

REPUBLIC OF SOUTH AFRICA

**SELECT COMMITTEE AMENDMENTS
TO
TRADITIONAL LEADERSHIP
AND GOVERNANCE
FRAMEWORK AMENDMENT
BILL**

[B 57B—2008]

*(As agreed to by the Select Committee on Co-operative Governance and
Traditional Affairs (National Council of Provinces))*

[B 57C—2008]

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AMENDMENTS AGREED TO

TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK AMENDMENT BILL [B 57B—2008]

ARRANGEMENT OF SECTIONS

CLAUSE 1

1. On page 2 after line 5 to insert:
 - (a) the substitution for the definition of “**Commission**” of the following definition:

“ ‘**Commission**’ means the commission established by section 22 and includes a committee established by section 26A;”

2. On page 2 after line 11 to insert:
 - (a) the insertion after the definition of “**Minister**” of the following definitions:

“ ‘**principal traditional leader**’ means a traditional leader—

(a) under whose authority, or within whose area of jurisdiction, senior traditional leaders exercise authority in accordance with customary law;

(b) recognised as such in terms section 10A of this Act;

“ ‘**principal traditional community**’ means a principal traditional community recognised as such in terms of section 2B;”

“ ‘**principal traditional council**’ means a council established and recognised in terms of section 3B.”.

3. On page 2 after line 11, to insert:
 - (a) the substitution for the definition of “**traditional council**” of the following definition:

“ ‘**traditional council**’ means a council established in terms of section 3 and includes a traditional sub-council established in terms of section 4B;”

CLAUSE 2

1. On page 2 from line 15, to substitute the heading to Chapter 2 of the following heading:

“**KINGSHIPS OR QUEENSHIPS, PRINCIPAL TRADITIONAL LEADERS, PRINCIPAL TRADITIONAL COMMUNITIES, TRADITIONAL COMMUNITIES, PRINCIPAL TRADITIONAL COUNCILS, KINGSHIP OR QUEENSHIP COUNCILS AND TRADITIONAL COUNCILS**”

CLAUSE 3

1. On page 3, in line 16, to delete the expression “**from**” and to substitute the following words “separate from principal traditional communities and”;
2. On page 3, in line 23, to insert after the expression “*Gazette*” the following words “on the recommendation of the Minister and”;
3. On page 3, in line 53, to insert after the expression “**President**” the following words “on the recommendation of the Minister and”.

NEW CLAUSE

1. On page 3, after line 58, to insert the following new clause:

Insertion of section 2B in Act 41 of 2003

4. The following section is hereby inserted in the principal Act after section 2A:

“Recognition of principal traditional communities

2B. (1) A number of traditional communities that are grouped together may be recognised as a principal traditional community if they—

- (a) are recognised as such in terms of applicable provincial legislation;
- (b) each have a recognised traditional council with a defined area of jurisdiction in terms of applicable provincial legislation;
- (c) each have a senior traditional leader recognised in terms of the applicable provincial legislation;
- (d) recognise a recognised senior traditional leader, who is of higher status than the other senior traditional leaders in terms of custom and customary law, as their principal traditional leader;
- (e) recognise themselves as a distinct group of traditional communities separate from kingships or queenships and all other traditional communities; and
- (f) have a system of traditional leadership at a principal traditional leadership level recognised by other traditional communities.

(2) The traditional communities applying for recognition as a principal traditional community must have a proven history of existence recognizing a senior traditional leader of higher status as a principal traditional leader in terms of customary law of succession.

(3)(a) The Premier may, by notice in the *Provincial Gazette*, after consultation with the provincial house of traditional leaders, and the senior traditional leaders who form part of the principal traditional community being applied for, recognise the traditional communities envisaged in subsections (1) and (2) as a principal traditional community.

(b) The Premier may—

- (i) direct the Member of the Executive Council responsible for traditional affairs to conduct the consultation referred to in paragraph (a) in his stead; and
- (ii) prescribe a fixed period within which the Member of the Executive Council responsible for traditional affairs must finalise the consultation regarding the recognition of a principal traditional community envisaged in subsections (1) and (2).

(4) A principal traditional community must transform and adapt customary law and customs relevant to the application of this Act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by—

- (a) preventing unfair discrimination;
- (b) promoting equality; and
- (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.

(5) The withdrawal of the recognition of a community as a principal traditional community as provided for in this Act, may only be considered where—

- (a) the majority of traditional communities under the jurisdiction of the principal traditional community concerned request the Premier that the recognition of their principal traditional community be withdrawn; and
- (b) the Premier, for good cause shown determines that the withdrawal of such a principal traditional community is necessary.

