

REPUBLIC OF SOUTH AFRICA

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# NATIONAL HOUSE OF TRADITIONAL LEADERS BILL

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*(As amended by the Select Committee on Co-operative Governance and Traditional Affairs)  
(National Council of Provinces))  
(The English text is the official text of the Bill)*

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(MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

**[B 56D—2008]**

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# BILL

**To provide for the establishment of the National House of Traditional Leaders; to determine the powers, duties and responsibilities of the House; to provide for support to the House by government; to provide for the relationship between the House and the provincial houses; to provide for the accountability of the House; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** the Constitution of the Republic of South Africa, 1996, recognises the institution, status and role of traditional leadership according to custom and customary law;

**AND WHEREAS** the Constitution of the Republic of South Africa, 1996, provides that national or provincial legislation may provide for the establishment of houses of traditional leaders to deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law;

**AND WHEREAS** the Constitution of the Republic of South Africa Act, 1993 (Act No. 200 of 1993), for the first time in the history of South Africa, provided for the enactment of the Council of Traditional Leaders Act, 1994 (Act No. 31 of 1994), which was repealed in 1997 and replaced by the National House of Traditional Leaders Act, 2000 (Act No. 20 of 2000);

**AND WHEREAS** from 1994, provinces passed provincial legislation providing for the establishment of provincial houses of traditional leadership;

**AND WHEREAS** in 2003 the government adopted the White Paper on Traditional Leadership and Governance which provides for another layer of houses of traditional leadership at a district municipal level;

**AND WHEREAS** the vision of government enunciated in the 2003 White Paper on Traditional Leadership and Governance necessitates the alignment of legislation establishing the National House of Traditional Leaders with the principles of non-sexism, co-operative governance between the houses, nation building, unity and peace among the houses and traditional communities as well as enhancing traditions and culture,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

## ARRANGEMENT OF SECTIONS

### Sections

1.	Definitions	
2.	Establishment of House	
3.	Composition of House	5
4.	Election of members to House	
5.	Qualification for membership of House	
6.	Vacation of seats	
7.	Filling of vacancies	
8.	Seat and meetings of House	10
9.	Chairperson and Deputy Chairperson of House	
10.	Status of members of House	
11.	Powers and duties of House	
12.	Administration of House	
13.	Responsibilities of House	15
14.	Relationship between House and kings and queens	
15.	Relationship between House and provincial houses	
16.	Support to House	
17.	Accountability of House	
18.	Privileges and immunities of members of House	20
19.	Remuneration and benefits to member of House	
20.	Rules, orders and committees of House	
21.	Dissolution of House	
22.	Oath or affirmation by members of House	
23.	Code of conduct	25
24.	Regulations	
25.	Repeal of laws and transitional provisions	
26.	Short title	

### SCHEDULE A

REPEAL OF LAWS	30
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### SCHEDULE B

### OATH OR AFFIRMATION BY MEMBERS OF HOUSE

### SCHEDULE C

### CODE OF CONDUCT

Definitions	35
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- In this Act, unless the context indicates otherwise—
  - “**code of conduct**” means the code of conduct contained in Schedule C;
  - “**Department**” means the national department responsible for traditional leadership matters;
  - “**Framework Act**” means the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);
  - “**House**” means the National House of Traditional Leaders established by section 2;
  - “**king or queen**” means a person recognised as such in terms of section 9 of the Framework Act;
  - “**local house**” means a local house as established in terms of section 17 of the Framework Act, and “**local houses**” has a corresponding meaning;
  - “**member**” means a member of the House elected in terms section 4;
  - “**Minister**” means the Minister responsible for traditional leadership matters;
  - “**prescribe**” means prescribed by regulation in terms of section 24;
  - “**provincial house**” means a provincial house of traditional leaders established in terms of applicable provincial legislation, and “**provincial houses**” has a corresponding meaning;

“rules and orders” means rules and orders of the House as provided for in section 20;  
 “Secretary” means the Secretary of the House appointed in terms of section 12;  
 “senior traditional leader” means a senior traditional leader defined in section 1 of the Framework Act;  
 “this Act” includes any regulations made under section 24;  
 “traditional council” means a traditional council defined in section 1 of the Framework Act; and  
 “traditional leader” means a traditional leader defined in section 1 of the Framework Act.

