withdrawal of the recognition of a traditional community contemplated in subsections (8) and (9) must set out the grounds on which the application is based and the details of the consultation contemplated in those subsections. 25
- (11) Before making a decision in respect of an application for withdrawal of recognition of a traditional community, the Premier must consult— 30
- (a) in the case of an application contemplated in subsection (8)(a), the provincial house, any community that may be affected, the kingship or queenship council or principal traditional council contemplated in subsection (8)(b); or
 - (b) in the case of an application contemplated in subsection (9)(a), the provincial house, any community that may be affected and the traditional community contemplated in subsection (9)(b). 35
- (12) If the Premier, after considering the application contemplated in subsection (8)(a) or (9)(a) and undertaking the consultation contemplated in subsection (11), is satisfied that sufficient cause exists for the withdrawal of the recognition of a traditional community, he or she may, by notice in the provincial *Gazette*, withdraw the recognition of the traditional community. 40
- (13)(a) A traditional council apply to the Premier to withdraw the recognition of a headmanship or headwomanship.
- (b) An application contemplated in paragraph (a) must set out the grounds on which it is based. 45
- (14) Before withdrawing the recognition of a headmanship or headwomanship, the Premier—
- (a) must consult the relevant headman or headwoman; and
 - (b) may investigate whether sufficient cause exists for the withdrawal of such recognition. 50
- (15) If the Premier is satisfied, after—
- (a) considering an application contemplated in subsection (13);
 - (b) undertaking the consultation contemplated in subsection (14)(a); and
 - (c) where applicable, considering the report in respect of the investigation contemplated in subsection (14)(b), 55
- that sufficient cause exists for the withdrawal of the recognition of the headmanship or headwomanship, the Premier may, by notice in the provincial *Gazette*, withdraw such recognition.
- (16)(a) The President or Premier, as the case may be, must withdraw the recognition of a kingship or queenship, principal traditional community, traditional community or headmanship or headwomanship if ordered to do so by a court. 60
- (b) The President, in the case of a kingship or queenship, and the Premier, in the case of a principal traditional community, traditional community or headmanship or

headwomanship, must give notice in the *Gazette* or provincial *Gazette*, as the case may be, of any withdrawal of recognition following the court order contemplated in paragraph (a).

(c) The notice contemplated in paragraph (b) must stipulate the legal, practical and other consequences of the withdrawal of recognition, if any, stipulated in the court order. 5

(17)(a) A Premier must, on an annual basis or when requested and in a format determined by the Minister, provide the Minister with a report on the withdrawal of recognition of principal traditional communities, traditional communities and headmanship or headwomanship.

(b) The Premier must submit a copy of the report referred to in paragraph (a) to the provincial house for noting. 10

Part 2

Khoi-San communities

Recognition of Khoi-San kingship, Khoi-San queenship, Khoi-San community and branch 15

5. (1) Two or more Khoi-San communities may apply to the President, by written submission to the Minister, to be recognised as a Khoi-San kingship or Khoi-San queenship, if the Khoi-San communities—

(a) recognise themselves as a distinct group of Khoi-San communities with a proven history of existence, from a particular point in time up to the present, distinct from other Khoi-San communities; 20

(b) are individually recognised as Khoi-San communities in terms of subsection (6);

(c) each has a recognised senior Khoi-San council;

(d) each has a recognised senior Khoi-San leader contemplated in section 7; 25

(e) recognise as their Khoi-San king or Khoi-San queen, a specific recognised senior Khoi-San leader who, in terms of custom and customary law, is regarded to be of a higher status than other Khoi-San leaders;

(f) have a historical system of Khoi-San leadership at a kingship or queenship level; and 30

(g) have an existence of distinctive cultural heritage manifestations, in terms of the custom and customary law of the community concerned.

(2) An application contemplated in subsection (1) must be accompanied by—

(a) a resolution of each Khoi-San council referred to in subsection (1)(c), indicating that such council forms part of the kingship or queenship being applied for; 35

(b) an application for the recognition of the position of a Khoi-San king or Khoi-San queen contemplated in section 7; and

(c) the respective communities' written customary law of succession and relevant genealogies for purposes of recognition and withdrawal of leadership positions. 40

(3)(a) The Minister may, upon receipt of an application as contemplated in subsection (1), investigate whether the relevant Khoi-San communities comply with the criteria set out in subsection (1).

(b) The Minister must, in respect of each application contemplated in subsection (1), consult the Premier, the National House, the provincial house and the senior Khoi-San leaders and branch heads of Khoi-San communities who fall under the kingship or queenship applied for. 45

(c) The investigation and consultations contemplated in paragraphs (a) and (b) must be completed within six months from the date of receipt of the application contemplated in subsection (1) after which the Minister must submit a report to the President. 50

(d) The President may, upon receipt of a report contemplated in paragraph (c), by notice in the *Gazette*, recognise the Khoi-San communities contemplated in subsection (1) as Khoi-San kingship or Khoi-San queenship, as the case may be.

(4)(a) A community may apply to the Premier to be recognised as a Khoi-San community, if the community— 55

(i) has a history of self-identification by members of the community concerned, as belonging to a Khoi-San community distinct from all other communities;

(ii) observes distinctive established Khoi-San customary law and customs;

- (iii) is subject to a system of hereditary or elected Khoi-San leadership with structures exercising authority in terms of customary law and customs of that community;
 - (iv) has an existence of distinctive cultural heritage manifestations;
 - (v) has a proven history of coherent existence of the community from a particular point in time up to the present; and 5
 - (vi) occupies a specific geographical area or various geographical areas together with other non-community members.
- (b) An application contemplated in paragraph (a) must be accompanied by—
- (i) an application for the recognition of the position of a senior Khoi-San leader of that community contemplated in section 10; and 10
 - (ii) a list of all community members which must in respect of each community member contain the following information:
 - (aa) Full names and surname;
 - (bb) identification number and a certified copy of his or her valid identification document or passport, or in the case of a community member who is younger than 16 years, a certified copy of his or her birth certificate; 15
 - (cc) physical address confirmed by documentary evidence, including the name of the province where such physical address is located;
 - (dd) contact details; 20
 - (ee) signature acknowledging his or her association with such community; and
 - (ff) any other information as may be requested by the Commission or as may be prescribed by the Minister.
- (c) In the case of any community member who is younger than 16 years, the information referred to in paragraph (b)(ii) must be provided by any parent or the legal guardian of such member and such parent or legal guardian must sign the list on behalf of the relevant member. 25
- (d) A person who has confirmed his or her association with a particular Khoi-San community by signing a list contemplated in paragraph (b)(ii), may not be a member of any other Khoi-San community. 30
- (e) Once a Khoi-San council has been established for a particular Khoi-San community, such council must—
- (i) update the list of members referred to in paragraph (b)(ii) at least once every three years; and
 - (ii) provide copies of such a list to the Minister, the Premier of the province where such council is situated and the Premiers of the provinces where any branch of such a community may have been recognised. 35
- (f) The Minister or the Premier may take the necessary steps to have the information contained in the list contemplated in paragraph (b)(ii) verified.
- (g) Only community members who are 18 years or older may participate in the official affairs of a Khoi-San community or council. 40
- (5) The Premier may, upon receipt of an application contemplated in subsection (4), investigate whether a community meets the criteria set out in subsection (4).
- (6) The Premier may, after consultation with the provincial house, by notice in the relevant provincial *Gazette*, recognise the community contemplated in subsection (4) as a Khoi-San community. 45
- (7)(a) A Khoi-San community may, where applicable, consist of branches.
- (b) A Khoi-San council may apply to the Premier for the recognition of a branch, if the branch—
- (i) is recognised by the Khoi-San community as a branch of that community; 50
 - (ii) consists of not less than 5% of the total number of members of such community as reflected in the list of community members referred to in subsection (4)(b)(ii);
 - (iii) will contribute to a more effective and efficient administration of the Khoi-San council; and
 - (iv) recognises the senior Khoi-San leader in terms of customary law and customs. 55
- (8)(a) If the Premier is of the view that the branch meets the criteria set out in subsection (7)(b), but such branch is situated in a province other than the province where the Khoi-San council is situated, the Premier of the province where the council is situated must request the Premier of the province where the branch is situated to recognise that branch. 60
- (b) The Premier of the province where the branch is situated may investigate whether a branch meets the criteria set out in subsection (7)(b).

(c) The Premier of the province where the branch is situated may recognise a branch that meets the criteria set out in subsection (7)(b).

(9) Where the Khoi-San community consists of branches in different provinces, the recognition of such branches must be done by the relevant Premiers by notice in the Provincial *Gazettes* of the provinces where the branches are situated. 5

(10)(a) Subject to paragraph (b), an application contemplated in subsections (1), (4) and (7)(b) must—

(i) during the period referred to in section 57(2)(a), be lodged with the Commission; and

(ii) be dealt with in accordance with sections 57(2)(b) and 58. 10

(b) Upon expiry of the period referred to in paragraph (a)(i), applications contemplated in subsections (1), (4) and (7)(b) must be lodged with the Premier.

(11)(a) A Premier must, on an annual basis or when requested by the Minister, provide the Minister with a report on the recognition of Khoi-San communities and branches.

(b) A copy of the report referred to in paragraph (a) must be submitted to the provincial house for noting. 15

Withdrawal of recognition of Khoi-San kingship, Khoi-San queenship, Khoi-San community and branch

6. (1)(a) The Khoi-San communities contemplated in section 5(1) may apply to the President, by written submission to the Minister, to withdraw the recognition of their Khoi-San kingship or Khoi-San queenship. 20

(b) An application contemplated in paragraph (a) must set out the grounds on which the application is based and must be accompanied by a resolution of the Khoi-San council of each of the Khoi-San communities making the application for withdrawal of recognition. 25

(2)(a) Upon receipt of an application contemplated in subsection (1), the Minister may investigate whether sufficient cause exists for the withdrawal of the recognition of the Khoi-San kingship or Khoi-San queenship.

(b) The Minister must, in respect of an application contemplated in subsection (1), consult the relevant Khoi-San kingship council or Khoi-San queenship council, the National House, the relevant Premier and the relevant Provincial House. 30

(c) An investigation and consultations contemplated in paragraphs (a) and (b) must be completed within six months from the date of receipt of the application contemplated in subsection (1) after which the Minister must submit a report to the President.

(3) The President may, upon receipt of a report contemplated in subsection (2)(c), by notice in the *Gazette*, withdraw the recognition of a Khoi-San kingship or a Khoi-San queenship, as the case may be. 35

(4)(a) A Khoi-San council may apply to the Premier to withdraw the recognition of a Khoi-San community or branch.

(b) An application contemplated in paragraph (a) must set out the ground on which it is based. 40

(5)(a) Before the withdrawal of a recognition, the Premier concerned must consult the relevant provincial house, any community that may be affected, the senior Khoi-San leaders and branch heads who form part of the Khoi-San community.

(b) The Premier may, in writing, direct the MEC to conduct the consultations referred to in paragraph (a) and determine a period within which such consultations must be finalised. 45

(6) The Premier concerned may, after the consultations referred to in subsection (5), by notice in the provincial *Gazette*, withdraw the recognition of a Khoi-San community or a branch. 50

(7)(a) The Khoi-San councils of two or more recognised Khoi-San communities may apply to the Premier to merge such communities into a single Khoi-San community.

(b) An application contemplated in paragraph (a) must set out the grounds on which it is based.

(8)(a) The Premier may recognise a merged Khoi-San community contemplated in subsection (7) and disestablish the individual Khoi-San communities that requested to be merged, by notice in the provincial *Gazette*. 55

(b) Whenever Khoi-San communities are merged, such merger automatically results in the disestablishment of any branch or Khoi-San council that has been established for such communities. 60

- (c) The merged Khoi-San community must establish a Khoi-San council in accordance with section 18 and may request that new branches for such merged community be recognised in accordance with section 5.
- (d) The notice referred to in paragraph (a) must stipulate the legal, practical and other consequences of the merger and disestablishment, including— 5
- (i) if applicable, the transfer of assets, liabilities and administrative and other records of the disestablished Khoi-San community, branches and councils; and
 - (ii) the leadership position of the merged Khoi-San community and the vacation of office of any office bearer of a disestablished Khoi-San community or branch.
- (9)(a) The Premier must withdraw the recognition of a Khoi-San community or branch if so ordered by a court. 10
- (b) The Premier must give notice in the provincial *Gazette* of any withdrawal of recognition in accordance with a court order contemplated in paragraph (a).
- (c) The notice contemplated in paragraph (b) must stipulate the legal, practical and other consequences of the withdrawal of recognition. 15
- (10)(a) A Premier must, on an annual basis or when requested and in a format determined by the Minister, provide the Minister with a report on the withdrawal of recognition of a Khoi-San community or branch.
- (b) A copy of the report referred to in paragraph (a) must be submitted to the relevant provincial house for noting. 20

Part 3

Traditional and Khoi-San leaders

Recognition of leadership positions

7. (1)(a) There are the following traditional leadership positions: 25
- (i) King or queen;
 - (ii) principal traditional leader;
 - (iii) senior traditional leader; and
 - (iv) headman or headwoman.
- (b) The position of principal traditional leader referred to in paragraph (a)(ii) only applies to a person who is deemed to be a principal traditional leader as defined in section 1. 30
- (2) There are the following Khoi-San leadership positions: 35
- (a) Khoi-San king or Khoi-San queen;
 - (b) senior Khoi-San leader; and
 - (c) branch head.
- (3) The following criteria apply to the recognition of traditional and Khoi-San leadership positions: 40
- (a) A proven history of existence of such leadership position within the community concerned;
 - (b) a proven history of acceptance of such leadership position by the community concerned; 40
 - (c) a history of functions and powers of the specific leadership position in terms of the established customary law and customs within the particular community;
 - (d) the recognition of the community in terms of this Act; and 45
 - (e) a proven history of either—
 - (i) hereditary leadership in terms of customary law and customs of the community, with or without a customary role for community participation in the determination or confirmation of the individual as a leader; or
 - (ii) elected leadership where, in terms of the customary law and customs of the community concerned, the leader is elected. 50
- (4)(a) An application for the recognition of a king or a queen or Khoi-San king or Khoi-San queen must be submitted to the Minister.
- (b) The Minister must within six months from receipt of the application determine whether the application complies with the criteria set out in subsection (3) and submit a report to the President. 55
- (5)(a) An application for the recognition of the position of a principal traditional leader, senior traditional leader, senior Khoi-San leader, headman, headwoman or branch head must be submitted to the Premier concerned.
- (b) Despite paragraph (a), all applications for the recognition of a Khoi-San king or 60

Khoi-San queen, senior Khoi-San leader or branch head must be lodged with the Commission until the period referred to in section 57(2)(a) has expired.

(c) After the period contemplated in paragraph (b), all applications for recognition must be lodged with the Premier in terms of sections 5 and 10, respectively.

(6)(a) Where there is evidence that an application contemplated in subsection (4) or (5) does not comply with the criteria referred to in subsection (3), the Minister or the Premier, as the case may be, may designate a committee to conduct an investigation in respect of the application. 5

(b) If the investigation relates to an application for—

(i) the recognition of a king or queen or Khoi-San king or Khoi-San queen, at least one member of the investigative committee must be a member of the National House; or 10

(ii) the recognition of a principal traditional leader, senior traditional leader, headman or headwoman, senior Khoi-San leader or branch head, at least one member of the investigative committee must be a member of the provincial house. 15

(c) Upon completion of its investigation, the investigative committee must submit a report to the Minister or the Premier, as the case may be, with findings on whether the application concerned, is compliant with the criteria referred to in subsection (3).

(d) If the report of the investigative committee relates to an application contemplated in subsection (4)(a), the Minister must, upon receipt of the report, in turn submit it to the President. 20

(7) The President or the Premier, as the case may be, may, after having considered—

(a) the application contemplated in subsection (4)(a) or (5)(a), as the case may be; and 25

(b) where applicable, the report of the investigative committee, recognise the traditional or Khoi-San leader contemplated in subsection (4)(a) or (5)(a), as the case may be.

(8) The recognition of a leadership position in terms of this section must be done by notice in the *Gazette* or provincial *Gazette*, as the case may be, and takes effect from the date of such publication. 30

(9)(a) When a senior traditional leader or senior Khoi-San leader is recognised as a king or queen or a Khoi-San king or Khoi-San queen in terms of this Act, the senior traditional or senior Khoi-San leadership position becomes vacant.

(b) If a senior traditional leader or senior Khoi-San leader was recognised as a king or queen or a Khoi-San king or Khoi-San queen prior to the commencement of this Act, the senior traditional or senior Khoi-San leadership position is regarded as being vacant. 35

(c) A vacant position contemplated in—

(i) paragraph (a) must be filled within 90 days of the vacancy occurring; or
(ii) paragraph (b) must be filled within 90 days of the date of commencement of this Act. 40

(d) A vacant senior traditional leadership or senior Khoi-San leadership position contemplated in paragraph (a) or (b) may be filled by—

(i) the recognition of another person as senior traditional leader or senior Khoi-San leader in accordance with section 8; or 45
(ii) the identification of a deputy traditional or Khoi-San leader in accordance with section 14.

(e) When the recognition of a kingship or a queenship or Khoi-San kingship or Khoi-San queenship is withdrawn in terms of section 4 or 6, as the case may be—

(i) the recognised king or queen or Khoi-San king or Khoi-San queen reverts to the position of senior traditional leader or senior Khoi-San leader, as the case may be, which he or she occupied prior to recognition as a king or queen or a Khoi-San king or Khoi-San queen; and 50

(ii) the recognition of the senior traditional leader or senior Khoi-San leader referred to in paragraph (d)(i) or the deputy traditional leader referred to in paragraph (d)(ii), as the case may be, terminates. 55

(f) A person whose recognition as senior traditional leader or senior Khoi-San leader or deputy traditional leader has terminated as contemplated in paragraph (e)(ii)—

(i) relinquishes all functions, roles, duties, responsibilities and rights associated with the relevant position he or she occupied; and 60

- (ii) is no longer entitled to receive any allowance or enabling resources contemplated in the Independent Commission for the Remuneration of Public Office-bearers Act.
- (g) Despite paragraph (f)(i) and (ii), a person contemplated in paragraph (f) would continue to receive the salary and benefits associated with the positions he or she occupied until his or her death. 5
- (10)(a) Any recognised traditional or Khoi-San leader may resign. 15
- (b) The resignation contemplated in paragraph (a) must be in writing and must—
- (i) in the case of a king or a queen, be submitted to the President;
 - (ii) in the case of any other recognised traditional or Khoi-San leader, be submitted to the Premier; or 10
 - (iii) in the case of a Khoi-San leader who was recognised by the Minister in terms of section 58, be submitted to the Minister and a copy thereof be submitted to the Premier.
- (c) A traditional or Khoi-San leader who resigns as such leader automatically relinquishes, with effect from the date of resignation, any salaries, allowances, benefits and rights associated with being a traditional or Khoi-San leader. 15
- (d) A traditional or Khoi-San leader who has resigned may not reapply for recognition.
- (e) The resignation of a traditional or Khoi-San leader does not affect succession in terms of customary law and customs of the particular community. 20
- (f) When a traditional or Khoi-San leader resigns as contemplated in this subsection, the relevant position becomes vacant and must be filled in accordance with customs and customary law and the relevant provisions of this Act, in respect of recognition, apply.
- (11) A person who holds himself or herself out as a recognised leader contemplated in subsection (1), is guilty of an offence and liable upon conviction to a fine or imprisonment not exceeding three years. 25

Recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman

- 8.** (1) The following process applies regarding the identification and application for the recognition of a king or queen or a successor to the principal traditional leader: 30
- (a) The royal family must, within 90 days of the position of a king or queen or principal traditional leader becoming vacant—
- (i) identify a person who, in terms of customary law and customs and this Act, qualifies to assume the position of a king or queen or principal traditional leader, as the case may be; and 35
 - (ii) apply to the President, by written submission to the Minister, or the Premier, as the case may be, for the recognition of the person so identified as a king or queen, or principal traditional leader;
- (b) an application contemplated in paragraph (a)(ii) must be accompanied by— 40
- (i) the particulars of the person so identified to fill the position of a king or queen, or principal traditional leader; and
 - (ii) the reasons for the identification of that person as king or queen, or principal traditional leader;
- (c) in the case of a king or queen, the President may, within 90 days of receipt of the application and after consultation with the Premier, recognise as a king or queen a person so identified in terms of paragraph (a)(i), taking into account whether a kingship or queenship has been recognised in terms of section 3; and 45
- (d) in the case of a principal traditional leader, the Premier may, within 90 days of receipt of application and after consultation with the MEC, recognise as the successor to a principal traditional leader a person so identified in terms of paragraph (a)(i), taking into account whether a principal traditional community still exists. 50
- (2) When the position of senior traditional leader, headman or headwoman is to be filled— 55
- (a) the royal family must, if hereditary succession applies, within 90 days of the vacancy occurring, identify a person who qualifies in terms of customary law and customs and this Act, to assume the position in question; or
 - (b) the community concerned must, if hereditary succession does not apply, within 90 days of the vacancy occurring, identify or elect a person who 60

qualifies in terms of customary law and customs and this Act, to assume the position of headman or headwoman in question.

(3)(a) In the case of—

- (i) hereditary succession referred to in subsection (2)(a), the royal family must, through the relevant customary structure, apply to the Premier for the recognition of the person so identified and provide the Premier with the particulars of such person; or
- (ii) headman or headwoman referred to in subsection (2)(b), the traditional council of the community concerned must apply to the Premier for the recognition of the person so identified or elected and provide the Premier with the particulars of such person.

(4) The Premier must, if satisfied that the person contemplated in subsection (2)(a) or (b), as the case may be, complies with the requirements of this Act, recognise that person as senior traditional leader, headman or headwoman, as the case may be.

(5) When the President recognises a king or queen, or a Premier recognises the successor to a principal traditional leader or recognises a senior traditional leader, headman or headwoman, the President or the Premier, as the case may be, must—

- (a) publish a notice in the *Gazette* recognising such person as a king or queen, or publish a notice in the relevant provincial *Gazette* recognising such person as a principal traditional leader, senior traditional leader, headman or headwoman;
- (b) issue a certificate of recognition to such person; and
- (c) inform the National House of the recognition of a king or queen and inform the relevant provincial house of the recognition of a principal traditional leader, senior traditional leader, headman or headwoman.

(6)(a) Where there is evidence that the identification of a person as a king or queen, principal traditional leader or senior traditional leader, or the identification or election of a person as a headman or headwoman, was not done in accordance with customary law and customs, the Minister or the Premier, as the case may be, must designate an investigative committee to investigate whether the identification or election of the person was done in accordance with the relevant customary law and customs.

(b) If the investigative committee contemplated in paragraph (a) is designated by—

- (i) the Minister, it must include at least one member of the National House; or
- (ii) the Premier, it must include at least one member of the provincial house.

(c) Upon completion of its investigation, the investigative committee must submit a report to the Minister or the Premier, as the case may be.

(d) If the findings of the investigative committee indicate that the identification or election of the person referred to in subsections (1) and (2) was not done in accordance with customary law and customs, the Minister or the Premier, as the case may be, must refer the report contemplated in paragraph (c), to the royal family or relevant traditional council for comments.

(e) The referral contemplated in paragraph (d) must be done within 30 days of the date of receipt of the report from the investigative committee.

(f) In the case of a king or queen, the Minister must also refer the report contemplated in paragraph (c) and the royal family's comments contemplated in paragraph (d), if any, to the President.

(7) The President or the relevant Premier, as the case may be, may, within 60 days of the date of receipt and consideration of the report contemplated in subsection (6), recognise a person as king or queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be.

(8)(a) The Premier must, on an annual basis or when requested and in the format determined by the Minister, provide the Minister with a report on the recognition of a senior traditional leader, headman or headwoman.

(b) A copy of the report referred to in paragraph (a) must be submitted to the provincial house for noting.

Withdrawal of recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman

9. (1) The President or the Premier, as the case may be, may withdraw the recognition of a traditional leader, if—

- (a) the traditional leader—

- (i) has been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
 - (ii) is declared mentally unfit or mentally disordered by a court; or
 - (iii) no longer permanently resides within the area of the kingship or queenship council, principal traditional council or traditional council, as the case may be; 5
 - (iv) has been removed from office in terms of the code of conduct; or
 - (v) has transgressed customary law and customs on a ground that warrants withdrawal of recognition; or
 - (b) so ordered by a court. 10
- (2) Any person may, within 90 days of the date of becoming aware of any of the grounds referred to in subsection (1)(a)(i) to (v), apply to the President or the Premier for the withdrawal of the recognition of a traditional leader.
- (3) If the withdrawal of recognition of a traditional leader contemplated in subsection (1) relates to— 15
- (a) a king or queen, the President must consult the Minister, the Premier and the royal family before he or she withdraws the recognition; or
 - (b) a principal traditional leader, senior traditional leader, headman or headwoman, the Premier must consult the MEC and the royal family or relevant traditional council, as the case may be, before he or she withdraws the recognition. 20
- (4) When the President or the Premier, as the case may be, withdraws the recognition of a traditional leader, he or she must—
- (a) publish in the *Gazette* or provincial *Gazette*, as the case may be, a notice with particulars of such traditional leader and the date on which such withdrawal takes effect; and 25
 - (b) inform the royal family or traditional council concerned and the relevant traditional leader of such withdrawal.
- (5) Where the recognition of a traditional leader is withdrawn in terms of this section, the royal family must identify a successor in accordance with section 8 and the relevant customary law and customs. 30
- (6)(a) A Premier must, on an annual basis or when requested in a format determined by the Minister, provide the Minister with a report on the withdrawal of recognition of a senior traditional leader, headman or headwoman.
- (b) A copy of the report referred to in paragraph (a) must be submitted to the relevant provincial house for noting. 35

Recognition of Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head

- 10.** (1) Whenever the position of a Khoi-San king or Khoi-San queen is to be filled, the following process applies: 40
- (a) The royal family concerned must, within 90 days after the need arises for the position of a Khoi-San king or Khoi-San queen, and with due regard to applicable customary law and customs—
 - (i) identify a person who, in terms of customary law and customs and this Act, qualifies to assume the position of a Khoi-San king or Khoi-San queen; and 45
 - (ii) apply to the President, by written submission to the Minister, for the recognition of the person so identified as a Khoi-San king or Khoi-San queen;
 - (b) an application contemplated in paragraph (a)(ii) must set out— 50
 - (i) the particulars of the person so identified to fill the position of a Khoi-San king or Khoi-San queen; and
 - (ii) the reasons for the identification of that person as Khoi-San king or Khoi-San queen.
 - (c) The President may, within 90 days of receipt of application and after consultation with the Minister, recognise as a Khoi-San king or Khoi-San queen, a person so identified in terms of paragraph (a)(i), taking into account whether a Khoi-San kingship or Khoi-San queenship has been recognised in terms of section 5. 55

- (2)(a) When the position of a senior Khoi-San leader or branch head is to be filled—
- (i) the royal family concerned, in the event of hereditary succession must, within 90 days after the need arises for a position to be filled and in accordance with the applicable customary law and customs and this Act, identify a senior Khoi-San leader as the hereditary successor; or 5
 - (ii) the Khoi-San council, in the case of succession by election must, within 90 days after the need arises for a position to be filled and in accordance with the applicable customary law and customs and this Act, elect a senior Khoi-San leader or a branch head to assume the position in question.
- (b) The royal family or the Khoi-San council, as the case may be, must apply to the Premier for the recognition of the person identified or elected in terms of paragraph (a)(i) or (b)(ii). 10
- (3) In the case of a merged Khoi-San community contemplated in section 6(7) and (8), an elected branch head contemplated in subsection (2)(a)(ii) must be elected for a period of five years which term must coincide with the term of the Khoi-San council 15 concerned.
- (4)(a) An election referred to in subsection (2)(a)(ii) must be conducted in terms of rules and procedures adopted by the Khoi-San council concerned.
- (b) The Minister may make regulations in respect of an election referred to in subsection (2)(b). 20
- (5) The royal family or Khoi-San council, as the case may be, must inform the Premier concerned of the particulars of the person identified or elected as contemplated in subsection (2).
- (6) The Premier concerned must, subject to subsections (7) and (8), where a senior Khoi-San leader or branch head has been identified or elected— 25
- (a) by notice in the relevant provincial *Gazette*, recognise the person identified or elected in terms of subsection (2);
 - (b) issue a certificate of recognition to the person so identified or elected and, subject to subsection (4), indicate the term of office of an elected person; and
 - (c) inform the Minister and the relevant provincial house of the particulars of the person referred to in paragraph (a). 30
- (7)(a) Where a branch head who has been elected resides in a province other than the province where the relevant Khoi-San council is situated, the Premier of the province within which the branch is situated must, by notice in the relevant provincial *Gazette* and after consultation with the Premier of the province where the Khoi-San council is situated, recognise the branch head concerned. 35
- (b) The provisions of subsection (6)(b) and (c) apply to the recognition of a branch head in terms of paragraph (a).
- (8) Where there is evidence that the election or identification of a person referred to in subsection (1) and (2) was not done in accordance with the rules and procedures 40 contemplated in subsection (4) or customary law and customs, the Premier concerned—
- (a) may cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one Khoi-San member of the provincial house, to provide a report on whether the identification or election of the person referred to in subsection (1) or (2) was 45 done in accordance with customary law and customs or the rules and procedures contemplated in subsection (4) and if not, which person should be so identified or whether a new election should be held; and
 - (b) must, where the findings of the investigative committee indicate that the identification or election of the person referred to in subsection (1) or (2) was 50 not done in terms of customary law and customs or the rules and procedures contemplated in subsection (4), refer the report contemplated in paragraph (a) to the royal family or Khoi-San council, as the case may be, for its comments.
- (9) The President or the relevant Premier, as the case may be, may, within 60 days of receipt of the report of the investigative committee as well as the comments of the royal 55 family or Khoi-San council—
- (a) recognise a person as a Khoi-San king or Khoi-San queen, senior Khoi-San leader or a branch head; or
 - (b) advise the Khoi-San council that the election of a Khoi-San king or Khoi-San queen, senior Khoi-San leader or branch head was not done in terms of 60 customary law and customs or in accordance with the rules and procedures contemplated in subsection (4) and that a re-election must be held within the time determined by the Premier.