(6) The Premier may, before taking a decision in terms of subsection (5), cause an investigation to be conducted.

(7) The withdrawal of the recognition of a community as a principal traditional community must be done by the Premier after consultation with the provincial house of traditional leaders, and the senior traditional leaders who form part of the principal traditional community.

(8) The withdrawal of a principal traditional community must be done by way of a notice in the *Provincial Gazette*.”.

CLAUSE 5

1. On page 4, in line 57, after the expression “**President**” to insert the following expression “**and the Minister**”.

NEW CLAUSE

1. On page 5, after line 51 to insert the following new clause:

Insertion of section 3B in Act 41 of 2003

7. The following section is hereby inserted in the principal Act after section 3A:

“Establishment and recognition of principal traditional councils

3B. (1) Once the Premier has recognised a principal traditional community, that principal traditional community must, within one year of the recognition, establish a principal traditional council.

(2) (a) A principal traditional council consists of the number of members as determined by the Premier, after consultation with the principal traditional community concerned, by formula published by notice in the *Provincial Gazette*.

(b) At least a third of the members of a principal traditional council must be women: Provided that where it has been proved that an insufficient number of women are available to participate in a principal traditional council, the Premier may determine a lower threshold for the particular principal traditional council than that required by paragraph (a).

(c) The membership of a principal traditional council comprises—

- (i) 60% of traditional leaders, including the principal traditional leader who is an ex officio member and chairperson, and members of the principal traditional council selected by the principal traditional leader in terms of that community's customs, taking into account the need for overall compliance with paragraph (b); and
- (ii) 40% of members elected democratically, by an electoral college consisting of all senior traditional leaders who fall under the principal traditional council.

(d) The members referred to in paragraph (c)(ii) are elected from amongst persons nominated by each of the traditional councils falling under the jurisdiction of the principal traditional community, with each traditional council nominating two candidates.

(3) The term of office of members of the principal traditional council is five years, and is aligned to the term of office for the National House of Traditional Leaders established in terms of the National House of Traditional Leaders Act, 2009, excluding the principal traditional leader.

(4) The Premier must, by notice in the *Provincial Gazette* and in accordance with this Act, recognise a principal traditional council for that principal traditional community within a defined area of jurisdiction.

(5) The principal traditional council meets at the principal traditional leader's great place or at any other place to be determined by the principal traditional leader.

(6) The quorum of the principal traditional council is the majority of the total number of members of the principal traditional council.

(7) The principal traditional council must elect one of its members as a deputy chairperson who will act as the chairperson in the absence of the principal traditional leader.

(8) The principal traditional council must meet every two months: Provided that the principal traditional leader may, in consultation with the Premier of the province concerned, call a special meeting of the principal traditional council as he or she considers necessary.

(9) The principal traditional leader must give notice of not less than seven days for holding a special meeting to members of the principal traditional council.

(10) A member of a principal traditional council vacates his or her office if—

- (a) he or she ceases to be a South African citizen;
- (b) he or she has been convicted of an offence and sentenced to imprisonment for more than 12 months without the option of a fine;
- (c) he or she tenders his or her resignation;
- (d) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the principal traditional council;
- (e) the period for which the member was selected or elected, as the case may be, has expired; and
- (f) he or she becomes disqualified in terms of subsection (13).

(11) If a member of a principal traditional council dies or vacates his or her office before the expiration of his or her term of office, such a vacancy must be filled in the manner envisaged in this Act within a reasonable period of the vacancy occurring.

(12) A member appointed to fill a vacancy in terms of subsection (11) holds office for the remainder of his or her predecessor's term of office.

(13) A person may not be appointed as a member of a principal traditional council if that person—

- (a) is not a South African citizen;
- (b) is under 18 years of age;
- (c) has been convicted of an offence in respect of which he or she was sentenced to imprisonment for more than 12 months without the option of a fine;
- (d) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
- (e) is of unsound mind and has been so declared by a competent court;
- (f) is or becomes a full-time member of a municipal council;
- (g) is elected as a member of a provincial legislature;
- (h) is elected as a member of the National Assembly;
- (i) is appointed as a permanent delegate in the National Council of Provinces; or
- (j) is elected to, or appointed in, a full-time position in any house of traditional leaders.”.

CLAUSE 4B

1. On page 6, in line 33 to insert after the expression “**areas**” the following words “within a province” and
2. On page 6, from line 36 to omit paragraph (b) and to substitute:
 - (b) The traditional sub-council must consist of the number of members as determined by the Premier, after consultation with the main traditional council concerned, by formula published by notice in the *Provincial Gazette*.