### Establishment and term of office of House

2. (1) There is hereby established a house of traditional leaders to be known as the National House of Traditional Leaders.  
 (2) The term of the House is five years.  
 (3) Notwithstanding the dissolution of the House in terms of section 21—  
     (a) every person who on the date of the dissolution of the House is a member remains a member of the House;  
     (b) the House remains competent to function; and  
     (c) the Minister may summon the House to an extraordinary meeting for the dispatch of urgent business,  
 during the period following such dissolution until the day before the first meeting of the next House.

### Composition of House

3. (1) The House consists—  
     (a) of three persons who are senior traditional leaders elected by each provincial house: Provided that where on good grounds shown or due to an insufficient number of senior traditional leaders in a provincial house, such provincial house may elect headmen or headwomen.  
     (b) where relevant, of persons identified in terms of subsection (2).  
 (2) The provisions of subsection (1)(c) apply only in cases where a provincial house has not been established, and will be implemented as follows:  
     (a) Where there are more than three traditional councils performing functions of a local house, the chairpersons of such councils must elect from amongst themselves three representatives to the House; or  
     (b) where there are three or a lesser number of traditional councils performing functions of a local house, the chairperson of such traditional councils must be ex officio members of the House; or  
     (c) where there are one or more local houses, the senior traditional leaders from within the province must elect from amongst themselves three representatives to the House.  
 (3) The chairperson of a traditional council or a local house referred to in subsection (2) must be a senior traditional leader, and if he or she is not a senior traditional leader the traditional council or the local house concerned must elect another member who is a senior traditional leader.  
 (4) At least a third of the members of the House must consist of women: Provided that if the Minister is satisfied that there is an insufficient number of women to participate in the House the Minister must, after consultation with the Premier of the province in question and the provincial house concerned, determine a lower threshold.

### Election of members to House

4. (1) The Minister must, within 30 days before the expiry of the term of the House, request the Premiers to notify provincial houses to, subject to section 3, conduct elections for members to serve in the House.  
 (2) The members of a provincial house that are to serve in the House must be elected, within 21 days after having received the notice from the Premier 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.

(3) The election proceedings must be conducted by the Premier or a person designated by the Premier of the province concerned, observed by officials of the House and the provincial department responsible for traditional affairs.

(4) An election contemplated in subsection (3) must be by secret ballot by members of the provincial house concerned in the same meeting where the nominations take place. 5

(5) Each provincial house must designate one of the members elected in terms of subsections (2), (3) and (4) as leader of the elected members.

(6) The Premier must submit to the Minister, in respect of every person elected, such person's— 10

- (a) acceptance of the election;
- (b) full name and surname;
- (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 House, within the time limits referred to in subsection (2), the Premier must designate members of the provincial house concerned to serve in the House. 15

### **Qualification for membership of House**

5. No person is eligible to become a member of the House if that person—

- (a) is a member of a municipal council, a member of provincial legislature or a member of Parliament; 20
- (b) at the time of the election of members of the House, is serving a sentence of imprisonment;
- (c) is an unrehabilitated insolvent;
- (d) is of unsound mind and has been so declared by a competent court; 25
- (e) has been convicted of a criminal offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic 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: Provided that a disqualification under this paragraph ends five years after the sentence has been completed; 30
- (f) is not a South African citizen; or
- (g) is not permanently resident within the Republic. 35

### **Vacation of seats**

6. The seat of a member of the House becomes vacant—

- (a) upon the death of a member;
- (b) if the member resigns by written notice;
- (c) if the member becomes disqualified in terms of section 5; 40
- (d) if the member becomes a full-time member of a municipal council, a member of a provincial legislature or a member of Parliament;
- (e) if a member is convicted of a criminal offence without the option of a fine;
- (f) if the member, without having obtained leave in accordance with the rules and orders, absents himself or herself from three consecutive meetings of the House; 45
- (g) if the member is removed from the House for breach of the code of conduct appearing in Schedule C; or
- (h) in the case of a member contemplated in section 3(1), if the member ceases to be a member of a provincial house that elected him or her, or ceases to be a chairperson or member of a local house, as the case may be. 50

## **Filling of vacancies**

7. (1) Where a vacancy occurs in the House the Minister must, within 14 days, inform the relevant Premier of such a vacancy.

