

REPUBLIC OF SOUTH AFRICA

TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK AMENDMENT BILL

*(As amended by the Portfolio Committee on Provincial Affairs and Local Government
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

[B 57B—2008]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Traditional Leadership and Governance Framework Act, 2003, so as to substitute a definition and insert a definition; to provide for the recognition of kingships or queenships and the withdrawal of such recognition; to provide for the establishment and recognition of kingship or queenship councils; to provide for the establishment of sub-traditional councils; to further regulate the election of members of local houses of traditional leaders; to provide for regulatory powers; to provide anew for the transitional provisions relating to tribal authorities, community authorities and paramountcies; to provide for the disestablishment of paramountcies; to amend the Remuneration of Public Office Bearers Act, 1998, so as to make provision for the remuneration of non-traditional leader members of traditional councils and kingship or queenship councils; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 41 of 2003

1. Section 1(1) of the Traditional Leadership and Governance Framework Act, 2003 (hereinafter referred to as the principal Act), is hereby amended by— 5
- (a) the substitution for the definition of “kingship” of the following definition:
“**‘kingship or queenship’** means a kingship or queenship established in terms of section 2A;”; and
 - (b) the insertion after the definition of “kingship” of the following definition:
“**‘kingship or queenship council’** means a council established and recognised for a kingship or queenship in terms of section 3A;”. 10

Substitution of heading to Chapter 2 of Act 41 of 2003

2. The following heading is hereby substituted for the heading to Chapter 2 of the principal Act: 15
- “KINGSHIPS OR QUEENSHIPS, TRADITIONAL COMMUNITIES, KINGSHIP OR QUEENSHIP COUNCILS AND TRADITIONAL COUNCILS”.**

Insertion of section 2A in Act 41 of 2003

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

“Recognition of kingships or queenships

- 2A.** (1) Subject to subsection (2), a number of traditional communities that are grouped together may be recognised as a kingship or queenship if they— 5
- (a) are recognised as such in terms of applicable provincial legislation;
 - (b) each have a recognised traditional council with a defined area of jurisdiction in terms of applicable provincial legislation;
 - (c) each have a senior traditional leader recognised in terms of the applicable provincial legislation; 10
 - (d) recognise a recognised senior traditional leader, who is of higher status than the other senior traditional leaders in terms of custom and customary law, as their king or queen;
 - (e) recognise themselves as a distinct group of traditional communities from all other traditional communities; and 15
 - (f) have a system of traditional leadership at a kingship or queenship level.
- (2) The traditional communities applying for recognition as a kingship or queenship must have a proven history of existence, with a recognised senior traditional leader of higher status as a king or queen in terms of customary law of succession. 20
- (3) (a) The President may, by notice in the *Gazette*, after consultation with the relevant Premier, the provincial house of traditional leaders in the relevant province, the national house of traditional leaders and the senior traditional leaders of traditional communities who fall under the kingship or queenship being applied for, recognise a kingship or queenship envisaged in subsections (1) and (2) as a kingship or queenship. 25
- (b) The President may—
- (i) direct the Minister to conduct the consultation referred to in paragraph (a) in his or her stead; and 30
 - (ii) prescribe a fixed period within which the Minister must finalise the consultation regarding the recognition of a kingship or queenship envisaged in subsections (1) and (2).
- (4) A kingship or queenship must transform and adapt customary law and customs relevant to the application of this Act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by— 35
- (a) preventing unfair discrimination;
 - (b) promoting equality; and 40
 - (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.
- (5) The withdrawal of the recognition of a community as a kingship or queenship as provided for in this Act, may only be considered where— 45
- (a) the majority of traditional communities under the jurisdiction of the kingship or queenship concerned request the President that the recognition of their kingship or queenship be withdrawn; and
 - (b) the President, on good cause shown, determines that the withdrawal of such a kingship or queenship is necessary.
- (6) The President may, before taking a decision in terms of subsection (5), cause an investigation to be conducted. 50
- (7) The withdrawal of the recognition of a community as a kingship or queenship must be done by the President after consultation with the kingship or queenship council, the Minister, the National House of Traditional Leaders, the relevant Premier and the provincial house of traditional leaders concerned. 55
- (8) The withdrawal of a kingship or queenship must be done by way of a notice in the *Gazette*.”.