NEW CLAUSE

1. On page 6, after line 49, to insert the following new clause:

Insertion of section 4C in Act 41 of 2003

9. The following section is hereby inserted in the principal Act after section 4B:

“Functions of principal traditional councils

4C. The provisions of section 4A apply, with the necessary changes, to principal traditional councils.”.

CLAUSE 7

1. On page 6, from line 52, to substitute the heading to section 5 of the following heading:

“Partnerships between district and local municipalities and kingship and queenship councils, principal traditional councils and traditional councils
2. On page 6, in line 56, to insert after the expression “**councils**” the following words “and principal traditional councils”

CLAUSE 8

1. On page 7, from line 14 to omit clause 8 and to substitute:

“Support to traditional councils, principal traditional councils and kingship or queenship councils

6. The national government and a provincial government may adopt such legislative and other measures as may be necessary to support and strengthen the capacity of traditional councils, principal traditional councils and kingship or queenship councils within the province to fulfill their functions.”.

NEW CLAUSE

1. On page 7, after line 18, to insert the following new clause:

Amendment of section 8 of Act 41 of 2003

12. The following section is hereby substituted for section 8 of the principal Act:

“Recognition of traditional leadership positions

8. The following leadership positions within the institution of traditional leadership are recognised:

- (a) Kingship or queenship;
 (aA) principal traditional leadership;
 (b) senior traditional leadership; and
 (c) headmanship.”

CLAUSE 9

1. On page 7, from line 20, to omit clause 9 and to substitute:

13. Section 9 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1)(a)(ii) for subparagraph (bb) of the following subparagraph:

“(bb) provide the President and the Minister with reasons for the identification of that person as king or queen;”

- (b) the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

“The President must, on the recommendation of the Minister and subject to subsection (3), recognise a person so identified in terms of paragraph (a)(i) as king or queen, taking into account”;

- (c) the substitution in subsection (1)(b) of subparagraph (ii) of the following subparagraph:

“(ii) whether a kingship or queenship has been recognised in terms of section 2A.”.

- (d) the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in terms of customary law, customs or processes, the President on the recommendation of the Minister—”; and

- (e) the substitution for subsection (4) of the following subsection:

“(4) Where the matter that has been referred back to the royal family for recognition and resolution in terms of subsection (3) has been reconsidered and resolved, the President on the recommendation of the Minister must recognise the person identified by the royal family if the President is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law.”.

NEW CLAUSE

1. On page 7, after line 23 to insert the following new clause

Amendment of section 10 of Act 41 of 2003

14. Section 10 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“Where it has been decided to remove a king or queen in terms of subsection (2), the President on the recommendation of the Minister must—”.

NEW CLAUSES

1. On page 7, after line 23, to insert the following new Part:

Insertion of Part 2A in Act 41 of 2003

15. The following Part is hereby inserted in the principal Act after Part 2:

Part 2A:

Principal traditional leaders

“Recognition of principal traditional leaders

10A (1) Whenever the position of a principal traditional leader is to be filled, the following process must be followed:

- (a) The royal family must, within a reasonable time after the need arises for the position of a principal traditional leader to be filled, and with due regard to applicable customary law—
- (i) identify a person who qualifies in terms of custom and customary law to assume the position of principal traditional leader, after taking into account whether any of the grounds referred to in section 10B (1) (a), (b) and (d) apply to that person; and
 - (ii) through the relevant customary structure—
 - (aa) inform the Premier of the province, of the particulars of the person so identified to fill the position of a principal traditional leader; and
 - (bb) provide the Premier with the reasons for the identification of that person as a principal traditional leader.
- (b) The Premier must, in accordance with provincial legislation and subject to subsections (2) and (3), recognise a

person so identified in terms of paragraph (a)(i) as a principal traditional leader, taking into account—

- (i) the need to establish uniformity in the Republic in respect of the status afforded to a principal traditional leader;
- (ii) whether a recognised principal traditional community exists—
 - (aa) that comprises the areas of jurisdiction of a substantial number of senior traditional leaders that fall under the authority of principal traditional leader;
 - (bb) in terms of which the principal traditional leader is regarded and recognised in terms of customary law and customs as a traditional leader of higher status than the senior traditional leaders referred to in subparagraph (aa); and
 - (cc) where the principal traditional leader has a customary structure to represent the traditional councils and senior traditional leaders that fall under the authority of the principal traditional leader; and
- (iii) the functions that will be performed by the principal traditional leader.

(2) A principal traditional leader to be recognised in terms of subsection (1) must be senior traditional leader of a specific traditional community who exercises authority over a number of senior traditional leaders in accordance with custom and customary law.