(2) A vacancy in the House must be filled, within 45 days, 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. 5

(3) A vacancy must be filled in accordance with sections 3 and 4.

## **Seat and meetings of House**

8. (1)(a) The first meeting of the House after its constitution in terms of sections 3 and 4 must take place at a time determined by the Secretary and at the seat of the House. 10

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

(2) Ordinary meetings of the House may take place at the seat of the House at the date and time determined by the Secretary in consultation with the Chairperson.

(3) Special meetings must be held at a time and place determined by the Executive Committee of the House or, if authorised thereto by the Executive Committee of the House, by the Chairperson of the House: Provided that the Minister may at any time summon the House to an extraordinary meeting for the dispatch of urgent business. 15

(4) The House must meet at least once in every quarter during the sitting of Parliament. 20

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

(6) The quorum for meetings of the House is fifty-one per cent of the total membership of the House. 25

(7) The decisions of the House must be taken by consensus, or where a vote is taken, subject to subsection (6), two thirds of the members present and voting in the meeting.

## **Chairperson and deputy chairperson of House**

9. (1) At its first meeting after it has been constituted in terms of this Act, the House with the President or any person designated by the President presiding, must elect one of its members to be the chairperson, and must thereafter elect another of its members to be the deputy chairperson. 30

(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 House.

(3) The chairperson presides over meetings of the House. 35

(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.

(5) If both the chairperson and the deputy chairperson are absent, a member of the House designated in terms of the rules and orders of the House must act as chairperson while the said circumstances prevail. 40

(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. 45

(7) While presiding at a meeting of the 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—

(a) ceases to be a member of the provincial house which elected him or her; 50

(b) resigns by lodging a written letter of resignation with the House;

(c) is convicted of a criminal offence without the option of a fine; or

(d) becomes disqualified in terms of section 5.

(9) A chairperson or a deputy chairperson may be removed from office by the House, by a vote supported by a two thirds majority of the full complement of the membership of the House, and thereupon such chairperson or deputy chairperson must vacate his or her office. 55

(10) If the office of the chairperson becomes vacant, the President or a person designated by the President, must preside over the election of a member of the House to fill the vacancy.

(11) If the office of the deputy chairperson becomes vacant, the chairperson must preside over the election of a member to fill the vacancy. 5

(12) If the offices of the chairperson and deputy chairperson of the House become vacant, the House, with the Minister or a person designated by the Minister presiding, must elect a member of the House to fill the vacancy.

(13) A chairperson or deputy chairperson is eligible for re-election: Provided that no member may serve as a chairperson or deputy chairperson of the House for more than two consecutive terms. 10

### **Status of members of House**

**10.** (1) The chairperson and deputy chairperson shall be full-time members of the House.

(2) The President may, after consultation with the House, determine that, subject to subsection (1), certain members are full-time members of the House. 15

### **Powers and duties of House**

**11.** (1) The powers and duties of the House are—

- (a) to cooperate with the provincial houses of traditional leaders, to promote—
  - (i) the role of traditional leadership within a democratic constitutional dispensation; 20
  - (ii) nation building;
  - (iii) peace, stability and cohesiveness of communities;
  - (iv) the preservation of the moral fibre and regeneration of society;
  - (v) the preservation of the culture and traditions of communities; 25
  - (vi) socio-economic development and service delivery;
  - (vii) the social well-being and welfare of communities; and
  - (viii) the transformation and adaptation of customary law and custom so as to comply with the provisions of the Bill of Rights in the Constitution, in particular by— 30
    - (aa) preventing unfair discrimination;
    - (bb) promoting equality; and
    - (cc) seeking to progressively advance gender representation in the succession to traditional leadership positions; and
- (b) to enhance co-operation between the House and the various provincial houses with a view to addressing matters of common interest. 35

