|  |
| --- |
| ***Customary Initiation Bill:***The objectives of the Bill are to provide for the effective regulation of customary initiation practices; to providefor the establishment of a National Initiation Oversight Committee and ProvincialInitiation Coordinating Committees and their functions; to provide for theresponsibilities, roles and functions of the various role-players involved ininitiation practices as such or in the governance aspects thereof; to provide for theeffective regulation of initiation schools; to provide for regulatory powers of theMinister and Premiers; to provide for the monitoring of the implementation of thisAct; to provide for provincial peculiarities; and to provide for matters connectedtherewith. |
| **EASTERN CAPE:**“The Province votes in favour of the Bill and mandates the Eastern Cape delegate to the NCOP to negotiate within the following parameters” |
|  | 2(4) | We propose that subsection 4 be amended as follows:“4 (a) Any principal who is involved in initiation practices or any aspect of suchpractice, must subject to section 37(3) and (4) be at least 40 years old and musthave undergone initiation himself of herself; Provided that a principal musthave prior and proven experience as a caregiver for a minimum of fiveinitiation seasons.(b)Any care giver, traditional surgeon or traditional medical practitioner who is involved in initiation practices or any aspect of such practice must have at least 10 years since graduating from an initiation school and have prior and proven experience in assisting a traditional surgeon and or traditional medical practitioner over 5 initiation seasons. | The existing clause 2(4) reads as follows: “(4)Any principal, care-giver, traditional surgeon or traditional health practitioner whois involved in initiation practices or any aspect of such practice, must, subject to section37(3) and (4), be at least 40 years old and must have undergone initiation himself orherself: Provided that a principal must have prior and proven experience as a care-giverfor a minimum of five initiation seasons.”To accommodate the proposal from the province, it is proposed that clause 2(4) be amended as follows (splitting up the existing clause and adding the proposal of the province): “(4)*(a)*Any principal, care-giver, traditional surgeon or traditional health practitioner whois involved in initiation practices or any aspect of such practice, must, subject to section37(3) and (4), be at least 40 years old and must have undergone initiation himself orherself**[: Provided that a principal must have prior and proven experience as a care-giver for a minimum of five initiation seasons]**.”*(b)* A principal must have prior and proven experience as a care-giver for a minimum of five initiation seasons.*(c)*A care-giver, traditional surgeon or traditional health practitioner may only be involved in initiation practices or any aspect of such practice, after a period of 10 years has lapsed since he or she has graduated from an initiation school.”.***DTA view: The proposed amendment is supported.*** |
|  | 2(7) | (7) no role player who is involved in initiation practise may unfairlydiscriminate directly or indirectly against an initiate on the grounds ofdisabilityand or sexual orientation. | This proposal of the province is supported and is dealt with under the discussion of the Western Cape inputs where the DTA is proposing an appropriate amendment to clause 2(7).***DTA view: The proposed amendment is supported.*** |
|  | 28(3)(b) | “ 3 (b) A person who is older than 18 years may not attend an initiationschool for purposes of being initiated, unless such person gives his or herwritten consent and permission of his or her parents which consent must be in the form of a sworn affidavit. | In terms of the Children’s Act, a “child” is “*a person under the age of 18 years*”. The Bill, in clause 28, requires various persons to give consent for a child to undergo initiation. However, for a person who is not a child as defined in the Children’s Act, such person is regarded as an adult (age of majority is reached at 18) and does not need the consent of his or her parents.***DTA view: No amendment needed.***  |
| **FREE STATE:** “The Portfolio Committee on Cooperative Governance and Traditional Affairs, Office of the Premier and Legislature, as designated by the Free State Legislature **votes in favour of the Bill with the following amendments**.” |
|  | 1 | Definition of “circumcision” to be reconsidered in consultation with the House of Traditional Leadership. | No specific amendment to a clause has been drafted by the province.It should be noted that the Bill, thus including definitions, were consulted on with the National House of Traditional Leaders and other houses on many occasions. The Bill was supported by the houses. The definition as it is in the Bill, is aligned with the similar definition in the Children’s Act, 2005, as far as it relates to female circumcision. The part relating to male circumcision simply states what male circumcision means. The definition therefore provides clarity on what circumcision entails and is sufficient.***DTA view: No amendment needed.***  |
|  | 1 | Clarity between the words circumcision and initiation be established. | No specific amendment to a clause has been drafted by the province.The two definitions are clear and distinctive from each other. The definitions read as follows:**‘*‘****circumcision’’, in relation to a female child, means the removal of the clitoris by any means and, in relation to a male child, means the surgical removal of the foreskin, whether partially or wholly, as part of a customary initiation process*;**‘‘***initiation’’means any customary or cultural practices, rituals or ceremonies taking place at an initiation school in accordance with the customs and traditions of the community concerned, and may include teachings relating to ideals, values, aspirations and respect;****DTA view: No amendment needed.*** |
|  | 2(4) | It is recommended that instead of requirement of age limit of 40 years by the principal, care-giver, traditional surgeon or traditional health practitioner involved in initiation practices, the requirement should be an experience of a minimum of 10 years after having undergone initiation. | No specific amendment to a clause has been drafted by the province.The original age that was in the draft Bill before it was tabled in Parliament, was 25. However, during public participation processes stakeholders raised concerns that persons of such young age will not have sufficient experience. Stakeholders emphasised that only persons who are mature and who have adequate experience should be entrusted to manage initiation schools and take care of initiates. As one stakeholder put it, “*Culturally it`s imperative that the principal, traditional surgeon and/or senior care giver are equals in age to the parents of the prospective initiates*” (TshabaTsohle Initiation & Tradition).This matter was also discussed during the processing of the Bill by Cabinet and the G&A Cabinet Committee directed that the age limit be changed to 40. ***DTA view: No amendment needed.***As far as the proposal regarding experience of 10 years after having undergone initiation is concerned, kindly refer to the inputs from the Eastern Cape where the DTA has drafted a proposed amendment.***DTA view: The proposed amendment is supported.*** |
