**TRADITIONAL COURTS BILL, 2017 [B1D-2017]**

The Table below contains a list of amendments proposed by the National Council of Provinces on the Bill:

|  |  |  |  |
| --- | --- | --- | --- |
| **CLAUSE** | **BILL AS TABLED IN THE NCOP** | **PROPOSED AMENDMENTS** | **COMMENTS** |
| 1 | (a) Traditional leader defined as any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position and is recognised in terms of the Traditional Leadership and GovernanceFramework Act, 2003 (Act No. 41 of 2003.(b) Traditional Leadership and GovernanceFramework Act is defined | (a) Define Traditional leader as any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position and is recognised in terms of the applicable legislation providing for such recognition.(b) Definition of Traditional Leadership and GovernanceFramework Act is consequentially deleted. | (a) Reference to Traditional Leadership and GovernanceFramework Act, 2003 (Act No. 41 of 2003) is omitted and the definition is made non-legislation specific. While comments from some stakeholders were that the definition should be aligned to the new Traditional and Khoi-San Leadership Act (Act No. 3 of 2019), it was deemed it safer not to make reference to the Act because it has not been implemented.(b) Definition is no longer relevant as reference to the Act is now being omitted. |
| 6 | (a) Clause makes reference to the Traditional Leadership and GovernanceFramework Act as the Act providing for levels of traditional leadership.(b) Clause only makes provisions for levels of traditional leadership of headman or headwoman, senior traditional leader’s court and king or queen’s court | (a) Delete reference to the Traditional Leadership and GovernanceFramework Act as the Act providing for levels of traditional leadership. Reference to the Act is substituted for “applicable legislation providing for such recognition”. (b) Add the level of a principal traditional leader’s court. | (b) The level of a principal traditional leader has been introduced by the new Traditional and Khoi-San Leadership Act (Act No. 3 of 2019) in the hierarchy of positions of traditional leadership. |
| 11 | Reference is made to section 4(3)(*f*) in clause 11(1)(a) | Delete 4(3)(*f*) and replace with “4(2)”. | Correction of cross reference. |
| 16 | (a) The Minister, must when compiling a code of conduct for persons who have a role in the in the functioning of traditional courts, do so **in consultation** with the Cabinet member responsible for traditional affairs. Further, the code must be reviewed once in every three years, by the Minister acting **in consultation** with the Minister responsible for traditional affairs.(b) Any breach of the code of conduct must be reported to the House of Traditional Leaders and the Provincial House of Traditional Leaders may impose any of the remedial steps listed in the Bill. | (a) The Minister must when compiling a code of conduct for persons who have a role in the in the functioning of traditional courts, do so **after** consultation with the Cabinet member responsible for traditional affairs. Furthermore, the code must be reviewed once in every three years, by the Minister after consultation with the Minister responsible for traditional affairs.(b) Any breach of the code of conduct must be reported to the member of the executive council responsible for traditional affairs and the said member of the executive council may impose any of the remedial steps listed in the Bill.  | (a) The requirement that the Minister compiles a code in consultation would require that the Minister consults before exercising the power of compiling the Code, and he or she must secure the consent of the person to be consulted. However, where the Minister is required to compile the code after consultation, he or she is only required to consult prior to exercising the power, without having to obtain the consent of the functionary to be consulted. In this case, the power of the Minister to perform his or her functions will not be constrained, because the Minister retains the responsibility to exercise the power.(b) This will ensure objectivity and accountability and so that traditional leaders do not become judges in their own court. |
| 18 | Clause does not provide for the repeal of sections 12 and 20 of the Black Administration Act, dealing with the judicial functions of traditional leaders. | Provide for the repeal of sections 12 and 20 of the Black Administration Act. | This is to ensure legal certainty. |
| 19 | Short title reads as:Traditional Courts Act, 2019 | Short title to read as:Traditional Courts Act, 2020 |  |