(10)(a) A Premier must, on an annual basis or when requested and in a format determined by the Minister, provide the Minister with a report on the recognition of Khoi-San leaders and branch heads.

(b) A copy of the report referred to in paragraph (a) must be submitted to the relevant provincial house for noting.

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Withdrawal of recognition of Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head

11. (1) The recognition of a Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head, subject to the provisions of subsection (2)—

(a) must be withdrawn if he or she— 10

(i) has been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;

(ii) is declared mentally unfit or mentally disordered by a court; or

(b) may be withdrawn if he or she—

(i) has been removed from office in terms of the code of conduct; or 15

(ii) has transgressed customary law or customs, on a ground that warrants withdrawal of recognition; and

(c) must be withdrawn if so ordered by a court.

(2)(a) Whenever, in the case of a Khoi-San king or a Khoi-San queen, any of the grounds referred to in subsection (1) come to the attention of the royal family, the royal family must, within 90 days from the date of becoming aware of such grounds and through the relevant customary structure— 20

(i) inform the President, the Premier concerned, the Minister and the senior Khoi-San leaders within the Khoi-San kingship or Khoi-San queenship, of the particulars of such Khoi-San king or Khoi-San queen, and of the particulars relating to the specific ground referred to in subsection (1); and 25

(ii) give written confirmation to the President that the Premier concerned and the Minister have been informed accordingly.

(b) Whenever any of the grounds referred to in subsection (1)(b) come to the attention of the royal family, the royal family may recommend the withdrawal of the recognition of the Khoi-San king or Khoi-San queen, and must furnish the President with reasons for such recommendation. 30

(3)(a) Whenever, in the case of a senior Khoi-San leader or branch head, any of the grounds referred to in subsection (1) come to the attention of the royal family or Khoi-San council, as the case may be, the royal family or Khoi-San council must, within 90 days from the date of becoming aware of such grounds and through the relevant customary structure inform the Premier of the province where the royal family or branch is situated of the particulars of such senior Khoi-San leader or branch head and of the particulars relating to the specific grounds referred to in subsection (1). 35

(b) Whenever, in the case of a senior Khoi-San leader or branch head, any of the grounds referred to in subsection (1)(b) come to the attention of the royal family or Khoi-San council, the royal family or Khoi-San council may recommend the withdrawal of the recognition of the senior Khoi-San leader or branch head, and must furnish the Premier with reasons for such recommendation. 40

(4)(a) When the President or relevant Premier is informed of the presence of any of the grounds referred to in subsection (1)(a), the President or relevant Premier must, after consultation with the Minister or member of the Executive Council responsible for traditional affairs in the particular province, as the case may be, subject to subsections (5) and (6), withdraw the recognition of the relevant Khoi-San king or Khoi-San queen, senior Khoi-San leader or branch head. 45

(b) When the President or relevant Premier is informed of the presence of any of the grounds referred to in subsection (1)(b), the President or Premier may— 50

(i) after having considered the information referred to in subsection (2)(a); and

(ii) where applicable, after having considered any recommendation and reasons as contemplated in subsection (2)(b), 55

withdraw the recognition of the Khoi-San king or Khoi-San queen, senior Khoi-San leader or branch head or refuse to withdraw such recognition: Provided that if the President or Premier refuses to withdraw such recognition, he or she must in writing provide reasons to the royal family or Khoi-San council, as the case may be: Provided further that if the President refuses to withdraw such recognition, he or she must inform the relevant Premier and the Minister accordingly. 60

- (5) When the President or relevant Premier withdraws the recognition of a Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head—
- (a) the President must cause a notice with particulars of such Khoi-San king or Khoi-San queen on which such withdrawal takes effect to be published in the *Gazette*; 5
 - (b) the Premier must cause a notice with particulars of such senior Khoi-San leader or branch head and the date on which such withdrawal takes effect to be published in the provincial *Gazette*; and
 - (c) the President or the relevant Premier, as the case may be, inform the royal family or Khoi-San council concerned and the senior Khoi-San leader or branch head concerned of such withdrawal. 10
- (6)(a) Where there is evidence that the withdrawal of the recognition of a Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head was not based on any of the grounds set out in subsection (1), or that the information which was brought to the President's or Premier's attention in accordance with subsection (2)(a)(i) was provided in bad faith, or that a recommendation made by the royal family or Khoi-San council as contemplated in subsection (2)(b), was done in bad faith, the President or Premier, as the case may be, must cause an investigation to be conducted by an investigative committee designated by the President or Premier which committee must, in the case of a Khoi-San king or Khoi-San queen, include at least one member of the National House, and in the case of senior Khoi-San leader and branch head, include at least one Khoi-San member of the relevant provincial house, to provide a report as well as recommendations on whether the withdrawal of the recognition of the senior Khoi-San leader or branch head was done in accordance with the grounds set out in subsection (1), or whether the information brought to the attention of the President or Premier was provided in bad faith or not, or whether the recommendation of the royal family or Khoi-San council was made in bad faith or not. 15 20
- (b) Where the report of the investigative committee indicates that—
 - (i) the withdrawal of the recognition of the Khoi-San king or Khoi-San queen, senior Khoi-San leader or branch head was not done in accordance with any of the grounds set out in subsection (1); 30
 - (ii) that the information brought to the President's or Premier's attention was provided in bad faith; or
 - (iii) or that the recommendation of the royal family or Khoi-San council was made in bad faith, 35
 the President or Premier, as the case may be, must refer the report to the royal family or Khoi-San council, as the case may be, for its comments and the royal family or Khoi-San council must provide the Premier with written comments within 60 days from the date of referral.
 - (c) The President or Premier, as the case may be, may within 60 days of receipt of the report of the investigative committee as well as the comments of the royal family or Khoi-San council, where applicable— 40
 - (i) refuse to withdraw the recognition of a Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head if the information provided or the recommendations made by the royal family or Khoi-San council were done in bad faith; or 45
 - (ii) by notice in the *Gazette* or provincial *Gazette*, as the case may be, confirm the withdrawal of recognition of the Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head concerned or revoke such withdrawal of recognition: Provided that if the withdrawal of recognition is revoked, the relevant Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head shall consequentially be regarded as reinstated from the date on which the recognition was withdrawn. 50
- (7) If a senior Khoi-San leader or branch head whose recognition has been withdrawn—
- (a) occupied a position of hereditary leadership as contemplated in section 7(2)(e)(i), a successor or an acting senior Khoi-San leader as contemplated in section 13(1), as the case may be, must be identified by the royal family in accordance with the provisions of section 10 or 13 respectively; or 55
 - (b) was elected as contemplated in section 7(2)(e)(ii), a successor must be elected by the Khoi-San council in accordance with the provisions of section 10: Provided that a person elected as branch head in terms of this paragraph is elected for the unexpired term of his or her predecessor. 60

(8) Where the recognition of a Khoi-San king or Khoi-San queen, senior Khoi-San leader and branch head is withdrawn in accordance with this section, the royal family or relevant Khoi-San council, as the case may be, must identify a successor in accordance with section 10 and the relevant customary law and customs.

(9)(a) Where the royal family or Khoi-San council, as the case may be, recommended the withdrawal of the recognition of a branch head who resides in a province other than the province where the Khoi-San council is situated, the Premier of the province where the Khoi-San council is situated must request the Premier of the province that recognised the branch head to withdraw the recognition of such branch head.

(b) The provisions of subsections (5) and (6) apply to a withdrawal in terms of paragraph (a).

(10)(a) A Premier must, on an annual basis or when requested and in a format determined by the Minister, provide the Minister with a report on the withdrawal of recognition of Khoi-San leaders and branch heads.

(b) A copy of the report referred to in paragraph (a) must be submitted to the relevant provincial house for noting.

Recognition of regent

12. (1) Where the hereditary successor to the position of a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader identified in terms of section 8 or 10, as the case may be, is regarded as a minor—

(a) the royal family concerned must, within 90 days of the death of a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader—

- (i) identify a regent to assume leadership on behalf of the minor, after taking into account whether, in the case of a regent to the position of a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman or headwoman any of the grounds referred to in section 9(1) or 16(11)(h) or 16(14) apply to such regent, or whether, in the case of a regent to a senior Khoi-San leader, any of the grounds referred to in section 11(1) or 16(14) apply to such regent; and
- (ii) through the relevant customary structure and with due regard to applicable customary law and customs, inform the Premier concerned of the particulars of the person identified as regent and the reasons for the identification of that person; and

(b) the Premier concerned must, with due regard to applicable customary law and customs and subject to subsections (2) and (3), recognise the regent identified by the royal family in respect of the position of a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader: Provided that the recognition of a regent must be reviewed by the Premier concerned at least every two years.

(2) Where the royal family fails to identify a regent as contemplated in subsection (1), the Premier must, after consultation with the royal family and after taking into account whether any of the grounds contemplated in subsection (1)(a)(i) are applicable, identify a suitable person as regent.

(3) Whenever a Premier recognises a regent as contemplated in subsection (1), he or she must—

- (a) publish a notice in the relevant provincial *Gazette* which notice must—
 - (i) indicate the full names of the minor stating that such minor is the rightful heir to the position: Provided that consent is provided by the parent or legal guardian;
 - (ii) indicate that the minor recognised in subparagraph (i) will assume his or her position upon reaching the age of majority and the relevant date of attainment of majority; and
 - (iii) recognise the person so identified as a regent in terms of subsection (1) for the period until the rightful heir reaches the age of majority;
- (b) issue a certificate of recognition to the identified regent;
- (c) issue an undertaking by the regent that he or she shall relinquish the position of a regent on the date on which the rightful heir as indicated in paragraph (a); and

- (d) inform the Minister and the relevant provincial house of the recognition of a regent, and identification of the minor as the rightful heir.
- (4) A regent is responsible for the performance of the functions that are attached to the relevant position and is entitled to the salary and allowances attached to such position.
- (5) The provisions of section 10(7) apply with the necessary changes in respect of a regent identified for a senior Khoi-San leader. 5
- (6) Where there is evidence that the identification of a person as regent was not done in accordance with customary law or customs, the Premier concerned—
- (a) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one member of the relevant provincial house, to provide a report on whether the identification of the person referred to in subsection (1) was done in accordance with customary law and customs and if not, which person should be so identified; and 10
- (b) must, where the findings of the investigative committee indicate that the identification of the person referred to in subsection (1) was not done in terms of customary law and customs, refer the report contemplated in paragraph (a) to the royal family for its comments. 15
- (7) The Premier concerned may, within 60 days of receipt of the report of the investigative committee as well as the comments of the royal family, recognise a person as a regent. 20
- (8) As soon as the successor to the position of a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader, attains the age of majority, the regent recognised in terms of subsection (1) automatically relinquishes his or her position as regent, and the rightful successor— 25
- (a) in the case of a king or queen, Khoi-San king or Khoi-San queen, must be recognised by the President after consultation with the Minister as contemplated in section 8(1)(b), and a certificate of recognition as contemplated in section 8(3)(b) must be issued after his or her name has been published in the *Gazette*; 30
- (b) in the case of a principal traditional leader, senior traditional leader, headman or headwoman, must be recognised by the Premier concerned in terms of section 8(1)(c) or 8(2)(d), as the case may be, and a certificate of recognition contemplated in section 8(3)(b) must be issued after his or her name has been published in the relevant provincial *Gazette*; or 35
- (c) in the case of a senior Khoi-San leader, must be recognised by the Premier concerned in terms of section 10(6)(a), and a certificate of recognition contemplated in section 10(6)(b) must be issued after his or her name has been published in the relevant provincial *Gazette*. 40
- (9) Where a regent has been recognised in respect of the position of a king or queen, Khoi-San king or Khoi-San queen, the Premier concerned must inform the President and the Minister—
- (a) of the particulars of the regent;
- (b) when the regent is supposed to relinquish his or her position as regent; and 45
- (c) if applicable, of the withdrawal of the recognition of the regent.
- (10) If the successor to the position of a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader dies while still being a minor, the regent automatically and immediately relinquishes his or her position. 50
- (11) In instances where—
- (a) the position of a king, queen, Khoi-San king, Khoi-San queen, senior traditional leader, headman, headwoman or senior Khoi-San leader has been recognised for the first time in terms of section 8 or 10, as the case may be;
- (b) such leadership position is regarded as hereditary in nature; and 55
- (c) the person identified or elected to assume such leadership position is a minor, the provisions of this section apply with the necessary changes.

Recognition of acting traditional and Khoi-San leader

13. (1) Within 90 days of becoming aware of any of the instances mentioned in subparagraphs (i), (ii) and (iii)—
- (a) a royal family must identify a suitable person to act as a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman or headwoman, after taking into account whether any of the grounds referred to in section 9(1), 16(11)(h) or 16(14) apply to such person; or
 - (b) a royal family or Khoi-San council, as the case may be, must identify a suitable person to act as a senior Khoi-San leader or branch head, as the case may be, after taking into account whether any of the grounds referred to in section 11(1) or 16(14) apply to such a person,
- where—
- (i) a successor—
 - (aa) to the hereditary position of a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader has not been identified by the royal family concerned in terms of section 8 or 10, as the case may be; or
 - (bb) to the position of senior Khoi-San leader or branch head has not been elected by the Khoi-San council as contemplated in section 10(2)(b);
 - (ii) the identification of a successor to the position of a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head is being dealt with in terms of section 8(4) or 10(8), as the case may be; or
 - (iii) a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head, as the case may be, is unable to perform his or her functions under circumstances other than those provided for in section 14 for—
 - (aa) the treatment of illness for a period of more than three months;
 - (bb) study purposes for a period of more than three months; or
 - (cc) any other lawful purpose.
- (2) Where the royal family or Khoi-San council fails to identify a suitable person as contemplated in subsection (1), the Premier must, after consultation with the royal family or Khoi-San council, as the case may be, and after taking into account whether any of the grounds contemplated in subsection (1) is applicable, identify a suitable person to act as a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head, as the case may be.
- (3) Where a person has been identified to act as a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head, the royal family or Khoi-San council, as the case may be, must, within seven days of the identification of an acting person, inform the Premier concerned of the particulars of the person so identified and the reasons for the identification of that person.
- (4) A person identified to act as a king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head must, subject to subsection (5), be recognised by the Premier concerned by notice in the relevant provincial *Gazette* and the Premier must—
- (a) issue a certificate of recognition to the person identified to act in a particular position; and
 - (b) inform the Minister of the recognition of an acting king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head and inform the relevant provincial house of the recognition of any other acting leader:
- Provided that an acting recognition must be reviewed at least every two years by the Premier concerned.
- (5)(a) Where there is evidence that the identification of a person as acting king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman or headwoman was not done in accordance with customary law or customs, the Premier concerned—

- (i) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one member of the relevant provincial house, to provide a report on whether the identification of the person referred to in subsection (1) was done in accordance with customary law and customs and if not, which person should be so identified; and 5
- (ii) must, where the findings of the investigative committee indicate that the identification of the person referred to in subsection (1) was not done in terms of customary law and customs, refer the report contemplated in subparagraph (i) to the royal family for its comments.

(b) The provisions of section 10(7) apply with the necessary changes in respect of the identification of the acting senior Khoi-San leader or branch head. 10

(6) A person who has been recognised as an acting king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head in terms of this section, is responsible for the performance of the functions that are attached to the relevant position and is entitled to the salary and allowances attached to such position: Provided that the king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader and branch head 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 so acting. 15 20

(7) Where a person has been identified as an acting king or queen or Khoi-San king or Khoi-San queen, the Premier concerned must inform the President and the Minister of—

- (a) the acting recognition; and 25
- (b) if applicable, the withdrawal of recognition of the person who has been identified as an acting king or queen, or Khoi-San king or Khoi-San queen.

(8) Whenever the successor to a leadership position has been identified or elected as contemplated in subparagraph (i) of subsection (1), or an investigation as contemplated in subparagraph (ii) of subsection (1) has been finalised, or the circumstances referred to in subparagraph (iii) of subsection (1) are no longer applicable, any relevant acting recognition shall automatically lapse on the date on which the relevant leader referred to in subparagraph (i) or (ii) of subsection (1) is recognised by notice in the *Gazette* or provincial *Gazette*, as the case may be, or the date on which the leader referred to in subparagraph (iii) of subsection (1) resumes his or her functions. 30 35

Recognition of deputy traditional and Khoi-San leader

14. (1) Any senior traditional leader, headman or headwoman may, with the concurrence of the relevant royal family, within 90 days of any of the circumstances set out in paragraphs (a) to (f) occurring, identify a deputy to act in his or her stead whenever that senior traditional leader, headman or headwoman— 40

- (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;
- (e) holds a full-time position in any house of traditional and Khoi-San leaders; or 45
- (f) is employed on a full-time basis by any employer:

Provided that such senior traditional leader, headman or headwoman must, prior to the identification of a deputy, take into account whether any of the grounds referred to in section 9(1), 16(11)(h) or 16(14) apply to such deputy.

(2) Where the senior traditional leader, headman or headwoman fails to identify a suitable person as contemplated in subsection (1), the Premier must, after consultation with the relevant leader and royal family, and after taking into account whether any of the grounds contemplated in subsection (1) applies to such person, identify a suitable person as deputy. 50

(3) A senior Khoi-San leader must, with the concurrence of the relevant royal family, within 90 days of any of the circumstances set out in subsection (1)(a) to (f) occurring, identify a suitable person as deputy to act in the stead of that senior Khoi-San leader: Provided that such senior Khoi-San leader must, prior to the identification of a deputy, take into account whether any of the grounds referred to in section 11(1) or 16(14) apply to such a person. 55 60

(4) Where the senior Khoi-San leader fails to identify a suitable person as contemplated in subsection (3), the Premier must, after consultation with the relevant leader and royal family, and after taking into account whether any of grounds contemplated in subsection (1) apply to such person, identify a suitable person as deputy. 5

(5) A royal family referred to in subsection (1) or (3) must, within seven days of the identification of a deputy and through the relevant customary structure, inform the Premier concerned of the particulars of the person identified as deputy traditional leader in terms of subsection (1) or deputy senior Khoi-San leader in terms of subsection (3), and the reasons for the identification of that person. 10

(6) The Premier concerned may, with due regard to applicable customary law and customs and subject to subsection (8), recognise the deputy identified in terms of subsection (1) or (3) and must—

(a) issue a certificate of recognition to such deputy traditional leader or deputy senior Khoi-San leader; and 15

(b) inform the relevant provincial house of the recognition of such deputy leader: Provided that the recognition of a person as a deputy shall automatically lapse with effect from the date that the senior traditional leader, headman, headwoman or senior Khoi-San leader ceases to occupy a position referred to in subsection (1). 20

(7) The provisions of section 10(7) apply with the necessary changes in respect of the identification of a deputy senior Khoi-San leader. 20

(8) Where there is evidence that the identification of a person as deputy senior traditional leader, headman or headwoman was not done in accordance with customary law or customs, the Premier concerned—

(a) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one member of the relevant provincial house, to provide a report on whether the identification of the person referred to in subsection (1) was done in accordance with customary law and customs and if not, which person should be so identified; and 25 30

(b) must, where the findings of the investigative committee indicate that the identification of the person referred to in subsection (1) was not done in terms of customary law or customs, refer the report contemplated in paragraph (a) to the royal family for its comments. 30

(9) Any recognition in terms of this section must be reviewed by the Premier concerned at least every two years in order to establish whether the reasons for having identified and recognised a deputy are still applicable. 35

(10) A person who has been recognised as a deputy in terms of this section is responsible for the performance of the functions that are attached to the relevant position and is entitled to the salary and allowances attached to such position: Provided that the senior traditional leader, headman, headwoman or senior Khoi-San leader in whose stead a person has been recognised as deputy in terms of this section, is not entitled to any salary and allowances attached to the relevant position for the duration of the recognition of such deputy. 40

Functions and resources of traditional and Khoi-San leaders 45

15. (1) A traditional or Khoi-San leader performs the functions provided for—

(a) in terms of customary law and customs of the traditional or Khoi-San community concerned; and

(b) in terms of any applicable national or provincial legislation.

(2) The Minister may, taking into account a recommendation made by the Independent Commission for the Remuneration of Public Office-bearers in terms of section 8(4)(c) of the Independent Commission for the Remuneration of Public Office-bearers Act, and after consultation with all Premiers, by notice in the *Gazette*, determine the resources to be made available to traditional and Khoi-San leaders as may be necessary to enable them to perform their functions effectively. 50 55

Part 4

Traditional and Khoi-San councils

Establishment of kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council

16. (1) A kingship or a queenship, Khoi-San kingship or Khoi-San queenship, or a principal traditional community contemplated in section 63(8)(c), or a traditional community contemplated in section 3, which has been recognised by the President or the Premier, as the case may be, must, within a period of two years of such recognition or any such further period as the Minister may determine, establish a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council, as the case may be. 5

(2)(a) In any instance where—

- (i) a kingship or queenship, principal traditional community or traditional community has been recognised prior to the publication of the formula contemplated in subsection (2), the period of two years shall commence from the date of publication of such formula; 10
- (ii) a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council could not be established as a result of a dispute or vacancy, that kingship or queenship, Khoi-San kingship or Khoi-San queenship, principal traditional community or traditional community must establish a council within a period of 12 months after the dispute is resolved or the vacancy is filled or within any other time that may be determined by the Minister after consultation with the Premier of the province concerned; or 15 20
- (iii) a kingship or queenship, Khoi-San kingship or Khoi-San queenship, principal traditional community or traditional community has been recognised prior to the publication of the formula contemplated in subsection (2), the period of two years shall commence from the date of publication of such formula. 20

(b) The provisions of section 63(1)(d) and (4) apply in respect of a kingship or queenship council, Khoi-San kingship or Khoi-San queenship council, principal traditional council and traditional council that was established prior to the commencement of this Act. 25

(3)(a) A kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, a principal traditional council, and a traditional council consists of a number of members determined by the Minister, by formula published by notice in the *Gazette* after consultation with— 30

- (i) in the case of a kingship or queenship council or Khoi-San kingship or Khoi-San queenship council or principal traditional council—
 - (aa) the king or queen, Khoi-San king or Khoi-San queen or principal traditional leader, as the case may be; 35
 - (bb) a forum of not more than five members of the royal family designated by the royal family concerned; and
 - (cc) a forum of not more than 20 senior traditional leaders or senior Khoi-San leaders, as the case may be, under the kingship or queenship, Khoi-San kingship council, Khoi-San queenship council or principal traditional community, designated by the senior traditional leaders or senior Khoi-San leaders from amongst themselves, as the case may be; or 40
- (ii) in the case of a traditional council, the relevant Premiers and provincial houses. 45

(b) At least 50% of the members of a kingship or queenship council, principal traditional council, Khoi-San kingship council or Khoi-San queenship council or traditional council must be women: Provided that if this requirement cannot be met, the Minister may, upon receipt of reasons, determine a lower threshold for the particular kingship or queenship council or the relevant Premier may, upon receipt of reasons, determine a lower threshold for the particular principal traditional council or traditional council. 50

(c) The membership of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council comprises—

- (i) 60% of selected traditional leaders or Khoi-San leaders, as the case may be, and members of the traditional community or Khoi-San community selected, subject to subsection (4) and in terms of that community's customs, by the king or queen, Khoi-San king or Khoi-San queen, principal traditional leader, senior traditional leader or senior Khoi-San leader, who is an *ex officio* member and chairperson of the relevant council, taking into account the need for overall compliance with paragraphs (b) and (c): Provided that if, in the case of traditional councils or Khoi-San councils, there are no recognised headman or 55 60

headwoman or branch heads, as the case may be, only community members must be selected; and

- (ii) 40% of members elected in terms of paragraph (f) in the case of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, or elected in terms of section 21 in the case of a traditional council. 5

(e) The selection of the members of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council as contemplated in this section must be finalised before the election of members as contemplated in this section, and the names of such selected members must be made public within 14 days from the date of such selection: Provided that any election in the case of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council or principal traditional council must take place within 28 days of the names of the selected members having been made public and in the case of a traditional council within 21 days of the names of the selected members having been made public. 10 15

(f) A kingship or queenship, Khoi-San kingship or Khoi-San queenship, principal traditional community or traditional community must, within 14 days of the date of an election, submit the names of the members that have been selected and elected to the Premier concerned. 20

(g) Each traditional council or Khoi-San council, falling within the area of jurisdiction of the kingship or queenship, Khoi-San kingship or Khoi-San queenship or principal traditional community concerned, must elect one person from the elected members of that council, to serve as a member referred to in paragraph (d)(ii): Provided that where the number of persons so elected are less than the number of members contemplated in paragraph (d)(ii), the traditional councils or Khoi-San council, as the case may be, must each elect one additional person from amongst the elected members of that council: Provided further that where the number of persons so elected exceed the number of members contemplated in paragraph (d)(ii), the persons elected by the traditional councils or Khoi-San council must elect from amongst themselves the number of persons contemplated in paragraph (d)(ii). 25 30

(h)(i) The formula contemplated in paragraph (a) must be published in the *Gazette* within two years from the date of commencement of this Act, or any further period as determined by the Minister.