Amendment of section 3 of Act 41 of 2003

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

- “(a) A traditional council **[may have no more than 30 members, depending on the needs of the traditional community concerned]** consists of the number of members determined by the Premier by formula published in the Provincial Gazette, after consultation with the provincial house, in accordance with the guidelines issued by the Minister by notice in the Gazette. 5
- (c) The members of a traditional council must comprise—
- (i) traditional leaders and members of the traditional community selected by the senior traditional leader concerned who is an *ex officio* member and chairperson of the traditional council, for a term of five years aligned with the term of office of the National House of Traditional Leaders, in terms of that community’s customs, taking into account the need for overall compliance with paragraph (b); and 10 15
 - (ii) other members of the traditional community who are democratically elected for a term of five years aligned with the term of office of the National House of Traditional Leaders and who must constitute 40% of the members of the traditional council.”. 15

Insertion of section 3A in Act 41 of 2003

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

“Establishment and recognition of kingship or queenship councils

- 3A.** (1) Once the President has recognised a kingship or queenship, that kingship or queenship must, within one year of the recognition, establish a kingship or queenship council. 25
- (2) (a) A kingship or queenship council consists of the number of members as determined by the Minister, after consultation with the kingship or queenship concerned, by formula published by notice in the *Gazette*. 30
- (b) At least a third of the members of a kingship or queenship council must be women: Provided that where it has been proved that an insufficient number of women are available to participate in a kingship or queenship council, the Minister may determine a lower threshold for the particular kingship or queenship council than that contemplated in paragraph (a). 30
- (c) The membership of a kingship or queenship council comprises— 35
- (i) 60% of traditional leaders, including the king or queen who is an *ex officio* member and chairperson, and members of the traditional community selected by the king or queen in terms of that community’s customs, taking into account the need for overall compliance with paragraph (b); and 40
 - (ii) 40% of members elected democratically, by an electoral college consisting of all senior traditional leaders who fall under the kingship or queenship. 45
- (d) Each traditional community falling within the area of jurisdiction of the kingship or queenship concerned must in the prescribed manner, elect one person to serve as a member referred to in paragraph (d)(ii): Provided that where the number of persons so elected exceed the number of members contemplated in paragraph (d)(ii), the persons elected by the traditional communities must elect from amongst themselves the number of persons contemplated in paragraph (d)(ii). 50
- (3) The term of office of the kingship or queenship council is five years and must be aligned to the term of the National House established by section 2 of the National House of Traditional Leaders Act, 2008. 55
- (4) The Premier must, by notice in the *Provincial Gazette* and in accordance with this Act, recognise a kingship or queenship council for that kingship or queenship within a defined area of jurisdiction, whereafter the Premier must inform the President of such establishment and recognition. 55

- (5) The kingship or queenship council meets at the king's or queen's great place or at any other place to be determined by the king or queen.
- (6) The quorum of the kingship or queenship council is the majority of the total number of the kingship or queenship council.
- (7) The kingship or queenship council must elect one of its members as a deputy chairperson who will act as the chairperson in the absence of the king or queen. 5
- (8) The kingship or queenship council must meet every two months: Provided that the king or queen may, in consultation with the Premier of the province concerned, call a special meeting of the kingship or queenship considers necessary. 10
- (9) The king or queen must give notice of not less than seven days for holding a special meeting to members of the kingship or queenship council.
- (10) A member of a kingship or queenship council vacates his or her office if— 15
- (a) he or she ceases to be a South African citizen;
 - (b) he or she has been convicted of an offence and sentenced to imprisonment for more than 12 months without the option of a fine;
 - (c) he or she tenders his or her resignation;
 - (d) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the kingship or queenship council; 20
 - (e) the period for which the member was selected or elected, as the case may be, has expired; or
 - (f) he or she becomes disqualified in terms of subsection (14). 25
- (11) If a member of a kingship or queenship council dies or vacates his or her office before the expiration of his or her term of office, such a vacancy must be filled in the manner envisaged in this Act within a reasonable period of the vacancy occurring.
- (12) A member appointed to fill a vacancy in terms of subsection (11) holds office for the remainder of his or her predecessor's term of office. 30
- (13) A vacancy arising at any time other than the close of a five-year cycle must be filled in the manner described in subsection (2)(d)(i) or (ii), as the case may be, within 14 days and 45 days, respectively.
- (14) A person may not be appointed as a member of a kingship or queenship council if that person— 35
- (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; 40
 - (d) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
 - (e) is of unsound mind and has been so declared by a competent court;
 - (f) is or becomes a member of a municipal council; 45
 - (g) is elected as a member of a provincial legislature;
 - (h) is elected as a member of the National Assembly;
 - (i) is appointed as a permanent delegate in the National Council of Provinces; or
 - (j) is elected to, or appointed in, a full-time position in any house of traditional leaders.”. 50