|  | 27  | The initiation school to be attended only by children who has completed grade 12. | No specific amendment to a clause has been drafted by the province.Clause 27 states that an initiation school may not operate during official school terms. The clause therefore already protects the rights of children to attend official schools and it is not necessary to limit the attendance of initiation schools to persons who have completed grade 12.***DTA view: No amendment needed.*** |
|  | 29 | The curriculum of the initiation school should not be disclosed as prescribed as the matters of initiation school are matters of people who are initiated only and relates to customary law and practices.  | No specific amendment to a clause has been drafted by the province.It should be noted that clause 15(1)*(i)* of the Bill states that no secret and sacred practices have to be disclosed as part of the curriculum; however, the principal of the relevant initiation school must give an undertaking that such activities will not be illegal or harmful. The main purpose of submitting the curriculum to the PICC is for the PICC to be satisfied that the provisions of clause 29(3) are complied with, in other words, that the teachings at initiation schools are “… *aimed at teaching the initiates about their ancestry, belief systems, the challenges and responsibilities of adulthood, family values, national identity, nation building and social cohesion*.”***DTA view: No amendment needed.*** |
|  | 30(4)(a) and (b) | Under no circumstances should alcohol be used at the initiation school. | No specific amendment to a clause has been drafted by the province.Clause 30(4)*(b)* only allows for alcohol to be used as part of a religious sacrament and only in respect of initiates to whom it applies. This clause acknowledges the rights of relevant initiates to practice their religious sacraments while attending initiation schools. It is important to note that the Bill clearly states that such use may only take place under supervision as stipulated in section 10(2) of the Liquor Act. Section 10(2) of the Liquor Act states that “…*the parent, adult guardian of a minor or a person responsible for administering a religious sacrament, may on occasion supply to that minor a moderate quantity of liquor to be consumed by the minor in the presence and under the supervision of that parent, guardian or other person.”*Clause 30(4)*(a)* and *(b)* provides protection to initiates against the abuse of alcohol at an initiation school and clause 33(6) states that it will be an offense if alcohol is allowed at an initiation school other than for the purposes stated in section 10(2) of the Liquor Act.***DTA view: The DTA is of the view that it is not necessary to amend clause 30(4).******However, if the Select Committee is of the opinion that there must be a total ban on alcohol at initiation schools as proposed by the province, an appropriate amendment to the clause will be drafted.*** |
|  | 33 | It should be an offence to open an initiation school at the townships. | No specific amendment to a clause has been drafted by the province. There is also no motivation provided by the province in respect of this comment.Nonetheless, in terms of the Bill the requirements for registered initiation schools will apply irrespective of where the initiation school is held.***DTA view: No amendment needed.*** |
| **GAUTENG:** “The Gauteng Provincial Legislature is supporting the Customary Initiation Bill subject to the recommendations below being considered.” |
|  | No specific clause mentioned. | The Department should ensure that principals and teachers of initiation schools are competent to perform the circumcision ritual. | No specific amendment to a clause has been drafted by the province.The Bill contains many requirements to ensure that principals and everyone involved in initiation, including circumcision, are competent. For example, in terms of clause 20(2), principals,traditional surgeons, care-givers and traditional health practitioners must be screened in accordance withthe criteria developed by the National House in terms of clause 19(2)(a). The purpose of such screening is to ensure that those involved in initiation meet the requirements of the Bill, and have the expertise and are capable to perform their tasks and duties as provided for in the Bill.Furthermore, clause 28(6) deals comprehensively with circumcision as such and also determines who may perform it.***DTA view: No amendment needed.*** |
|  | No specific clause mentioned. | The Department should ensure that the commercialisation of initiation school is prohibited to ensure that culture and tradition is preserved. | No specific amendment to a clause has been drafted by the province.The Bill addresses this concern by requiring that initiation schools must be registered and by criminalising the holding of unregistered initiation schools. The Bill also, in clause 18(3), makes provision for the determination of fees to be paid by initiates for attending an initiation school. This will ensure uniformity and that reasonable fees are put in place. It should be noted that the clause also requires that proposed fees be published in the Gazette for public comment before it may be finally determined. ***DTA view: No amendment needed.*** |
|  | No specific clause mentioned. | The Department should ensure that strict measures are put in place to protect the initiates from being abused. | No specific amendment to a clause has been drafted by the province.One of the objectives of the Bill, as stated in clause 2(2), is to prevent the abuse of initiates. Clause 29 of the Bill states that no initiate may be abused. The abuse of initiates is also dealt with under the offences clause, clause 33. Provision is furthermore made for the investigation of alleged abuse – see for example clause 9(1)*(b)*(ii) and 15(1)*(j)*.Also see the discussion under the Western Cape inputs where a definition for “abuse” is proposed by the DTA.***DTA view: No amendment needed.*** |