(ii) The Minister may, from time to time, revoke, amend or revise the formula contemplated in paragraph (a). 35

(4)(a) The forum of not more than five members of the royal family designated by the royal family may assist the king or queen, Khoi-San king or Khoi-San queen, principal traditional leader or senior traditional leader with the selection contemplated in subsection (3)(d)(i). 40

(b) The selection of the members contemplated in subsection (3)(d)(i) by a king or queen, Khoi-San king or Khoi-San queen, principal traditional leader or senior traditional leader is subject to the concurrence of the forum referred to in paragraph (a).

(c) If there is no concurrence as referred to in paragraph (b), the king or queen, Khoi-San king or Khoi-San queen, principal traditional leader or senior traditional leader, as the case may be, must submit the names of the persons who were nominated for selection as contemplated in paragraph (a) to the Premier concerned and the Premier must, after consultation with such leader and the forum referred to in paragraph (a), select the required number of members as contemplated in subsection (3)(d)(i). 45

(5)(a)(i) The term of office of the members of a traditional council, excluding the senior traditional leader, is not more than five years and must be aligned to the term of office of the National House: Provided that, notwithstanding anything to the contrary contained in any law, the term of any traditional council that was established and constituted prior to the commencement of this Act, will subject to section 63(18) expire on 31 March 2027: Provided further that any term of office of any such council constituted or established prior to or after the commencement of this Act, shall expire every five years on 31 March, calculated from 31 March 2027. 50 55

(ii) The term of office of the members of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, or a principal traditional council, excluding the king or queen, Khoi-San king or Khoi-San queen or principal traditional leader, is not more than five years and must be aligned to the term of office of the National House: Provided that, notwithstanding anything to the contrary contained in any law, the term of any kingship or queenship council, Khoi-San kingship council or 60

Khoi-San queenship council or principal traditional council that was established and constituted prior to the commencement of this Act, will subject to section 63(17), expire on 30 April 2027: Provided further that any term of office of any such council constituted or established prior to or after the commencement of this Act, shall expire every five years on 30 April, calculated from 30 April 2027. 5

(b) The selection of members in terms of subsection (3)(d)(i) must, in the case of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, or principal traditional council, be finalised at least 60 days prior to the expiry of the term of office of members of such council, and in the case of a traditional council, at least 45 days prior to the expiry of the term of office of the members of such council. 10

(6)(a) The Premier concerned must, by notice in the relevant provincial *Gazette* and in accordance with this Act, recognise a kingship or queenship council, principal traditional council or traditional council for such kingship or queenship, Khoi-San kingship council or Khoi-San queenship council, principal traditional community or traditional community and define its area of jurisdiction, indicating the portions of land forming part of such area of jurisdiction, and having regard to the provisions of section 3(1)(b) and (2)(a) in the case of a kingship or queenship: Provided that the Premier must inform the President and the Minister of any recognition of a kingship or queenship council: Provided further that the area of jurisdiction of a traditional council must include the area of a traditional sub-council, where applicable. 15 20

(b) The notice referred to in paragraph (a) must contain the names of the council members and must, in the case of kingship or queenship council or principal traditional council, contain the area of jurisdiction of a traditional council forming part of the kingship, queenship or principal traditional leadership concerned.

(c) The delineated area of jurisdiction contemplated in paragraph (a) must be mapped and such map must be published under the notice referred to in paragraph (a). 25

(d) The Premier concerned must, by notice in the relevant provincial *Gazette* and in accordance with this Act, recognise a Khoi-San kingship or Khoi-San queenship council: Provided that the Premier must inform the President and the Minister of any recognition of a Khoi-San kingship or Khoi-San queenship council: Provided further that the notice must contain the names of the council members. 30

(7) A kingship or queenship council, Khoi-San kingship council, Khoi-San queenship council, principal traditional council and a traditional council convenes at the administrative seat of the particular council.

(8) The quorum of a kingship or queenship council, Khoi-San kingship council, Khoi-San queenship council, principal traditional council or traditional council consists of the majority of the total number of members of such council: Provided that for the purposes of determining such quorum, the total number of members excludes any vacancies. 35

(9) A kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council must elect one of its members as a deputy chairperson who will act as the chairperson in the absence of the king or queen, Khoi-San king or Khoi-San queen, principal traditional leader or senior traditional leader, as the case may be. 40

(10)(a) A kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council or principal traditional council must meet once every three months and a traditional council must meet every two months: Provided that the king or queen, Khoi-San king or Khoi-San queen, principal traditional leader or senior traditional leader, as the case may be, may, with the concurrence of the relevant Premier, convene any additional ordinary or any special meeting of the relevant council. 45 50

(b) A king, a queen, Khoi-San king, Khoi-San queen or a principal traditional leader may meet at least once a year with all senior traditional leaders falling under such kingship, queenship, Khoi-San kingship, Khoi-San queenship or principal traditional leadership.

(11) A king or queen, Khoi-San king or Khoi-San queen, principal traditional leader or senior traditional leader, as the case may be, must, for purposes of convening a special meeting, give notice of not less than seven days to members of the kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council. 55

(12) A member of a kingship or queenship council, Khoi-San kingship or Khoi-San queenship, principal traditional council or traditional council must vacate his or her office if— 60

(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 is declared mentally unfit or mentally disordered by a court;
- (e) the period for which the member was selected or elected, as the case may be, has expired; 5
- (f) he or she becomes disqualified in terms of subsection (15);
- (g) he or she has been removed from office in terms of the code of conduct;
- (h) he or she no longer resides within the area of jurisdiction of the kingship or queenship council, principal traditional council or traditional council, as the case may be; or 10
- (i) he or she is a selected member and his or her recognition as a traditional leader has been withdrawn.

(13) If a member of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council dies or vacates his or her office before the expiration of his or her term of office, such a vacancy must be filled in the manner referred to in subsection (3)(c)(i) or (ii), as the case may be, within 90 days of the vacancy having arisen. 15

(14) A person who has been appointed to fill a vacancy in a kingship or queenship council, principal traditional council, Khoi-San kingship council or Khoi-San queenship council or traditional council as contemplated in subsection (13), holds office for the unexpired period of his or her predecessor's term of office. 20

(15) A person is not eligible to be elected or selected as a member of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council if that person— 25

- (a) is not a South African citizen;
- (b) is under 18 years of age;
- (c) has been convicted of an offence in respect of which he or she was sentenced to imprisonment for more than 12 months without the option of a fine;
- (d) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors; 30
- (e) is of unsound mind and has been so declared by a competent court;
- (f) is or becomes a full-time member of a municipal council;
- (g) is elected as a member of a provincial legislature;
- (h) is elected as a member of the National Assembly; 35
- (i) is appointed as a permanent delegate in the National Council of Provinces;
- (j) is elected to a full-time position in any house of traditional leaders; or
- (k) does not reside within the area of jurisdiction of the kingship or queenship council, principal traditional council or traditional council, as the case may be. 40

(16)(a) The withdrawal of the recognition of a kingship or queenship, Khoi-San kingship or Khoi-San queenship, principal traditional community or traditional community in terms of section 4 or section 6, as the case may be, automatically results in the disestablishment of the relevant kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council and the withdrawal of the recognition of the relevant king or queen, Khoi-San king or Khoi-San queen, principal traditional leader or senior traditional leader. 45

(b) The disestablishment of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council must be done by the Premier concerned by notice in the relevant provincial *Gazette*. 50

(17) The notice referred to in subsection (16)(b) must stipulate the legal, practical and other consequences of the disestablishment of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council or traditional council, including the transfer of assets, liabilities, staff, administrative and other records, taking into account any applicable legislation. 55

(18) Any provision of this Act that relates to the establishment of a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, traditional council or traditional sub-council, apply to the initial establishment of such a council or sub-council and any subsequent reconstitution of the council or sub-council following the expiry of any term thereof: Provided that, subject to subsection (19) or (20), as the case may be, the provisions of subsection (6) and section 17(2) relating to areas of jurisdiction do not apply to the reconstitution of such 60

a kingship or queenship council, principal traditional council, traditional council or traditional sub-council.

(19) Whenever the area of jurisdiction of a traditional council is to be amended, the Premier must, after consultation with the relevant traditional council and municipal council, by notice in the provincial *Gazette*, redefine such area of jurisdiction. 5

(20) Whenever the area of jurisdiction of a traditional sub-council is to be amended, the Premier must, after consultation with the relevant traditional council and sub-council, by notice in the provincial *Gazette*, redefine such area of jurisdiction.

(21) The provisions relating to areas of jurisdiction in this section do not apply to Khoi-San kingship or Khoi-San queenship councils. 10

Establishment of traditional sub-council

17. (1)(a) Notwithstanding the provisions of section 16, the Premier concerned may, at the request of a traditional council in cases where a traditional community occupies two or more non-contiguous geographical areas within a province, establish a traditional sub-council for the geographical area which is located outside the area where the administrative seat of the traditional community is situated, if the Premier is of the view that such establishment will improve the effective administration of the traditional community. 15

(b) A traditional sub-council consists of the number of members as determined by the Premier concerned, after consultation with the main traditional council. 20

(2) The Premier concerned must, subject to the provisions of section 16(5), (17) and (19), by notice in the relevant provincial *Gazette*, recognise a traditional sub-council as part of the main traditional council and define its area of jurisdiction, indicating the portions of land forming part of such area of jurisdiction, which area must be mapped and such map must be published under such notice. 25

(3)(a) At least a third of the members of a traditional sub-council must be women.

(b) The members of a traditional sub-council must comprise of—

(i) 60% traditional leaders and members of the traditional sub-community selected by the senior traditional leader concerned, in terms of that community's customs, taking into account the need for overall compliance with paragraph (a): Provided that if there are no recognised headman or headwoman, only community members must be selected; and 30

(ii) 40% of members of the traditional sub-community who are elected by members of the traditional sub-community in accordance with the provisions of section 21. 35

(4) The provisions of section 16(2)(b) and (d) apply to the constitution and composition of a traditional sub-council and any reference in the said paragraphs to members of a traditional council shall be construed as a reference to members of a traditional sub-council.

(5) The chairperson of a traditional sub-council must be elected by the traditional council, after consultation with the members of the traditional sub-council. 40

(6) A chairperson elected in terms of subsection (5) must be a member of the traditional council.

(7) The term of office of members of a traditional sub-council is not more than five years and must be aligned with the term of office of the relevant traditional council: Provided that, notwithstanding anything to the contrary contained in any law, the term of any traditional sub-council that was established and constituted prior to the commencement of this Act, will subject to section 63(17), expire on 30 April 2027: Provided further that any term of office of any such sub-council constituted or established prior to or after the commencement of this Act, shall expire every five years on 30 April, calculated from 30 April 2027. 45 50

(8)(a) A traditional sub-council must meet every two months and performs the functions referred to in section 20 as may be delegated to it by the traditional council concerned.

(b) A traditional sub-council must, in the format and within the timeframes as determined by the traditional council, submit a report to the traditional council on the performance of the functions delegated to it. 55

(9)(a) The withdrawal of the recognition of a community as a traditional community in terms of section 4, automatically results in the disestablishment of the traditional sub-council concerned. 60

(b) If, after consultation with a traditional council, a Premier is of the opinion that a traditional sub-council is no longer contributing to the effective administration of that traditional community, the Premier may withdraw the recognition of such traditional sub-council.

(c) The withdrawal of the recognition of a traditional sub-council must be done by the Premier concerned by notice in the relevant provincial *Gazette*. 5

(d) The provisions of section 16(16) apply with the necessary changes to the withdrawal of the recognition of a traditional sub-council.

Establishment of Khoi-San council

18. (1) Once a Premier or the Minister has recognised a Khoi-San community in accordance with the provisions of section 5 or 58 respectively, that community must within a period of two years of such recognition or any further period as the Premier may determine by notice in the provincial *Gazette*, establish a Khoi-San council: Provided that in any instance where a Khoi-San community has been recognised prior to the publication of the formula contemplated in subsection (2)(a), the period of two years shall commence from the date of publication of such formula: Provided further that in an instance where a leadership dispute exists or a vacancy arises in a leadership position, the period of two years shall commence from the date of resolution of the dispute or the date of filling of the vacancy, as the case may be, or any further period that may be determined by the Minister after consultation with the Premier of the province concerned. 10 15 20

(2)(a) A Khoi-San council consists of the number of members determined by the Minister by formula published in the *Gazette*, after consultation with all relevant Premiers, and provincial houses: Provided that the formula must be published in the *Gazette* within two years from the date of commencement of this Act or any further period as determined by the Minister: Provided further that the Minister may, from time to time, revoke, amend or revise any such formula. 25

(b) The members of a Khoi-San council must comprise of—

(i) 60% of members which consists of—

(aa) the senior Khoi-San leader concerned who is an *ex officio* member and chairperson of the Khoi-San council; and 30

(bb) where the main community has branches, branch heads: Provided that if the senior Khoi-San leader together with the branch heads is less than the required number of members, the senior Khoi-San leader must select the remainder from the members of the main community after consultation with the branch heads and, where there is a royal family, must also select from members of the royal family with the concurrence of a forum as contemplated in subparagraph (cc): 35

Provided further that if the number of branch heads are more than the required number of members, the branch heads must elect the required number from amongst themselves, ensuring provincial representation; or (cc) where the main community has no branches, the senior Khoi-San leader must, where applicable, with the concurrence of a forum of not less than five and not more than 10 members designated by the royal family, select the required number of members from the members of the royal family and members of the main community, or where there is no royal family, the senior Khoi-San leader must select the required number of members from the main community only: Provided that the provisions of section 16(3)(c) shall apply with the necessary changes to instances where there is no concurrence; and 40 45 50

(ii) 40% of members which consist of members of the main community who are elected by the main community in accordance with the provisions of section 21. 55

(3) The Premier concerned must, by notice in the relevant provincial *Gazette*, recognise a Khoi-San council for a Khoi-San community and indicate the administrative seat of such Khoi-San council.

(4) The jurisdiction of a Khoi-San council will apply only to the members of the Khoi-San community contemplated in section 5(1) and (3). 60

(5) The provisions of section 16(2)(b), (d) and (e), (5)(b), (7), (8), (11), (14)(a) to (j), (15) and (16) apply to a Khoi-San council and any reference in the said section to a traditional council, senior traditional leader and headman or headwoman shall,

respectively, be construed as a reference to a Khoi-San council, senior Khoi-San leader and branch head.

(6) Any provision of this Act that relates to the establishment of a Khoi-San council applies to the initial establishment of such a council and any subsequent reconstitution of the council following the expiry of any term thereof. 5

(7) A Khoi-San council must meet every three months: Provided that the senior Khoi-San leader may, with the concurrence of the Premier of the province where such council is recognised, convene any additional ordinary or any special meeting of the relevant council: Provided further that for the purposes of convening a special meeting, the senior Khoi-San leader must give notice of not less than seven days to the members of the relevant Khoi-San council. 10

(8) The term of office of the members of a Khoi-San council, excluding the senior Khoi-San leader, is, subject to section 63(19), not more than five years and must be aligned to the term of office of the National House: Provided that any term of office of any such council established prior to or after the commencement of this Act, shall expire every five years on 31 March, calculated from 31 March 2032. 15

Functions of kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council and principal traditional council

19. (1) A kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council and principal traditional council have the following functions: 20

- (a) Administering the affairs of the kingship or queenship, Khoi-San kingship or Khoi-San queenship or principal traditional community in accordance with customary law and customs; 20
- (b) assisting, supporting and guiding senior traditional leaders or senior Khoi-San leaders and traditional councils or Khoi-San councils, as the case may be, falling within the jurisdiction of the kingship or queenship, Khoi-San kingship or Khoi-San queenship or principal traditional community concerned in the performance of their functions; 25
- (c) assisting the king or queen, Khoi-San king or Khoi-San queen, or principal traditional leader in performing customary functions in relation to the recognition of senior traditional leaders or senior Khoi-San leaders, where applicable; 30
- (d) assisting the king or queen, Khoi-San king or Khoi-San queen or principal traditional leader in mediating disputes between senior traditional leaders or senior Khoi-San leaders falling within the jurisdiction of the kingship or queenship, Khoi-San kingship or Khoi-San queenship or principal traditional community, in accordance with customs and customary law; 35
- (e) promoting unity between traditional communities and Khoi-San communities falling under the jurisdiction of the kingship or queenship, Khoi-San kingship or Khoi-San queenship or principal traditional community; 40
- (f) assisting the king or queen, Khoi-San king or Khoi-San queen or principal traditional leader in performing his or her roles and functions conferred upon him or her in terms of regulations made in accordance with the provisions of section 60; and
- (g) provide strategic direction to the institution of traditional and Khoi-San leadership. 45

(2) A kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council or principal traditional council must—

- (a) keep proper records;
- (b) have its financial statements audited by a registered auditor as contemplated in the Auditing Professions Act, 2005 (Act No. 26 of 2005), and submit such audited statements to the Premier within two months from the date of receipt thereof; 50
- (c) disclose to the Premier concerned, the receipt of gifts with a value above an amount as may be determined by such Minister by notice in the *Gazette*; 55
- (d) adhere to the code of conduct;
- (e) advise and support all traditional councils or Khoi-San councils, as the case may be, falling under its authority;
- (f) convene four meetings per annum with traditional or Khoi-San councils, as the case may be, falling under its authority; 60

- (g) on a date and in a format as determined by the relevant Premier, submit a strategic plan for a period of five years to such Premier for approval;
- (h) on a date and in a format as determined by the relevant Premier, submit an annual performance plan to such Premier for approval;
- (i) on a date and in a format as determined by the relevant Premier, submit annual and quarterly reports in respect of its activities to such Premier for approval, which report must include but are not limited to, information on— 5
- (i) the composition of the relevant council;
 - (ii) the filling of any vacancies;
 - (iii) the disqualification of any member; 10
 - (iv) meetings of the relevant council;
 - (v) the exercising of any of its functions as contemplated in subsection (1);
 - (vi) budget and expenses of the relevant council;
 - (vii) any matter as may be directed by the relevant Premier; and
 - (viii) any other matter deemed necessary by the relevant council; and 15
- (j) on a date and in a format as determined by the relevant provincial Department responsible for traditional and Khoi-San matters, submit annual estimates of expenditures for the next financial year to such provincial Department.
- (3) The relevant Premier may, before approving a report submitted to him or her as contemplated in subsection (2)(g), (h)(i) and (k) request a meeting with the council to discuss the content of the report. 20
- (4)(a) If an audit contemplated in subsection (2)(b) is not performed by the Auditor-General, the Auditor-General may review any such audit.
- (b) If any kingship or queenship council, Khoi-San kingship council, Khoi-San queenship council or principal traditional council does not have its financial statements audited as contemplated in subsection (2)(b), the accounting officer of the provincial department responsible for providing financial support to such council may withhold any financial support to such council or impose any other appropriate sanction on the council. 25

Functions of traditional council, traditional sub-council, Khoi-San council and branch 30

- 20.** (1) A traditional council, a traditional sub-council subject to section 17(8), a Khoi-San council and a branch have the following functions:
- (a) Administering the affairs of the traditional or Khoi-San community in accordance with customs and customary law; 35
 - (b) assisting, supporting and guiding traditional and Khoi-San leaders in the performance of their functions;
 - (c) supporting municipalities in the identification of community needs;
 - (d) facilitating the involvement of the traditional or Khoi-San community in the development or amendment of the integrated development plan of a municipality in whose area that community resides; 40
 - (e) recommending, after consultation with the relevant local and provincial houses, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council or within the municipal area where the administrative seat of the Khoi-San council is; 45
 - (f) participating in the development of policy and legislation at a municipal level;
 - (g) participating in development programmes of the local, provincial and national spheres of government;
 - (h) promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery; 50
 - (i) promoting indigenous knowledge systems for sustainable development and disaster management;
 - (j) alerting any relevant municipality to any hazard or calamity, and contributing to disaster management in general; 55
 - (k) sharing information and co-operating with other traditional and Khoi-San councils; and
 - (l) performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.
- (2) A traditional and Khoi-San council must— 60
- (a) keep proper records;

- (b) have its financial statements audited by a registered auditor as contemplated in the Auditing Professions Act, 2005 (Act No. 26 of 2005), and submit such audited statements to the Premier within two months from the date of receipt thereof;
 - (c) disclose to the Premier concerned, the receipt of gifts with a value above an amount as may be determined by such Minister by notice in the *Gazette*; 5
 - (d) adhere to the code of conduct;
 - (e) on a date and in a format as determined by the relevant Premier, submit a strategic plan for a period of five years to such Premier for approval;
 - (f) on a date and in a format as determined by the relevant Premier, submit an annual performance plan to such Premier for approval; 10
 - (g) on a date and in a format as determined by the relevant Premier, submit annual and quarterly reports in respect of its activities to such Premier for approval, which report must include but are not limited to, information on—
 - (i) the composition of the relevant council; 15
 - (ii) the filling of any vacancies;
 - (iii) the disqualification of any member;
 - (iv) meetings of the relevant council;
 - (v) the exercising of any of its functions as contemplated in subsection (1);
 - (vi) budget and expenses of the relevant council; 20
 - (vii) any matter as may be directed by the relevant Premier;
 - (viii) any other matter deemed necessary by the relevant council; and
 - (h) on a date and format as determined by the relevant provincial Department responsible for traditional and Khoi-San matters, submit annual estimates of expenditures for the next financial year to such provincial Department. 25
- (3) A traditional and Khoi-San council must—
- (a) cooperate with any relevant ward committee established in terms of section 73 of the Local Government: Municipal Structures Act; and
 - (b) respectively meet at least once a year with the relevant traditional or main Khoi-San community to give account of the activities and finances of the traditional or Khoi-San council. 30
- (4)(a) If an audit contemplated in subsection (2)(b) is not performed by the Auditor-General, the Auditor-General may review any such audit.
- (b) If any traditional or Khoi-San council does not have its financial statements audited as contemplated in subsection (2)(b), the accounting officer of the provincial department responsible for providing financial support to such council may withhold any financial support to such council or impose any other appropriate sanction on the council. 35

Election of members of traditional council, traditional sub-council and Khoi-San council and filling of vacancies 40

- 21.** (1) Whenever a member of a traditional council, traditional sub-council or Khoi-San council is to be elected, the Premier concerned, after consultation with the relevant provincial house, may have such elections conducted—
- (a) by the Electoral Commission established in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996), if the Electoral Commission and the Premier of the province concerned enter into an agreement in respect of such elections, which agreement must include provisions relating to the manner in which the elections are to be conducted: Provided that this paragraph does not apply to the filling of a vacancy that occurs during the term of office of the council concerned; or 45
 - (b) subject to subsection (2)—
 - (i) by way of a community meeting; and
 - (ii) by a body consisting of one or more persons appointed by the Premier: 50
- Provided that the procedures to be followed during any such elections contemplated in this subsection must ensure the secrecy and integrity thereof. 55
- (2) A Premier may, by notice in the relevant provincial *Gazette*, make regulations in respect of—
- (a) the elections as contemplated in subsection (1)(b) relating to the procedure to be followed, which procedures must ensure the secrecy and integrity of voting and timeframes within which such elections must be conducted; and 60
 - (b) subject to the provisions of this Act, the filling of vacancies.

Administration of kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council

22. (1) A kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, traditional council, traditional sub-council and a Khoi-San council, in this section jointly referred to as a council, must endeavor to perform its statutory and financial obligations in the best interest of its community and is accountable to the Premier concerned for the efficient and effective performance of such obligations. 5

(2) A Premier must monitor a council situated within his or her province so as to ensure the effective and efficient performance of that council's statutory, customary and financial obligations. 10

(3) If a Premier is of the view that a council does not or cannot fulfill a statutory or financial obligation binding on that council, the Premier must—

(a) by written notice, request the council to provide the Premier with the information relating to the council's performance in respect of the obligation required in the notice; or 15

(b) if the Premier considers it necessary, designate a person or persons to investigate the matter.

(4) If, based on the information received or investigation conducted as contemplated in subsection (3), a Premier is satisfied that a council does not or cannot fulfill its statutory or financial obligations, the Premier may intervene by appointing any person or persons for a period determined by the Premier in writing— 20

(a) to assist the council concerned to perform any or all of the statutory or financial obligations assigned to such council; or 25

(b) to assume responsibility for any or all the statutory and financial obligations of such council.

(5) If a person or persons are appointed in terms of subsection (4), the council concerned is divested of the specific or all of its statutory and financial obligations, as the case may be. 30

(6) A person or persons appointed in terms of subsection (4) must be competent to perform either the statutory or the financial obligations of such council or both, as the case may be.

(7)(a) A person or persons appointed in terms of subsection (4) must submit monthly written reports to the Premier, king or queen, Khoi-San king or Khoi-San queen, principal traditional leader, senior traditional leader or senior Khoi-San leader concerned setting out the steps taken and progress made in respect of the performance of the specific or all of the council's statutory and financial obligations, as the case may be. 35

(b) A Premier must submit copies of the reports contemplated in paragraph (a) to the National House and relevant provincial house for noting. 40

(8) An appointment made in terms of subsection (4) must be reviewed before the expiry of a period of 180 days: Provided that such a period may, as many times as the Premier concerned deems necessary to ensure the efficient and effective performance of the specific or all of the relevant council's statutory and customary obligations, be renewed for a further period of 180 days and must be reviewed before the expiry of any such period of 180 days. 45

Support to kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council 50

23. (1) The national government may and a provincial government must adopt such legislative or other measures as may be necessary to—

(a) support and strengthen the capacity of kingship or queenship councils, Khoi-San kingship councils or Khoi-San queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils to fulfil their functions, and such support includes the provision of administrative and financial support; and 55

(b) monitor and manage the finances of such councils.