(2) The House—

- (a) must consider Parliamentary Bills referred to it by the Secretary to Parliament in terms of section 18 of the Framework Act;
- (b) may advise the national government and make recommendations relating to any of the following: 40
  - (i) Matters relating to policy and legislation regarding traditional leadership;
  - (ii) the role of traditional leaders;
  - (iii) customary law; and 45
  - (iv) the customs of communities observing a system of customary law;
- (c) may investigate and make available information on traditional leadership, traditional communities, customary law and customs;
- (d) must, at the request of a member of National Cabinet, advise him or her in connection with any matter referred to in this section; 50
- (e) must be consulted on national government development programmes that affect traditional communities;
- (f) must complement and support the work of government at national level;
- (g) must form cooperative relations and partnerships with government at national level in development and service delivery; 55
- (h) may participate in international and national programmes geared towards the development of rural communities;
- (i) may participate in national initiatives meant to monitor, review and evaluate government programmes in rural communities; and



- (j) must perform tasks as may be determined by a member of the national Cabinet or as may be provided for in national legislation.

### **Administration of House**

**12.** (1) The Minister must, with the approval of the House and subject to the laws governing the public service, second as many staff from the Department as he or she considers necessary, to discharge the work of the House. 5

(2) The Minister must, in terms of the laws governing the public service and with the approval of the 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; and 10
- (b) subject to the directions of the House, perform such work as is incidental to the exercise or performance by the House of its powers and functions.

(3) The Secretary must be supported in the exercise or performance of his or her powers and functions by officers of the Department designated in terms of subsection (1) for that purpose. 15

### **Responsibilities of House**

**13.** The House must—

- (a) keep proper records;
- (b) have its financial statements audited annually by the Auditor-General;
- (c) in addition to quarterly meetings, hold an annual meeting with provincial houses to give account of the activities and finances of the House; 20
- (d) enforce the Code of Conduct provided for in Schedule C;
- (e) establish clear relationships with, and facilitate co-operation and communication between itself and provincial houses as well as between provincial houses; 25
- (f) hold the Secretary of the House accountable for the overall performance and administration of the House;
- (g) maximise the efficiency of communication and decision-making within the administration of the House;
- (h) assign clear responsibilities for the management and co-ordination of the administration of the House; 30
- (i) involve the Secretary of the House in decisions impacting on the overall management of the House, as far as is practicable;
- (j) promote an equitable, fair, open, non-discriminatory and supportive environment for all provincial houses; and 35
- (k) provide an equitable, fair, open, non-discriminatory and supportive environment for the House.

### **Relationship between House and kings and queens**

**14.** The House must, on a biannual basis, hold a meeting with all kings and queens in the country to discuss— 40

- (a) the activities and programmes of the House;
- (b) matters of interest to kings and queens;
- (c) matters relating to service delivery and development of traditional communities; and
- (d) any other business identified and proposed by either party and agreed to by both parties. 45

### **Relationship between House and provincial houses**

**15.** (1) The House must investigate matters referred to it by the provincial houses and make recommendations thereon.

(2) The House must advise provincial houses regarding the administration of their affairs. 50

(3) The House must on a biannual basis hold meetings with provincial houses to discuss progress on matters relating to the general interest and welfare of traditional communities.



(4) Where the House wishes to interact with a local house or a traditional council, such interaction must be done in consultation with the relevant provincial house: Provided that where no provincial house has been established, the House may interact directly with a local house.

(5) The chairperson of the House must establish a body of Chairpersons of provincial houses to interact with the House on a regular basis on issues of mutual interest. 5

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

### **Support to House**

**16.** The national government must adopt such legislative or other measures as may be necessary to support and strengthen the capacity of the House to fulfil its functions, and such support may include provision of— 10

- (a) infrastructure;
- (b) finances;
- (c) human resources; 15
- (d) skills development programmes; and
- (e) administrative systems.

### **Accountability of House**

**17.** (1) The House must, on an annual basis, submit a report to Parliament giving an account on its activities and programmes. 20

(2) Parliament may request a meeting with the House to discuss matters of interest to Parliament.

### **Privileges and immunities of members of House**

**18.** (1) The House has full power to control, regulate and dispose of its internal affairs and has all such powers, privileges and immunities as may, subject to the Constitution, be prescribed. 25

(2) (a) Members of the House have freedom of speech in the House and its committees, subject to the rules and orders of the House.

(b) Members of the House are not liable to civil or criminal proceedings, arrest, imprisonment or damages for— 30

- (i) anything that they have said in, produced before or submitted to the House or any of its committees; or
- (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the House or any of its committees.

