**PROPOSED AMENDMENTS**

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**TRADITIONAL AND KHOI-SAN LEADERSHIP BILL**

**[B23-2015]**

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**CLAUSE 4**

1. On page 9, in line 10, after “by” to insert “a resolution of each traditional council of such traditional communities and”.

**CLAUSE 16**

1. On page 26, from line 17, to omit paragraph *(a)* and to substitute:
2. (i) The term of office of the members of a traditional council, excluding the senior traditional leader, is not more than five years and must be aligned to the term of office of the National House: Provided that, notwithstanding anything to the contrary contained in any law, the term of any traditional council that was established and constituted prior to the commencement of this Act, will expire on 31 March 2022: Provided further that any term of office of any such council constituted or established after the commencement of this Act, shall expire every five years on 31 March, calculated from 31 March 2022.

(ii) The term of office of the members of a kingship or queenship council or a principal traditional council, excluding the king or queen or principal traditional leader, is not more than five years and must be aligned to the term of office of the National House: Provided that, notwithstanding anything to the contrary contained in any law, the term of any kingship or queenship council or principal traditional council that was established and constituted prior to the commencement of this Act, will expire on 30 April 2022: Provided further that any term of office of any such council constituted or established after the commencement of this Act, shall expire every five years on 30 April, calculated from 30 April 2022.

1. On page 26, in line 35, after “jurisdiction,” to insert “indicating the portions of land forming part of such area of jurisdiction, and”
2. On page 26, after line 42, to add the following paragraph:

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

**CLAUSE 17**

1. On page 28, from line 13, to omit subsection (2) and to substitute:

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

1. On page 28, from line 34, to omit subsection (7) and to substitute:

(7) The term of office of members of a traditional sub-council is not more than five years and must be aligned with the term of office of the relevant traditional council: Provided that, notwithstanding anything to the contrary contained in any law, the term of any traditional sub-council that was established and constituted prior to the commencement of this Act, will expire on 30 April 2022: Provided further that any term of office of any such sub-council constituted or established after the commencement of this Act, shall expire every five years on 30 April, calculated from 30 April 2022.

**CLAUSE 18**

1. On page 29, in line 39, to omit “(4)”.
2. On page 29, after line 52, to add the following subsection:

(8) The term of office of the members of a Khoi-San council, excluding the senior Khoi-San leader, is, subject to section 70(19), not more than five years and must be aligned to the term of office of the National House: Provided that any term of office of any such council established after the commencement of this Act, shall expire every five years on 31 March, calculated from 31 March 2027.

**CLAUSE 19**

1. On page 30, in line 14, to omit “by the Auditor-General”.
2. On page 30, in line 15, to omit “one month” and to substitute “two months”.
3. On page 30, after line 19, to add the following subsection:

 (3) *(a)* If an audit contemplated in subsection (2)*(b)* is not performed by the Auditor-General, the Auditor-General may review any such audit.

 *(b)* If any kingship or queenship council or principal traditional council does not have its financial statements audited as contemplated in subsection (2)*(b)*, the accounting officer of the provincial department responsible for providing financial support to such council may impose an appropriate sanction on such council.

**CLAUSE 20**

1. On page 30, in line 52, to omit “by the Auditor-General”.
2. On page 30, in line 53, to omit “one month” and to substitute “two months”.
3. On page 31, after line 3, to add the following subsection:

 (4) *(a)* If an audit contemplated in subsection (2)*(b)* is not performed by the Auditor-General, the Auditor-General may review any such audit.

 *(b)* If any traditional or Khoi-San council does not have its financial statements audited as contemplated in subsection (2)*(b)*, the accounting officer of the provincial department responsible for providing financial support to such council may impose an appropriate sanction on such council.

**CLAUSE 23**

1. On page 32, in line 37, to omit “may” and to substitute “must”.
2. On page 32, in line 37, after “to” to insert “paragraph *(c)* and”.
3. On page 32, after line 56, to add the following paragraph:

 “*(c)* The Minister must, in consultation with the Minister of Finance and after consultation with the Premiers, by notice in the *Gazette* determine the minimum standards to be complied with by a Premier for the purposes of paragraph *(b)*(i) to (vii).