- (2) The Premier of a province may, after consultation with a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, traditional council or Khoi-San council situated in the particular province—
- (a) determine the number and remuneration levels of posts needed to perform the administrative, financial and related duties relevant to the functions of the specific council; 5
 - (b) determine any other conditions of service applicable to such posts; and
 - (c) appoint suitable persons in such posts in accordance with the recruitment procedures applicable to that provincial government or second officials from the provincial government to perform such duties. 10
- (3)(a) For the purposes of subsection (1), a Premier must, in consultation with the relevant Provincial Treasury and subject to any legislative or other measures as contemplated in subsection (1), cause to be opened an account for each established council referred to in subsection (1) into which must be paid—
- (i) all voluntary contributions made by members of the relevant community; 15
 - (ii) all moneys derived from any property owned or managed by such council;
 - (iii) any financial donation made to such council by any person, body or institution;
 - (iv) any moneys payable to the council in accordance with the provisions of a partnership or agreement as contemplated in section 24; and
 - (v) any other moneys as may be determined or agreed to by the Premier. 20
- (b) For the purposes of the management of any account referred to in paragraph (a), a Premier must, in consultation with the relevant Provincial Treasury and subject to paragraph (c) and any legislative or other measures as contemplated in subsection (1), determine—
- (i) the financial systems and controls applicable to such account; 25
 - (ii) any conditions applicable to such account;
 - (iii) the investment of any moneys by the council concerned;
 - (iv) the payment of any expenditure by the council concerned;
 - (v) the purposes for which any moneys in such account may be used by the relevant council; 30
 - (vi) the closure of any other accounts, including a trust account but excluding a trust account as contemplated in section 10 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), and the transfer of any moneys in such other account or trust account to the account contemplated in paragraph (a);
 - (vii) the reporting requirements applicable to such account; and 35
 - (viii) any other measures as may be deemed necessary by the Premier to ensure the efficient and effective management of such account,
- and may designate any official from the provincial government to assist the council concerned with the management of such account or to manage such account on behalf of the relevant council: Provided that for the purposes of subparagraphs (ii) to (vii) the Premier must consult the relevant council prior to making any determination as contemplated in those subparagraphs. 40
- (c) The Minister may, in consultation with the Minister of Finance and after consultation with the Premiers, by notice in the *Gazette*, determine the minimum standards to be complied with by a Premier for the purposes of paragraph (b)(i) to (viii). 45
- (d) The financial year of any council contemplated in this section must be aligned to the financial year of the provincial department responsible for providing financial support to such council.
- (4)(a) The provincial government of a province where a branch of a Khoi-San community has been recognised must adopt such legislative or other measures as may be necessary to provide administrative support to such branch: Provided that if a branch is situated in a province other than the province where the Khoi-San council has been recognised, the Premier of the province where the branch is situated must first consult the Premier of the province where the Khoi-San council is situated to ensure uniformity in the provisioning of such administrative support. 50
- (b) The provincial government of a province where a branch of a Khoi-San community has been recognised is responsible for the financial expenditure in relation to the attendance of Khoi-San council meetings by the relevant branch head. 55

Partnerships and agreements

24. (1) The national government and provincial governments may, through legislative or other measures, regulate partnerships and agreements as contemplated in this section.
- (2) Kingship or queenship councils, Khoi-San kingship councils or Khoi-San queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils may enter into partnerships and agreements with each other, and with—
- (a) municipalities;
 - (b) government departments; and
 - (c) any other person, body or institution.
- (3) Any partnership or agreement entered into by any of the councils contemplated in subsection (2) must be in writing, and in addition to any other legislative provisions contained in any other applicable law, and—
- (a) must be intended to benefit the community represented by such council;
 - (b) must contain clear provisions on the responsibilities of each party and the termination of such partnership or agreement;
 - (c) is subject to prior consultation with the community concerned indicating the support of the partnership or agreement;
 - (d) is subject to a prior decision of relevant council indicating in writing the support of such council for the particular partnership or agreement;
 - (e) may promote collaboration between the institution of traditional and Khoi-San leadership and government in socio-economic development and service delivery of the community; and
 - (f) may not bind the state or any person, body or institution who is not a party to such partnership or agreement:
- Provided that the Premier must ratify a partnership or agreement within 180 days of receipt of such agreement or partnership or any such time period stipulated in such partnership or agreement; whichever is the earlier date.
- (4) Any partnership or agreement contemplated in subsection (2) must—
 - (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and
 - (b) be guided by and based on the principles of cooperative governance.
 - (5) Any council contemplated in subsection (2), 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.
 - (6) A Premier must—
 - (a) monitor all partnerships and agreements as contemplated in this section and may take the necessary steps to ensure the effective and efficient implementation or termination thereof;
 - (b) provide the Minister with copies of all partnerships or agreements contemplated in subsection (3) which copies must be kept by the Department in an appropriate database; and
 - (c) review all partnerships and agreements as contemplated in section 63(22).
 - (7)(a) A Premier, when considering the ratification of any partnership or agreement as contemplated in subsection (3), must be satisfied that the provisions of this subsection have been complied with.
 - (b) If a Premier is of the opinion that a partnership or agreement does not comply with the provisions of this subsection, the Premier must refer such partnership or agreement to the parties who entered into such partnership or agreement, together with his or her reasons for not ratifying the partnership or agreement, and request them to rectify any shortcomings as referred to in his or her reasons.

Allocation of roles to kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council

25. (1) A department within the national or provincial sphere of government, as the case may be, may, through legislative or other measures provide a role for a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council in respect of any functional area of such department: Provided that such a role may not include any decision-making power.

- (2)(a) The process and procedure to be followed for the provision of a role contemplated in subsection (1) to any of the councils contemplated in that subsection, as well as the extent thereof, and the conditions and resources attached to any such provision, may, subject to paragraph (b), be determined by the department concerned.
- (b) Before a department makes provision for a role as contemplated in subsection (1), such department must—
- (i) in the case of a national department, obtain the concurrence of the Minister and consult with the National House;
 - (ii) in the case of a provincial department, obtain the concurrence of the member of the Executive Council responsible for traditional affairs of the relevant province and consult with the relevant provincial and local houses; and
 - (iii) consult with the relevant traditional and Khoi-San council concerned.
- (3) Where a department has made provision for a role for any council contemplated in subsection (1), such department must monitor the execution of the role and ensure that—
- (a) the execution of the role is consistent with the Constitution and any other relevant law; and
 - (b) the role is being executed efficiently and effectively.
- (4) Where any of the councils contemplated in subsection (1) does not execute a role as envisaged in subsection (3), such role or any resources provided to such a council to perform that role may be withdrawn by the department concerned: Provided that before any such withdrawal, the relevant department must first establish the reasons for the non-execution of the relevant role and, where necessary, capacitate such councils to enable them to execute the role.
- (5)(a) When a national or provincial department has made provision for a role as contemplated in subsection (1), such department must inform the Department of—
- (i) the extent thereof;
 - (ii) the conditions and resources attached thereto; and
 - (iii) the name of the relevant council.
- (b) When a national or provincial department withdraws a role or resources as contemplated in subsection (4), such department must inform the Department of the reasons for such withdrawal.
- (c) The Department must keep proper records of the information contemplated in paragraphs (a) and (b).

CHAPTER 3

HOUSES OF TRADITIONAL AND KHOI-SAN LEADERS

Part 1

Houses of traditional and Khoi-San leaders

Houses of traditional and Khoi-San leaders

- 26.** The houses of traditional and Khoi-San leaders are—
- (a) a National House of Traditional and Khoi-San Leaders established in terms of section 27;
 - (b) provincial houses of traditional and Khoi-San leaders as may be established in accordance with the principles set out in section 49; and
 - (c) local houses of traditional and Khoi-San leaders as may be established in accordance with the principles set out in section 50.

Part 2

National House of Traditional and Khoi-San Leaders

Establishment and term of office of National House

- 27.** (1) There is hereby established a National House to be known as the National House of Traditional and Khoi-San Leaders.
- (2) The term of office of the National House is, subject to subsection (3), five years.
- (3) The term of the National House—

- (a) that was established in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act; or
 - (b) that, if the date of invalidity takes effect, is regarded as having been established in terms of the National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009), will, subject to section 63(12), expire on 30 June 2027: 5
- Provided that any subsequent term of office of the National House as reconstituted after the commencement of this Act, shall expire every five years on 30 June, calculated from 30 June 2027.

Composition of National House

28. (1) The National House comprises of the number of senior traditional and senior Khoi-San leaders, as determined by the Minister by formula published by notice in the *Gazette*, after consultation with—

- (a) kingship or queenship councils, Khoi-San kingship councils or Khoi-San queenship councils, principal traditional councils, traditional and Khoi-San councils; 15
- (b) the king or queen, Khoi-San king or Khoi-San queen, principal traditional leader, and
- (c) Premiers:

Provided that the formula must be published in the *Gazette* within six months from the date of commencement of this Act, or any further period as determined by the Minister. 20

(2) The formula contemplated in subsection (1) must—

- (a) ensure that members to the National House are elected by each provincial house in terms of section 29;
- (b) result, in general, in proportional representation of recognised traditional and Khoi-San leaders; 25
- (c) ensure that at least 50% of the members of the house are women;
- (d) ensure representation of kings or queens or Khoi-San kings or Khoi-San queens and principal traditional leaders; and
- (e) ensure representation of youth and people with disabilities.

(3) If the requirement in subsection (2)(c) cannot be met, the Minister may determine a lower threshold and provide reasons for lowering such threshold. 30

(4) Any formula made under this section must be published in the *Gazette* for public comment.

Election and designation of members to National House

29. (1) The Minister must, at least 90 days before the expiry of the term of office of the National House, request the Premiers to notify provincial houses to elect subject to section 28, senior traditional leaders and where applicable, senior Khoi-San leaders to serve as members in the National House. 35

(2) The members of a provincial house referred to in section 28(1) must be elected, within 21 days after having received the notice from the Premier concerned in terms of subsection (1), by members of that provincial house in a meeting called for that purpose and attended by at least two-thirds of the members of the house concerned. 40

(3) The election proceedings referred to in subsection (2) must be managed and chaired by the Premier concerned or a person designated by such Premier, and must be observed by officials of the National House and the provincial department responsible for traditional or Khoi-San affairs. 45

(4) An election contemplated in subsection (2) must be by secret ballot by members of the provincial house concerned in the same meeting where the nominations take place.

(5) Each provincial house must elect one of the members as contemplated in subsection (2) as leader of the elected members. 50

(6) A Premier must submit to the Minister, in respect of every person elected and designated, such person's—

- (a) acceptance of the election or designation;
- (b) full name and surname; 55
- (c) identity number; and
- (d) contact details.

(7) In the event that a provincial house fails to elect one or more of its members to serve in the National House within the period referred to in subsection (2), the Premier

concerned must designate members of the relevant provincial house to serve in the National House.

(8) A member of the National House may not serve more than two consecutive terms as a member of the National House: Provided that this provision shall not apply where the provincial house comprises of eight or less than eight members. 5

(9)(a) If a full-time member of a provincial house is elected as a member of a National House, such a member will receive his or her salary as full-time member of the National House and an allowance for meetings attended as a member of the provincial house.

(b) An allowance as contemplated in paragraphs (a) is subject to a determination referred to in section 45. 10

Disqualification for membership of National House

30. A person is disqualified from becoming a member of the National House if that person—

- (a) is a member of a municipal council, a member of a provincial legislature or a member of Parliament; 15
- (b) at the time of the election of members of the National House, is serving a sentence of imprisonment of more than 12 months without the option of a fine;
- (c) is an unrehabilitated insolvent;
- (d) is of unsound mind and has been so declared by a competent court;
- (e) has been convicted of a criminal offence and sentenced to more than 12 20 months imprisonment without the option of a fine, either in the Republic 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; 25
- (f) is not a member of a provincial house;
- (g) is not a South African citizen; or
- (h) is not permanently resident within the Republic.

Vacation of seats

31. The seat of a member of the National House becomes vacant— 30

- (a) upon the death of a member;
- (b) if the member resigns by written notice to the Minister;
- (c) if the member becomes disqualified in terms of section 30;
- (d) if the member becomes a full-time member of a municipal council, a member of a provincial legislature or a member of Parliament; 35
- (e) if a member is convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
- (f) if the member is removed from office for a breach of the code of conduct; or
- (g) if a member ceases to be a member of a provincial house that elected him or her. 40

Filling of vacancies

32. (1) Where a vacancy occurs in the National House the Minister must, within 14 days after being informed of such a vacancy by the Secretary, inform the relevant Premier of such a vacancy.

(2) A vacancy in the National House must, subject to sections 28 and 29, be filled 45 within 45 days after it became vacant, by the election of a member for the 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 or designated.

Seat and meetings of National House

33. (1)(a) The first meeting of the National House must take place within 90 days after its constitution in terms of sections 28 and 29, at a time and place determined by the Secretary, subject to subsection (5). 50

(b) The President or a person designated by him or her may address the annual official opening of the National House.

(2) Ordinary meetings of the National House may, subject to subsection (5), take place at a time and place determined by the Secretary in consultation with the Chairperson.

(3) Special meetings of the National House may, subject to subsection (5), be held at a time and place determined by the Executive Committee of the National House or, if authorised thereto by the Executive Committee, by the Chairperson of the National House: Provided that the Minister may at any time convene a special meeting of the National House for the purposes of attending to urgent business at a time and place determined by the Minister. 5

(4) The National House must meet at least once in every quarter. 10

(5) The administrative seat of the National House is located at the same place where the head office of the Department is located and meetings of the National House may take place either at the administrative seat or at the seat of Parliament.

(6) The quorum for meetings of the National House is fifty per cent plus one of the total membership of the National House, excluding any vacancies. 15

(7) The decisions of the National House must be taken by a majority of the members present and voting in the meeting.

(8) Meetings of the National House are, subject to section 46(1)(f), open to the public.

Chairperson and deputy chairperson of National House

34. (1) At its first meeting after it has been constituted in terms of sections 28 and 29, the National House must, with the Chief Justice or a judge designated by the Chief Justice presiding, elect one of its members to be the chairperson and must thereafter elect another of its members to be the deputy chairperson. 20

(2) The chairperson is vested with all powers and functions assigned to a chairperson in terms of this Act and the rules and orders of the National House. 25

(3) The chairperson presides over meetings of the National House.

(4) If the chairperson is absent or for any reason unable to exercise or perform the powers or functions vested in the office of the chairperson, or when the office of the chairperson is vacant, the deputy chairperson must act as chairperson during the chairperson's absence or inability or until a chairperson is elected. 30

(5) If both the chairperson and the deputy chairperson are absent, a member of the National House designated in terms of the rules and orders of the National House must act as chairperson while the said circumstances prevail.

(6) The deputy chairperson or the member designated in terms of this Act, while acting as a chairperson, may exercise the powers and must perform the functions vested in the office of the chairperson. 35

(7) While presiding at a meeting of the National House, a member of the House designated as a chairperson has a deliberative vote as well as a casting vote in the case of an equality of votes.

(8) The chairperson or deputy chairperson must vacate office if he or she becomes disqualified in terms of section 30. 40

(9) If the position of chairperson becomes vacant, the Minister or a person designated by the Minister must preside over the election of a member of the National House to fill the vacancy.

(10) If the position of deputy chairperson becomes vacant, the chairperson must preside over the election of a member of the National House to fill the vacancy. 45

(11) If the positions of both chairperson and deputy chairperson of the National House become vacant, the National House must, with the Chief Justice of a judge designated by the Chief Justice presiding, elect members of the National House to fill the vacancies. 50

(12) A chairperson or deputy chairperson is eligible for re-election: Provided that no member may serve as a chairperson or deputy chairperson of the National House for more than two consecutive terms.

Status of members of National House

35. (1) The chairperson and deputy chairperson shall be full-time members of the National House. 55

(2) The Minister may, after consultation with the National House and subject to subsection (1), determine that certain members are full-time members of the National House.

Duties of National House

- 36.** (1) The duties of the National House are—
- (a) to cooperate with the provincial houses, to promote, support and advise government on—
 - (i) the role of traditional and Khoi-San leadership within a democratic constitutional dispensation; 5
 - (ii) nation building, peace, stability and cohesiveness of traditional and Khoi-San communities;
 - (iii) the preservation of the moral fibre and regeneration of traditional and Khoi-San communities; 10
 - (iv) the preservation of the culture and traditions of traditional and Khoi-San communities;
 - (v) socio-economic development of traditional and Khoi-San communities, and service delivery within such communities;
 - (vi) the social well-being and welfare of traditional and Khoi-San communities; and 15
 - (vii) the transformation and adaptation of customary law and customs as contemplated in section 2.
 - (b) to enhance cooperation between the National House and the various provincial houses with a view to address matters of common interest. 20
- (2) The National House—
- (a) must consider Parliamentary Bills referred to it by the Secretary to Parliament in terms of section 39;
 - (b) may advise the national government and make recommendations in respect of— 25
 - (i) matters relating to policy and legislation regarding traditional and Khoi-San leadership;
 - (ii) the role of traditional and Khoi-San leaders;
 - (iii) customary law; and
 - (iv) the customs of communities observing a system of customary law; 30
 - (c) may investigate and make available information on traditional and Khoi-San leadership, traditional and Khoi-San communities, customary law and customs;
 - (d) must, at the request of the Minister, advise any member of the National Cabinet on any matter referred to in this section; 35
 - (e) must complement and support the work of government at national level;
 - (f) may form cooperative relations and partnerships with government at national level in respect of development and service delivery within traditional and Khoi-San communities;
 - (g) may participate in and form partnerships in respect of international and national programmes geared towards the development of traditional and Khoi-San communities; 40
 - (h) may participate in national initiatives meant to monitor, review and evaluate government programmes in traditional and Khoi-San communities; and
 - (i) must perform tasks as may be determined by the President or Minister or as 45 may be provided for in national legislation.

Administration of National House

37. (1) The Director-General of the Department may, in consultation with the chairperson of the National House and subject to the laws governing the public service, second or designate officers from the Department to discharge the administrative work of the National House. 50

(2) The Director-General of the Department must, in terms of the laws governing the public service and in consultation with the chairperson of the National House, appoint a person as Secretary to the House, who must—

- (a) exercise or perform the powers and functions conferred upon or assigned to the Secretary by this Act and the rules and orders of the National House; 55
- (b) subject to the directions of the National House, perform such work as is incidental to the exercise or performance by the National House of its powers and functions; and

- (c) ensure that the National House and any committee of the House exercise or perform its duties, functions and responsibilities in an appropriate and cost-effective manner.
- (3) The Secretary must be supported in the exercise or performance of his or her powers and functions by officials of the Department seconded or designated in terms of subsection (1) for that purpose. 5

Responsibilities of National House

- 38.** (1) The National House must—
- (a) prepare a strategic plan for a period of five years and review it annually; 10
 - (b) prepare an annual performance plan; 10
 - (c) keep proper records;
 - (d) in addition to quarterly meetings, hold an annual meeting with provincial houses to give account of the activities and finances of the National House;
 - (e) enforce the code of conduct;
 - (f) establish clear relationships with provincial houses and facilitate cooperation and communication between itself and provincial houses, as well as between the various provincial houses; 15
 - (g) assign clear responsibilities for the management and coordination of the administration of the National House to the Secretary of the National House and hold him or her accountable for the overall administration of the National House; 20
 - (h) maximise the efficiency of communication and decision-making within the administration of the National House;
 - (i) involve the Secretary of the National House in decisions impacting on the overall management of the National House, as far as is practical; 25
 - (j) promote an equitable, fair, open, non-discriminatory and supportive environment for all provincial houses; and
 - (k) provide an equitable, fair, open, non-discriminatory and supportive environment for members of the National House.
- (2)(a) The strategic plan and annual performance plan referred to in subsection (1)(a) and (b) must be submitted to the Minister for approval, before a date determined by the Minister. 30
- (b) The National House must submit a quarterly report to the Minister on the implementation of the strategic plan and annual performance plan.
- (c) The National House must, within 60 days after the Minister has approved the strategic plan or any revised strategic plan as contemplated in subsection (1)(a), table the strategic plan in Parliament. 35
- (3) The National House must, where applicable,—
- (a) determine the reasons why the 50% requirement for female representation on a provincial house is not met; and 40
 - (b) in collaboration with the relevant provincial house, determine the reasons why such requirement is not met by a kingship or queenship council, principal traditional council, traditional council, traditional sub-council or Khoi-San council, and make recommendations to the Minister and the Premier, house and council concerned on how female representation on such house or council can be advanced to ensure that the 50% requirement is met. 45

Referral of Bills to National House

- 39.** (1)(a) Any Parliamentary Bill—
- (i) which directly affects traditional, or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or 50
 - (ii) pertaining to any matter referred to in section 154(2) of the Constitution, must, in the case of a bill contemplated in subparagraph (i) and may, in the case of a bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments. 55
- (b) The National House must, within 60 days from the date of such referral, make and submit such comments to the Secretary to Parliament: Provided that the National House may refer any such Bill to any provincial house for comments: Provided further that if

the National House has no comments on any Bill referred to it, the National House must inform the Secretary to Parliament accordingly.

(2) A provincial legislature or a municipal council may adopt the same procedure referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law to a provincial house or a local house, as the case may be. 5

Relationship between National House and kings, queens, Khoi-San kings, Khoi-San queens and principal traditional leaders

40. The National House may meet with recognised kings, queens, Khoi-San kings, Khoi-San queens and principal traditional leaders on a bi-annual basis to discuss— 10

- (a) the activities and programmes of the National House;
- (b) matters of interest to kings, queens, Khoi-San kings, Khoi-San queens and principal traditional leaders;
- (c) matters relating to service delivery and the development of traditional communities; and
- (d) any other business identified and proposed by either party and agreed to by both parties. 15

Relationship between National House and provincial houses

41. (1) The National House may—

- (a) investigate matters referred to it by a provincial house and make recommendations thereon; 20
- (b) advise provincial houses regarding the administration of their affairs; and
- (c) hold a meeting with a provincial house to discuss progress on matters relating to the general interest and welfare of traditional and Khoi-San communities.

(2) Where the National House wishes to interact with a local house or a traditional or Khoi-San council, such interaction must be done in consultation with the relevant provincial house: Provided that where no provincial house has been established, the National House may, after having informed the relevant Premier, interact directly with a local house or traditional or Khoi-San council. 25

(3) The chairperson of the National House must establish a body of chairpersons of provincial houses to interact with the National House on a regular basis on issues of mutual interest. 30

(4) The Secretary of the National House must establish a body of Secretaries of provincial houses to interact with the National House on a regular basis on issues of mutual interest.

Support to National House 35

42. (1) The Department must provide support to the National House so as to enable the National House to perform all the functions assigned to it, and such support—

- (a) may include the provision of— 40
 - (i) infrastructure;
 - (ii) human resources as contemplated in section 37(1);
 - (iii) skills development programmes; and
 - (iv) administrative systems; and
- (b) must, subject to section 36, include financial support, subject to the budget allocation of the Department.

(2) For the purposes of subsection (1)(b), the National House must submit to the Director-General of the Department, before a date determined by the Director-General, annual estimates of expenditure for the next financial year. 45

Annual report of National House

43. (1) The National House must annually, by no later than 30 June of a particular year, submit to the Minister a report in respect of the preceding financial year, complying with the provisions of subsection (2), in respect of its activities and programmes and must, within 30 days after the Minister has approved the report, table it in Parliament. 50

(2) The information to be contained in the report contemplated in subsection (1), include but are not limited to, information on—

- (a) the composition of the National House; 55

- (b) the filling of any vacancies;
 - (c) the disqualification of any member;
 - (d) meetings of the National House, with specific reference to the meetings held with kings and queens or Khoi-San kings and Khoi-San queens, and the meetings held with provincial houses; 5
 - (e) the consideration of any Bills referred to the National House;
 - (f) the exercising of any duties of the National House as contemplated in section 36;
 - (g) the responsibilities of the National House as contemplated in section 38;
 - (h) the budget and expenses of the National House; 10
 - (i) any matter as may be directed by the President or Minister; and
 - (j) any other matter deemed necessary by the National House.
- (3)(a) The Minister may, before approving a report submitted to him or her as contemplated in subsection (1), request a meeting with the National House to discuss the content of the report. 15
- (b) Any house of Parliament may, once a report contemplated in subsection (1) has been tabled in Parliament, request a meeting with the National House to discuss the contents of the report.

Privileges and immunities of members of National House

- 44.** (1) The National House has the authority to control, regulate and dispose of its internal affairs in terms of its rules and orders of the National House and subject to the Constitution and other any applicable legislation. 20
- (2) Members of the National House have freedom of speech in the National House and its committees, subject to the rules and orders of the National House, subject to the Constitution and other any applicable legislation. 25

Remuneration and benefits of members of National House

- 45.** The remuneration and benefits of members of the National House are determined in terms of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998).

Rules, orders and committees of National House

- 46.** (1) The National House must make rules and orders in connection with the conduct of its business and proceedings, including rules and orders regulating— 30
- (a) subject to subsection (2), establishment, constitution, meetings, powers and functions, procedures and lifespan of committees of the National House;
 - (b) the procedure to be followed in meetings of the National House;
 - (c) restrictions on access to such committees; 35
 - (d) the competency of any such committee to perform or dispose of its business and proceedings at venues other than the administrative seat of the National House;
 - (e) the designation of members to preside over meetings of the committees of the National House; and 40
 - (f) the attendance of any meeting of the National House by any person who is not a member of the House and the status of such a person at such a meeting.
- (2) There may be an executive committee consisting of the chairperson and deputy chairperson and those members contemplated in section 29(5).
- (3) The National House must, subject to subsection (1), establish an ethics committee. 45

Dissolution of National House

- 47.** (1) The National House must be dissolved—
- (a) on the expiry of the term of office of the National House; or
 - (b) after a vote supported by a majority of the full complement of the members of the National House in a meeting of the National House called for that purpose: 50
- Provided that in such instance the National House must be reconstituted in accordance with the provisions of sections 28 and 29, and such reconstituted National House shall function for the unexpired term of the dissolved National House as contemplated in section 27(2).

(2) Notwithstanding the dissolution of the National House, the Minister may convene the National House to an extraordinary meeting to attend to any urgent business, during the period following such dissolution until the day before the first meeting of the next National House and for this purpose—

- (a) every person who on the date of the dissolution of the National House is a member, remains a member of the House; and
- (b) the National House remains competent to function.

Oath or affirmation by members of National House

48. The members of the National House must, before they begin to perform their functions in the National House, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before the Chief Justice or a judge designated by the Chief Justice.

Part 3

Provincial and local houses of traditional and Khoi-San leaders

Provincial houses of traditional and Khoi-San leaders 15

49. (1) Provincial houses may be established by provinces in terms of provincial legislation and subject to the provisions of this Act .

(2) The provincial legislation contemplated in subsection (1) must include provisions that provide for —

- (a) the term of provincial houses to be five years: Provided that, notwithstanding anything to the contrary contained in any law, but subject to section 63(13), the term of a provincial house that was established and constituted in terms of any applicable legislation prior to the commencement of this Act, will expire on 31 May 2027: Provided further that any term of office of provincial houses reconstituted or established after the commencement of this Act, expires every five years on 31 May, calculated from 31 May 2027;
 - (b) where applicable, the membership of both senior traditional leaders and senior Khoi-San leaders in provincial houses;
 - (c) where applicable, the election of both senior traditional leaders and senior Khoi-San leaders as contemplated in section 28;
 - (d) where applicable, a relationship between the provincial house and any kingship or queenship council, Khoi-San kingship councils or Khoi-San queenship councils, or principal traditional council within the particular province, including meetings with such councils or the respective recognised traditional leaders;
 - (e) where applicable, entering into partnerships and agreements as contemplated in section 24;
 - (f) full-time and part-time members of the provincial house; and
 - (g) administrative and financial support to the provincial house, and
- may provide for a code of conduct for members of a provincial house that complements the code of conduct contained in Schedule 1 to this Act.

(3)(a) The membership contemplated in subsection (2)(c) must be composed in such a way that both senior traditional leaders and senior Khoi-San leaders are represented in the provincial house concerned—

- (i) in the same proportion that they are represented in the local houses concerned; or
 - (ii) if local houses have not been established, in the same proportion that they would have been represented in such local houses had such houses been established:
- Provided that if only one senior Khoi-San leader is a member of a local house as contemplated in subparagraph (i) or would have been such a member as contemplated in subparagraph (ii), such senior Khoi-San leader must be a member of the provincial house concerned.

(b) The fact that only senior traditional leaders or only senior Khoi-San leaders are recognised in a province does not preclude a province from establishing a provincial house.