|  | No specific clause mentioned. | The Department should ensure that initiation fees is affordable and regulated and that no child will be denied the right to attend the initiation school due to poor background at home. | No specific amendment to a clause has been drafted by the province.The Bill, in clause 18(3), makes provision for the determination of fees to be paid by initiates for attending an initiation school. This will ensure that uniform and reasonable fees are put in place. It should be noted that the clause also requires of proposed fees to be published in the Gazette for public comment before it may be finally determined. Furthermore, the Minister must also consult all Premiers, the National House and provincial houses before determining such fees.***DTA view: No amendment needed.*** |
|  | No specific clause mentioned. | The rights of the disabled (particularly blind and deaf people) should be catered for in the Bill by way of making provision for sign language practitionersand braille services at initiation schools. | No specific amendment to a clause has been drafted by the province.The Bill states in clause 2(7) that no initiate may be discriminated against on grounds of disability. Clause 21(10) determines that a principal must “…*inform all role-players involved in initiation practices at the particular initiation school of any special needs of initiates who**have disabilities, and must ensure that such needs are taken care of*.”To address the proposal made by the province, it is proposed that clause 21(10) be amended to add the following:*“21.(10) A principal must … inform all role-players involved in initiation practices at the particular initiation school of any special needs of initiates whohave disabilities, and must ensure that such needs are taken care of, including the provision of sign language practitioners and braille services, where applicable*.”***DTA view: The proposed amendment is supported.*** |
|  | No specific clause mentioned. | Adequately capacitated staff should be appointed to provide technical support to the PICC. | No specific amendment to a clause has been drafted by the province.This proposal by the province is covered by clause 17 of the Bill.Clause 17 states that the administrative and financial support to a PICC and its technical supportteam must beprovided for by provincial departments as determined by the Premier afterconsultation with the relevant MECs. The clause also determines that the heads of the provincial departments must,after consultation with each other, designate officials from their respective departmentsto provide specified administrative support to the PICC or its technical support team forthe period indicated in such designation. Furthermore, the administrative support must includesecretariat support.***DTA view: No amendment needed.*** |
| **KWAZULU-NATAL:** “The Portfolio Committee on Cooperative Governance and Traditional Affairs met on, Tuesday, the 8th of September 2020 and agreed to mandate the KwaZulu-Natal delegation to support the Customary Initiation Bill[B7B-2018] with the following proposed amendments as outlined in theattached Committee Report.” |
|  | 4 | **Establishment, composition and term of office****4.** (1) The Minister must, by notice in the *Gazette* and subject to the provisions of subsection (3) and section 6, establish a National Initiation Oversight Committee consisting of—*(a)* **[two]**three members of the National House, designated by the members of theNational House from amongst themselves; | As a general principle, it was the intention to keep the structures as small as possible. However, since traditional leaders remain overall responsible for initiation in terms of the Bill, the inclusion of one more member of the National House will strengthen representation of traditional leaders at the NIOC.***DTA view: The proposed amendment is supported.*** |
|  |  | *(f)* one senior official from the Department of Women, Youth and Persons with Disabilities, designated by the Minister responsible for women, youth and persons with disabilities; | The Bill was tabled in Parliament in 2018 and the changes of ministerial portfolios came after the 2019 elections. It is therefore appropriate to correct the reference as proposed by the province.***DTA view: The proposed amendment is supported.*** |
|  |  | *(i)* one senior official from the Department of Arts and Culture, designated by the Ministerresponsible for arts and culture; | This proposal is supported. The inclusion thereof will mean that the existing paragraph *(i)* will become paragraph *(j)* and therefore consequential amendments will have to be effected elsewhere in the Bill.Also, this Department is now known as the Department of Sports, Arts and Culture. However, the person needed will have to be someone who is familiar with cultural aspects and not sports. Therefore the wording will have to be different from the proposal by the province. The DTA proposes the following wording:“*(i)* one senior official from the Department of Sports, Arts and Culture who has knowledge of cultural customs, designated by the Minister responsible for Sports, Arts and Culture;”***DTA view: The proposed amendment is supported.*****Note:**Consequential amendments will have to be made to clauses 4(1)*(i)*; 4(4); 32(1); 32(2). |
|  | 5 | **Chairperson and deputy chairperson****5.** The Minister or the Director-General must convene the first meeting of NIOC and preside over the election of Chairperson and Deputy Chairperson. | The proposal by the province is supported, but the DTA is proposing that the introductory part of the clause be changed as follows:“**5.** (1) The NIOC must, at its first meeting after it has been established, which meeting must be convened and chaired by the Minister or by the Director-General if so directed by the Minister,elect—“Since the NIOC is to be appointed by the Minister, it would be appropriate for the Minister to convene and chair the first meeting of the NIOC.***DTA view: The proposed amendment is supported.*** |
|  | 16 | **Technical support teams****16.** (1) *(a)* The PICC contemplated in section 11(1) may, after consultation with the head of each of the provincial government departments, **[traditional leadership councils]**traditional councils**OR**the institution of traditional leadership or institutions referred to in subparagraphs (i) to (xi), establish a technical support team consisting of not more than two representatives each of any or all of— | This proposal by the province is not supported. The introductory part of clause 16(1)*(a)* states that it is the traditional leadership councils or institutions as set out in subparagraphs (i) to (xi). Subparagraph (vii) states that these councils are the kingship or queenshipcouncils, principal traditional councils or traditional councils. The clause is therefore clear and there is no uncertainty as to which structures the clause refers to.***DTA view: No amendment needed.*** |