 *(d)* The financial year of any council contemplated in this section must be aligned to the financial year of the provincial department responsible for providing financial support to such council.

**CLAUSE 27**

1. On page 34, in line 37, to omit “31 May 2017” and to substitute “30 June 2022”.
2. On page 34, in line 39, to omit “31 May, calculated from 31 May 2017” and to substitute “30 June, calculated from 30 June 2022”.

**CLAUSE 28**

1. On page 34, from line 41, to omit subsection (1) and to substitute:
2. *(a)* The National House consists of senior traditional and senior Khoi-San leaders-
3. elected by each provincial house in accordance with the provisions of paragraph *(b)* and section 29; and
4. where relevant, of persons contemplated in subsection (2).
5. In a province where a provincial house has been established and there are-
6. only senior traditional leaders, the provincial house must elect three senior traditional leaders as members of the National House; or

(ii) only senior Khoi-San leaders, the provincial house must elect three senior Khoi-San leaders as members of the National House; or

1. more senior traditional leaders than senior Khoi-San leaders, the provincial house must elect three senior traditional leaders and one senior Khoi-San leader as members of the National House; or
2. more senior Khoi-San leaders than senior traditional leaders, the provincial house must elect three senior Khoi-San leaders and one senior traditional leader as members of the National House; or

(v) an equal number of senior traditional leaders and senior Khoi-San leaders, the provincial house must elect two senior traditional leaders and two senior Khoi-San leaders as members of the National House; or

(vi) two or less than two of either or of both senior traditional leaders and senior Khoi-San leaders, such leaders are *ex officio* members of the National House.

1. On page 34, from line 48, to omit subsection (2) and to substitute:

(2) In a province where a provincial house has not been established-

*(a)*  the senior traditional leaders or the senior Khoi-San leaders or the senior traditional leaders and the senior Khoi-San leaders, as the case may be in the particular province, must, at a meeting convened by the relevant Premier, elect from amongst themselves representatives to the National House in accordance with the representation numbers as contemplated in subsection (1)*(b)*(i) to (v); or

*(b)* where there are two or less than two of either or of both senior traditional leaders and senior Khoi-San leaders in such province, such leaders are *ex officio* members of the National House.

**CLAUSE 29**

1. On page 35, in line 17, to omit “28(1)*(a)*” and to substitute “28(1)*(a)*(i) and *(b)*”.

**CLAUSE 31**

1. On page 36, in line 11, to omit “28(1)*(a)*” and to substitute “28(1)*(a)*(i) and *(b)*”.
2. On page 36, in line 13, to omit “28(1)*(b)*” and to substitute “28(1)*(a)*(ii).

**CLAUSE 38**

1. On page 39, from line 13, to omit subsection (3) and to substitute:

(3) The National House must, where applicable,—

(a) determine the reasons why the one-third requirement for female representation on a provincial house is not met; and

(b) in collaboration with the relevant provincial house, determine the reasons why such requirement is not met by a local house, kingship or queenship council, principal traditional council, traditional council, traditional sub-council or Khoi-San council,

and make recommendations to the Minister and the Premier, house and council concerned on how female representation on such house or council can be advanced to ensure that the one-third requirement is met.

**CLAUSE 49**

1. On page 42, in line 2, to omit “30 April 2017” and to substitute “31 May 2022”.
2. On page 42, in line 4, to omit “30 April, calculated from 30 April 2017” and to substitute “31 May, calculated from 31 May 2022”.
3. On page 42, in line 8, to omit “28(1)*(a)*” and to substitute “28(1)*(a)*(i) and *(b)*”.
4. On page 42, from line 17, to omit paragraph *(a)* of subsection (3) and to substitute:

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

(i) in the same proportion that they are represented in the local houses concerned; or

(ii) if local houses have not been established, in the same proportion that they would have been represented in such local houses had such houses been established:

Provided that if only one senior Khoi-San leader is a member of a local house as contemplated in subparagraph (i) or would have been such a member as contemplated in subparagraph (ii), such senior Khoi-San leader must be a member of the provincial house concerned.

