

REPUBLIC OF SOUTH AFRICA

COUNCIL OF TRADITIONAL LEADERS BILL

(As amended by the Portfolio Committee on Constitutional Affairs (National Assembly))

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 25B—96]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE RAAD VAN TRADISIONELE LEIERS

(Soos gewysig deur die Portefeuljekomitee oor Staatkundige Aangeleenthede (Nasionale Vergadering))

(MINISTER VIR PROVINSIALE SAKE EN STAATKUNDIGE ONTWIKKELING)

[W 25B—96]

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BILL

To provide for the establishment of a Council of Traditional Leaders; for the objects and functions of the said Council; and for matters incidental thereto.

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

Definitions

1. In this Act, unless the context otherwise indicates—
- (i) “Council” means the Council of Traditional Leaders established by section 2(1); (ii) 5
 - (ii) “fixed date” means the date on which this Act comes into operation in terms of section 16; (v)
 - (iii) “House” means any House of Traditional Leaders which is established by provincial legislation under section 212(2)(a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), or which was established by provincial legislation as contemplated in section 239 of the said Constitution, as the case may be; (i) 10
 - (iv) “rules and orders” means the rules and orders made by the Council under section 10; (iii) 15
 - (v) “Secretary” means the Secretary to the Council appointed in terms of section 14(1) or any person acting as Secretary in accordance with section 14(3), as the case may be. (iv)

Establishment of Council of Traditional Leaders

2. (1) There is hereby established a council to be known as the Council of Traditional Leaders. 20
- (2) The Council shall consist of members nominated as provided in section 4.

Duration and dissolution of Council

3. (1) Subject to the provisions of subsection (2), the Council shall continue for five years as from the day on which the first meeting of the Council after its constitution takes place. 25
- (2) Notwithstanding the dissolution of the Council by virtue of the provisions of subsection (1)—
- (a) every person who at the date of the dissolution is a member of the Council shall remain a member thereof; 30
 - (b) the Council shall remain competent to exercise or to perform its powers and functions; and
 - (c) the President shall have power to summon the Council by proclamation in the *Gazette* to an extraordinary meeting for the despatch of urgent business, during the period following such dissolution up to and including the day immediately preceding the day on which the first meeting of the Council after such dissolution takes place. 35

Nomination of members of Council

4. (1) Each House shall—
- (a) if the House was established prior to the fixed date, within 21 days as from the said date; 40
 - (b) if the House is established on or after the fixed date, within 21 days as from the first meeting of that House;

- (c) in the case of a dissolution of the Council, within 21 days as from such dissolution,
nominate three members of the House who are not members of Parliament or members of any provincial legislature to represent that House on the Council.
- (2) Any nomination contemplated in subsection (1) shall be made— 5
- (a) by means of a resolution of the House concerned;
- (b) by the submission to the Secretary in writing in respect of the person nominated—
- (i) his or her acceptance of the nomination;
- (ii) his or her full name and surname; and 10
- (iii) his or her address.

Qualifications and period of office of members of Council

5. (1) No person shall be qualified to become or to remain a member of the Council, unless he or she is or remains qualified to be nominated as such a member in terms of section 4(1). 15
- (2) A member of the Council shall hold office until the next ensuing dissolution of the Council, but shall be eligible for renomination.

Vacation of office and filling of vacancies

6. (1) A member of the Council shall vacate his or her office—
- (a) if he or she ceases to be a member of the House which nominated him or her as a member of the Council; 20
- (b) if he or she becomes a member of Parliament or a member of any provincial legislature;
- (c) if he or she, without having obtained leave in accordance with the rules and orders, absents himself or herself from three consecutive meetings of the Council; or 25
- (d) if he or she resigns as a member of the Council by submitting his or her resignation in writing to the Secretary.
- (2) A casual vacancy in the Council shall be filled by the nomination of a member for the unexpired portion of the term of office of the member in whose stead he or she is nominated, and in the same manner in which the latter member was nominated in terms of section 4. 30

Objects and functions of Council

7. (1) The objects of the Council shall be—
- (a) to promote the role of traditional leadership within a democratic constitutional dispensation; 35
- (b) to enhance unity and understanding among traditional communities; and
- (c) to enhance co-operation between the Council and the various Houses with a view to addressing matters of common interest.
- (2) The Council— 40
- (a) may advise the national government and make recommendations relating to any of the following:
- (i) matters relating to traditional leadership;
- (ii) the role of traditional leaders;
- (iii) customary law; and 45
- (iv) the customs of communities observing a system of customary law;
- (b) may investigate and make available information on traditional leadership, traditional authorities, customary law and customs; and
- (c) shall at the request of the President, advise him or her in connection with any matter referred to in this section. 50

Meetings of Council

8. (1) The first meeting of the Council after its constitution shall take place within forty days as from the fixed date or as from the date of the dissolution of the Council, as the case may be, at a time and place determined by the Secretary.
- (2) All subsequent meetings shall be held at a time and place determined by the 55

Council or, if authorised thereto by the Council, the Chairperson of the Council: Provided that the President may at any time by proclamation in the *Gazette* summon the Council to an extraordinary meeting for the despatch of urgent business.