|  | 24 | **Medical practitioners****24.** (1)… (2) (a)For the purposes of subsection (1), the parents or legal or customary guardian of an initiate, as the case may be, may, after consultation with the principal of the particular initiation school, invite a male medical practitioner to perform circumcision on **[any]** a particularmale initiateconcerned or any male initiate after receiving the appropriate consent or to supervise the performance of such circumcision as contemplated in section 28(6) within the confines of the customs and traditions of the particular community. | The DTA agrees that reference to a particular initiate should be included. However, it is not necessary to refer to consent in this subclause because subclause (1) already states that a medical practitioner may only perform circumcision if the consent requirements of clause 28 of the Bill have been complied with.The DTA proposes that the subclause be changed as follows:“(2)*(a)* For the purposes of subsection (1), the parents or legal or customary guardianof an initiate, as the case may be, may, after consultation with the principal of theparticular initiation school, invite a male medical practitioner to perform circumcision on **[any]**the relevant male initiate or to supervise the performance of such circumcision ascontemplated in section 28(6) within the confines of the customs and traditions of theparticular community.”***DTA view: The proposed amendment is supported.*** |
|  | 28 | **Consent, prohibitions, age and circumcision****28**. (3) (a)A child between the ages of 16 and 18 may not attend an initiation school for the purposes of being initiated, unless such child gives written consent as contemplated in the Children’s Act Regulations 5(1) (a); and his or her parents or customary or legal guardian, as the case may be, give written consent for him or her to undergo initiation. | This proposal by the province to amend clause 28(3) is not supported. Regulation 5 to which the province refers is not about consent for initiation as such, but only for circumcision. Clause 28(3) of the Bill deals with consent to undergo initiation, not circumcision. However, clause 28(6) deals comprehensively with consent for circumcision and already includes a reference to Regulation 5 of the General Regulations Regarding Children. The proposal by the province is therefore already covered under clause 28(6).***DTA view: No amendment needed.*** |
|  | 31 | **Death of initiate****31.** (2)(b)must arrange for a qualified counsellor, who has undergone initiation himself or herself, to provide counselling to the parents or legal or customary guardian of the deceased initiate and the remaining initiates. | The DTA supports the proposal, but with different wording, as follows:*“(b)* must arrange for a qualified counsellor, who has undergone initiation himselfor herself, to provide counselling to the remaining initiatesand, if requested by them, to the parents or legal or customary guardian of the deceased initiate.”***DTA view: The proposed amendment is supported.*** |
|  | 36 | **Monitoring****36.** (1) The Department and the National House may monitor the implementation of this Act and any regulations made in terms of this Act, and may submit reports in this regard and make recommendations on such implementation to the Minister, the Premiers and the NIOC or any PICC. | This proposal by the province is not supported for the following reasons:The administration of the Act is a government responsibility and therefore clause 36 deals with the overall monitoring responsibilities of the national and provincial governments (through their respective departments).Other specific monitoring duties are also allocated to the initiation structures provided for in the Bill, namely the NIOC and the PICCs. See for example clauses 9(1); 15(1)*(m)*; 18(1)*(c)*; 21(5) and 39(3).The National House has very specific duties and responsibilities assigned to it in clause 19 of the Bill. This however does not include a monitoring function as that will in future be a responsibility of government and the NIOC (it should be kept in mind that the NIOC will include members of the National House).***DTA view: No amendment needed.*** |
| **LIMPOPO:** “Provincial NCOP Delegates to negotiate in favour of the Bill.” |
|  | No specific clause mentioned. | Considering the current situation of Covid-19 which necessitated a virtual participation, stakeholders held a strong view that there was limited participation due to limited connectivity as a result of lack of resources to connect virtually. Stakeholders mainly in rural areas and peripheral parts of the province were largely left out of this process, while the nature of the bill directly affects their interests. In this regard, stakeholders were of the view that the bill should not be rushed but rather wait for the situation to normalize so that there is extensive consultation on the bill. | This is a comment from the provincial legislature regarding their processing of the Bill.***DTA: No comment.*** |
|  | No specific clause mentioned. | The word “Customary” and “customary practices” are widely used in different contexts by different cultural groups in South Africa. Both words should therefore be defined under Definitions in the bill. | No specific amendment to a clause has been drafted by the province.The use of the term “customary” in the Bill is linked to the initiation practices of traditionalcommunities and traditional leadershipand not any other form of initiation.This is also clear from one of the paragraphs in the Preamble to the Bill where it is stated as follows:“***AND WHEREAS*** *customary initiation is practiced by many communities in South Africa as a sacred and respected practice, and in some instances is regarded as a rite of passage to adulthood*.”It is therefore the view of the DTA that the Bill is clear on which customary practices are involved.***DTA view: No amendment needed.*** |
|  | 28(3)(a) | While there must be a consent signed by the parent to allow their children to undergo initiation school, there must also be provision for the word “assent” which provides for the child to agree to undergo initiation. | This is already addressed in clause 28(3)*(a)* which reads as follows:“*A child between the ages of 16 and 18 may not attend an initiation school forthe purposes of being initiated,* ***unless such child and his or her parents*** *or customary orlegal guardian, as the case may be, give written consent for him or her to undergoinitiation*.”***DTA view: No amendment needed.*** |
|  | No specific clause mentioned. | As the bill requires that both caregivers and traditional surgeons must have gone through initiation practice, it is proposed that the same requirement should be applicable to medical practitioners. | The original Bill as tabled in Parliament had this particular requirement. However, following public consultations held by the CoGTA Portfolio Committee and their subsequent deliberations on the Bill, the Portfolio Committee removed the requirement as far as it concerns medical practitioners. One of the reasons for this is the fact that a medical practitioner’s involvement will basically be limited to male circumcision as provided for in the Bill. The medical practitioner will therefore not be present during other rituals or practices.***DTA view: No amendment needed.*** |