(c) At least 50% of the members of a provincial house must be women: Provided that if this requirement cannot be met, the Premier may, upon receipt of reasons, determine a lower threshold for the house concerned.

(4) The members of a provincial house must, before they begin to perform their

functions in the provincial house, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before a judge of the High Court designated by the relevant Judge President for this purpose.

(5) A provincial house must, on a date and in a format as determined by the relevant Premier, submit— 5

- (a) a strategic plan for a period of five years;
- (b) an annual performance plan;
- (c) annual and quarterly reports in respect of its activities, which report must include but is not limited to, information on— 10
 - (i) the composition of the relevant house;
 - (ii) the filling of any vacancies;
 - (iii) the disqualification of any member;
 - (iv) meetings of the relevant house;
 - (v) the exercising of any of its functions;
 - (vi) budget and expenses of the relevant house; 15
 - (vii) any matter as may be directed by the relevant Premier; and
 - (viii) any other matter deemed necessary by the relevant house;

to such Premier for approval.

(6) A provincial house must on a date and in a format as determined by the relevant provincial Department responsible for traditional and Khoi-San matters, submit annual estimates of expenditures for the next financial year to such provincial Department. 20

Local houses of traditional and Khoi-San leaders

50. (1) Subject to the provisions of this Act and any regulations relating to local houses as contemplated in subsection (13), a Premier may by notice in the relevant provincial *Gazette* establish a local house of traditional and Khoi-San leaders for the area of jurisdiction of a local municipality, district municipality or a metropolitan municipality where there are one or more traditional councils or Khoi-San councils. 25

(2) A local house must consist of not less than five members and all senior traditional leaders, senior Khoi-San leaders, headmen, headwomen and branch heads who reside within the area of jurisdiction of a local municipality, district municipality or a metropolitan municipality in a specific area: Provided that at least 50% of the members of a local house must be women: Provided further that if this requirement cannot be met, the Premier may, upon receipt of reasons, determine a lower threshold for the house concerned. 30

(3) At its first meeting, after it has been constituted, the local house must elect one of its members to be the chairperson and must thereafter elect another of its members to be the deputy chairperson. 35

(4) The functions of a local house are—

- (a) to advise the local municipality, district municipality or the metropolitan municipality on— 40
 - (i) matters pertaining to customary law, customs, traditional and Khoi-San leadership of the traditional and Khoi-San communities within such municipality;
 - (ii) the development of planning frameworks that impact on traditional and Khoi-San communities; and 45
 - (iii) the development of by-laws that impact on traditional and Khoi-San communities;
- (b) to participate in local programmes that have the development of traditional and Khoi-San communities as an object;
- (c) to participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in traditional and Khoi-San communities; and 50
- (d) to participate in and form partnerships intended for the development of traditional and Khoi-San communities.

(5) A local house must meet at least four times a year. 55

(6) A local house must, on a date and format as determined by the Premier, submit—

- (a) a strategic plan for a period of five years;
- (b) an annual performance plan; and
- (c) annual and quarterly reports in respect of its activities, which report must include but are not limited to, information on— 60
 - (i) the composition of the relevant house;

- (ii) the filling of any vacancies;
- (iii) the disqualification of any member;
- (iv) meetings of the relevant house;
- (v) the exercising of any of its functions;
- (vi) budget and expenses of the relevant house; 5
- (vii) any matter as may be directed by the relevant Premier; and
- (viii) any other matter deemed necessary by the relevant house;

for approval by such Premier.

(7) A local house must on a date and format as determined by the relevant provincial Department responsible for traditional and Khoi-San matters, submit annual estimates of expenditures for the next financial year to such provincial Department. 10

(8) The term of a local house is five years: Provided that, notwithstanding anything to the contrary contained in any law, but subject to section 63(14), the term of a local house that was established and constituted in terms of any applicable legislation prior to the commencement of this Act, will expire on 30 April 2027: Provided further that any term of office of local houses reconstituted or established after the commencement of this Act, shall expire every five years on 30 April, calculated from 30 April 2027. 15

(9) The traditional and Khoi-San leaders who participate in the proceedings of a municipal council as contemplated in section 81 of the Local Government: Municipal Structures Act, must report on such participation in accordance with the provisions of that section. 20

(10) A province must provide administrative and financial support to local houses which support may include, but is not limited to, office accommodation and support staff: Provided that where local houses are established for the areas of jurisdiction of local municipalities, the administrative support to such houses may be provided as a shared service on district or metropolitan level. 25

(11) The Minister may, in accordance with the provisions of section 60, make regulations in respect of—

- (a) the disqualification of members of a local house;
- (b) where applicable, the election of representatives to the relevant provincial house; 30
- (c) meetings of a local house, including the quorum and requisite majorities;
- (d) the vacation of seats and the filling of vacancies;
- (e) subject to subsection (4), the powers, functions and duties of a local house;
- (f) subject to subsection (3), the rules and orders of a local house; 35
- (h) subject to subsection (12), the administrative and financial support to be provided to a local house;
- (i) the relationship between provincial and local houses having regard to the provisions of section 41;
- (j) mechanisms or procedures that would allow a fair representation of women as members of local houses; and 40
- (k) a code of conduct for members of local houses that complements the code of conduct contained in Schedule 1 to this Act.

(12) A Premier may make regulations in respect of the matters set out in subsection (11): Provided that such regulations may not be inconsistent with any regulations made by the Minister in terms of subsection (11): Provided further that the provisions of section 60(2)(a) apply with the necessary changes to any regulations made by a Premier in terms of this subsection. 45

(13) The members of a local house may, before they begin to perform their functions in the local house, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before a magistrate having jurisdiction over the local municipality, district municipality or a metropolitan municipality where the relevant local house was established. 50

CHAPTER 4

COMMISSION ON KHOI-SAN MATTERS

Establishment of Commission 55

51. (1) There is hereby established a Commission on Khoi-San Matters.

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

Appointment of members of Commission

52. (1)(a) The Minister must, subject to paragraphs (b), (c), (d), (e) and (f), and after inviting nominations from the general public, appoint a chairperson, deputy chairperson and at least three but not more than five other persons, as members of the Commission for a period not exceeding five years or any such further period as the Minister may determine by notice in the *Gazette*. 5

(b) A member of the Commission must be a South African citizen and have a qualification, experience and knowledge in—

- (i) governance and public administration; 10
- (ii) anthropology; 10
- (iii) traditions, culture and history relating to the Khoi-San; or
- (iv) customary law and customs and the institutions of Khoi-San leadership; and must have proven extensive research experience in relation to the areas listed in subparagraphs (ii) to (iv) above.

(c) The members of the Commission referred to in paragraph (b)(ii), (iii) and (iv) must collectively represent a pool of knowledge concerning issues relevant to the Khoi-San groupings. 15

(d) The Minister may appoint a selection panel consisting of the Director-General of the Department and not more than three other persons to make recommendations to the Minister on which nominees, based on the requirements referred to in this subsection, are most suited to serve on the Commission. 20

(e) The Minister must, after having received the recommendations of the selection panel contemplated in paragraph (d), refer the recommendations to the Premiers for comments.

(f) A nomination made by the public must contain all the information as may be specified in the invitation and must indicate whether the nominee is eligible for possible recognition as a Khoi-San king, Khoi-San queen, senior Khoi-San leader, branch head or is a member of a community which may apply for possible recognition as a Khoi-San community: Provided that no such person may serve on the Commission. 25

(g) The names of the chairperson, deputy chairperson and members appointed in terms of paragraph (a), together with the date from which the appointment takes effect, must be published in the *Gazette*. 30

(2) A member of the Commission is appointed on a full-time basis.

(3) If a member of the Commission dies or vacates office before the expiry of the term for which he or she has been appointed, the Minister may, in accordance with the provisions of subsection (1), appoint a person to fill the vacancy for the unexpired term for which such member was appointed. 35

(4) The Minister may remove a member of the Commission on the grounds of—

- (a) having been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine; 40
- (b) such member having been declared mentally unfit or mentally disordered by a court;
- (c) such member having been declared insolvent by a court;
- (d) misconduct, incapacity or incompetence;
- (e) failure to make recommendations to the Minister as contemplated in section 57(2), on the date and format as determined by the Minister; and 45
- (f) such member becoming eligible for recognition as a Khoi-San king, Khoi-San queen, senior Khoi-San leader, senior Khoi-San leader or branch head, or being a member of a community which applied for recognition as a Khoi-San community. 50

(5)(a) A decision to remove a member of the Commission on the grounds of misconduct or incompetence may be based on the Commission's performance and implementation of its strategic and annual performance plans or its failure to produce and submit plans and reports to the Minister, on the dates and format as determined by the Minister or on a finding to that effect by an investigative committee appointed by the Minister. 55

(b) The Minister may suspend a member of the Commission who is under investigation in terms of paragraph (a).

Vacancies

- 53.** A vacancy occurs whenever a member of the Commission—
- (a) resigns by giving written notice to the Minister;
 - (b) is removed in terms of section 52(4); or
 - (c) becomes a member of the National Assembly, a member of a provincial legislature, a full-time member of a municipal council or a permanent delegate to the National Council of Provinces. 5

Conditions of appointment of members of Commission

- 54.** (1) The Minister must, after consultation with the Minister of Finance, determine the conditions of appointment of the members of the Commission, taking into account— 10
- (a) the role, duties and responsibilities of the members of the Commission; and
 - (b) the level of expertise and experience required from the members of the Commission.
- (2) Conditions of appointment may differ in respect of— 15
- (a) the chairperson and other members of the Commission; and
 - (b) must include a code of conduct, clear deliverables and key performance areas aligned to the strategic and annual performance plans of the Commission, for the period of appointment.
- (3) The Public Finance Management Act, 1999 (Act No. 1 of 1999) and relevant public service policies, rules and regulations shall apply to the Commission. 20

Support to and reports by Commission

- 55.** The Department must provide administrative and financial support to the Commission so as to enable it to perform all the functions assigned to it and may appoint, second or designate officials from the Department for this purpose, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999) and relevant public service policies, rules and regulations. 25

Application for recognition of Khoi-San kingship, Khoi-San queenship, Khoi-San communities, branches, Khoi-San kings, Khoi-San queens, senior Khoi-San leaders and branch heads

- 56.** (1) A community that meets the criteria set out in section 5 may lodge a detailed application in writing with the Commission for the recognition of that community as a Khoi-San kingship or Khoi-San queenship, as the case may be, as well as the recognition of a Khoi-San king or Khoi-San queen who meets the criteria set out in section 7. 30
- (2) A community that meets the criteria set out in section 5 may lodge a detailed application in writing with the Commission for the recognition of that community and, if applicable, the branches of that community as well as for the recognition of a senior Khoi-San leader who meets the criteria set out in section 7 and, if applicable, a branch head. 35
- (3) An application contemplated in subsection (1) and (2) must be in the format as may be determined by the Commission, must comply with the provisions of section 5(1)(b) and must— 40
- (a) be lodged by a member of the community duly authorised by such community or the royal family concerned, as the case may be; and
 - (b) (i) be accompanied by information setting out the details on which the claim for the recognition of the Khoi-San kingship or Khoi-San queenship, community as well as the leadership positions are based; 45
 - (ii) be accompanied by details of the geographical area or areas referred to in section 5(1)(a) and, subject to section 5(1)(c), the number of members of the community occupying such areas;
 - (iii) be submitted within the period of one year referred to in section 57(2)(a); 50 and
 - (iv) if the community referred to in subsection (1) has a proven history of hereditary or elected leadership, be accompanied by details of the hereditary or elected leadership position.
- (3) When considering an application, the Commission must consider and apply 55 customary law and customs of the Khoi-San community concerned.

- (4) The Commission must, in respect of an application for the recognition of—
- (a) a Khoi-San kingship or Khoi-San queenship, apply the criteria as set out in section 5;
 - (b) a community and branches, apply the criteria set out in section 5; and
 - (c) Khoi-San kings or Khoi-San queen, hereditary or elected senior Khoi-San leaders, apply the criteria set out in sections 7 and 10. 5
- (5) The Commission must, on a quarterly basis, inform the Premiers concerned of the applications received in terms of this section.

Functions of Commission

- 57.** (1) The Commission must research, investigate and make recommendations to the Minister on the recognition of— 10
- (a) Khoi-San kingships and Khoi-San queenships;
 - (b) Khoi-San communities;
 - (c) Khoi-San kings and Khoi-San queens;
 - (d) hereditary senior Khoi-San leaders; 15
 - (e) elected senior Khoi-San leaders; and
 - (f) branches and branch heads.
- (2) The Commission—
- (a) may only research, investigate and make recommendations in respect of those applications that have been lodged with the Commission in terms of section 56 within a period of one year from a date to be determined by the Minister by notice in the *Gazette*, or any such further period as the Minister may determine by notice in the *Gazette*; and 20
 - (b) must complete the research, investigations and make recommendations as contemplated in paragraph (a) within the period of five years referred to in section 52(1)(a), or any such further period as the Minister may determine. 25
- (3) Any application that has not been lodged with the Commission by the period referred to in subsection (2)(a), may not be dealt with by the Commission and must be dealt with in accordance with the provisions of sections 5 or 10, as the case may be.
- (4) Any dispute that may arise after the period referred to in subsection (2)(a), must be dealt with by the relevant Premier and for this purpose the provisions of section 59 apply with the necessary changes. 30
- (5) The Commission must conduct public awareness campaigns relating to its roles and functions and the application and recognition process relating to Khoi-San communities and leaders. 35
- (6) The Commission must—
- (a) within two months of the date of establishment, in a format and manner determined by the Minister, submit a five year strategic plan to the Minister;
 - (b) on a date and format determined by the Minister, submit an annual performance plan to the Minister; 40
 - (c) keep proper records;
 - (d) on a date and format as determined by the relevant Premier, submit annual and quarterly reports in respect of its activities to such Premier, which report must include but are not limited to, information on— 45
 - (i) the disqualification of any member;
 - (ii) meetings of the Commission;
 - (iii) exercising of the Commission's functions as contemplated in subsection (1);
 - (iv) the budget and expenses of the Commission; and
 - (v) number of applications lodged with the Commission and the status of each application in relation to research and investigations thereof; and
 - (vi) any matter as may be directed by the Minister;
 - (e) on a date and in a format as determined by the Department, submit annual estimates of expenditures for the next financial year to the Department. 50
- (7) The Minister may, before approving a report submitted to him or her as contemplated in subsection (6) request a meeting with the Commission on the content of the report. 55
- (8) The members of the Commission must, before they begin to perform their functions, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before a magistrate having jurisdiction. 60

Recommendations and decisions

58. (1) A recommendation of the Commission must be agreed to by at least two-thirds of the members of the Commission.

(2)(a) A recommendation of the Commission must, within a period of two weeks of the recommendation having been made, be referred for comments to the Premier of the province where the applicant community, leader and branch head reside or where the branch is located. 5

(b) A Premier must submit his or her comments to the Commission within a period of 60 days from the date of referral of the recommendation: Provided that if no comments are received within the period of 60 days, it shall be deemed that the Premier is in support of the specific recommendation. 10

(c) The Commission must, within a period of two weeks from the expiry of the 60 days referred to in paragraph (b), submit its recommendation together with the Premier's comments, if any, to the Minister.

(3) The Minister must, within a period of 60 days from the date of receipt of the submission contemplated in subsection (2)(c), make a decision on the recommendation. 15

(4) If the Minister takes a decision that differs with the recommendation submitted in terms of subsection (2), the Minister must provide written reasons for such decision to the Commission and relevant Premier.

(5) Subject to the decision of the Minister as contemplated in subsection (3), the Minister may— 20

(a) recognise a Khoi-San kingship or Khoi-San queenship, Khoi-San community, branch, Khoi-San king or Khoi-San queen, senior Khoi-San leader or branch head, as the case may be, by notice in the *Gazette*; and

(b) issue a certificate of recognition to such leader. 25

CHAPTER 5

GENERAL PROVISIONS

Disputes and appeals

59. (1) This section applies to any traditional leadership or Khoi-San dispute subject to paragraphs (b) and (c) and section 63(10) and (11). 30

(2) Provincial legislation may provide for a mechanism to deal with traditional or Khoi-San leadership disputes, excluding any dispute relating to a king or a queen or a kingship or a queenship or Khoi-San kingships or Khoi-San queenships or Khoi-San kings or Khoi-San queens: Provided that such provincial legislation must stipulate the legal, practical and other consequences relating to the administration and assets of the relevant councils: Provided that such legislation may not be inconsistent with the provisions of this section. 35

(3) Notwithstanding the relevant provisions of provincial legislation contemplated in subsection (2), a Premier may apply subsection (5).

(4) In the absence of provincial legislation as contemplated in subsection (2), a Premier must apply the provisions of this section. 40

(5) Any traditional or Khoi-San leadership dispute relating to a king, queen, principal traditional leader, kingship, queenship, principal traditional community, Khoi-San kingships or Khoi-San queenships or Khoi-San kings or Khoi-San queen must be dealt with by the President. 45

(6) Any traditional or Khoi-San leadership dispute relating to senior traditional leader, headman, headwoman, traditional community, headmanship, headwomenship, Khoi-San community, branch, senior Khoi-San leaders or branch heads must be dealt with by a Premier concerned.

(7) The President or Premier, as the case may be, must— 50

(a) cause an investigation to be conducted by an investigative committee designated by him or her which committee must, in the case of a dispute concerning a king, queen, kingship or queenship, Khoi-San kingship or Khoi-San queenship or Khoi-San king or Khoi-San queen, include at least one member of the National House and in the case of any other dispute include at least one member of the relevant provincial house, to provide a report as well as recommendations on the matter in dispute within 60 days from the date of designation of the investigative committee; and 55

- (b) refer the report to the relevant royal family or, where applicable, relevant traditional council or Khoi-San council, as the case may be, and affected community members, for its written comments which must be submitted to the President or Premier, as the case may be, within 60 days from the date of such referral. 5
- (8) The President or the relevant Premier, as the case may be, may refer any dispute, including any report, recommendations and comments contemplated in subsection (5), to the Minister for written comments and advice which must be submitted to the President or Premier, as the case may be, within 60 days from the date of such referral.
- (9) Within 60 days of receipt of the report and recommendations of the investigative committee, the comments of the royal family or traditional council or Khoi-San council and affected community members and, where applicable, the comments and advice of the Minister, the President or relevant Premier, as the case may be, must take a decision on the matter in dispute and inform the parties to the dispute in writing of his or her decision. 10
- (10) Any person who is aggrieved by a decision of a member of the Executive Council may lodge an appeal to the relevant Premier. 15
- (11) Any person who is aggrieved by a decision of a Premier may lodge an appeal to the Minister.
- (12) An appeal contemplated in subsections (7) and (8) must be lodged— 20
- (a) within 30 calendar days after the aggrieved person has been informed of the specific decision; and
- (b) in the manner as may be prescribed by the relevant Premier or the Minister, as the case may be.
- (13) The relevant Premier or the Minister, as the case may be— 25
- (a) dismiss the appeal against a decision made;
- (b) hold an appeal and set aside or vary the specific decision, wholly or in part; and
- (c) must, in writing, inform the person who lodged the appeal and the relevant Member of the Executive or Premier. 30
- (14) Any appeal lodged in terms of this section must be dealt with by the relevant Premier or the Minister, as the case may be, within 30 calendar days from the date on which the appeal was lodged.

Regulations

- 60.** (1) The Minister may, by notice in the *Gazette*, make regulations regarding— 35
- (a) any matter that must or may be prescribed in terms of this Act;
- (b) the traditional, ceremonial and any other roles and functions of a king or queen, Khoi-San king or Khoi-San queen or principal traditional leader, after consultation with a delegation consisting of not more than two members of each kingship or queenship council, principal traditional council, Khoi-San kingship council or Khoi-San queenship council, as the case may be, designated by such councils; 40
- (c) any matter that may be necessary to ensure the effective functioning of any local house, including a matter referred to in section 50;
- (d) the documentation of customary laws of succession and the development of genealogies for traditional or Khoi-San leadership; 45
- (e) strategic and annual performance plans for kingship council or queenship council or principal traditional council, or Khoi-San kingship council or Khoi-San queenship council or traditional or Khoi-San council, Commission, committee or house; 50
- (f) any consultation process to be conducted in terms of the Act;
- (g) the period within which the Premier must reach a decision regarding—
- (i) the recognition contemplated in section 3(4) and (7); and
- (ii) the withdrawal of recognition contemplated in section 4;
- (h) the procedure to be followed for the identification or election of a senior traditional leader, headman or headwoman in instances where the customary law and customs do not provide for such identification or election; 55
- (i) elections referred to in section 10(2)(a)(ii);
- (j) partnerships or agreements as contemplated in section 24; and
- (k) any ancillary or administrative matter that is necessary to prescribe for the proper implementation or administration of this Act. 60

- (2) Before any regulations are made under this section, the Minister may consult—
- (a) the members of the Executive Councils responsible for traditional and Khoi-San leadership matters of the provinces concerned;
 - (b) the National House and relevant provincial houses; and
 - (c) the Premiers concerned.

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(3) Any regulations made under this section must be published in the *Gazette* for public comment and must within 90 days of the notice contemplated in subsection (1), be tabled in Parliament for noting.

Delegation of powers and duties by Premier

61. (1) A Premier may, subject to such conditions as he or she may determine, in writing, delegate any power or duty conferred on him or her under this Act, except the power to recognise any community or leader or to withdraw such recognition, to the member of the Executive Council responsible for traditional affairs of the province concerned.

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(2) A delegation in terms of subsection (1) does not prevent the exercise of the relevant power or the performance of any duty by a Premier.

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(3) A Premier may, at any time in writing, withdraw or amend a delegation contemplated in subsection (1).

(4) A member of the Executive Council to whom a power has been delegated, may not further delegate such power or duty without the written authority of the Premier concerned.

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(5) A Premier must, within 30 days of delegating any power or duty in terms of subsection (1) or withdrawing or amending such delegation in terms of subsection (3), inform the Minister accordingly.

Monitoring

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62. (1) The Department may monitor the implementation of this Act and any regulations made in terms of this Act, including the functioning of any Commission, committee, house, community, leader, council or branch provided for in this Act, and may submit reports in this regard and make recommendations on such implementation or functioning to the Minister, the relevant Premier or Premiers in general, and the relevant Commission, committee, house, community, leader, council or branch.

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(2) The Department may monitor the implementation of section 81 of the Local Government: Municipal Structures Act, and make recommendations on such implementation to the Minister, a Premier, any relevant house of traditional and Khoi-San leaders, and any senior traditional leader or senior Khoi-San leader, headman or headwoman or branch heads who participates in the proceedings of a municipal council in accordance with the provisions of that Act.

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(3) The Minister may, after having received a report or recommendations contemplated in subsections (1) and (2), as the case may be, and in consultation with the relevant Premier, take the necessary steps to ensure that the provisions of this Act are met.

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Transitional arrangements

63. (1)(a) Any traditional leader—

(i) who was appointed or recognised as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before 24 September 2004; or

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(ii) who was recognised as such in terms of the Traditional Leadership and Governance Framework Act, prior to the repeal of that Act, or in terms of any applicable provincial legislation which is not inconsistent with the Traditional Leadership and Governance Framework Act or Traditional and Khoi-San Leadership Act, as the case may be; or

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(iii) who is recognised as such in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of this Act but subject to the date of invalidity,

is deemed to have been recognised as such in terms of section 8 of this Act, subject to a recommendation of the CTLDC where applicable.

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(b) Any kingship or queenship, principal traditional community, traditional community and subject to paragraph (c), any headmanship or headwomanship that was

recognised as such in terms of the Traditional Leadership and Governance Framework Act prior to the repeal of that Act, or in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act, but subject to the date of invalidity or in terms of any applicable provincial legislation which is not inconsistent with the Traditional Leadership and Governance Framework Act or the Traditional and Khoi-San Leadership Act, as the case may be, is deemed to have been recognised in terms of section 3 of this Act, subject to a recommendation of the CTLDC where applicable. 5

(c)(i) A Premier must, within three years of the commencement of this Act or such further period as the Minister may determine, cause an investigation to be conducted to determine whether any headmanship or headwomanship established or recognised in terms of applicable legislation prior to or since the commencement of the Traditional Leadership and Governance Framework Act, and any headman or headwoman appointed or recognised for such headmanship or headwomanship, meet the relevant criteria set out in sections 3, 7 and 8 of this Act. 10

(ii) If an investigation as contemplated in subparagraph (i) finds that any headmanship or headwomanship or any headman or headwoman does not meet the relevant criteria set out in sections 3, 7 and 8 of this Act, such headmanship or headwomanship shall automatically be disestablished upon the death or resignation of the relevant headman or headwoman and the appointment or recognition of the position of headman or headwoman, as the case may be, shall be deemed to have been withdrawn. 20

(iii) The Premier may, by notice in the provincial *Gazette*, stipulate the legal, practical and other consequences of a disestablishment as contemplated in subparagraph (ii).

(iv) Any investigation contemplated in subparagraph (i) and any notice in subparagraph (iii) that was done or issued in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act, will, subject to the date of invalidity, be deemed to have been done in terms of this Act. 25

(d) Any kingship or queenship council, principal traditional council, traditional council or traditional sub-council established in terms of the Traditional Leadership and Governance Framework Act prior to the repeal of that Act, or in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act, but subject to the date of invalidity, or in terms of applicable provincial legislation which is not inconsistent with the Traditional Leadership and Governance Framework Act and which complies with all requirements of this Act, is deemed to have been established in terms of section 16 or 17 of this Act, as the case may be, subject to the term of office as contemplated in section 16(4) of this Act: Provided that if the establishment of any such council did not comply with all the requirements of this Act, the relevant provisions of subsection (4) apply. 30 35

(e) Any kingship or queenship, principal traditional community, traditional community and subject to paragraph (c), any headmanship or headwomanship that was recognised as such in terms of the Traditional Leadership and Governance Framework Act prior to the repeal of that Act, or in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act, but subject to the date of invalidity, or in terms of any applicable provincial legislation which is not inconsistent with the Traditional Leadership and Governance Framework Act or the Traditional and Khoi-San Leadership Act, as the case may be, must within three years of commencement of this Act, submit written customary law of succession and relevant genealogies, for purposes of recognition and withdrawal of leadership positions applicable within their respective communities to the Minister. 40 45

(2) Any person who was recognised or appointed as a regent, acting leader or deputy leader in terms of the Traditional Leadership and Governance Framework Act, prior to the repeal of that Act, or in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act, but subject to the date of invalidity, or in terms of any applicable provincial legislation which is not inconsistent with the Traditional Leadership and Governance Framework Act or Traditional and Khoi-San Leadership Act, as the case may be, is deemed to have been recognised as such in terms of section 12, 13 or 14 of this Act, as the case may be. 50 55

(3) Any “tribe” that, immediately before 24 September 2004, had been established in terms of applicable legislation and was still recognised as such, at the commencement of this Act, is deemed to be a traditional community contemplated in section 3 of this Act, subject to—

- (a) the withdrawal of its recognition in accordance with the provisions of section 4; or 60
- (b) a recommendation of the CTLDC, where applicable.