### **Remuneration and benefits to members of House** 35

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

### **Rules, orders and committees of House**

**20.** (1) The House must make rules and orders in connection with the conduct of its business and proceedings, including rules and orders regulating— 40

- (a) the establishment, constitution, powers and functions, procedures and lifespan of committees of the House;
- (b) the procedure to be followed in meetings of the House and its committees;
- (c) restrictions on access to such committees;
- (d) the competency of any such committee to perform or dispose of its business and proceedings at venues other than the seat of the House; and 45
- (e) the designation of members to preside over meetings of the committees of the House.

(2) (a) There may be an executive committee consisting of the chairperson and deputy chairperson and as many additional members, so as to ensure that each provincial house is represented in the executive committee, as elected by the House. 50

(b) The House may at any time on good cause shown, replace any of the members elected in terms of paragraph (a).

## **Dissolution of House**

- 21.** The House must be dissolved—
- (a) on the expiry of the term of office of the House; or
  - (b) after a vote supported by a two-thirds majority of the full complement of the members of the House in a meeting of the House called for that purpose. 5

## **Oath or affirmation by members of House**

**22.** All the members of the House must, before they begin to perform their functions in the House, take an oath or solemn affirmation in the terms set out in Schedule B, before the Chief Justice or a judge designated by the Chief Justice.

## **Code of conduct** 10

**23.** (1) All members of the House must, in addition to the code of conduct contained in the Schedule to the Framework Act, adhere to the code of conduct appearing in Schedule C.

(2) Any breach of the codes of conduct referred to in subsection (1) must be dealt with in accordance with the procedure set out in item 9 of Schedule C. 15

## **Regulations**

**24.** (1) The Minister may make regulations regarding any matter that this Act requires or permits to be prescribed.

(2) The Minister may make regulations regarding generally any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act. 20

(3) Before any regulations are made under this section, the Minister must—

- (a) consult the House;
- (b) publish the draft regulations in the *Gazette* for public comment; and
- (c) submit the draft regulations to Parliament for parliamentary scrutiny at least one month before their publication. 25

## **Repeal of laws and transitional provisions**

**25.** (1) The laws listed in Schedule A are hereby repealed to the extent indicated in the Schedule.

(2) The traditional leaders who, on the date of commencement of this Act, were members of the National House of Traditional Leaders in terms of the National House of Traditional Leaders Act, 1997 (Act No. 10 of 1997), remain members of the House and continue as such as if that Act had not been repealed, until the expiry of the current term whereupon the House must be reconstituted in terms of this Act. 30

(3) Despite subsection (2), the current composition of the House must be expanded to accommodate the additional members contemplated in section 3(2). 35

(4) Any employee in the public service who immediately prior to the commencement of this Act was seconded to perform services for the House continues to perform such services without any interruption, subject to the laws applicable to him or her.

## **Short title** 40

**26.** This Act is called the National House of Traditional Leaders Act, 2008.

## SCHEDULE A

### REPEAL OF LAWS

Name of Act	Year of Publication	Extent of Repeal	
National House of Traditional Leaders Act	Act No. 10 of 1997	The whole	5
Council of Traditional Leaders Amendment Act	Act No. 85 of 1998	The whole	10
National House of Traditional Leaders Amendment Act	Act No. 20 of 2000	The whole	

## SCHEDULE B

### PART A

15

#### OATH BY MEMBERS OF THE HOUSE

I, ..... (name of member), do swear that I will be faithful to the National House of Traditional Leaders 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 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. 20

May the Almighty God by His Grace and/or the ancestors guide and sustain me in keeping this oath with honour and dignity. 25

So help me God.

### PART B

#### AFFIRMATION

I, ..... (name of member), do solemnly affirm that I will be faithful to the National House of Traditional Leaders 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 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. 30 35

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

## SCHEDULE C

### CODE OF CONDUCT

#### Members of the House

##### Performance of functions by members

1. A member of the House must— 5
  - (a) perform the functions of office in good faith and in an honest, non-discriminatory and transparent manner; and
  - (b) at all times act in the best interest of the House and in such a way that the credibility and integrity of the House are not compromised.