|  | 2 | It has been observed that in some cases, initiation schools in South Africa are prone to perpetuate sexual and gender-based violence. Furthermore, in view of the current wave of gender-based violence and vulnerability of the girl child, the objectives as stated in section 2 of the bill should purposively aim to also prevent sexual abuses of the girl child at initiation schools including specific punitive measures. | This was also raised by the Western Cape.Kindly refer to the discussion of the Western Cape inputs.***DTA view: The proposed amendment is supported.*** |
|  | 6 | The committee welcomes various grounds to disqualify a person from membership of the national oversight committee (for example, a person being convicted and sentenced to 12 months imprisonment). However, where such offence involves sexual abuse, the person should be disqualified even if the charge is less than twelve (12) months. | This is already addressed in the Bill.Paragraph *(j)* of clause 6 (the disqualifications clause) has a cross-referenceto clause 2(5) and in terms of clause 2(5) no person may participate in any aspect of initiation if that person is unsuitable towork with children in terms of a finding contemplated in section 120 of the Children’sAct or if that person’s name is listedin Part B of the National Child Protection Register as contemplated in section111 of the Children’s Act, read with section 118 thereof or in the National Register for Sex Offenders as contemplated in section 42 of theCriminal Law (Sexual Offences and Related Matters) Amendment Act, 2007(Act No. 32 of 2007).Therefore a person who has committed a sexual offence and whose name is in any of the said registers, may not serve on the NIOC or the PICC or be involved in initiation in any way, irrespective of the sentence.***DTA view: No amendment needed.*** |
|  | No specific clause mentioned. | It is common in South Africa that the values that are determined by culture, religion and tradition are often regarded as sacred and supreme and not subjected to censure. In view of this backdrop, the bill must ensure that the rights of a culture to enjoy cultural rights and practices must be consistent with the bill of rights. | This concern is addressed in clause 3 of the Bill. Clause 3 contains guiding principles and the introductory part of the clause states that “*The customary practice of initiation is subject to the Constitution and must be transformed and adapted so as to comply with the relevant principles contained in theBill of Rights*”.Furthermore, clause 2(2) contains the main objectives of the Bill which includes “*to provide for the protection of life, the prevention of injuries and the prevention of all forms of physical and mental abuse that initiates may be subjected to as a result of initiation practices*”.***DTA view: No amendment needed.*** |
|  | No specific clause mentioned. | While it is generally agreed that secret teachings and curriculum in customary initiations should not be made public, the bill should come up with ways to ensure that these teachings are regulated to ensure that they are not harmful but within the confines of the constitution. | This comment was addressed under the Free State inputs.In short, clause 15(1)*(i)* of the Bill states that no secret and sacred practices have to be disclosed as part of the curriculum, however, the principal of the relevant initiation school must give an undertaking to the relevant PICC that such activities will not be illegal or harmful.***DTA view: No amendment needed.*** |
|  | 11(b) | The word ‘emergency services” in clause 11 (b) must be defined so it includes emergency medical services. | The DTA agrees that emergency services should be defined, but not under clause 11 as proposed by the province. It would be better to include a definition under clause 1.The following is therefore proposed as a new definition to be inserted after the definition of “Drugs and Drug Trafficking Act”:“’***emergency services****’ means any services needed as a response to an urgent, impending or recurrent situation for which knowledgeable and expert intervention is required to ensure the welfare of initiates and any other person present at an initiation school, including but not limited to emergency medical services, ambulance services, fire-fighting services and disaster management services*;”***DTA view: The proposed amendment is supported.*** |
|  | 4(1) and 11 | It is proposed that the constitution of both NIOC and PICC should include members of the judiciary as well as representatives from the education sector. | The “judiciary” is the term used for referring to judges collectively. It is assumed that the province meant that the structures should include members who represent the line-functionaries of the administration of justice. In this regard, kindly note that the NIOC members will include representatives from the NPA and SAPS. In the case of the technical support teams that will assist the PICCs, provision is made for representatives from SAPS, the NPA, basic education and justice.***DTA view: No amendment needed.*** |
|  | 33 | While punitive measures on establishment of illegal initiation schools and transgression of customary initiation practices is welcomed, however, it is felt that the fifteen (15) years imprisonment for this offence is too harsh and should be reduced. | It should be noted that the sentence of 15 years for holding illegal (unregistered) initiation schools is a maximum sentence. A court can therefore decide on a much lower term of imprisonment. There is also the option of a fine without imprisonment.One of the main purposes of the Bill is to regulate initiation schools and to require of such schools to comply with criteria and to be registered. The rapid increase of “illegal” initiation schools is one of the reasons why legislation became necessary. In order to protect initiates from any form of abuse and to curb the unacceptable deaths of initiates, it is vital that the offence clause serves as a real deterrent to those who may wish to continue holding illegal or unregistered initiation schools.***DTA view: No amendment needed.*** |