(4)(a) A tribal authority that, immediately before 24 September 2004, had been established and was still recognised as such, at the commencement of this Act must be reconstituted in terms of section 16(2) of this Act or within two years of publication of the formula contemplated in section 16(2) or within two years from the date of commencement of this Act, whichever is the later date, whereafter such tribal authority shall be a traditional council and must perform the functions referred to in section 20. 5

(b) If, prior to the commencement of this Act, any tribal authority was reconstituted as contemplated in paragraph (a) but such reconstitution did not comply with all the requirements of section 16(2), or a traditional council was constituted or reconstituted but did not comply with all the requirements of section 16(2), such tribal authority or traditional council must be reconstituted in accordance with the provisions of section 16(2) of this Act within two years from the publication of the formula as contemplated in section 16(2) or within two years from the commencement of this Act, whichever is the later date, whereafter such tribal authority shall be a traditional council and must perform the functions referred to in section 20. 10 15

(c) If a kingship or queenship council or principal traditional council was constituted or reconstituted prior to the commencement of this Act but did not comply with all the requirements of this Act, such council must be reconstituted in accordance with the relevant provisions of section 16 of this Act within two years from the publication of the formula as contemplated in section 16(2) or within two years from the commencement of this Act, whichever is the later date. 20

(d) If a traditional sub-council was constituted or reconstituted prior to the commencement of this Act, but did not comply with all the requirements of this Act, such council must be reconstituted in accordance with the relevant provisions of section 17 of this Act within two years from the commencement of this Act. 25

(e) If the timeframes contemplated in paragraphs (a), (b) or (c) are not met, the Minister may, within two years after the timeframes have lapsed and after consultation with the relevant Premier, apply the provisions of section 16(2) to ensure that such council is constituted or reconstituted in accordance with the provisions of section 16(2).

(f) The provisions of sections 16(3) and (5) apply to any constitution or reconstitution contemplated in paragraphs (a), (b) and (c) of this subsection. 30

(5)(a) Any community authority that had been established in terms of applicable legislation and still existed as such at the commencement of this Act, continues to exist until it is disestablished in accordance with provincial legislation, which disestablishment must take place within three years from the date of commencement of this Act. 35

(b) The provincial legislation contemplated in paragraph (a) must regulate the legal, practical and other consequences of the disestablishment, including—

- (i) the transfer of assets, liabilities and administrative and other records to an appropriate authority; 40
- (ii) the vacation of office of any office bearer of such a community authority; and
- (iii) the transfer of staff of such a community authority in accordance with applicable legislation.

(c) In the absence of provincial legislation as contemplated in paragraph (a), the Premier of a province may, after consultation with any relevant member of the Executive Council of the province, the relevant community authority and the provincial house, by notice in the provincial *Gazette* disestablish such community authority and such notice must stipulate the legal, practical and other consequences of such disestablishment as contemplated in paragraph (b). 45

(d) If the timeframe referred to in paragraph (a) is not met in respect of any community authority, the Minister may within five years of the lapse of the timeframe, after consultation with the relevant Premier, disestablish a community authority and by notice in the *Gazette*, stipulate the legal, practical and other consequences of such disestablishment as contemplated in paragraph (b). 50

(e) A community authority that has been disestablished in full compliance with section 63(5) of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act, but subject to the date of invalidity, is deemed to have been disestablished in terms of this subsection: Provided that if such disestablishment was not done in full compliance with the said section 63(5), the provisions of paragraphs (a), (b), (c) and (d) of this subsection apply. 55 60

(6)(a) The Premier of a province must, by notice in the provincial *Gazette*, within two years of the commencement of this Act, disestablish any regional authority, Ibandla Lamakhosi, Council of Chiefs and ward authority functioning under tribal authorities

that have been established in terms of applicable legislation before the commencement of this Act.

(b) The notice disestablishing a regional authority, Ibandla Lamakhosi, Council of Chiefs or ward authority must stipulate the legal, practical and other consequences of the disestablishment, including— 5

- (i) the transfer of assets, liabilities and administrative and other records to an appropriate provincial department, a municipality or local house of traditional leaders, as circumstances may require;
- (ii) the vacation of office of any office bearer of such a regional authority; and
- (iii) the transfer of staff of such a regional authority in accordance with applicable legislation. 10

(c) If the timeframe of two years referred to in paragraph (a) is not met in respect of any regional authority, Ibandla Lamakhosi, Council of Chiefs or ward authority, the Minister may, after consultation with the relevant Premier, disestablish a regional authority, Ibandla Lamakhosi, Council of Chiefs or ward authority and by notice in the *Gazette*, stipulate the legal, practical and other consequences of such disestablishment subject to paragraph (b). 15

(d) A regional authority, Ibandla Lamakhosi, Council of Chiefs or ward authority that has been disestablished in full compliance with section 63(6) of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act but subject to the date of invalidity, is deemed to have been disestablished in terms of this subsection: Provided that if such disestablishment was not done in full compliance with the said section 63(6), the provisions of paragraphs (a), (b) and (c) of this subsection apply. 20

(7)(a) Where, pursuant to an investigation conducted in terms of section 28(7) of the Traditional Leadership and Governance Framework Act, the Commission decided that a paramountcy qualifies to be recognised as a kingship or queenship, such a paramountcy is deemed to be recognised as a kingship or queenship in terms of section 3 of this Act. 25

(b) The incumbent paramount chiefs, in respect of the kingships and queenships contemplated in paragraph (a), are deemed to be recognised as kings or queens in terms of section 8 of this Act. 30

(c) In this subsection and subsection (7), (8), (10) and (11), “Commission” refers to the Commission on Traditional Leadership Disputes and Claims as it existed prior to 1 February 2010.

(8)(a) Where, pursuant to an investigation conducted in terms of section 28(7) of the Traditional Leadership and Governance Framework Act, the Commission decided that a paramountcy does not qualify to be recognised as a kingship or queenship, such a paramountcy will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a kingship or queenship in terms of section 3 of this Act. 35 40

(b) Where, pursuant to an investigation conducted in terms of section 28(7) of the Traditional Leadership and Governance Framework Act, the Commission has decided that a paramount chief does not qualify to be recognised as a king or queen, such a paramount chief, regent or acting paramount chief will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a king or queen in terms of section 8 or a regent or acting king or queen in terms of section 12 or 13 of this Act, respectively. 45

(c) A kingship or queenship and a king or queen recognised in terms of paragraphs (a) and (b) lapses—

- (i) if, on 1 February 2010, the position was vacant; 50
- (ii) on the death of the incumbent king or queen where the position of such king or queen is occupied by a permanent incumbent; and
- (iii) where the position of the incumbent king or queen is occupied by a regent or an acting incumbent, on the death of such regent or acting incumbent or on the date of the recognition of a successor, 55

whereafter the kingship or queenship and the king or queen, as the case may be, will be deemed to be a principal traditional community and principal traditional leader respectively: Provided that when a leader or a community becomes a principal traditional leader or principal traditional community in terms of this paragraph, the Premier concerned must publish a notice in the relevant provincial *Gazette* recognising such principal traditional leader and principal traditional community, and issue a certificate of recognition to such principal traditional leader. 60

(9) If a kingship or queenship council has been established for a kingship or queenship referred to in subsection (8)(a) and the recognition of such kingship or queenship lapses in terms of subsection (8)(c), the kingship or queenship council shall be deemed to be a principal traditional council.

(10) Any recommendation made by the Commission remains valid notwithstanding the repeal of the Traditional Leadership and Governance Framework Act. 5

(11) Any dispute or claim that has not been disposed of by the Commission by the expiry of its term of office must be dealt with in accordance with the provisions of section 59 of this Act or any relevant provisions provided for in provincial legislation.

(12) Subject to the provisions of sections 27 and 28, the traditional and Khoi-San leaders who, on the date of commencement of this Act were members of the National House of Traditional and Khoi-San Leaders, remain members of the House until 30 June 2027, whereupon the House must be reconstituted in terms of this Act: Provided that anything done by the National House in accordance with a provision of any of the laws as contemplated in section 27(3), shall be deemed to have been done in terms of the corresponding provisions of this Act. 10 15

(13) Notwithstanding the provisions of section 49, the traditional and Khoi-San leaders who, on the date of commencement of this Act were members of a provincial house of traditional and Khoi-San leaders, established and constituted in terms of provincial legislation, remain members of the provincial house concerned until 31 May 2027 and any subsequent reconstitution of such a house must comply with the provisions of section 49. 20

(14) Subject to the provisions of section 50(8), the members of a local house of traditional and Khoi-San leaders who, on the date of commencement of this Act were members of such a house, remain members of the local house concerned until 30 April 2027, whereupon the local house must be reconstituted in terms of this Act: Provided that anything done by a local house in accordance with a provision of any of the laws as contemplated in section 50(8), shall be deemed to have been done in terms of the corresponding provisions of this Act. 25

(15) Any formula published in the *Gazette* in terms of a provision of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act but subject to the date of invalidity, continues to apply until it is replaced by a formula issued in terms of the applicable provision of this Act. 30

(16) Any consultations done in terms of the Traditional and Khoi-San Leadership Act in respect of the establishment of a kingship or queenship council, principal traditional council, traditional council or Khoi-San council prior to the repeal of that Act but subject to the date of invalidity, is deemed to have been done in accordance with the corresponding provisions of this Act. 35

(17)(a) Subject to subsections (1)(d) and (4), the members of a kingship or queenship council, a principal traditional council or a traditional sub-council who, on the date of commencement of this Act, were members of such a council established and constituted in terms of applicable provincial legislation, remain members of the council concerned until 30 April 2027, whereupon such council must be reconstituted in accordance with the provisions of section 16 or 17, as the case may be. 40

(b) Subject to subsections (1)(d) and (4), the members of a kingship or queenship council, a principal traditional council or a traditional sub-council who, on the date of commencement of this Act, were members of such a council established and constituted in terms of the Traditional and Khoi-San Leadership Act, prior to the repeal of that Act, but subject to the date of invalidity, remain members of the council concerned until 30 April 2027, whereupon such council must be reconstituted in accordance with the provisions of section 16 or 17, as the case may be. 45 50

(18)(a) Subject to subsections (1)(d) and (4), the members of a traditional council who, on the date of commencement of this Act were members of such a council established and constituted in terms of applicable provincial legislation, remain members of the council concerned until 31 March 2027, whereupon such council must be reconstituted in accordance with the provisions of section 16. 55

(b) Subject to subsections (1)(d) and (4), the members of a traditional council who, on the date of commencement of this Act, were members of such a council established and constituted in terms of the Traditional and Khoi-San Leadership Act, prior to the repeal of that Act but subject to the date of invalidity, remain members of the council concerned until 31 March 2027, whereupon such council must be reconstituted in accordance with the provisions of section 16. 60

(19) The members of a Khoi-San council that was established in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act, but subject to the date of invalidity, remain members of the council concerned until 31 March 2032, whereupon such council must be reconstituted in accordance with the provisions of section 18. 5

(20)(a) A recognised senior Khoi-San leader will, with effect from the date of publication of a notice contemplated in section 10(5)(a) or 58(5)(a), as the case may be, become a member of the relevant local house established in terms of section 50 of this Act, if such a house has been established.

(b) For the purposes of a local house as contemplated in section 50 of this Act, only branch heads who, at the time of establishment of such house were recognised in terms of section 10(5)(a) or 58(5)(a) of this Act, as the case may be, may be considered for membership of such house. 10

(c) Recognised senior Khoi-San leaders will become members of provincial houses at a time and in a manner provided for in provincial legislation as contemplated in section 49 of this Act. 15

(d) In a province where a provincial house has been established, recognised senior Khoi-San leaders will become members of the National House in accordance with the provisions of the provincial legislation as contemplated in section 49 of this Act and subject to section 28 of this Act. 20

(e) In a province where a provincial house has not been established, the provisions of section 28 of this Act apply in respect of recognised senior Khoi-San leaders.

(f) Notwithstanding the provisions of paragraph (c), any senior Khoi-San leader who has been recognised prior to the enactment of provincial legislation as contemplated in section 49 of this Act may, upon a decision of the relevant provincial house, become a co-opted member of such house with observer status. 25

(g) A recognised senior Khoi-San leader who becomes a co-opted member of a provincial house as contemplated in paragraph (f), may be reimbursed for his or her travel and accommodation expenditure for the purposes of attending meetings of such house, in accordance with the travel and subsistence policy of the provincial department responsible for providing administrative and financial support to such house. 30

(h) The provisions of this subsection apply from the date of commencement of this Act.

(21) In any instance where the area of jurisdiction of a traditional council or traditional sub-council has been defined in terms of national or provincial legislation prior to the commencement of this Act, a Premier must, within three years of the commencement of this Act, or such further period as the Minister may determine, have such areas of jurisdiction mapped and publish such maps by notice in the relevant provincial *Gazette*: Provided that this provision does not apply in instances where such an area of jurisdiction has been defined, mapped and published in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act but subject to the date of invalidity. 35

(22)(a) Any partnership or agreement entered into by a kingship or queenship council, principal traditional council, traditional council or traditional sub-council prior to the commencement of this Act, must, within three years from such commencement, be reviewed by the relevant Premier to determine whether such partnership or agreement meets the requirements of section 24. 45

(b) If a Premier is of the opinion that a partnership or agreement contemplated in paragraph (a) does not meet such requirements, the Premier must refer such partnership or agreement to the parties who entered into such partnership or agreement and request them to either amend or re-enter into such partnership or agreement to ensure compliance with section 24 or to cancel such partnership or agreement. 50

(c) The provisions of section 24(6) apply to partnerships and agreements contemplated in this subsection.

(d) The provisions of this subsection do not apply to any partnership or agreement which, at the commencement of this Act, has been entered into in accordance with any enabling provisions of any other law. 55

(e) Any partnership or agreement that has been reviewed as contemplated in paragraph (a) prior to the repeal of the Traditional and Khoi-San Leadership Act, but subject to the date of invalidity, is deemed to have been reviewed in terms of this subsection. 60

(23)(a) Any Khoi-San community or branch that was recognised as such in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act but subject

to the date of invalidity, is deemed to have been recognised as such in terms of sections 5(3) or (8) or 58(5)(a) of this Act, as the case may be.

(b) Any senior Khoi-San leader or branch head who was recognised as such in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act but subject to the date of invalidity, is deemed to have been recognised as such in terms of section 10(5)(a) or 58(5)(a) of this Act, as the case may be. 5

(c) Any Khoi-San council that was established in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act, but subject to the date of invalidity, is deemed to have been established in terms of section 18 of this Act and for the term contemplated in section 18(8). 10

(d) Any recognition or establishment as contemplated in paragraphs (a), (b) and (c) that was done after the date of invalidity takes effect, if applicable, must be reconsidered and re-established in terms of the relevant provisions of this Act.

(24)(a) For the purposes of this subsection, the Commission on Khoi-San Matters that was established in terms of sections 51 and 52 of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act, but subject to the date of invalidity, is referred to as the previous Commission and the Commission on Khoi-San Matters to be established in terms of sections 51 and 52 of this Act after the commencement of this Act, is referred to as the new Commission. 15

(b) Any application for the recognition of a Khoi-San community, branch, senior Khoi-San leader or branch head that was lodged with the previous Commission in terms of the Traditional and Khoi-San Leadership Act prior to the repeal of that Act but subject to the date of invalidity, and within the period referred to in section 57(2)(a) of that Act or any extension of such period, and in respect of which the previous Commission— 20

- (i) has not conducted any research or the research is incomplete; or 25
- (ii) has not conducted any investigation or the investigation is incomplete; or
- (iii) has finalised the research and investigation but has not made a recommendation to the Minister prior to the repeal of that Act,

is deemed to have been lodged with the new Commission in terms of section 56 of this Act. 30

(c) If the previous Commission has made a recommendation to the Minister in terms of section 58(2)(c) of the Traditional and Khoi-San Leadership Act, but the Minister has not taken a decision as contemplated in section 58(3) prior to the repeal of the Traditional and Khoi-San Leadership Act but subject to the date of invalidity, the Minister must, within 60 days from the commencement of this Act, comply with section 58(3) of this Act. 35

(d) Any research and investigations conducted by the previous Commission are, subject to the date of invalidity, if applicable, deemed to have been conducted by the new Commission: Provided that the new Commission may conduct additional research and investigations before complying with section 58(1) and (2) of this Act. 40

(e) The application form developed by the previous Commission and published under General Notice 802 in *Gazette* No. 45865 of 4 February 2022 is, subject to the date of invalidity, if applicable, deemed to have been developed in terms of section 56(2) of this Act: Provided that the new Commission may revise the application form, taking into account the need for consistency. 45

Amendment of legislation

64. The legislation mentioned in Schedule 3 to this Act, is hereby amended to the extent set out in that Schedule.

Repeal of legislation and savings

65. (1) The legislation specified in Schedule 4 to this Act, is repealed to the extent indicated in the third column of that Schedule. 50

(2) Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which may or must be done in terms of this Act, is regarded as having been done in terms of the corresponding provision of this Act.

Short title and commencement

66. (1) This Act is called the Traditional and Khoi-San Leadership Act, 2026, and comes into operation on the date to be determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

Code of conduct for members of Commission, members of houses, members of councils and other leaders

1. Definitions
2. General conduct of members
3. Attendance of meetings
4. Sanctions for non-attendance of meetings
5. Disclosure of interests
6. Personal gain
7. Declaration of interests
8. Rewards, gifts and favours
9. Unauthorised disclosure of information
10. Breach of code by member of National House
11. Breach of code by member of Commission
12. Breach of code by member of provincial house, local house or council
13. Conduct of any other leader
14. Breach of code by any other leader

Definitions

1. In this Schedule, unless the context indicate otherwise—
 - “**any other leaders**” means a recognised traditional and Khoi-San leader who is not a member of a house or council;
 - “**Commission**” means the Commission on Khoi-San Matters established in terms of section 51;
 - “**council**” means a Khoi-San kingship or Khoi-San queenship council, kingship or queenship council, principal traditional council, traditional council, traditional sub-council, Khoi-San council or a branch;
 - “**House**” means the National House of Traditional and Khoi-San Leaders, a provincial house of traditional and Khoi-San leaders or a local house of traditional and Khoi-San Leaders;
 - “**MEC**” means a member of the executive council of a province contemplated in section 132 of the Constitution;
 - “**member**” means a member of a House, Commission or a council; and
 - “**Promotion of Administrative Justice Act**” means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

General conduct of members

2. A member—
 - (a) must perform his or her functions in good faith and in an honest, non-discriminatory and transparent manner;
 - (b) must at all times act in the best interest of the House or council and in such a way that the credibility and integrity of the House or council are not compromised;
 - (c) may not deliberately do anything calculated to unjustly or unfairly injure the reputation of another member;
 - (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 of meetings

3. A member must attend each meeting of the House, Commission or a council and of a committee of the House or a council of which he or she is a member, except when—
 - (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the House, Commission or council; or
 - (b) that member is required in terms of item 5(1)(b) to withdraw from a meeting.

Sanctions for non-attendance of meetings

4. (1) A member who, without leave of absence, is absent from three or more consecutive meetings of the House, Commission or a council which that member is required to attend, must be removed from office as a member of the House, Commission or such council.

(2) The removal of a member from office in terms of subitem (1) is subject to the provisions of item 10 in the case of a member of the National House and item 11 in the case of a member of a provincial house, a local house, Commission or a council.

Disclosure of interests

5. (1) A member must—

- (a) disclose to the House, Commission or a council, or to any committee of the House, Commission or a council of which he or she is a member, any direct or indirect personal or private business interest that he or she, or any spouse, partner, business associate or close family member of that member, may have in any matter before the House, Commission or a council, or before a committee of the House or a council; and
- (b) withdraw from the proceedings of the House, Commission or a council or committee of the House, Commission or a council of which he or she is a member when a matter as contemplated in paragraph (a) is considered by the House, Commission, council or committee unless the House, Commission or a council, or a committee thereof decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

(2) A member who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the House, Commission or a council, must disclose full particulars of the benefit of which that member is aware of, at the first meeting of the House, Commission or a council at which it is possible for the member to make such disclosure.

Personal gain

6. (1) A member 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 or to litigate against a House, Commission or council.

(2) Except with the prior consent of the House, Commission or a council, a member may not—

- (a) be a party to or a beneficiary under a contract for the provision of goods or services to the House, Commission or a council;
- (b) obtain a financial interest in any business of the House, Commission or a council; or
- (c) for a fee or other consideration, appear on behalf of any other person before the House, Commission or a council, or a committee of the House, Commission or a council.

(3) If more than one quarter of the members of the House, Commission or a council object to consent being given to a member in terms of subitem (2), such consent may only be given to the member with the approval of the Minister in the case of the National House or Commission and the relevant Premier in the case of a provincial house, a local house or a council.

Declaration of interests

7. (1) When elected or appointed, a member must, within 60 days of his or her election or appointment, declare, in writing, to an officer of the House, a council or the Department, designated by the Minister in the case of the National House or Commission or by the relevant Premier in the case of a provincial house, a local house or a council, the following financial interests held by such member:

- (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 undertaking;
- (g) employment and remuneration;
- (h) interest in property;
- (i) pension; and
- (j) subsidies, grants and sponsorships by any organisation.

(2) Any change in the nature or detail of the financial interests of a member must annually be declare, in writing, to the officer referred to in subitem (1).

(3) Gifts received by a member with a value above an amount as may be determined by the Minister, by notice in the *Gazette*, must also be declared in accordance with subitem (1).

(4) The House, Commission or a council must determine which of the financial interests referred to in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

Rewards, gifts and favours

8. A member may not request, solicit or accept any reward, gift or favour for—

- (a) voting or not voting in a particular manner on any matter before the House, Commission or a council, or before a committee of the House, Commission or a council, of which he or she is a member;
- (b) persuading the House, Commission or a council, or any committee of the House, Commission or a council with regard to the exercise of any power, function or duty;
- (c) making a representation to the House, Commission or a council, or any committee of the House, Commission or a council; or
- (d) disclosing privileged or confidential information.

Unauthorised disclosure of information

9. (1) A member may not, without the permission of the House, Commission or a council, or a committee of the House, Commission or a council, disclose any privileged or confidential information of the House, Commission or a council or such committee to any unauthorised person.

(2) For the purposes of this item “privileged or confidential information” includes any information—

- (a) in respect of which the House, Commission or a council, or a committee of the House, Commission or a council is the original author and is classified by the House, Commission or a council, or a committee of the House, Commission or a council, to be privileged or confidential;
- (b) discussed in closed session by the House, Commission or a council, or a committee of the House, Commission or a council;
- (c) of which the disclosure would violate a person’s right to privacy; or
- (d) declared to be privileged, confidential or secret in terms of applicable law.

(3) This item does not derogate from the right of any person to apply for access to information in terms of relevant legislation.

Breach of code by member of National House

10. (1) If the National House, on reasonable grounds, is of the opinion that a provision of the code of conduct has been breached by one of its members, the National House must—

- (a) authorise an investigation of the facts and circumstances of the alleged breach; and
- (b) give the member of the National House a reasonable opportunity to reply in writing regarding the alleged breach:

Provided that the National House may suspend the relevant member for the duration of such an investigation.

(2) The National House must inform the Minister of the outcome of an investigation contemplated in this item.

(3) The Secretary must ensure that each member of the National House, when taking office, is given a copy of this code of conduct and that a copy of the code is available in every room or place where the National House or a committee of the National House meets.

(4) If the National House has authorised an investigation, it must establish an investigative committee—

- (a) to investigate and make a finding on any alleged breach of the code of conduct; and
- (b) to make recommendations in respect of an appropriate sanction or sanctions to the National House.

(5) If an investigative committee appointed by the National House to conduct an investigation finds that a member of the National House, including the chairperson or deputy chairperson, has breached a provision of the code of conduct, the National House may—

- (a) issue a formal warning to such member;
- (b) reprimand such member;
- (c) suspend such member for a period specified by the National House; or
- (d) remove such member from office.

(6)(a) Any member of the National House who has been warned, reprimanded, suspended or removed in terms of paragraph (a), (b), (c) or (d) of subitem (5) may, within 14 days of having been notified of the decision of the National House, appeal to the Minister, in writing, setting out the reasons on which the appeal is based.

(b) A copy of the appeal must be provided to the National House.

(c) The National House may, within 14 days of receipt of the appeal referred to in paragraph (b), make any representation pertaining to the appeal to the Minister in writing.

(d) The Minister may, after having considered the appeal, confirm, set aside or vary the decision of the National House and inform the relevant member of the National House as well as the House of the outcome of the appeal.

(7)(a) If the National House does not authorise an investigation conducted as contemplated in subitem (1), the Minister must appoint a person or a committee to investigate any alleged breach of a provision of this code of conduct by a member of the National House and to make recommendations as to the appropriate sanction in terms of subitem (5): Provided that the Minister may suspend the relevant member for the duration of such investigation.

(b) If the Minister is of the opinion that a member of the National House has breached a provision of this code of conduct, and that such contravention warrants a suspension or removal from office, the Minister may—

- (i) suspend the member of the National House for a period and on conditions determined by the Minister; or
- (ii) remove the member of the National House from office.

(8) Any investigation in terms of this item must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act.

Breach of code by member of Commission

11. (1) If the Commission, on reasonable grounds, is of the opinion that a provision of the code of conduct has been breached by one of its members, the Minister must—

- (a) authorise an investigation of the facts and circumstances of the alleged breach; and
- (b) give the member of the Commission a reasonable opportunity to reply, in writing, regarding the alleged breach:

Provided that the Minister may suspend the relevant member for the duration of such an investigation.

(2) The Department must ensure that each member of the Commission, when taking office, is given a copy of this code of conduct and that a copy of the code is available in every room or place where the Commission or a committee of the Commission meets.

(3) If the Minister has authorised an investigation, he or she must establish an investigative committee—

- (a) to investigate and make a finding on any alleged breach of the code of conduct; and
- (b) to make recommendations in respect of an appropriate sanction or sanctions to the Commission.

(4) If an investigative committee, appointed by the Minister to conduct an investigation, finds that a member of the Commission, including the chairperson or deputy chairperson, has breached a provision of the code of conduct, the Minister may—

- (a) issue a formal warning to such member;

- (b) reprimand such member;
- (c) suspend such member for a period specified by the Minister; or
- (d) remove such member from office.

(5) Any investigation in terms of this item must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act.

Breach of code by member of provincial house, local house or council

12. (1) If a provincial house, a local house or a council, or any member of such a house or council, on reasonable grounds, is of the opinion that a member of such house or council, excluding the chairperson, has breached a provision of this code of conduct, that house or council must establish an investigative committee—

- (a) to investigate and make a finding on any alleged breach of this code of conduct; and
- (b) to make recommendations to the relevant house or council:

Provided that the house or council may suspend the relevant member for the duration of such investigation.

(2) If an investigative committee finds that a member of a provincial house, a local house or a council has breached a provision of this code of conduct, the relevant house or council may—

- (a) issue a formal warning to such member;
- (b) reprimand such member;
- (c) request the relevant Premier to suspend the member for a period determined by the Premier; or
- (d) request the Premier to remove the member from office.

(3)(a) If the relevant provincial house, local house or council does not establish an investigative committee as contemplated in subitem (1), the Premier must appoint a person or a committee to investigate any alleged breach of a provision of this code of conduct and to make recommendations as to the appropriate sanction in terms of subitem (2): Provided that in the event of an alleged breach of the code of conduct by the chairperson of a provincial house, a local house or a council, the provisions of this item must be applied by the Premier: Provided further that the Premier may suspend the relevant member for the duration of such investigation.