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

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

“Functions of kingship or queenship councils

- 4A.** (1) A kingship or queenship council has the following functions: 55
- (a) Administering the affairs of the kingship or queenship in accordance with customs and tradition;

- (b) assisting, supporting and guiding senior traditional leaders and traditional councils falling within the jurisdiction of the kingship or queenship concerned in the performance of their functions;
- (c) assisting the king or queen in performing customary functions in relation to the recognition of senior traditional leaders, where applicable; 5
- (d) mediating in disputes between senior traditional leaderships falling within the jurisdiction of the kingship or queenship;
- (e) promoting unity between traditional communities falling under the jurisdiction of the kingship or queenship; and 10
- (f) assisting the king or queen in performing his or her roles and functions conferred upon him or her by the President in terms of the regulations issued under section 9(5).
- (2) A kingship or queenship council is required to— 15
 - (a) keep proper records;
 - (b) have its financial statements audited;
 - (c) disclose the receipt of gifts;
 - (d) adhere to the code of conduct contained in the applicable provincial legislation for all traditional leaders and traditional councils: Provided that where a member of a kingship or queenship council has to be disciplined for the breach of the code of conduct, the king or queen must inform the Premier of such fact and also of the outcome of the inquiry; and 20
 - (e) advise and support all traditional councils falling under the authority of the king or queen. 25
- (3) A kingship or queenship council and its resources may not be used to promote or prejudice the interest of any political party.
- (4) Provincial legislation may provide for a relationship between kings or queens and provincial houses as contemplated in section 14 of the National House of Traditional Leaders Act, 2008.”. 30

Establishment and functions of traditional sub-councils

- 4B.** (1) (a) Despite the provisions of section 3, the Premier may, in cases where a traditional community occupies two or more geographical areas, establish a traditional sub-council for that section of the community which is resident outside the area in which the great place is located. 35
- (b) The traditional sub-council must consist of not more than 15 members resident in the area contemplated in paragraph (a).
- (2) The Premier must, in the *Provincial Gazette*, recognise the traditional sub-council as part of the main traditional council, and define the area of its jurisdiction. 40
- (3) The provisions of section 3(2) apply to the constitution and composition of the traditional sub-council.
- (4) The chairperson of the traditional sub-council must be appointed by a senior traditional leader, in consultation with the royal family.
- (5) A chairperson appointed in terms of subsection (4) must be a member of the main traditional council selected by the senior traditional leader in terms of section 3(2)(c)(i). 45
- (6) A traditional sub-council performs such functions listed in section 4 as may be delegated to it by the main traditional council.”.

Substitution of section 5 of Act 41 of 2003 50

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

“Partnerships between district or local municipalities and traditional kingship or queenship councils

- 5.** (1) The national government and all provincial governments must promote partnerships between district municipalities and kingship or queenship councils through legislative or other measures. 55

- (2) The national government and all provincial governments must promote partnerships between local municipalities and traditional councils through legislative or other measures.
- (3) Any partnership contemplated in subsections (1) and (2) must—
- (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and
 - (b) be guided by and based on the principles of co-operative governance.
- (4) A traditional council may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and any other applicable legislation.”.