|  | 28(7) | The bill proposes that if initiate is guilty of misconduct, the principal must, subject to the provisions of section 28(7), take corrective measures in accordance with customs of that community. It should be noted that different cultures prescribe their own ways of discipline which often involve physical discipline. There must be general guidelines on what constitute a misconduct where the bill must list the nature of misconducts and actual consequences for such misconducts. | This comment is already addressed in the Bill.Clause 19(2) of the Bill determines that the National House must develop acceptable standards relating to discipline at initiation schools. Furthermore, clause 29(1)*(b)* states that misconduct by initiates must be dealt with in accordance with the customs of the particular community.Most important is clause 29(1)*(c)*: it reads as follows: “*an initiate may under no circumstances be abused or assaulted under the guise of discipline*.”Several other clauses of the Bill deal with the abuse of initiates and the consequences thereof.Kindly also refer to the Western Cape inputs where the issue of abuse is discussed and proposals for amendment of the Bill is made.***DTA view: No amendment needed.*** |
| **MPUMALANGA: “**The Portfolio Committee on Human Settlements, Co-operative Governance andTraditional Affairs (“the Committee”), after considering the Customary Initiation Billconfers on the permanent delegate representing the Mpumalanga ProvincialLegislature in the NCOP, the mandate to negotiate in favour of the Bill with proposedamendments, taking into consideration the views of the community members ascontained in the attached Committee report”. |
|  | 2 | Insert the following (sub) clause 8:(8) No child or any other person may be forced or coerced to undergo virginitytesting as part of an initiation process. | The proposal is supported. However, the amendment is to be effected to clause 28(5)*(d)* which is the clause that already deals with virginity testing. Kindly refer to the inputs of the Western Cape where the DTA has made a proposal on how clause 28(5)*(d)* can be amended.***DTA view: The proposed amendment is supported.*** |
| **NORTHERN CAPE: “**After due deliberation, the Portfolio Committee on Cooperative Governance, Human Settlements & Traditional Affairs supports the Bill.The Committee recommends to the House to mandate the Permanent Delegates to participate in deliberations at thenegotiating stage and to supportthe Bill.”  |
|  | No amendments proposed by the Northern Cape Portfolio Committee on Cooperative Governance, Human Settlements and Traditional Affairs. |
| **NORTH WEST:** “The North West Provincial Legislature votes in favour of the Bill”. |
|  | No amendments proposed by the North West Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs. |
| **WESTERN CAPE:** “The Standing Committee on Community Safety, Cultural Affairs and Sport, having considered the subject of the Customary Initiation Bill [B 7B–2018] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape’s delegation in the NCOP the authority to support the Bill with the following proposed amendments.” |
|  | 1 | The Bill should sufficiently define what is considered to be surgical equipment. The Bill should provide a sufficient definition to include that of all types of female genital mutilation. | No specific amendment to a clause has been drafted by the province.It is uncertain why the province is proposing a definition for “surgical equipment” as the term is not used anywhere in the Bill.The definition of “genital mutilation” in the Bill is an exact duplication of the definition as it appears in the Children’s Act, 2005 (Act No. 38 of 2005) and the Bill is therefore aligned with the said Act.***DTA view: No amendment needed.*** |
|  | Accessibility for EMS(No reference was made to any specific clause in the Bill) | The Bill should sufficiently address the obstacles for the accessibility of Emergency Medical Services to initiation sites in remote areas. | No specific amendment to a clause has been drafted by the province.After consideration of the comment by the province, the DTA proposes that clause 15(1)*(e)* be amended as follows:“(*e*) determine the number of initiation schools to be allowed within a particularmunicipal area in the province taking into account criteria as may bedetermined by the PICC, including the proximity of the schools to oneanother, the number of available traditional surgeons in the municipal area, theavailability of sufficient and appropriate space and land, the provisioning ofproper habitable structures conducive to initiation practices,**[and]** the provisionof municipal services at such initiation schoolsand accessibility of the schools;”***DTA view: The proposed amendment is supported.*** |
|  | Recognition of statutory Khoi-San leaders(No reference was made to any specific clause in the Bill) | The Bill should refer to the recognition of statutory Khoi-San leaders and communities within the context of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) being repealed. | No specific amendment to a clause has been drafted by the province. The recognition of Khoi-San communities and leaders is addressed in the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019) which was published in the Government Gazette on 28 November 2019. This new Act is however still to commence. Once it commences, a Commission on Khoi-San Matters must be established. This Commission will receive and investigate applications for the recognition of Khoi-San communities and leaders. ***DTA view: No amendment needed.*** |
|  | Norms and Standards(No reference was made to any specific clause in the Bill) | The Bill should reference the National Environmental Health Norms and Standards for Premises and Acceptable Monitoring Standards for Environmental Health Practitioners to acknowledge the powers and responsibilities given to the Minister of Health regarding conditions of circumcisions. | No specific amendment to a clause has been drafted by the province.The National Health Norms and Standards for Premises (hereinafter referred to as the Standards) were published in the Gazette on 24 December 2015 under a General Notice. Annexure A of the Standards contains standards applicable to premises and clause 9 thereof deals with “Standards for Initiation/Circumcision Schools”. The clause addresses matters relating to structural facilities, admission and entry for initiation, water supply and sanitation, medical care for initiates, management of waste, food storage and preparation. Many of the provisions of clause 9 of Annexure A of the Standards are already sufficiently addressed in various clauses of the Bill, while some of the provisions of clause 9 are contradicting agreed upon principles contained in the Bill. The Bill will prevail once enacted. However, the DTA is of the view that those standards that are not in contradiction of the Bill should be considered. The Bill, in clause 15(1)(*g*), places a responsibility on the PICCs to develop criteria for initiation schools, including many of the aspects reflected in clause 9 of Annexure A of the Standards. This responsibility must remain with the PICCs, but they can take into account the Standards that are not contradicting the Bill. It is therefore proposed that in order to accommodate the proposal of the province, clause 15(1)(*g*) be amended to read as follows:*“15.