##### Attendance at meetings 10

2. A member of the House must attend each meeting of the House and of a committee of which that member of the House 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; or
  - (b) that member of the House is required in terms of this Code to withdraw from the meeting. 15

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

3. (1) The House may impose a sanction as determined by the rules and orders of the House on a member of the House for—
  - (a) not attending a meeting which that member of the House is required to attend in terms of item 2; or 20
  - (b) failing to remain in attendance at such a meeting.
- (2) (a) A member of the House who is absent from three or more consecutive meetings of the House, or from three or more consecutive meetings of a committee of the House, which that member of the House is required to attend in terms of item 2, must be removed from office as a member of the House. 25
- (b) The Minister must inform the relevant Premier of the removal of the member.
- (3) Proceedings for the imposition of a sanction including removal of a member of the House must be conducted in accordance with a uniform standing procedure which the House must adopt for the purposes of this item and in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). 30

##### Disclosure of interests

4. (1) A member of the House must—
  - (a) disclose to the House, or to any committee of the House of which that member of the House is a member, any direct or indirect personal or private business interest that that member of the House, or any spouse, partner or business associate of that member of the House, may have in any matter before the House or the committee of the House; and 35
  - (b) withdraw from the proceedings of the House or committee of the House when that matter is considered by the House or its committee, unless the House or its committee decides that the member of the House's direct or indirect interest in the matter is trivial or irrelevant. 40
- (2) A member of the House 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, must disclose full particulars of the benefit of which the member of the House is aware at the first meeting of the House at which it is possible for the member of the House to make the disclosure. 45
- (3) This section does not apply to an interest or benefit which a member of the House, or a spouse, partner, business associate or close family member, has or acquires in common with other members of the House. 50

### Personal gain

- 5.** (1) A member of the House may not use the position or privileges of a member of the House, or confidential information obtained as a member of the House, for private gain or to improperly benefit another person.
- (2) Except with the prior consent of the House, a member of the House may not— 5
- (a) be a party to or beneficiary under a contract for—
    - (i) the provision of goods or services to the House; or
    - (ii) the performance of any work otherwise than as a member of the House and for the House;
  - (b) obtain a financial interest in any business of the House; or 10
  - (c) for a fee or other consideration appear on behalf of any other person before the House or its committee.
- (3) If more than one quarter of the members of the House object to consent being given to a member of the House in terms of subitem (2), such consent may only be given to the member of the House with the approval of the Minister. 15

### Declaration of interests

- 6.** (1) When elected or appointed, a member of the House must within 60 days declare in writing to an officer of the House designated by the Minister the following financial interests held by that member of the House:
- (a) Shares and securities in any company; 20
  - (b) membership of any close corporation;
  - (c) interest in any trust;
  - (d) directorships;
  - (e) partnerships;
  - (f) other financial interests in any business undertaking; 25
  - (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 of the House must be declared in writing to the officer referred to in sub-item (1) annually. 30
- (3) Gifts received by a member of the House above a prescribed amount must also be declared in accordance with subitem (1).
- (4) The House 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. 35

### Rewards, gifts and favours

- 7.** A member of the House 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 or before a committee of the House of which that member of the House is a member; 40
  - (b) persuading the House or any committee of the House with regard to the exercise of any power, function or duty;
  - (c) making a representation to the House or any committee of the House; or 45
  - (d) disclosing privileged or confidential information.

### Unauthorised disclosure of information

- 8.** (1) A member of the House may not without the permission of the House or a committee disclose any privileged or confidential information of the House or committee to any unauthorised person. 50
- (2) For the purpose of this item “privileged or confidential information” includes any information—
- (a) determined by the House or committee of the House to be privileged or confidential;
  - (b) discussed in closed session by the House or its committees; 55
  - (c) disclosure of which would violate a person’s right to privacy; or

- (d) declared to be privileged, confidential or secret in terms of the law.
- (3) This item does not derogate from the right of any person to access to information in terms of national legislation.