Substitution of section 6 of Act 41 of 2003

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

“Support to traditional councils and kingship or queenship councils

6. The national government and a provincial government may adopt such legislative or other measures as may be necessary to support and strengthen the capacity of traditional councils and kingship or queenship councils within the province to fulfill their functions.”.

Amendment of section 9 of Act 41 of 2003

9. Section 9 of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph:

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

Amendment of section 17 of Act 41 of 2003

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

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

“(1) (a) A local house of traditional leaders must be established for a term of office of five years aligned to the term of office of the National House of Traditional Leaders in accordance with provincial legislation for the area of jurisdiction of a district municipality or metropolitan municipality where more than one **[senior traditional leadership]** traditional council exists in that district municipality or metropolitan municipality.

(b) The electoral college mentioned in subsection (2)(b) must ensure that members of a local house of traditional leaders are broadly representative of the different traditional leadership positions and also of the areas falling within the district municipality or metropolitan municipality in question.”;

(b) the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) (i) Only persons recognised as traditional leaders must be elected as members of a local house of traditional leaders.

(ii) Members of a local house are elected by an electoral college consisting of all kings or queens, or their representatives, and senior traditional leaders residing within the district municipality or metropolitan municipality in question.”.

Amendment of section 26 of Act 41 of 2003

11. Section 26 of the principal Act is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following:

“(a) the President for immediate implementation in accordance with section 2A, 9 or 10 where the position of a king or queen or kingship or queenship is affected by such a decision; and

(b) the relevant provincial government and any other functionary which must immediately implement the decision of the Commission in accordance with

applicable provincial legislation in so far the implementation of the decision does not relate to the recognition or removal of a king or queen or the recognition or withdrawal of a kingship or queenship in terms of section 2A, 9 or 10.”.

Insertion of section 27A in Act 41 of 2003

12. The following section is hereby inserted in the principal Act after section 27: 5

“Regulatory powers

27A. (1) The President may, by notice in the *Gazette*, make regulations regarding—

- (a) any matter that must or may be prescribed in terms of this Act;
- (b) any ancillary or administrative matter that it is necessary to prescribe for the proper implementation or administration of this Act. 10

(2) Before any regulations are made under this section, the President must—

- (a) consult—
 - (i) the Minister responsible for local government; 15
 - (ii) the National House of Traditional Leaders;
 - (iii) the provincial house of traditional leaders; and
 - (iv) the provincial departments responsible for traditional leadership.
- (b) publish the draft regulations in the *Gazette* for public comment; and 20
- (c) submit the draft regulations to Parliament for parliamentary scrutiny at least one month before their promulgation.”.

Amendment of section 28 of Act 41 of 2003

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

- (a) the substitution for subsection (4) of the following subsection: 25

“(4) A tribal authority that, immediately before the commencement of this Act, had been established and was still recognised as such, is deemed to be a traditional council contemplated in section 3 and must perform the functions referred to in section 4: Provided that such a tribal authority must comply with section 3(2) within **[one year]** five years of the commencement of this Act.”; 30

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

“(5) Any community authority that had been established in terms of applicable legislation and still existed as such immediately before the commencement of this Act, continues to exist until it is disestablished in accordance with provincial legislation, which disestablishment must take place within **[two]** five years of the commencement of this Act, except where the traditional leadership related to that community authority is still under investigation by the Commission in terms of section 25(2) in which case the community authority concerned must be administered as if the relevant establishing legislation had not been repealed.”; 35 40

- (c) the substitution for subsection (7) of the following subsection:

“(7) The Commission must, in terms of section 25(2), investigate the position of paramountcies and paramount chiefs that had been established and recognised, and which were still in existence and recognised, before the commencement of this Act, before the Commission commences with any other investigation in terms of that section [.]:Provided that where a vacancy occurs before the final decision by the Commission, the Premier of the province concerned must appoint a person to act as a paramount chief as if the relevant establishing legislation had not been repealed.”; and 45 50

- (d) the addition of the following subsection:

“(8) Where, pursuant to a investigation conducted in terms of subsection (7), the Commission decides that an established paramountcy and a recognised paramount chief do not qualify to be recognised as a kingship or queenship and a king or queen respectively in terms of this Act, such a paramountcy must be disestablished and the recognition of 55

such a paramount chief be withdrawn by the President by notice in the *Gazette*.”.