(1) A PICC must coordinate all initiation schools, practices and activities within the particular province and must, for this purpose—*(*g*) *develop criteria and requirements with which prospective initiation schools must comply prior to such schools being registered and opened, including health, water, sanitation and safety requirements, and taking into account standards for initiation school premises insofar as such standards are not inconsistent with this Act,to ensure that the overall objectives and directives of this Act are met;*”.This will also require the insertion of a new definition in section 1 (after the definition of “SAPS”) as follows:“’***standards for initiation school premises****’ means the standards for initiation school premises published under General Notice No. 1229 of 2015 in Government Gazette No. 39561 of 24 December 2015 as part of the National Health Norms and Standards for Premises, as may be amended from time to time;*”***DTA view: The proposed amendment is supported.*** |
|  | Age(No reference was made to any specific clause in the Bill) | The age specific references in the Bill must be rechecked by taking into account the various cultural practices. There are references to children, 16-18 year olds, and references to persons who completed secondary education. | No specific amendment to a clause has been drafted by the province.As far as the age requirements for initiates are concerned, the Bill is perfectly aligned with the Children’s Act, 2005.Comments related to other age requirements of the Bill have been addressed earlier in this document.***DTA view: No amendment needed.*** |
|  | Confidentiality(No reference was made to any specific clause in the Bill) | The Bill should state that all relevant tests are to be concluded before a medical certificate will be issued, prior to the initiation process. The Bill should also address the confidentiality measures to be in place to safeguard the information contained in a medical certificate. | No specific amendment to a clause has been drafted by the province.It is not clear which tests the province is referring to. However, the Bill deals comprehensively with the issuing of medical certificates in clauses 15(1)*(k)*, 15(7)*(b)*, 22(1)*(c)*, 24 and 28(1).As far as confidentiality is concerned, it is proposed that clause 2 of the Bill be amended by the addition of a new subclause (8), as follows:“(8)(*a*) Every initiate has the right to confidentiality regarding his or her health status.(*b*) A medical certificate required in terms of the provisions of this Act is confidential and must be treated as such by the medical practitioner issuing such certificate and by any person or body to whom such certificate must be submitted in terms of this Act.(*c*) Notwithstanding paragraphs (*a*) and (*b*), the confidential status of a medical certificate may not be used as a reason for non-compliance with section 22(1)*(c)* to *(f)* or (2).”***DTA view: The proposed amendment is supported.*** |
|  | Cooperation across Provinces(No reference was made to any specific clause in the Bill) | The Bill should address clear guidelines for interprovincial cooperation and collaboration and detail the effects of medical certificates being issued in a province different to where the one where an initiate is entered into an initiation school. | No specific amendment to a clause has been drafted by the province.However, the DTA is of the view that clause 22(1)*(c)* can be amended to accommodate the concern raised by the province, as follows:“*(c)*subject to subsection (2), obtain a certificate from a medical practitionerwho is practicing within the province where the relevant initiation school is located,indicating whether a prospective initiate is fit to participate in the initiationpractices and that he or she has no medical, physical or psychologicalcondition that may cause complications during or after initiation;”***DTA view: The proposed amendment is supported.*** |
|  | Virginity testing(No reference was made to any specific clause in the Bill) | The Bill should contain a definition for virginity testing and include substantive provisions dealing with virginity testing. Also, the Bill should state that "No child or any other person may be forced or coerced to undergo virginity testing as part of an initiation process". | No specific amendment to a clause has been drafted by the province.Kindly note that the provisions in the Bill dealing with virginity testing are aligned with the corresponding provisions of the Children’s Act, 2005. The Children’s Act does not define virginity testing.***DTA view: No amendment needed.***As far as the second proposal of the province is concerned, it is proposed that clause 28(5)*(d)* of the Bill be amended as follows:“*(d)* No child or any other person may be forced or coercedto undergo virginity testing as part ofan initiation process.”***DTA view: The proposed amendment is supported.*** |
|  | Abuse and discrimination(No reference was made to any specific clause in the Bill) | The Bill should include other types of abuse and not just reference to mental and physical abuse. Or, use the term abuse to refer to all types of abuse. The Bill should set out measures at initiation schools to prevent harmful practices such as those that equate sexual and gender-based violence. The objectives of the Bill should therefore also purposively aim to prevent sexual abuse, and all other forms of abuse. | No specific amendment to a clause has been drafted by the province.The term “abuse” appears numerous times in the Bill and is not limited or defined except for the clause dealing with the objectives of the Bill, clause 2(2)*(b)*, and the offence clause, clause 33, where reference is made to “physical and mental abuse”.To address the comment made by the province, it is proposed that a definition for “abuse” be inserted under clause 1, after the definition of “abduction”, reading as follows:“’**abuse**’ includes but is not limited to physical or mental abuse, sexual abuse, any form of gender-based violence and any harmful practice that an initiate may be subjected to;” Following the insertion of this definition, consequential amendments should be made to clause 2(2)*(b)* and clause 33(6), as follows:“2.(2)*(b)*to provide for the protection of life, the prevention of injuries and theprevention of all forms of **[physical and mental]**abuse that initiates may besubjected to as a result of initiation practices;”"33.(6) Any alleged offences relating to—(a) the death of an initiate;(b) the abduction or kidnapping of an initiate;(c) male or female circumcision, genital mutilation or virginity testing as part ofinitiation practices;(d) the **[physical or mental]** abuse of initiates;(e) the use, possession, supply or manufacturing of liquor or drugs or dealing inliquor or drugs by an initiate or any other person involved in initiation; or(f) the involvement of a medical practitioner at an initiation school,must be dealt with in terms of the offence clauses provided for in the Criminal ProcedureAct, the Children’s Act, the Health Professions Act, the Drugs and Drug Trafficking Actor the Liquor Act, as the case may be.”***DTA view: The proposed amendment is supported.*** |