(3) There shall be an ordinary meeting of the Council at least once in every year during the sitting of Parliament.

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Chairperson and Deputy Chairperson of Council

9. (1) (a) At the first meeting of the Council after its constitution, the Council, with the President or any other person designated by him or her acting as the chairperson, shall elect one of the members of the Council as the Chairperson of the Council and another member as the Deputy Chairperson of the Council.

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(b) Subject to the provisions of paragraph (c), the nomination of candidates for election as, and the voting for the election of, the Chairperson or the Deputy Chairperson of the Council shall take place in such manner as the person acting as the chairperson may determine.

(c) If any member of the Council proposes that the voting in question be by secret ballot, and such proposal is seconded by any other member, the relevant votes shall be taken by secret ballot in such manner as the person acting as the chairperson may determine.

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(2) The Chairperson of the Council shall be invested and charged with all the powers and functions conferred upon or assigned to him or her by this Act and the rules and orders.

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(3) Whenever the Chairperson of the Council is absent or for any reason unable to exercise or perform the powers and functions vested in the office of Chairperson of the Council, or whenever the office of Chairperson of the Council is vacant, the Deputy Chairperson of the Council shall act as Chairperson of the Council during the absence or inability of the Chairperson of the Council or until a Chairperson of the Council is elected, as the case may be.

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(4) Whenever both the Chairperson and the Deputy Chairperson of the Council is absent or for any reason unable to exercise or perform the powers and functions vested in the office of Chairperson of the Council, or whenever both offices are vacant, a member of the Council designated in terms of the rules and orders shall act as Chairperson of the Council.

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(5) While presiding at a meeting of the Council, the Chairperson or Deputy Chairperson of the Council, or any other member presiding, shall not have a deliberative vote, but shall have and exercise a casting vote in the case of an equality of votes.

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(6) The Chairperson or Deputy Chairperson of the Council may resign by submitting his or her resignation in writing to the Secretary.

(7) (a) If the office of Chairperson or Deputy Chairperson of the Council becomes vacant, the Council, with the Secretary acting as the chairperson shall elect a member of the Council to fill the vacancy.

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(b) The provisions of subsection (1)(b) and (c) shall apply *mutatis mutandis* to any such election.

Rules of procedure

10. Subject to the provisions of this Act, the Council may make rules and orders in connection with the order and conduct of its business and proceedings, the establishment, constitution and powers of committees of the Council and the order and conduct of their business and proceedings.

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Quorum

11. The presence of at least a majority of all the members of the Council shall be necessary to constitute a meeting of the Council.

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Decisions

12. Save as is otherwise provided in the rules and orders, all questions at a meeting of the Council shall be determined by a majority of votes of the members present.

Remuneration and allowances of members

13. The remuneration and allowances of members of the Council shall be determined in accordance with a framework prescribed by legislation referred to in section 219(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

Administration of Council

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14. (1) Subject to the laws governing the Public Service, the Minister for Provincial Affairs and Constitutional Development shall, with the approval of the Council, appoint a person as Secretary to the Council, who shall—

- (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 Council, perform the work incidental to the exercise or performance of the powers and functions of the Council.

(2) The Secretary shall be assisted in the exercise or performance of his or her powers and functions by officers of the Department of Constitutional Development designated for that purpose by the Director-General: Constitutional Development, with the approval of the Council. 15

(3) As soon as possible after the fixed date the said Director-General shall designate any officer of his or her Department to act as Secretary until an appointment is made in terms of subsection (1).

Repeal of Act 31 of 1994

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15. The Council of Traditional Leaders Act, 1994, is hereby repealed.

Short title

16. This Act shall be called the Council of Traditional Leaders Act, 1997.

MEMORANDUM ON THE OBJECTS OF THE COUNCIL OF TRADITIONAL LEADERS BILL, 1997

In order to give effect to the provisions of section 184(3) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), the Council of Traditional Leaders Bill, 1994, was duly introduced in Parliament after the relevant traditional authorities were consulted to establish their views on the contents of the draft legislation. It was also a constitutional requirement that the Chairperson and the members of the said Council were to be elected by an electoral college constituted by the members of the Houses of Traditional Leaders contemplated in section 183(1)(a) of the said Constitution. After the promulgation of the Council of Traditional Leaders Act, 1994 (Act No. 31 of 1994), it was realised that the rules relating to the constitution of the electoral college could not ensure a fair distribution of representatives amongst the various Houses. At the same time, the constitution of the electoral college was dependent upon the establishment of all the Houses concerned. However, certain provinces were unable to introduce draft legislation relating to the establishment of those Houses within the prescribed period.

The most important object of the Bill is to remove the above-mentioned obstacles by providing for each House to nominate three members of the House to represent that House on the Council. Such members may not be members of Parliament or members of any provincial legislature. The proposed amendments necessitate the repeal of the Council of Traditional Leaders Act, 1994.

In the mean time, the said Constitution was repealed by the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996). The Bill is adjusted in order to comply with the new Constitutional requirements.

In the opinion of the State Law Adviser, the Bill must be dealt with in accordance with the procedure prescribed by section 76 of the latter Constitution.