Validation of decisions

11. Despite the expiration of the term provided in the transitional arrangements, the actions and decisions taken by any community authority and tribal authority in terms of the applicable legislation, which was provided for in section 28 of the principal Act, at any time from 24 September 2005 to the date on which this Act takes effect, are hereby validated and declared to have been lawfully done. 5

Amendment of long title of Act 20 of 1998, as amended by Act 21 of 2000 and section 29 of Act 41 of 2003 10

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

“To provide for a framework for determining the salaries and allowances of the President, members of the National Assembly, permanent delegates to the National Council of Provinces, Deputy President, Ministers, Deputy Ministers, traditional leaders, non-traditional leader members of traditional councils, non-traditional leader members of kingship or queenship councils, members of local Houses of Traditional Leaders, members of provincial houses of Traditional Leaders and members of the National House of Traditional Leaders; to provide for a framework for determining the upper limit of salaries and allowances of Premiers, members of Executive Councils, members of provincial legislatures and members of Municipal Councils; to provide for a framework for determining pension and medical aid benefits of office bearers; to provide for the repeal of certain laws; and to provide for matters connected therewith.”. 15 20 25

Amendment of section 1 of Act 20 of 1998

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

(a) by the substitution for the definition of “benefits” of the following definition:
“‘**benefits**’ means in respect of a traditional leader, a non-traditional leader member of a traditional council, a member of a kingship or queenship council, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders and a member of the National House of Traditional Leaders those benefits which the President may determine in terms of section 5(3), and in respect of all other office bearers, the contributions contemplated in sections 8(2) and (5) and 9(2) and (5); (xii)”;

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

“‘**office bearer**’ means a Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate, a Premier, a member of an Executive Council, a member of a provincial legislature, a traditional leader, a non-traditional leader member of a traditional council, a member of a kingship or queenship council, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders, a member of the National House of Traditional Leaders and a member of a Municipal Council; (ii)”.

Substitution of section 5 of Act 20 of 1998

14. The following section is substituted for section 5 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998): 50

“Salaries, allowances and benefits of traditional leaders, non-traditional leader members of traditional councils, members of kingship or queenship councils, members of local Houses of Traditional Leaders, members of

provincial houses of Traditional Leaders and members of National House of Traditional Leaders

5. (1) Traditional leaders, non-traditional leader members of any traditional council, non-traditional leader members of any kingship or queenship council, members of any local House of Traditional Leaders, members of any provincial house of Traditional Leaders and members of the National House of Traditional Leaders shall, despite anything to the contrary in any other law contained, be entitled to such salaries and allowances as may from time to time be determined by the President after consultation with the Premier concerned by proclamation in the *Gazette*, after taking into consideration—

- (a) any recommendations of the Commission;
- (b) the role, status, duties, functions and responsibilities of different categories of traditional leaders, non-traditional leader members of traditional councils, members of kingship or queenship councils, different members of the local Houses of Traditional Leaders, different members of the Houses of Traditional Leaders in the various provinces and different members of the National House of Traditional Leaders;
- (c) the affordability of different levels of remuneration of public office bearers;
- (d) the current principles and levels of remuneration in society generally;
- (e) the need for the promotion of equality and uniformity of salaries and allowances for equal work performed;
- (f) the enhancement of co-operation, unity and understanding between traditional communities nationally;
- (g) the extent of the role and functions of traditional leaders across provincial borders; and
- (h) inflationary increases.

(2) Despite the provisions of subsection (1), a traditional leader, a non-traditional leader member of a traditional council, a member of a kingship or queenship council, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders or a member of the National House of Traditional Leaders who holds different public offices simultaneously, is only entitled to the salary, allowances and benefits of the public office for which he or she earns the highest income, but—

- (a) this subsection shall not preclude the payment of out of pocket expenses for the performance of functions other than those for which such office bearer receives such highest income; and
- (b) where only an allowance has been determined in terms of subsection (1) in respect of a traditional leader's membership of a local House of Traditional Leaders, a provincial house of Traditional Leaders or the National House of Traditional Leaders, such a traditional leader shall be entitled to such an allowance in addition to his or her salary, allowances and benefits as a traditional leader.