### **Breach of code**

9. (1) If the House, on reasonable grounds, is of the opinion that a provision of the Code of Conduct has been breached, the House must— 5
- (a) authorise an investigation of the facts and circumstances of the alleged breach;
  - (b) give the member of the House a reasonable opportunity to reply in writing regarding the alleged breach; and
  - (c) report the matter to a meeting of the House after paragraphs (a) and (b) have been complied with. 10
- (2) A report referred to in subitem (1)(c) may be made available to the public.
- (3) The House must report the outcome of the investigation to the Minister.
- (4) The Secretary of the House must ensure that each member of the House when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the House or a committee of the House meets. 15
- (5) The House may—
- (a) investigate and make a finding on any alleged breach of a provision of this Code; or
  - (b) establish a special committee— 20
    - (i) to investigate and make a finding on any alleged breach of this Code; and
    - (ii) to make appropriate recommendations to the House.
- (6) If the House or a special committee appointed by the House to conduct the investigation finds that a member of the House has breached a provision of this part of the Code of Conduct, the House may— 25
- (a) issue a formal warning to the member of the House;
  - (b) reprimand the member of the House;
  - (c) suspend the member of the House for a period in consultation with the Minister; and
  - (d) remove the member of the House from office in consultation with the Minister. 30
- (7) (a) Any member of the House who has been warned, reprimanded, suspended or removed in terms of paragraph (a), (b), (c) or (d) of sub-item (6) may within 14 days of having been notified of the decision of 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 House. 35
- (c) The 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 House and inform the member of the House and the House of the outcome of the appeal. 40
- (8) The Minister may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make recommendations on whether the member of the House should be suspended or removed from office.
- (9) If the Minister is of the opinion that a member of the House has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the Minister may— 45
- (a) suspend the member of the House for a period and on conditions determined by the Minister; or
  - (b) remove the member of the House from office.
- (10) Any investigation in terms of this item must be conducted in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). 50



## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL HOUSE OF TRADITIONAL LEADERS BILL, 2008**

### **BACKGROUND**

1. The Constitution of the Republic of South Africa, 1996, accords a place and role to the institution of traditional leadership within the broader system of governance. This role is further elaborated in the White Paper on Traditional Leadership and Governance and in the subsequent legislation at national and provincial levels.
2. Government's primary objective is to restore the dignity of traditional leadership as a custodian of African customs and heritage and to transform its institutions so that they may be able to play their statutory role in the reconstruction and development of South Africa, in partnership with government.
3. Chapter 12 of the Constitution, 1996 further provides that national and provincial legislation must provide for the establishment of houses of traditional leaders. Since 1994, the National House of Traditional Leaders (hereinafter referred to as "the House") and provincial houses of traditional leaders have been established through the national and provincial legislation.
4. The Council of Traditional Leaders Act, 1994 was passed in 1994, in line with the 1993 interim Constitution. This Act was repealed in 1997 and replaced by the Council of Traditional Leaders Act, 1997 (Act No. 10 of 1997). The 1997 Act was further amended through the Council of Traditional Leaders Amendment Act, 1998 (Act No. 85 of 1998) and amended again through the National House of Traditional Leaders Amendment Act, 2000 (Act No. 20 of 2000).
5. As an attempt to address the misalignment, insufficiencies and other gaps in the current National House of Traditional Leaders Act and to enhance the efficiency of the houses of traditional leaders, the Bill therefore provides for the following key areas in line with the Constitution, the White Paper and the Framework Act:
  - (a) Establishment of the National House of Traditional Leaders;
  - (b) powers, functions and duties of the House;
  - (c) provision of support to the House by government;
  - (d) relationship between the House and the Provincial houses; and
  - (e) relationship between the House and Government.

### **OBJECT OF BILL**

1. The main object of the Bill is to repeal the National House of Traditional Leaders Act, 1997 (Act No. 10 of 1997), and replace it with a whole new Act. The Bill fully overhauls the current Act by repealing it together with its amending Acts passed in 1998 and 2000, and replacing it with a new law which is fully in line with the Constitution and the White Paper on Traditional Leadership and Governance adopted in July 2003. The main thrust of the Bill is thus the establishment and functioning of the National House of Traditional Leaders.