|  | Timeframes(No reference was made to any specific clause in the Bill) | The Bill should set out timeframes for the Minister to consider and approve any reports submitted to the Minister by the National Initiation Oversight Committee (NIOC). The Bill should also indicate the processes to be followed if the Minister does not approve reports from the NIOC. | No specific amendment to a clause has been drafted by the province.The Bill contains timeframes within which the NIOC must submit reports to the Minister and also within which such reports must be submitted to Premiers, relevant MECs and PICCs once the Minister has approved the reports [clause 9(2)*(b)*]. It is correct that the Bill does not impose a timeframe within which the Minister must deal with the reports of the NIOC. It may be impractical to include such a provision.***DTA view: No amendment needed.*** |
|  | Community based structures(No reference was made to any specific clause in the Bill) | The Bill should make provision for the establishment and support of community based initiation structures. | No specific amendment to a clause has been drafted by the province.The Bill provides for structures at national and provincial level. It also provides for local initiation structures and the involvement of municipalities in clause 39. Clause 39 states that provincial legislation may provide for the establishment of local initiation structures. The CIB is therefore an enabling piece of legislation in this regard and provinces may thus provide for local structures which may include community structures.***DTA view: No amendment needed.*** |
|  | Gender Equality (No reference was made to any specific clause in the Bill) | The Bill should strike a balance regarding the intersection between LGBTIQA+ persons and tradition, culture, religion and other subcultures. | No specific amendment to a clause has been drafted by the province.After consideration of the comment, the DTA proposes that clause 2(7) of the Bill be amended as follows:“(7) No role-player who is involved in initiation practices may unfairly discriminatedirectly or indirectly against an initiate or prospective initiate on the grounds ofdisability, gender or sexual orientation.”***DTA view: The proposed amendment is supported.*** |
|  | Disqualifying criteria (No reference was made to any specific clause in the Bill) | The Bill refers to exclusion of persons imprisoned for sexual offences for more than 12 months. This poses a grave concern as all persons convicted for sexual offences should be disqualified from being on the NIOC irrespective of the duration of their imprisonment. | No specific amendment to a clause has been drafted by the province.This is already covered by clauses 2(5) and 6(*j*) of the Bill as discussed earlier in this document.***DTA view: No amendment needed.*** |
|  | Duties of NIOC(No reference was made to any specific clause in the Bill) | The duties should include facilitating awareness of sexual orientation, gender identity and sexual offences. Also, only female health care practitioners must perform rituals or practices to female initiates in order to promote and protect gender rights of all initiates. | No specific amendment to a clause has been drafted by the province.The Bill provides for both the NIOC and PICCs to “*conduct initiation awareness campaigns which must include information on the rights and responsibilities of initiates and their parents or legal or customary guardians as provided for in the Constitution, this Act and any other relevant law*” – see clauses 9(1)*(b)*(iii) and 15(1)*(n)*. These clauses do not limit the content of the awareness campaigns. There is a focus on the rights of initiates as that was one of the main concerns raised by stakeholders over the years of developing the Bill. These rights include the aspects referred to by the province.***DTA view: No amendment needed.***The involvement of female health care practitioners in female initiation schools is something which is taken care of in terms of the customs of communities. It should be noted that such practitioners will also be subjected to screening as provided for in the Bill. ***DTA view: No amendment needed.***  |
| **DTA: PROPOSED AMENDMENTS** |
|  | 1: Definitions | There are a number of definitions in the Customary Initiation Bill that refer to the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) (Framework Act).After the Customary Initiation Bill was tabled in Parliament, the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019) (TKLA) was published in the Gazette. This new Act will repeal the Framework Act.Although the TKLA has not yet commenced, the DTA has drafted appropriate amendments to the relevant definitions which will ensure that the Customary Initiation Bill is aligned with the TKLA when it commences.The proposed amendments appear in the next column. | **Proposed amendments to definitions in format of Committee Amendments:****CLAUSE 1**1. On page 4, in line 34, after “Act” to insert “prior to the repeal of that Act by the TKLA or section 16(5)*(a)* of the TKLA once it commences;”.
2. On page 5, in line 36, after “Act” to insert “prior to the repeal of that Act by the TKLA or section 1 of the TKLA once it commences;”.
3. On page 5, in line 39, after “Act” to insert “prior to the repeal of that Act by the TKLA, section 50 of the TKLA”.
4. On page 5, in line 58, after “2009)” to insert “prior to the repeal of that Act by the TKLA or in terms of section 27 of the TKLA”.
5. On page 6, in line 10, after “Act” to insert “prior to the repeal of that Act by the TKLA or section 1 of the TKLA once it commences;”.
6. On page 6, in line 12, after “Act” to insert “prior to the repeal of that Act by the TKLA, section 49 of the TKLA”.
7. On page 6, after line 20, to add the following definition:

 “’**TKLA**’ means the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);”.1. On page 6, in line 22, after “Act” to insert “prior to the repeal of that Act by the TKLA, section 3 of the TKLA”.
2. On page 6, in line 24, after “Act” to insert “prior to the repeal of that Act by the TKLA or section 1 of the TKLA once it commences;”.
3. One page 6, in line 31, after “Act” to insert “prior to the repeal of that Act by the TKLA, the TKLA”.
 |