**CLAUSE 50**

1. On page 43, in line 44, to omit “31 March 2017” and to substitute “30 April 2022”.
2. On page 43, in line 46, to omit “31 March, calculated from 31 March 2017” and to substitute “30 April, calculated from 30 April 2022”.

**CLAUSE 56**

1. On page 46, in line 55, after “dispute” to add “within 60 days from the date of designation of the investigative committee”.
2. On page 46, from line 60, to omit paragraph *(b)* and to substitute the following paragraphs:

*(b)* The President or the relevant Premier, as the case may be, may refer any dispute, including any report, recommendations and comments contemplated in paragraph *(a)*, to the Minister for written comments and advice which must be submitted to the President or Premier, as the case may be, within 60 days from the date of such referral.

*(c)* After having considered the report and recommendations of the investigative committee, the comments of the royal family or traditional council and, where applicable, the comments and advice of the Minister, the President or relevant Premier, as the case may be, must take a decision on the matter in dispute and inform the parties to the dispute in writing of his or her decision.

**CLAUSE 70**

1. On page 54, in line 31, to omit “31 May 2017” and to substitute “30 June 2022”.
2. On page 54, in line 39, to omit “30 April 2017” and to substitute “31 May 2022”.
3. On page 54, in line 44, to omit “31 March 2017” and to substitute “30 April 2022”.
4. On page 54, after line 53, to add the following subsections:

(17) Notwithstanding the provisions of section 16 and 17, as the case may be, the members of a kingship or queenship council, a principal traditional council or a traditional sub-council who, on the date of commencement of this Act were members of such a council established and constituted in terms of applicable national or provincial legislation, remain members of the council concerned, until 30 April 2022, and any subsequent reconstitution of such a council must comply with the provisions of section 16 or 17, as the case may be.

(18) Notwithstanding the provisions of section 16, the members of a traditional council who, on the date of commencement of this Act were members of such a council established and constituted in terms of applicable national or provincial legislation, remain members of the council concerned, until 31 March 2022, and any subsequent reconstitution of such a council must comply with the provisions of section 16.

(19) Notwithstanding the provisions of section 18, the members of a Khoi-San council that was established in terms of this Act prior to 31 March 2022, remain members of the council concerned until 31 March 2027, and any subsequent reconstitution of such a council must comply with the provisions of section 18.

 (20) *(a)* Notwithstanding any other provision of this Act, recognised senior Khoi-San leaders will become members of the National House, provincial houses and local houses with effect from the dates referred to in sections 27(2), 49(2)*(b)* and 50(8) respectively and subject to the provisions relating to the constitution of such houses as contemplated in sections 28, 29, 49 and 50.

*(b)* Notwithstanding the provisions of paragraph *(a)*, any senior Khoi-San leader who has been recognised prior to the dates referred to in sections 49(2)*(b)* and 50(8) respectively, may, upon a decision of the relevant provincial or local house, become a co-opted member of such house with observer status for the term of office of such house ending in 2022.

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

 (21) In any instance where the area of jurisdiction of a traditional council or traditional sub-council has been defined in terms of national or provincial legislation prior to the commencement of this Act, a Premier must, within three years of the commencement of this Act, or such further period as the Minister may determine, have such areas of jurisdiction mapped and publish such maps by notice in the relevant Provincial *Gazette*.

 **CLAUSE 73**

Clause rejected.

**NEW CLAUSE**

1. That the following be a new clause:

**Short title and commencement**

**73.** (1)This Act is called the Traditional and Khoi-San Leadership Act, 2018 and comes into operation on the date to be determined by the President by proclamation in the *Gazette*.

 (2) Different dates may be so determined in respect of different provisions of this Act.