### **SUMMARY OF BILL**

1. Clause 1 provides for the definition of certain terms used in the Bill;
2. Clause 2 provides for the establishment of the National House of Traditional Leaders and further provides that its term runs for 5 years;
3. Clause 3 provides for the composition of the House from three representatives from each province. A provision is made for a special representation of provinces which have traditional leaders but do not have provincial houses. This applies mainly to Gauteng and Northern Cape provinces;
4. Clause 4 provides for the dissolution of the National House and the procedure to be followed in the election of members of provincial houses to serve in the House;



5. Clause 5 provides for criteria for qualification of members to serve in the House and exclusion of certain persons from participating in the House;
6. Clause 6 provides for the circumstances under which vacancies may occur in the membership of the House;
7. Clause 7 provides for the procedure to fill vacancies occurring in the membership of the House;
8. Clause 8 provides that the administrative seat of the House is the seat of the department responsible for traditional leadership and Parliament for ordinary meetings of the House. It further provides for the procedure of calling the meetings of the House and the frequency of such meetings;
9. Clause 9 provides for the procedure for the election of the chairperson and the deputy chairperson of the House and the manner in which the vacancies to these positions are to be filled;
10. Clause 10 provides that the President may determine that certain members of the House may be full time members of the House;
11. Clause 11 provides for the powers and duties of the House to be fully aligned with the powers and duties envisaged in the White Paper on Traditional Leadership and Governance, 2003;
12. Clause 12 provides for the administration and management of support to the House, especially by the appointment of staff to provide support as the secretariat of the House;
13. Clause 13 provides for a set of responsibilities placed on the House;
14. Clause 14 provides for the unprecedented legislative relationship between the National House and the kings and queens. This relationship has never been regulated before. Kings and queens are recognised at national level and the national house is established and operates at national level; hence it follows that the House and kings and queens should have a regulated relationship;
15. Clause 15 regulates the relationship between the House and the provincial houses and further regulates the protocol procedure to be followed should the National House wish to interact with local houses and traditional councils. This clause further provides for the establishment of administrative structures by the chairperson and the secretary of the House working with provincial houses to enhance national unity and uniformity;
16. Clause 16 provides for the areas of support to the National House by government of the country for the House to fulfill its mandate in terms of the legislation and custom;
17. Clause 17 places certain specific duties on the House for the accountability of the House;
18. Clause 18 accords certain privileges and immunities to the members of the National House when performing the functions of the House;
19. Clause 19 provides for the payment of remuneration and certain allowances to members of the House in accordance with the determinations by the President in terms of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998);
20. Clause 20 enables the House to adopt its rules of procedure to conduct its business and for the House to establish its committees for the performance of its functions;
21. Clause 21 provides for the circumstances under which the House may be dissolved and the manner in which such dissolution should be conducted;

22. Clause 22 provides for the oath or affirmation to be taken by the members of the House upon assuming office, and this oath or affirmation is contained in Schedule B to the Bill;
23. Clause 23 provides for the Code of Conduct to be adhered to by members of the House, and this code of conduct is contained in Schedule C to the Bill;
24. Clause 24 provides for the regulatory powers of the Minister on certain matters he or she may deem necessary for the functioning of the House; and
25. Clause 25 provides for the repeal of the National House of Traditional Leaders Act, 1997, and its subsequent amending legislation passed in 1998 and 2000.

#### **ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

1. The institution of traditional leadership will be fully constituted at all levels with the establishment of kingships and kingship councils. Kings or Queens will then have a legal entity to work with. Government will have to provide support by providing staff to assist the kingship councils.
2. Government will continue to provide administrative and human resource support to the House, which is already being provided.

#### **FINANCIAL IMPLICATIONS**

The National House of Traditional Leaders is already being fully funded by government regarding sitting allowances for members, human resources, capacity building and provision of infrastructure. Through the alignment of the work of the House with the Constitution, the White Paper and the Framework Act, it may require a bigger budget to perform the responsibilities.

#### **CONSTITUTIONAL IMPLICATIONS**

None.

#### **DEPARTMENTS AND PARTIES CONSULTED**

The National House of Traditional Leaders, provincial houses of traditional leaders and provincial departments responsible for traditional leadership have been fully consulted and their comments have been included in the Bill.

#### **PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Co-operative Governance and Traditional Affairs are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996, since it falls within a functional area listed in Schedule 4 to the Constitution, namely "Traditional leadership".

The State Law Advisers are of the opinion that the Bill must be referred to the National House of Traditional Leaders in terms of section 18(i)(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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