(b) If a Premier is of the opinion that a member of a provincial house, a local house or a council has breached a provision of this code of conduct and that such contravention warrants a suspension or removal from office, the Premier may—

- (i) issue a formal warning to such member;
- (ii) reprimand such member;
- (iii) suspend the member for a period and on conditions as he or she may determine; or
- (iv) remove a member from office: Provided that in the case of the chairperson of a council, any such removal from office is subject to the relevant provision of the Act dealing with the withdrawal of recognition of the leadership position concerned.

(4) If a Premier fails to comply with subitem (3)(a), the Minister must appoint a person or an investigative committee to conduct an investigation as contemplated in subitem (3)(a), and the provisions of subitem (3)(b) apply with the necessary changes.

(5) The Commissions Act, 1947 (Act No. 8 of 1947), or where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (3).

(6) Any investigation in terms of this item must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act.

Conduct of any other leader

13. (1) Any other leader must—

- (a) perform his or her actions in good faith and in an honest, non-discriminatory and transparent manner and consistent with the Bill of Rights;
- (b) always respect human rights of traditional and Khoi-San community members and adhere to the Bill of Rights; and
- (c) at all times act in the best interest of his or her traditional and Khoi-San community;

- (2) Any other leader may—
- (a) not deliberately do anything calculated to unjustly or unfairly injure the reputation of any other recognised traditional or Khoi-San leader;
 - (b) not use his or her position as recognised leader to seek or obtain any special advantage for personal benefit or gain or to improperly benefit another person;
 - (c) not harm any member of the traditional and Khoi-San community because of his or her position;
 - (d) not use his or her position as a traditional leader or Khoi-San to commit unjust actions against traditional and Khoi-San community members; and
 - (e) not disclose confidential information acquired in the course of his or her duties unless required to do so by law or compelled to do so by circumstances to prevent substantial injury to any third party: Provided that this paragraph does not derogate from the right of any person to apply for access to information in terms of the relevant legislation.

(3)(a) Any other leader must declare, in writing, the following financial interests held by such leader—

- (i) shares and securities in any company;
- (ii) membership of any close corporation;
- (iii) interest in any trust;
- (iv) directorships;
- (v) partnerships;
- (vi) other financial interests in any business undertaking;
- (vii) employment and remuneration;
- (viii) interests in property;
- (ix) pension; and
- (x) subsidies, grants, and sponsorships by any organisation.

(b) The MEC responsible for traditional and Khoi-San affairs in a particular province must, once every three years, determine the period within which any other leader must comply with paragraph (a) and give notice of such period in the provincial *Gazette*.

(c) The notice contemplated in paragraph (b) must contain the names and contact details of a provincial official or officials to whom declarations of interests must be submitted.

(4) The provisions of item 7(3) applied to any other leader and a declaration in accordance with the item must be made to the official or officials contemplated in subitem (3)(c).

Breach of code by any other leader

14. (1) Any person who is of the opinion that any other leader has breached the provisions of item 12, may report such alleged breach to the MEC in writing whereupon the MEC must—

- (a) authorise an investigation into the facts and circumstances of the alleged breach; and
- (b) provide a particular leader with a reasonable opportunity to reply, in writing, regarding the alleged breach.

(2) For the purposes of an investigation contemplated in subitem (1)(a), the MEC must establish an investigative committee, which committee must include at least one recognised traditional or Khoi-San leader residing within the particular province.

(3) The investigative committee must submit its report to the MEC within the period determined by the MEC.

(4) If the investigative committee finds that the particular leader has breached a provision of item 12, the MEC may—

- (a) issue a formal warning to such leader;
- (b) reprimand such leader; or
- (c) recommend to the Premier that the withdrawal of the recognition of such leader be considered in accordance with and subject to the provisions of section 9 of this Act.

(5) A leader who has been warned and reprimanded as contemplated in sub-item (4)(a) and (b), may, within 14 days of having been notified of the decision of the MEC, appeal to the Premier, in writing, setting out the reasons on which the appeal is based and such leader must provide a copy of the appeal to the MEC.

(6) The MEC may, within 14 days of the appeal referred to in subitem (5), make any representation pertaining to the appeal to the Premier in writing.

(7) The Premier may, after having considered the appeal, confirm, set aside or vary the decision of the MEC and inform the relevant leader and the MEC of the outcome of the appeal.

(8) The Commissions Act, 1947, or where appropriate, applicable provincial legislation, may be applied to an investigation in terms of this item.

(9) Any investigation in terms of item (1) must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act.

SCHEDULE 2

PART A

OATH BY MEMBERS OF NATIONAL HOUSE, PROVINCIAL HOUSES, LOCAL HOUSES AND COMMISSION

I, (name of member), do swear that I will be faithful to the House and do solemnly and sincerely promise at all times to promote that which will advance, and to oppose all that may harm, the House; to obey, observe, uphold and maintain the laws, rules, orders and procedures of the House, the Constitution 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 and its members.

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

So help me God.

.....
Signature of Member

Date:

PART B

AFFIRMATION BY MEMBERS OF NATIONAL HOUSE, PROVINCIAL HOUSES, LOCAL HOUSES AND COMMISSION

I, (name of member), do solemnly affirm that I will be faithful to the House and do solemnly and sincerely promise at all times to promote that which will advance, and to oppose all that may harm, the House; to obey, observe, uphold and maintain the laws, rules, orders and procedures of the House, the Constitution 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 and its members.

I so solemnly swear.

.....
Signature of Member

Date:

SCHEDULE 3
AMENDMENT OF LEGISLATION

Section 64

Amendment of Independent Commission for the Remuneration of Public Office-bearers Act, 1997

1. The Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997), is hereby amended by the substitution in section 1 for paragraph (e) of the definition of “office-bearer” with the following paragraph:

- “(e) any [**member of the National House of Traditional Leaders, any member of any provincial house of traditional leaders or any traditional leader**]—
- (i) king, queen, Khoi-San king, Khoi-San queen, principal traditional leader, senior traditional leader, senior Khoi-San leader, headman, headwoman and branch head recognised in accordance with the relevant provisions of the Traditional Leadership and Governance Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), prior to the repeal of that Act or as contemplated in section 28 of that Act, or recognised in accordance with the relevant provisions of the Traditional and Khoi-San Leadership Act, 2019;
 - (ii) member of the National House of Traditional and Khoi-San leaders, any provincial house of traditional and Khoi-San leaders and any local house of traditional and Khoi-San leaders established in accordance with the relevant provisions of the Traditional and Khoi-San Leadership Act, 2019, prior to the repeal of that Act or in accordance with the provisions of any applicable provincial legislation; and
 - (iii) non-traditional or Khoi-San leader member of any kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, traditional council, traditional sub-council, Khoi-San council or branch established in accordance with the relevant provisions of the Traditional and Khoi-San Leadership Act, 2019 or as contemplated in section 63 of that Act prior to the repeal of that Act: Provided that in respect of a non-traditional or Khoi-San leader member recommendations may be made only in respect of allowances as referred to in section 8(4)(a) and (c);”.

Amendment of Remuneration of Public Office Bearers Act, 1998

2. The Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended by the substitution for the long title with the following long title:

“To provide for a framework for determining the salaries and allowances of the President, members of the National Assembly, permanent delegates to the National Council of Provinces, Deputy President, Ministers, Deputy Ministers, traditional leaders, Khoi-San leaders, non-traditional and Khoi-San leader members of traditional and Khoi-San councils, non-traditional leader members of kingship or queenship councils, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; members of local Houses of Traditional and Khoi-San Leaders, members of provincial houses of Traditional and Khoi-San Leaders and members of the National House of Traditional and Khoi-San Leaders; to provide for a framework for determining the upper limit of salaries and allowances of Premiers, members of Executive Councils, members of provincial legislatures and members of Municipal Councils; to provide for a framework for determining pension and medical aid benefits of office bearers; to provide for the repeal of certain laws; and to provide for matters connected therewith.”.

3. Section 1 of the Remuneration of Public Office Bearers Act, 1998, is hereby amended—

- (a) by the insertion after the definition of “Minister” of the following definition:
“**‘non-traditional or Khoi-San leader member’** means a non-traditional or Khoi-San leader member of any Khoi-San kingship council

or Khoi-San queenship council, kingship or queenship council, principal traditional council, traditional council, traditional sub-council, Khoi-San council or branch established in accordance with the relevant provisions of the Traditional and Khoi-San Leadership Act, 2026;”;

- (b) by the substitution for the definition of “**office bearer**” of the following definition:

“**‘office bearer’** means a Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate, a Premier, a member of an Executive Council, a member of a provincial legislature, a traditional leader, a Khoi-San leader, a non-traditional or Khoi-San leader member, a member of a house and a member of a Municipal Council;”.

Amendment of the Local Government: Municipal Structures Act, 1998

7. (1) The Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), is hereby amended by the substitution for section 81 of the following section:

“Participation of traditional and Khoi-San leaders in municipal councils

81. (1) In this section, unless the context indicates otherwise—

‘branch’ means a branch of a Khoi-San community recognised as such in terms of section 5(5) of the TKLA;

‘Khoi-San council’ means a Khoi-San council established for a recognised Khoi-San community in accordance with the provisions of section 18 of the TKLA;

‘local house’ means a local house of traditional and Khoi-San leaders as contemplated in section 50 of the TKLA;

‘MEC’ means the member of the Executive Council responsible for local government matters in a particular province;

‘participating leader’ means the member or members elected in terms of subsection (1), (2) and (3);

‘TKLA’ means the Traditional and Khoi-San Leadership Act, 2026;

‘traditional council’ means a traditional council established for a recognised traditional community in accordance with the provisions of section 16 of the TKLA;

‘traditional sub-council’ means a traditional sub-council as contemplated in section 17 of the TKLA.

(2)(a) Where a local house has been established for the area of jurisdiction of a local or metropolitan municipality, the number of members of a local house that may participate in the proceedings of such council may not exceed 20 per cent of the total number of councillors in each such municipal council.

(b) Where a local house has been established for the area of jurisdiction of a district municipality, the number of members of a local house that may participate in the proceedings of the council of such district municipality comprise of—

- (i) not more than 20 per cent of the total number of councillors in that district council; and
- (ii) two additional members of the local house per local municipality established for the area of jurisdiction of that district municipality.

(3) For the purposes of identification of the number of members of a local house that may participate in the proceedings of a local, district or metropolitan municipality council as contemplated in subsection (1), the local house established at the local, district or metropolitan municipality must—

- (a) hold a consultative meeting with all members of the house and must elect, from the leaders present at such meeting, leaders to participate in the proceedings of that municipal council;
- (b) elect one leader who will fill any vacancy of the position of participating leader which may occur; and

(c) submit the full names and surnames, identity numbers and contact details of participating leaders to the relevant municipal manager of the council concerned.

(4) Where there are no local houses within the areas of jurisdiction of any local, district or metropolitan municipality, but there are traditional councils and Khoi-San councils—

(a) the member of the Executive Council must hold a consultative meeting with all recognised headmen, headwomen, senior traditional leaders, senior Khoi-San leaders and branch heads falling within the area of jurisdiction of the particular municipality; and

(b) the leaders as contemplated in paragraph (a) present at such meeting must, from amongst themselves—

(i) elect leaders in respect of each such municipality to participate in the proceedings of that municipality as contemplated; and

(ii) elect one leader in respect of each such municipality who will fill any vacancy of the position of participating leader which may occur.

(5) At least a third of the total number of members elected in terms of subsections (1), (2) and (3) must be women.

(6) If the requirement in subsection (5) cannot be met, the MEC may determine a lower threshold.

(7) The identification of participating leaders as contemplated in subsections (2) and (3) must commence at least one month prior to the date of election of a municipal council and must be completed prior to such date: Provided that the MEC may determine a longer period which may not be longer than one month after the date of election of the specific municipal council.

(8) A person may not be a participating leader if he or she—

(a) is under the age of 18;

(b) is not a South African citizen;

(c) is not a recognised traditional leader or Khoi-San leader in terms of section 8 or 10 of the TKLA respectively;

(d) has been convicted of an offence and is sentenced to imprisonment for more than 12 months without the option of a fine;

(e) is impaired to the extent that he or she cannot participate in the proceedings of the municipal council;

(f) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;

(g) is of unsound mind and has been so declared by a competent court;

(h) is an elected councillor of a municipal council;

(i) is a member of a provincial legislature;

(j) is a member of the National Assembly;

(k) is a permanent delegate in the National Council of Provinces; or

(l) is a full-time member of any house of traditional and Khoi-San leaders contemplated in sections 27, 49 or 50 of the TKLA.

(9) A participating leader may no longer participate in the proceedings of a municipal council if—

(a) any of the circumstances referred to in subsection (8) becomes applicable to such participating leader; or

(b) he or she tenders his or her resignation as participating leader.

(10) A participating leader may not be elected for participation in the councils of more than one category of municipality.

(11) The death of a participating leader or any of the circumstances referred to in subsection (8) will result in a vacancy of the position of participating leader, which vacancy must be filled in accordance with the provisions of subsections (2) and (3).

(12) A participating leader may participate in the proceedings of the local, district or metropolitan municipality, as the case may be, and—

(a) must perform such official or ceremonial duties as the municipal council may request him or her to do;

(b) must attend and participate in any meeting of the municipal council and may, subject to the rules and orders of the municipal council, submit motions, make proposals and ask questions: Provided that the

non-attendance or non-participation of any participating leader will have no effect on any municipal council proceedings;

- (c) must attend and participate in any meetings of a committee of the relevant municipal council to which such leader has been co-opted in terms of section 79(2)(d) of this Act;
- (d) is subject to the appropriate provisions of the Code of Conduct contained in Schedule 7 of this Act and the standing rules and orders of the relevant municipality;
- (e) is not entitled to vote in any meeting of the municipal council or council committee and cannot be included for the purpose of establishing a quorum in the municipal council or council committee; and
- (f) may address the municipal council on—
 - (i) any matter directly or indirectly affecting traditional or Khoi-San leadership or the relevant traditional or Khoi-San council or community; or
 - (ii) any other matter involving traditional or Khoi-San communities in the area of jurisdiction of the relevant municipal council.

(13) A participating leader—

- (a) may participate in the proceedings of the specific municipal council for the duration of the term of such council as contemplated in section 24 of this Act;
- (b) may not serve consecutive terms: Provided that if there are no other recognised traditional leaders or Khoi-San leaders available to be considered for election as contemplated in subsections (2) and (3) when a new municipal council is elected, a participating leader who has previously been elected or nominated may serve consecutive terms; and
- (c) may not request any other person to participate in the proceedings of a municipal council on his or her behalf.

(14) A participating leader must, within three weeks from the date of a municipal council meeting, prepare a report on all matters affecting the relevant traditional and Khoi-San communities, as discussed and decided on by such municipal council, and submit the report to the local house and traditional and Khoi-San councils falling within the area of jurisdiction of such municipality: Provided that where more than one participating leader participate in the proceedings of any municipal council, such leaders must, within two weeks from the date of a municipal council meeting, meet to prepare the report referred to in this subsection.

(15) A committee of a municipal council as referred to in subsection (12)(c), may invite any recognised traditional leader or any recognised Khoi-San leader other than a participating leader, to address such committee on any matter affecting the relevant traditional or Khoi-San community or communities.

(16) A participating leader must act in an impartial manner and must—

- (a) support municipal councils in the identification of specific needs of the traditional and Khoi-San communities falling within the area of the municipality;
- (b) facilitate the involvement of the traditional and Khoi-San communities in the development or amendment of the integrated development plan of the relevant municipality;
- (c) support the relevant municipality in promoting integrated local economic development and planning;
- (d) facilitate the participation of the relevant traditional and Khoi-San communities in any affairs of the municipality that require or allow for public participation, including the affairs of ward committees;
- (e) make recommendations and propose appropriate interventions in respect of service delivery within the defined areas of jurisdiction of the relevant traditional councils;
- (f) participate in the development of policy and by-laws at a municipal level;

- (g) participate in the relevant development programmes of the municipality;
- (h) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
- (i) promote indigenous knowledge systems;
- (j) participate, and ensure participation of traditional and Khoi-San communities, in any environmental programmes of the municipality;
- (k) alert the municipality to any current or threatening hazard or calamity which affects or may affect the municipal area; and
- (l) support the relevant municipality with the implementation of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), as far as that Act makes provision for the involvement of traditional leadership or structures, and may advise the relevant municipal council on matters concerning the heritage, language, customs and traditions of the relevant traditional and Khoi-San communities.

(17) The councillors of a municipal council and the participating leaders must—

- (a) recognise and respect each other's status and roles within the affairs of the municipality;
- (b) recognise and respect the local sphere of government as a distinctive, interdependent and interrelated sphere of government as contemplated in the Constitution; and
- (c) co-operate with one another in mutual trust and good faith by—
 - (i) fostering sound working relations with one another; and
 - (ii) assisting and supporting one another in the execution of roles and responsibilities.

(18)(a) In the event of any breach of, or non-compliance with, the applicable provisions of the Code of Conduct contained in Schedule 7 by any participating leader, the municipal council concerned must forthwith inform the—

- (i) relevant provincial house of traditional and Khoi-San leaders, if any such house has been established;
- (ii) local houses of traditional and Khoi-San leaders within the area of jurisdiction of the municipality, if any such houses have been established; and
- (iii) traditional councils and Khoi-San councils, within the area of jurisdiction of the municipality, of the nature of the alleged breach.

(b) Any alleged breach of, or non-compliance with, the applicable provisions of the Code of Conduct, must be dealt with in accordance with the provisions of item 17 of that Code of Conduct.

(c) The findings of any investigation contemplated in item 17 of the Code of Conduct and any sanctions imposed under that item, must be conveyed by the municipal council or MEC, as the case may be, to—

- (i) the relevant participating leader;
- (ii) the responsible MEC in the case of investigations conducted by the municipal council or a special committee as contemplated in item 16(1) of the Code of Conduct;
- (iii) the municipal council in the case of investigations conducted by a person or committee appointed by the MEC as contemplated in item 17(4) of the Code of Conduct; and
- (iv) the houses and councils referred to in paragraph (a).

(d) Notwithstanding the provisions of paragraph (a), a participating leader remains subject to the Code of Conduct contained in Schedule 7 to the TKLA, and any provincial code of conduct provided for in the provincial legislation relating to traditional and Khoi-San leadership.

(19) The MEC—

- (a) must, through any means deemed appropriate, monitor the implementation of this section in the province and make recommendations on such implementation to any relevant house of traditional and Khoi-San leaders, all relevant municipalities and all relevant participating leaders; and

(b) may delegate any of his or her powers referred to in this section, except the power to determine a longer period as contemplated in subsection (2)(g), to the Head of the department responsible for traditional and Khoi-San matters in a particular province, or to any official of such department.

(20) A Premier may, by notice in the provincial *Gazette*, make regulations on any matter that is necessary for the proper implementation of this section: Provided that such regulations may not be inconsistent with the provisions of this section.

(21)(a) A participating leader and an invited leader as contemplated in subsection (7), may, from the budget of the relevant municipal council, be reimbursed for any out of pocket expenses: Provided that for the purposes of this section, 'out of pocket expenses' means actual and necessary expenses incurred by a participating leader in respect of own transport, public transport and parking, which expenses must be related to a meeting or event arranged by a municipal council or a committee of such council, or any ceremonial or official duties which such participating leader has been requested to attend to by the municipal council.

(b) Out of pocket expenses must be authorised by the municipality prior to the meeting or event referred to in paragraph (a).

(c) Out of pocket expenses do not include any salaries, allowances or benefits as contemplated in the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), or resources as contemplated in the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997).

(d) To ensure uniformity across provinces, the Minister may, after consultation with the Premiers, National House and provincial houses of traditional and Khoi-San leaders and by notice in the *Gazette*, make regulations on out of pocket expenses.".

SCHEDULE 4
REPEAL OF LEGISLATION

(Section 65)

No	Title, number and year of law	Extent of repeal
1	Traditional Leadership and Governance Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003)	The whole
2	Traditional Leadership and Governance Framework Amendment Act, 2009 (Act No. 23 of 2009)	The whole
3	National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009)	The whole
4	Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019)	The whole

MEMORANDUM ON THE OBJECTS OF THE TRADITIONAL AND KHOI-SAN LEADERSHIP BILL, 2026

1. BACKGROUND OF BILL

- 1.1 Section 211 of the Constitution of the Republic of South Africa, 1996, makes provision for the recognition of the institution, status and role of traditional leadership according to customary law. It is further determined that a traditional authority that observes a system of customary law may function subject to any applicable legislation and customs. Section 212 of the Constitution determines that national legislation may provide for a role for traditional leadership as an institution at local level, while matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities may be dealt with through national or provincial legislation that makes provision for the establishment of houses of traditional leaders. This resulted in the promulgation of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) (Framework Act), and the National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009) (National House Act).
- 1.2 While certain traditional structures and leadership positions have therefore been recognised by law in compliance with the Constitutional prescripts, there has never before been statutory recognition of the Khoi-San. The formal recognition of the Khoi-San communities, leaders and structures is only possible through enabling legislation.
- 1.3 Subsequently, it was decided to prepare a single Bill—
 - to make provision for the recognition of the Khoi-San;
 - to repeal and replace the Framework Act and the National House Act—
 - to ensure an integrated approach in dealing with all matters relating to traditional affairs;
 - to enhance the uniform manner in which matters relating to traditional affairs are dealt with across the country; and
 - to address legal uncertainties and gaps that have been identified in the two pieces of legislation; and
 - to amend the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997), the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), and the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), appropriately.
- 1.4 The Traditional and Khoi-San Leadership Bill was therefore drafted and introduced in Parliament in September 2015 (hereinafter referred to as the 2015-Bill). Following the adoption of the 2015-Bill by Parliament in February 2019, it was assented to by the President in November 2019 and published in the *Gazette* on 28 November 2019 as Act No. 3 of 2019 (hereinafter referred to as the Traditional and Khoi-San Leadership Act). The Traditional and Khoi-San Leadership Act commenced on 1 April 2021.
- 1.5 The constitutionality of the 2019-Act was challenged in the Constitutional Court in the case of *Constance Mogale and Others v Speaker of the National Assembly and Others* [CCT 73/2022], mainly on what the applicants regarded as insufficient Parliamentary public participation.
- 1.6 On 30 May 2023, the Constitutional Court delivered its judgement on the matter and declared that Parliament has failed to comply with its constitutional obligation to facilitate public involvement before passing the Traditional and Khoi-San Leadership Act. The Traditional and Khoi-San Leadership Act was, as a consequence, adopted in a manner that was inconsistent with the Constitution and was therefore declared invalid.
- 1.7 The order declaring the Act invalid was suspended for a period of 24 months to enable Parliament to re-enact the statute in a manner that is consistent with

the Constitution or to pass another statute in a manner that is consistent with the Constitution.

- 1.8 This Bill is therefore introduced for consideration by Parliament in accordance with the Constitutional Court order.
- 1.9 It should be noted that the Traditional Affairs General Amendment Bill (TAGAB) was tabled in Parliament as Bill 16 of 2022. In terms of the TAGAB, technical amendments would be made to section 16(3)(a) of the 2019-Act and section 81 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998). However, following the Constitutional Court judgement on the Traditional and Khoi-San Leadership Act, the TAGAB was withdrawn and its provisions were included in this Bill.
- 1.10 The differences between the Traditional and Khoi-San Leadership Act and this Bill are, briefly, as follows:
- A few definitions were added including a definition for the Traditional and Khoi-San Leadership Act and a definition for the date of invalidity . The latter definition refers to the date on which the Traditional and Khoi-San Leadership Act will become invalid should Parliament not comply with the timeframe set by the Court or the Court is approached for a possible extension of the timeframe and it is not granted. The Bill therefore has to take this possibility into account and therefore certain provisions, especially the transitional provisions, refer to the date of invalidity.
 - The Traditional and Khoi-San Leadership Act referred to certain five-year terms of office that ended in 2022 and would end every five years calculated from specific months in 2022 going forward. The 2022-dates were therefore changed to be calculated from 2027 going forward.
 - A number of transitional provisions had to be included to determine the status of anything that was implemented in terms of the Traditional and Khoi-San Leadership Act. However, the status of such will be subject to the date of invalidity, if it takes effect.
 - The provisions of the TAGAB referred to above have been included.
 - A few grammatical errors were corrected.

2. PURPOSE OF BILL

The purpose of the draft Bill is, among other things, to—

- (a) provide for the recognition of traditional and Khoi-San communities, leadership positions and for the withdrawal of such recognition;
- (b) provide for the recognition, establishment, functions, roles and administration of kingship or queenship councils, Khoi-San kingship councils, Khoi-San queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils, as well as the support to such councils;
- (c) provide for the establishment, composition and functioning of the National House of Traditional and Khoi-San leaders; and
- (d) provide for the establishment of provincial houses of traditional and Khoi-San leaders;
- (e) to provide for the establishment and composition of local houses of traditional and Khoi-San leaders.

3. OBJECTS OF BILL

3.1 The objectives of the draft Bill are to provide for—

- (a) the recognition of the Khoi-San communities, leaders and structures;
- (b) the repeal of the Traditional Leadership and Governance Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) (Traditional Leadership and Governance Framework Act), National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009) (National House Act), Traditional Leadership and Governance Framework Amendment, 2009 (Act No. 23 of 2009) (Framework Amendment Act)

and the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019) (Traditional and Khoi-San Leadership Act)—

- (i) to ensure an integrated approach in dealing with all matters relating to traditional and Khoi-San affairs;
 - (ii) to enhance the uniform manner in which matters relating to traditional and Khoi-San affairs are dealt with across the country; and
 - (iii) to address legal uncertainties and gaps that have been identified in the two pieces of legislation; and
- (c) amendment of the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997 (Act No. 92 of 1997) (Independent Commission Remuneration Act), the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) (Remuneration Act), and the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (Structures Act).

4. ANALYSIS OF BILL

Preamble

4.1 The Preamble of the Bill seeks to, among other things—

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

Clause 1: Definitions

4.2 Clause 1 provides for definitions of terms and phrases used in the Bill.

Clause 2: Guiding principles

4.3 Clause 2 provides that traditional and Khoi-San communities must promote constitutional principles enshrined in section 9 of the Constitution and provides the prohibition of the use of any official resources to benefit political parties.

Clause 3: Recognition of kingship or queenship, traditional community, headmanship or headwomenship

4.4.1 Clause 3 provides for the recognition of kingships or queenships, traditional communities and headmanship or headwomenship. In terms of this clause, two or more traditional communities may in the prescribed manner apply to the President to be recognised as a kingship or queenship. Clause 3(1) sets out the criteria that the traditional communities must comply with to be recognised as a kingship or queenship.

4.4.2 Clause 3(4) provides that a community may apply to the Premier to be recognised as a traditional community if the community—

- (a) has a system of traditional leadership at a senior traditional leadership level recognised by other traditional communities;
- (b) observes a system of customary law;
- (c) recognises itself as a distinct traditional community with a proven history of existence, from a particular point in time up to the present, distinct and separate from other traditional communities;
- (d) occupies a specific geographical area;
- (e) has an existence of distinctive cultural heritage manifestations; and
- (f) where applicable, has a number of headmanship or headwomenship.

- 4.4.3 Clause 3(7) provides that a portion of a traditional community may, through the relevant traditional council, apply to the Premier for recognition as a headmanship or headwomanship if that portion of the traditional community—
- (a) has a system of traditional leadership at a headmanship or headwomanship level and is recognised as such by the relevant traditional community;
 - (b) consists of an area within the area of jurisdiction of the traditional council of the relevant traditional community; and
 - (c) will contribute to the more effective and efficient administration of the relevant traditional council.