(3) (a) The President may, if he or she deems it expedient after consultation with the Minister and the Premier concerned, by proclamation in the *Gazette* determine any benefits to which a traditional leader, a non-traditional leader member of a traditional council, a member of a kingship or queenship council, a member of any local House of Traditional Leaders, a member of any Provincial house of Traditional Leaders or a member of the National House of Traditional Leaders shall be entitled, subject to such conditions as the President may prescribe.

(b) If the President decides to determine such benefits, the criteria listed in paragraphs (a) to (h) of subsection (1) shall be applicable, with the necessary changes.

(4) The amount payable in respect of salaries, allowances and benefits to traditional leaders, non-traditional leader members of a traditional council, members of a kingship or queenship council, members of local Houses of Traditional Leaders, members of provincial houses of Traditional Leaders and members of the National House of Traditional Leaders shall be paid from monies appropriated for that purpose by Parliament in respect of the National House of Traditional Leaders and by a provincial legislature in respect of traditional leaders, non-traditional leader members of traditional councils, the members of kingship or queenship councils, members of local Houses of Traditional Leaders and members of provincial houses of Traditional Leaders, as the case may be.

(5)

(6) Despite the provisions of subsection (1), a member of the National House of Traditional Leaders shall be entitled to an allowance as determined by the President by proclamation in the *Gazette* for actual work performed with effect from 10 April 1997 until a determination is made in terms of subsection (1).”.

Amendment of section 8 of Act 20 of 1998

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15. Section 8 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended by the substitution for subsection 6 of the following subsection:

“(6) The provisions of this section shall, subject to section 5(3), not apply to a traditional leader, a non-traditional leader member of a traditional council, a member of a kingship or queenship council, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders and a member of the National House of Traditional Leaders.”.

Amendment of section 9 of Act 20 of 1998

16. Section 9 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended by the substitution for subsection 6 of the following subsection:

“(6) The provisions of this section shall, subject to section 5(3), not apply to a traditional leader, a non-traditional leader member of a traditional council, a member of a kingship or queenship council, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders and a member of the National House of Traditional Leaders.”.

Short title

17. This Act is called the Traditional Leadership and Governance Framework Amendment Act, 2008.

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

1. BACKGROUND

The Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) was passed in December 2003, and came into operation on 24 September 2005. Since then, the Act has been implemented and through careful analysis of the Act and assessment of its implementation it has emerged that there is a need to effect certain amendments to address the current gaps and legal uncertainties and vacuums in respect of the following areas highlighted in this Bill:

- (a) Recognition of kingships or queenship and withdrawal of such recognition;
- (b) Establishment and recognition of kingship or queenship councils by Premiers whose term of office must be aligned with that of local government for the alignment in respect of planning, service delivery and support;
- (c) Provision for functions of the kingship or queenship councils;
- (d) The disestablishment of paramountcies and the withdrawal of recognition of paramount chiefs;
- (e) Provision for the establishment of sub-traditional councils;
- (f) Further amendment of the transitional provisions relating to tribal authorities, community authorities and paramountcies; and
- (g) Amendment of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) to make provision for the remuneration of non-traditional leader members of traditional councils and kingship or queenship councils.

2. PARTIES CONSULTED

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

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

3. CLAUSE BY CLAUSE EXPLANATION OF THE BILL

Clause 1

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

Clause 2

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

Clause 3

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

The correct interpretation of section 8 of the Act as it currently stands is that it provides for the recognition of kingship or queenship positions and not a kingship or queenship as an entity or structure. No section in the Act provides for the kingship or queenship and the constituent parts thereof. While there is mention for a customary structure for kings or queens and that kingships are constituted of a number of senior traditional leaderships (recognised traditional communities) under it, there is no provision for a formal process to establish a kingship or queenship as a formal entity. Sections 9 and 10 only provide for a full process to identify, recognise and depose incumbents to kingship or queenship positions.