**SCHEDULE 1**

1. On page 56, in line 2, after “conduct” to add “for members of houses and councils”.

**SCHEDULE 3**

1. On page 63, in line 17, to omit “2015” and to substitute “2018”.
2. On page 63, in line 23, to omit “2015” and to substitute “2018”.
3. On page 63, in line 27, to omit “2015” and to substitute “2018”.
4. On page 64, in line 10, to omit “2015” and to substitute “2018”.
5. On page 64, in line 15, to omit “2015” and to substitute “2018”.
6. On page 64, in line 22, to omit “2015” and to substitute “2018”.
7. On page 64, in line 40, to omit “2015” and to substitute “2018”.
8. On page 66, in line 35, to omit “2015” and to substitute “2018”.
9. On page 68, from line 17, to omit paragraph *(b)* and to sub stitute:
10. must attend and participate in any meeting of the municipal council and may, subject to the rules and orders of the municipal council, submit motions, make proposals and ask questions: Provided that the non-attendance or non-participation of any participating leader will have no effect on any municipal council proceedings;
11. On page 69, in line 25, to omit “area,” and to substitute “area;”.
12. On page 69, after line 25, to add the following paragraphs:

*(l)* inform the relevant municipality of any land allocations made within the municipal area by any traditional leader;

*(m)* assist the relevant municipality with the implementation of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), for as far as that Act makes provision for the involvement of traditional leadership or structures,

1. On page 70, in line 46, to omit “2015” and to substitute “2018”.

**MEMORANDUM ON THE OBJECTS OF THE TRADITIONAL AND KHOI-SAN LEADERSHIP BILL, 2015**

1. On page 72, in the heading, to omit “2015” and to substitute “2018”.
2. On page 80, to omit paragraph 2.29 and to substitute:
	1. The National House is established by clause 27 of the Bill for a term of five years. In terms of clause 28, the National House consists of persons elected by provincial houses or, in instances where a provincial house has not been established, persons elected by the relevant senior traditional and/or senior Khoi-San leaders. At least a third of the members of the National House must be women although a lower threshold may be determined if it is not possible to reach this target.
3. On page 80, to omit paragraph 2.30 and to substitute:
	1. It should be noted that while the terms of the National House, provincial houses and local houses should be aligned, a precise alignment has been found to be impractical. For example, before the National House can be constituted, the provincial houses have to be constituted to enable them to elect the representatives to the National House. In some instances, the establishment of provincial houses is dependent on the establishment of local houses or traditional councils. The Bill therefore determines that all the houses will have terms of five years however such terms are to end on specific dates in 2022 which dates are one month apart. This will allow sufficient time for the provincial houses to be constituted before the National House and for local houses to be constituted before the provincial houses. From 2022 onwards, the terms of the respective houses will therefore continue to end one month apart. For this purpose, clause 27(2) determines that the term of the National House as established in terms of the National House Act, prior to the enactment of this Bill, will expire on 30 June 2022. The same principle applies to the term of kingship or queenship councils, principal traditional councils, traditional councils and Khoi-San councils [please see clauses 16(4)(a), 18(5), 49(2)(b) and 50(8)].
4. On page 82, to omit paragraph 2.44 and to substitute:
	1. Section 212(2)*(a)* of the Constitution determines that national or provincial legislation may provide for the establishment of houses of traditional leaders. Provincial houses are currently established in accordance with provincial legislation. Clause 49 of the Bill extends the composition of provincial houses to include both traditional and Khoi-San leaders in substantially the same proportion as they are represented in local houses. With reference to paragraph 2.30 above, clause 49(2)*(b)* determines that the term of a provincial house that was established and constituted prior to the enactment of this Bill, will expire on 31 May 2022.
5. On page 83, to omit paragraph 2.46 and to substitute:
	1. The term of a local house is five years. With reference to paragraph 2.30 above, clause 50(8) determines that the term of a local house that was established and constituted prior to the enactment of this Bill will expire on 30 April 2022.
6. On page 85, to omit paragraph (f) and to substitute:

(f) Lastly, provision is made for—

• the terms of the National House, provincial houses and local houses to expire on 30 June 2022, 31 May 2022 and 30 April 2022 respectively. Notwithstanding the repeal of the National House Act by this Bill once enacted, the National House constituted in terms of that Act will continue to exist until 30 June 2022. Similar provision is made in respect of provincial and local houses; and

* the continued application of any formula or guidelines determined in terms of the Framework Act prior to the repeal of that Act by this Bill.