Clause 3(9) provides that the Premier may, after consultation with the traditional council referred to in clause 3(8), and by notice in the provincial *Gazette*, recognise the headmanship or headwomanship contemplated in clause 3(7).

Clause 4: Withdrawal of recognition of kingship or queenship, principal traditional community, traditional community, headmanship or headwomanship

- 4.5 Clause 4 provides for the withdrawal of recognition of a kingship or queenship, principal traditional community, traditional community, headmanship or headwomanship. It sets out the process in terms of which an application for the withdrawal of such recognition may be made.

Clause 5: Recognition of Khoi-San kingship and Khoi-San queenships, Khoi-San community and branch

- 4.6.1 Clause 5(1) provides that two or more Khoi-San communities may apply to the President, by written submission to the Minister, to be recognised as a Khoi-San kingship or Khoi-San queenship if the Khoi-San communities comply with the following criteria:
- (a) Recognise themselves as a distinct group of Khoi-San communities with a proven history of existence, from a particular point in time up to the present, distinct from other Khoi-San communities;
 - (b) are individually recognised as Khoi-San communities in terms of subsection (6);
 - (c) each has a recognised senior Khoi-San council;
 - (d) each has a recognised senior Khoi-San leader contemplated in section 7;
 - (e) recognise as their Khoi-San king or Khoi-San queen, a specific recognised senior Khoi-San leader who, in terms of custom and customary law, is regarded to be of a higher status than other Khoi-San leaders;
 - (f) have a historical system of Khoi-San leadership at a kingship or queenship level; and
 - (g) have an existence of distinctive cultural heritage manifestations, in terms of the custom and customary law of the community concerned.
- 4.6.2 Clause 5(4) provides that a community may apply to the Premier to be recognised as a Khoi-San community. To be recognised as a Khoi-San community, the community must comply with the following criteria:
- (i) Have a history of self-identification by members of the community concerned, as belonging to a Khoi-San community distinct from all other communities;
 - (ii) observes distinctive established Khoi-San customary law and customs;
 - (iii) be subject to a system of hereditary or elected Khoi-San leadership with structures exercising authority in terms of customary law and customs of that community;
 - (iv) have an existence of distinctive cultural heritage manifestations;
 - (v) have a proven history of coherent existence of the community from a particular point in time up to the present; and

- (vi) occupy a specific geographical area or various geographical areas together with other non-community members.

4.6.3 Clause 5(7) provides that a Khoi-San community may, where applicable, consisting of branches and a Khoi-San council, apply to the Premier for the recognition of a branch if the branch complies with the following criteria:

- (i) Is recognised by the Khoi-San community as a branch of that community;
- (ii) consists of not less than 5% of the total number of members of such community as reflected in the list of community members referred to in subsection (4)(b)(ii);
- (iii) will contribute to a more effective and efficient administration of the Khoi-San council; and
- (iv) recognises the senior Khoi-San leader in terms of customary law and customs.

Clause 6: Withdrawal of recognition of Khoi-San community and branch

4.7 Clause 6 provides for the withdrawal of recognition of a Khoi-San kingship, Khoi-San queenship, Khoi-San community and branch. It sets out the process in terms of which an application for the withdrawal of such recognition may be made.

Clause 7: Recognition of leadership positions

4.8.1 Clause 7(1)(a) provides that there are the following traditional leaders: King or queen, principal traditional leader, senior traditional leader, and headman or headwoman that may be recognised. Clause 7(2) provides for the following Khoi-San leaders that may be recognised: Khoi-San king or Khoi-San queen, senior Khoi-San leader and branch head.

4.8.2 Clause 7(3) sets out the criteria that must be complied with for the recognition of traditional leaders or Khoi-San leaders. The criteria entail that there must be—

- (a) a proven history of existence of such leadership position within the community concerned;
- (b) a proven history of acceptance of such leadership position by the community concerned;
- (c) a history of functions and powers of the specific leadership position in terms of the established customary law and customs within the particular community;
- (d) the recognition of the community in terms of this Act; and
- (e) a proven history of either—
 - (i) hereditary leadership in terms of customary law or customs of the community, with or without a customary role for community participation in the determination or confirmation of the individual as a leader; or
 - (ii) elected leadership where, in terms of the customary law or customs of the community concerned, the leader is elected.

Clause 8: Recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman

4.9.1 Clause 8 provides for the process relating to the recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman. Regarding the identification and application for the recognition of a king or queen or a successor to the principal traditional leader (a) the royal family must, within 90 days of the position of a king or queen or principal traditional leader becoming vacant—

- (i) identify a person who, in terms of customary law and customs and this Act, qualifies to assume the position of a king or queen or principal traditional leader, as the case may be; and

- (ii) apply to the President, by written submission to the Minister, or the Premier, as the case may be, for the recognition of the person so identified as a king or queen or principal traditional leader.

4.9.2 Furthermore clause 8 provides for the filling of the position of senior traditional leader, headman or headwoman:

- (a) The royal family must, if hereditary succession applies, within 90 days of the vacancy occurring, identify a person who qualifies in terms of customary law and customs and this Act to assume the position in question; or
- (b) the community concerned must, if hereditary succession does not apply, within 90 days of the vacancy occurring, identify or elect a person who qualifies in terms of customary law and customs and this Act to assume the position of headman or headwoman in question. In the case of—
 - (i) a hereditary succession referred to in subsection (2)(a), the royal family must, through the relevant customary structure, apply to the Premier for the recognition of the person so identified and provide the Premier with the particulars of such person; or
 - (ii) a headman or headwoman referred to in subsection (2)(b), the traditional council of the community concerned must apply to the Premier for the recognition of the person so identified or elected and provide the Premier with the particulars of such person.

4.9.3 Clause 8(5) provides that when the President recognises a king or queen, or a Premier recognises the successor to a principal traditional leader or recognises a senior traditional leader, headman or headwoman, the President or the Premier, as the case may be, must—

- (a) publish a notice in the *Gazette* recognising such person as a king or queen, or publish a notice in the relevant Provincial *Gazette* recognising such person as a principal traditional leader, senior traditional leader, headman or headwoman;
- (b) issue a certificate of recognition to such person; and
- (c) inform the National House of the recognition of a king or queen and inform the relevant provincial house of the recognition of a principal traditional leader, senior traditional leader, headman or headwoman.

Clause 9: Withdrawal of recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman

4.10 Clause 9 of the draft Bill provides for the withdrawal of recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman. In terms of clause 9(1) the President or the Premier, as the case may be, may withdraw the recognition of a traditional leader, if—

- (a) the traditional leader:
 - (i) has been convicted of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;
 - (ii) is declared mentally unfit or mentally disordered by a court; or
 - (iii) no longer permanently resides within the area of the kingship or queenship council, principal traditional council or traditional council, as the case may be; or
 - (iv) has been removed from office in terms of the code of conduct; or
 - (v) has transgressed customary law and customs on a ground that warrants withdrawal of recognition; or
- (b) so ordered by a court.

Clause 10: Recognition of Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head

4.11 Clause 10 provides for the process regarding the filling of the position of a Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head which entails the following:

- (a) The royal family concerned must, within 90 days after a need arises for the position of a Khoi-San king or Khoi-San queen, and with due regard to applicable customary law and customs:
- (i) identify a person who, in terms of customary law and customs and this Act, qualifies to assume the position of a Khoi-San king or Khoi-San queen; and
 - (ii) apply to the President, by written submission to the Minister, for the recognition of the person so identified as a Khoi-San king or Khoi-San queen.

Clauses 11, 12, 13 and 14: Withdrawal of recognition of Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head; recognition of regent and Recognition of acting traditional and Khoi-San leader

4.12 Clause 11 provides for the withdrawal of recognition of Khoi-San king, Khoi-San queen, senior Khoi-San leader or branch head. The grounds upon which the recognition of a Khoi-San leader may be withdrawn are the same as those which apply to the withdrawal of recognition of a traditional leader in terms of clause 9 outlined above. Clauses 12, 13 and 14 respectively provide for the recognition of regent, acting traditional and Khoi-San leader and deputy traditional and Khoi-San leader.

Clause 16: Establishment of kingship or queenship council, principal traditional council or traditional council

4.13 Clause 16(3) provides for the establishment of kingship or queenship council, principal traditional council or traditional council which will consist of a number of members determined by the Minister by formula that the Minister will publish by notice in the *Gazette*. In terms of clause 16(12), a member of a kingship or queenship council, Khoi-San kingship or Khoi-San queenship, principal traditional council or traditional council must vacate his or her office if, amongst other things, he or she ceases to be a South African citizen; he or she has been convicted of an offence and sentenced to imprisonment for more than 12 months without the option of a fine; or he or she tenders his or her resignation.

Clauses 17 and 18: Establishment of traditional council and establishment of Khoi-San council

4.14 Clauses 17 and 18 provide for the establishment of traditional sub-council and the Khoi-San Council respectively. Clause 17 empowers the Premier to establish a traditional sub-council for the geographical area which is situated outside the area where the administrative seat of the traditional community is situated at the request of the traditional council. The Premier may do so if he or she is of the view that such establishment would improve the effective administration of the traditional community. Clause 18 provides that, after the recognition of the Khoi-San community in accordance with sections 5 and 58 by the Premier or the Minister, respectively, that community may establish a Khoi-San council within a period of two years of such recognition or any further period determined by the Premier in the provincial *Gazette*.

Clauses 19 and 20: Functions of kingship or queenship council and principal traditional council and functions of traditional council, traditional sub-council, Khoi-San council and branch

4.15 Clause 19 provides for the functions of kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council and principal traditional council which are, amongst other things, administering the affairs of the kingship or queenship, Khoi-San kingship or Khoi-San queenship or principal traditional community in accordance with customary law and customs; assisting, supporting and guiding senior traditional leaders or senior Khoi-San leader and traditional councils or Khoi-San councils, as the case may be, falling within the jurisdiction of the kingship or queenship, Khoi-San

kingship or Khoi-San queenship or principal traditional community concerned in the performance of their functions; or assisting the king or queen, Khoi-San king or Khoi-San queen, or principal traditional leader in performing customary functions in relation to the recognition of senior traditional leaders or senior Khoi-San leaders, where applicable.

Clause 21: Election of members of traditional council, traditional sub-council and Khoi-San council and filling of vacancies

4.16 Clause 21(1) provides that the election of a member of a traditional council, traditional sub-council or Khoi-San council may be conducted by the Electoral Commission established in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996) provided the Electoral Commission and the Premier are in agreement.

Clause 22: Administration of kingship or queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council

4.17 Clause 22(2) provides that the Premier is empowered to monitor a council to ensure there is effective and efficient performance of the council's statutory, customary and financial obligations.

Clause 23: Support to kingship or queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council

4.18 Clause 23 provides for the adoption of legislative and other measures to support and strengthen the capacity of kingship or queenship councils, Khoi-San kingship council or Khoi-San queenship council, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils to fulfil their functions, and such support includes the provision of administrative and financial support including monitoring and management of finances of councils.

Clause 24: Partnerships and agreements

4.19 Clause 24(1) and (2) empowers kingship or queenship councils, Khoi-San kingship council or Khoi-San queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils to enter into partnerships and agreements with each other which may be regulated by national government and provincial governments through legislative or other measures.

Clause 25: Allocation of roles to kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders

4.20 Clause 25(1) provides that the Department may, within the national or provincial sphere of Government, provide a role for a kingship or queenship council, Khoi-San kingship council or Khoi-San queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council in respect of any functional areas through legislative or other measures.

Clause 26: Houses of traditional and Khoi-San leaders

4.21 Clause 26 provides for the houses of traditional and Khoi-San leaders, namely the National House of Traditional and Khoi-San Leaders, the provincial houses of traditional and Khoi-San leaders and the local houses of traditional and Khoi-San leaders.

Clauses 27, 28, 29, 30, 31 and 32: Establishment and term of office of National House, composition of National House, election and designation of members to

National House, disqualification for membership of National House, vacation of seats and filling of vacancies

- 4.22 Clause 28 provides that a National House must be comprised of the number of senior traditional and senior Khoi-San leaders determined by the Minister through a formula published in the *Gazette*. The Formula must ensure that:
- (a) members to the National House are elected by each provincial house;
 - (b) elections result, in general, in proportional representation of recognised traditional and Khoi-San leaders;
 - (c) at least a third of the members of the house are women;
 - (d) representation of kings or queens or Khoi-San kings or Khoi-San queens and principal traditional leaders are represented; and
 - (e) representation of youth and people with disabilities are represented.

Clause 33: Seat and meetings of National House

- 4.23 Clause 33 provides that the first meeting of the National House must take place within 90 days after its constitution. The seat of the National House is at the same place as where the head office of the Department is located.

Clause 34: Chairperson and deputy chairperson of National House

- 4.24 Clause 34 provides that the National House must elect one of its members as a chairperson and another as the deputy chairperson at its first meeting. The election of the chairperson and the deputy chairperson must be presided over by the Chief Justice or a judge designated by the Chief Justice.

Clauses 35 and 36: Duties of National House and status of members of National House

- 4.25 Clause 36 provides that the duties of the National House are to cooperate with the provincial houses to promote, support and advise government on, amongst other things, the role of traditional and Khoi-San leadership within a democratic constitutional dispensation towards nation building, peace, stability and cohesiveness of traditional and Khoi-San communities and to enhance cooperation between the National House and the various provincial houses with a view to address matters of common interest.

Clause 39: Referral of Bills to National House

- 4.26 Clause 39 provides that any Parliamentary Bill which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities or pertaining to any matter referred to in section 154(2) of the Constitution, must be referred to the National House by the Secretary of Parliament for comments.

Clauses 40 and 41: Relationship between National House and kings and queens Relationship between National House and provincial houses

- 4.27 Clause 40 provides for the meeting of the National House with recognised kings, queens, Khoi-San kings, Khoi-San queens and principal traditional leaders on a bi-annual basis.

Clauses 42 and 43: Support to National House and annual report of National House

- 4.28 Clause 42(1) provides that the Department must provide support to the National House to enable the National House to perform all the functions assigned to it. Clause 43 provides for the timeframes of submitting annual reports to the Minister relating to the activities of the National House.

Clauses 44, 45 and 46: Privileges and immunities of members of National House, remuneration and benefits of members of National House and rules, orders and committees of National House

4.29 Clause 45 provides that remuneration and benefits of members of the National House are determined in terms of the Remuneration Act.

Clause 47: Dissolution of National House

4.30 Clause 47 provides that the National House must be dissolved on the expiry of a term of office of the National House or after a vote supported by a majority of the full complement of the members of the National House in a meeting of the National House called for that purpose.

Clause 48: Oath or affirmation by members of National House

4.31 Clause 48 provides that members of the National House must take an oath or solemn affirmation as set out in Schedule 2 to this Act, before the Chief Justice or a judge designated by the Chief Justice, before they begin to perform their functions in the National House.

Clause 49: Provincial houses of traditional and Khoi-San leaders

4.32 Clause 49 provides that provincial houses may be established by provinces in terms of provincial legislation. The membership of provincial houses must be composed in such a way that both senior traditional leaders and senior Khoi-San leaders are represented in the provincial house concerned in the same proportion that they are represented in the local houses.

Clause 50: Local houses of traditional and Khoi-San leaders

4.33 Clause 50 provides that the Premier may establish a local house of traditional and Khoi-San leaders for the area of jurisdiction of a local municipality, district municipality or a metropolitan municipality, where there is one or more traditional councils or Khoi-San councils, by notice in the provincial *Gazette*.

Clauses 51 to 55: Establishment of Commission, Appointment of members of Commission, Vacancies, Conditions of appointment of members of Commission and Support to and reports by Commission

4.34 Clauses 51 to 55 provide for matters relating to the Commission, which are, the establishment of the Commission on Khoi-San Matters (the “Commission”), appointment of members of the Commission, vacancies, conditions of appointment of members of Commission and support to and reports by Commission, respectively.

Clause 56: Application for recognition of Khoi-San communities, branches, senior Khoi-San leaders and branch heads

4.35 Clause 56 provides for the lodgement of applications, in writing, to the Commission by a qualifying community for the recognition of that community as a Khoi-San kingship or Khoi-San queenship and Khoi-San king or Khoi-San queen.

Clause 57: Functions of Commission

4.36.1 Clause 57 sets out the functions of the Commission which are to research, investigate and make recommendations to the Minister on the recognition of Khoi-San kingships and Khoi-San queenships, Khoi-San communities, Khoi-San kings and Khoi-San queens, hereditary senior Khoi-San leaders, elected senior Khoi-San leaders and branches and branch heads.

- 4.36.2 Clause 57(2) provides that the Commission—
- (a) may only research, investigate and make recommendations in respect of those applications that have been lodged with the Commission in terms of section 56 within a period of one year from a date to be determined by the Minister by notice in the *Gazette*, or any such further period as the Minister may determine by notice in the *Gazette*; and
 - (b) must complete the research, investigations and make recommendations as contemplated in paragraph (a) within the period of five years referred to in section 52(1)(a), or any such further period as the Minister may determine.
- 4.36.3 In terms of clause 57(3), any application that has not been lodged with the Commission by the period referred to in subsection (2)(a), may not be dealt with by the Commission and must be dealt with in accordance with the provisions of sections 5 or 10, as the case may be.

Clause 58: Recommendations and decisions

- 4.37 Clause 58 provides for the recommendations and decisions of the Commission. Clause 58(1) requires that a recommendation of the Commission must be agreed to by at least two-thirds of the members of the Commission.

Clauses 59 and 60: Disputes, Appeals and Regulations

- 4.38 Clause 60 provides for the Minister's power to make regulations regarding, amongst other things, any matter that must or may be prescribed in terms of the Bill, any consultation process to be conducted in terms of the Bill and any ancillary or administrative matter that is necessary to prescribe for the proper implementation or administration of the Bill.

Clauses 64, 65 and 66: Amendment of legislation, repeal of legislation and savings; and short title and commencement

- 4.39 Clauses 64, 65 and 66 provide for the amendment of legislation, legislation to be repealed upon the enactment of the Bill into law; and the short title and commencement of the Traditional and Khoi-San Leadership Act, 2025, respectively.

Schedule 1: Code of Conduct for members of Commission, members of houses, members of councils and other leaders

- 4.40 Schedule 1 provides for the Code of Conduct of houses and councils and also sets out in detail processes to be followed to address any breach of the provisions of the Code of Conduct. In order to assist the relevant functionaries with the formalities relating to taking of the oath or affirmation by members of the National House, Provincial Houses and Local Houses, Parts A and B of Schedule 2 to the Bill prescribes the forms in this regard.

Schedule 2: Oath and affirmation by members of National House, provincial houses, local houses and Commission

- 4.41 Schedule 2 provides for templates for oath and affirmation by members of National House, provincial houses, local houses and Commission.

Schedule 3: Amendment of legislation

- 4.42 Schedule 3 contains a list of consequential amendments to section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, the long title and section 1 of the Remuneration Act, and section 81 of the Structures Act in accordance with clause 64. These amendments ensure alignment with the provisions of the Bill.

Schedule 4: Repeal of legislation

4.43 Schedule 4 to the Bill provides for the list of legislation to be repealed in accordance with the provisions of clause 65.

5. FINANCIAL IMPLICATIONS

5.1 The Bill makes provision for new structures and leadership positions in respect of Khoi-San leadership, which will have additional financial implications for the Department. It should be noted that the salaries, allowances, benefits and other related expenses of traditional and Khoi-San leaders are determined in terms of the provisions of the Remuneration Act.

5.2 Therefore, some of the Khoi-San leadership activities that may have financial implications for the purposes of the draft Bill may relate to—

- (a) recognition of senior Khoi-San leaders contemplated in (clause 10) of the Bill;
- (b) establishment and recognition of Khoi-San councils contemplated in (clause 18) of the Bill; and
- (c) support to Khoi-San councils contemplated in clause 23.

6. DEPARTMENTS/BODIES/PERSONS CONSULTED

6.1 It should be noted that there are significant changes incorporated in the Bill based on the inputs received from the public participation processes conducted in compliance with section 154(2) of the Constitution.

6.2 Therefore, a significant first step towards complying with the Constitutional Court order is that the Bill must officially be introduced into Parliament. The Parliamentary Legal Services advised the Department that there are basically two options: an Executive Bill or a Committee Bill. The COGTA MInMEC¹ was briefed on the two options in September 2023 and endorsed the Executive Bill option.

6.3 Subsequently, the Portfolio Committee on Cooperative Governance and Traditional Affairs was briefed on the two options, and it decided on 11 October 2023 that the Executive Bill route should be followed.

6.4 The Bill was consequently prepared. The Department finalised all the administrative processes towards the tabling of the Bill in Parliament including obtaining a pre-certification opinion from the State Law Advisers for the submission of the draft Bill to Cabinet, Socio-Economic Impact Assessment System certification, and subsequently Cabinet approval to table the draft Bill in Parliament on 18 September 2024.

6.5 At the stage of obtaining final certification from the State Law Advisers to table the draft Bill into Parliament, the State Law Advisers advised that the draft Bill had to first be published for public comments in terms of section 154(2) of the Constitution.

6.6 The draft Bill was then published in *Gazette* No. 51657 of 29 November 2024, as contemplated in section 154(2) of the Constitution on 29 December 2024 for a period of 30 calendar days which was subsequently extended to 28 February 2025 in *Gazette* No. 51807 of 20 December 2024.

6.7 The Department carefully considered all the comments made during the briefing sessions, including all the written comments received, for incorporation into the draft Bill.

¹MInMEC MinMEC is a periodic intergovernmental forum consisting of a national Minister and respective provincial Member of Executive Council or similar, to discuss and coordinate matters of mutual interest across various sectors like public works, tourism and cooperative governance

7. CONSTITUTIONAL IMPLICATIONS

The Bill deals with matters of traditional leadership and institutions as contemplated in sections 211 and 212 of the Constitution. The Bill furthermore makes provision for the official recognition of Khoi-San communities and leaders, as well as for the establishment of Khoi-San structures. Constitutional principles such as those contained in the Bill of Rights are, where necessary, promoted and emphasised throughout the Bill. The State Law Advisers previously certified the draft Bill as being consistent with the Constitution.

8. COMMUNICATION IMPLICATIONS

Upon enactment of the Bill into law, the Department shall engage all stakeholders responsible for the implementation of the new law, with a focus on the changes brought by the new Act, for example, new timeframes provided and the transitional arrangements, and consequential provisions in other legislation and their implications. Similar engagements will also take place with the structures of traditional and Khoi-San leadership.

9. PARLIAMENTARY PROCEDURE

9.1 The Constitution distinguishes between four categories of Bills as follows: Bills amending the Constitution (section 74); Ordinary Bills not affecting provinces (section 75); Ordinary Bills affecting provinces (section 76); and Money Bills (section 77). The aforesaid provisions require Parliament first to classify a Bill submitted to it, in order to determine which procedure should be followed in enacting the Bill. Section 76(1) of the Constitution provides that “When the National Assembly passes a Bill referred to in subsection (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the procedure *set out in that provision*”. Section 76(3) in turn provides that “a Bill must be dealt with in accordance with the procedure established by either subsection (1) or (2) if it falls within a functional area listed in Schedule 4”. Considering the above, a Bill must be correctly tagged otherwise it would be constitutionally invalid. (Our emphasis)

9.2 In *Tongoane and Others v Minister of Agriculture and Land Affairs and Others*², the Constitutional Court (CC) definitively dealt with the question of tagging. The CC determined the proper test for tagging of the Communal Land Rights Act, 2004³ (“the CLARA”), by analysing the provisions of the CLARA and found that, in substantial measure, it affects indigenous law, customary law and traditional leadership which are areas of concurrent national and provincial legislative competence, and are functional areas listed in Schedule 4 of the Constitution. The CC held in paragraph 58 of the judgment that:

“... What matters for the purpose of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill ‘in substantial measure fall within a functional area listed in schedule 4’. This statement refers to the test to be adopted when tagging Bills. This test for classification or tagging is different from that used by this court to characterise a Bill in order to determine legislative competence. This involves the determination of the subject matter or the substance of the legislation, its essence, or true purpose and effect, that is, what the [legislation] is about.” (Footnote omitted)

9.3 The CC held that the test for tagging must be informed by its purpose. Tagging is neither concerned with determining the sphere of government that has the competence to legislate on a matter, nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how a Bill must be

²2010 (8) BCLR 741 (CC).

³[Act No. 11 of 2004].

considered by the provinces and in the National Council of Provinces, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interest, concerns and capacities of the provinces, the more say the provinces should have on its content.⁴ The CC further held as follows:

“[64] The purpose of tagging is therefore to determine the nature and extent of the input of provinces on the contents of legislation affecting them. Indeed, all the legislation mentioned in section 76(3) is legislation that substantially affects the interests of provinces.

[69] The tagging of Bills before Parliament must be informed by the need to ensure that the provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects them. Paying less attention to the provisions of a Bill once its substance, or purpose and effect, has been identified undermines the role that provinces should play in the enactment of national legislation affecting them. The subject-matter of a Bill may lie in one area, yet its provisions may have a substantial impact on the interests of provinces. And different provisions of the legislation may be so closely intertwined that blind adherence to the subject-matter of the legislation without regard to the impact of its provisions on functional areas in Schedule 4 may frustrate the very purpose of classification.

[71] ... ; the ‘substantial measure’ test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces. This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.

[72] To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.”.

- 9.4 To determine whether the provisions of the Bill in a substantial measure fall within a functional area listed in Schedule 4, we considered the Bill against the provisions of the Constitution relating to the tagging of Bills as well as against the functional areas listed in Schedule 4 and Schedule 5 to the Constitution. There are at least two functional areas of concurrent National and Provincial legislative competence under Schedule 4 of the Constitution which the provisions of the Bill fall under, namely cultural matters and indigenous law and customary law.
- 9.5 In the light of the above, the State Law Advisers and the Department are of the view that the Bill is an ordinary Bill affecting provinces contemplated in section 76 of the Constitution and must be dealt with in accordance with the procedure set out in that section.

10. REFERRAL OF BILL TO NATIONAL HOUSE OF TRADITIONAL AND KHOI-SAN LEADERS

- 10.1 The referral of the Bill to the House of Traditional and Khoi-San Leaders by Parliament, section 39 of the Traditional and Khoi-San Leadership Act finds application as it provides as follows:

⁴Fn 6 above at para [60].

“Referral of Bills to National House**39. (1) (a) Any Parliamentary Bill—**

(i) *which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or*

(ii) *pertaining to any matter referred to in section 154(2) of the Constitution,*

must, in the case of a Bill contemplated in subparagraph (i) and may, in the case of a Bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.

(b) The National House must, within 60 days from the date of such referral, make any comments it wishes to make and submit such comments to the Secretary to Parliament: Provided that the National House may refer any such Bill to any provincial house for comments: Provided further that if the National House has no comments on any Bill referred to it, the National House must inform the Secretary to Parliament accordingly.”.
(Underlining is our emphasis).

10.2 It is clear that the Bill is a Bill which directly affects traditional or Khoi-San communities or pertains to customary law or customs of traditional or Khoi-San communities as contemplated in section 39(1)(a) cited in the preceding paragraph. The Bill should, therefore, in our view, be referred to the National House of Traditional and Khoi-San Leaders.

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