This is unlike a traditional community which is fully provided for in the Act as an entity where the structures and the leadership positions including functions and areas of jurisdiction are clearly provided for (sections 2, 3, 4, 11 and 12 of the Framework Act). Section 9(5) of the Act provides for the President to issue regulations to determine the ceremonial and other roles, responsibilities and functions of kings or queens. There is no provision in the Act for the establishment and recognition of a structure or council for the kingship or queenship in performing its roles and functions.

Clause 4

Clause 4 provides for the amendment of section 3 of the principal Act so as to determine that the term of office of members of traditional councils is five years, and this applies to both selected as well as elected members.

Clause 5

Clause 5 provides for the process to establish and recognise kingship or queenship councils as a formal structure to assist kings or queens to administer the affairs of their kingships or queenships. This is in line with the principles adopted in the current text of the Act where traditional councils are established and recognised for senior traditional leaders who are at a lower level of traditional leadership.

The term of office of the kingship or queenship councils and traditional councils will be aligned with the term of office of local government in terms of this amendment in respect of planning, service delivery and support.

Clause 6

Clause 6 provides for the addition of section 4A and 4B to the principal Act to provide for the functions of kingship or queenship councils as well as the establishment and the functions of a sub-traditional council. A sub-traditional council is to be established in areas where one traditional community exists in more than one geographical area. This situation is prevalent in certain areas of KwaZulu-Natal and North West where there currently exists a legal vacuum regarding these communities. There are historical and customary reasons why these communities were divided and ended up in more than one geographical location.

Clause 7

Clause 7 amends section 6 of the principal Act so as to provide for the support to kingship or queenship councils as it is the case with traditional councils.

Clause 8

Clause 8 provides for the amendment of section 17 of the principal Act so as to allow for the electoral college on the election of members of local houses to ensure gender representation, to make local houses representative of all traditional leaders residing within the area of jurisdiction of a local house, including headmen or headwomen, to be elected into the local houses.

Clause 9

Clause 9 provides for the addition of section 27A to the principal Act providing for regulatory powers of the President on matters considered necessary and expedient to be regulated in terms of the Act.

Clause 10

Clause 10 provides for the amendment of section 28 of the principal Act relating to transitional arrangements on the following areas:

- (1) The Act currently provides for the compliance with section 3(2) of the Act relating to the composition of traditional councils within one year of the coming into operation of the Act. The one year originally given has been found to be very insufficient due to the fact that the provinces had to draft and pass their province-specific legislation on traditional leadership and transform their traditional authorities in terms of the new provincial legislation. Not even a single province was able to fully meet this deadline. The result is therefore that the status of the current untransformed traditional authorities is legally questionable. To remedy this situation, the recommendation in this clause is that provinces be given five years, with a retrospective effect to finalise the transformation of their traditional authorities into traditional councils in terms of the new legislation. Of the five years, already about three years have elapsed and there is effectively about two full years left. This time is considered to be reasonably sufficient to deal with all the practical and other challenges leading to the delay in complying with the relevant section of the Act.
- (2) There is currently no provision for the administration of the community authorities pending the finalisation of the decisions of the Commission. This clause provides for the continuation of the administration of the community authorities in terms of the legislation in terms of which they were originally established pending the determination by the Commission.
- (3) The Act currently provides for the Commission to investigate issues whether paramountcies qualify to be kingships or queenships and then investigate if the current incumbents are legitimate. The Act does not provide for any transitional arrangement in case where an incumbent paramount chief passes

on. This clause provides for the recognition of a person, by the Premier of the affected province, as an acting paramount chief of the affected paramountcy.

Clause 11

Clause 11 provides for the amendment of section 29 of the principal Act which amends the Remuneration of the Public Office Bearers Act, 1998 (Act No. 20 of 1998) so as to provide for the payment of remuneration to members of kingship or queenship councils and traditional councils who are not traditional leaders.

Clause 12

Clause 12 provides for the name of the Amendment Act.

4. FINANCIAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

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

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

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