(3) The provincial legislation referred to in subsection (1)(b) must at least provide for—

- (a) notice in the *Provincial Gazette* recognising the person identified as a principal traditional leader in terms of subsection (1);
- (b) a certificate of recognition to be issued to the identified person; and
- (c) the relevant provincial house of traditional leaders to be informed of the recognition of a principal traditional leader

(4) (a) The Premier may, by notice in the *Provincial Gazette*, make regulations concerning—

- (i) the traditional or ceremonial role of a principal traditional leader;
- (ii) the responsibilities of a principal traditional leader in respect of nation building; and
- (iii) other functions or roles of a principal traditional leader.

(b) Regulations made in terms of paragraph (a) must be tabled in provincial legislature after their publication in the *Provincial Gazette*.

Removal of principal traditional leaders

10B (1) A principal traditional leader may be removed from office on the grounds of—

- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;
- (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for the principal traditional leader to function as such;
- (c) wrongful appointment or recognition; or
- (d) a transgression of a customary rule or principle that warrants removal.

(2) Whenever any of the grounds referred to in subsection (1)(a), (b) and (d) come to the attention of the royal family and

the royal family decides to remove a principal traditional leader, the royal family must, within a reasonable time and through the relevant customary structure—

- (a) inform the Premier of the province concerned, of the particulars of the principal traditional leader to be removed from office; and
- (b) furnish reasons for such removal.

(3) Where it has been decided to remove a principal traditional leader in terms of subsection (2), the Premier must—

- (a) withdraw the certificate of recognition with effect from the date of removal;
- (b) publish a notice with particulars of the removed principal traditional leader in the *Provincial Gazette*; and
- (c) inform the royal family concerned, and the provincial traditional leader of such removal.

(4) Where a principal traditional leader is removed from office, a successor may be recognized subject to section 10A.

(5) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with customary law, customs or processes, the Premier—

- (a) may refer the matter to the relevant royal family for its recommendation; or
- (b) may refuse to issue a certificate of recognition; and
- (c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.

(6) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (3) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law.

Amendment of section 13 of Act 41 of 2003

16. Section 13 of the principal Act is hereby amended by—

- (a) the substitution of the words preceding paragraph (a) of subsection (1) for the following words:

“Where the successor to the position of king, queen, principal traditional leader, senior traditional leader, headman or headwoman identified in terms of section 9, 9A or 11 is still regarded as a minor in terms of applicable customary law or customs—”;

- (b) by the substitution of the words preceding paragraph (a) of subsection (5) for the following words:

“As soon as the successor to the position of king, queen, principal traditional leader, senior traditional leader, headman or headwoman ceases to be a minor in terms of customary law, the regent recognised in terms of subsection (1) must relinquish his or her position as regent, and the rightful successor must—”.

- (c) the substitution of paragraphs (a) and (b) of subsection (5) for the following paragraphs:

“(a) in the case of a king or queen, be **[installed]** recognised by the President on the recommendation of the Minister in terms of section 9(1) (b), and a certificate of recognition contemplated in section 9 (2)(b) must be issued after his or her name has been published in the *Gazette*; or;

“(b) in the case of a principal traditional leader or senior traditional leaders, headman or head-

woman, be **[installed]** recognised by the Premier in terms of section 9A or 11(1)(b), and a certificate of recognition contemplated in section 9A(6) or 11(2)(a)(ii) must be issued after his or her name has been published in the *Provincial Gazette*; or”.

- (d) the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
 “Where a regent has been recognised in respect of the position of a king or queen, the Premier concerned must inform the President and Minister—”.

Amendment of section 14 of Act 41 of 2003

17. Section 14 of the principal Act is hereby amended by—

- (a) the substitution of subsection (1) for the following subsection:

“(1) A royal family **[may]** must, in accordance with provincial legislation, identify a suitable person to act as a king, queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be, where—

- (a) a successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman or headwoman has not been identified by the royal family concerned in terms of section 9 (1), 9A(1) or 11 (1);
- (b) the identification of a successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman or headwoman is being reconsidered and resolved in terms of section 9 (3), 9A(3) or 11 (3); or
- (c) a king, queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be, would be absent from his or her area of jurisdiction under circumstances other than those provided for in section 15 and for a period of more than six months for—
- (i) the treatment of illness;
- (ii) study purposes; or
- (iii) any other lawful purpose.”.

- (b) by the substitution of subsections (3) and (4) for the following subsections:

“(3) A person who has been **[appointed]** identified as an acting king, queen, principal traditional leader, senior traditional leader, headman or headwoman in terms of subsection (1) may perform the functions that are attached to the kingship, queenship, principal traditional leadership, senior traditional leadership or headmanship in question.

(4) Where a person has been **[appointed]** identified as an acting king or queen, principal traditional leader, the authority referred to in subsection (2) (a) must inform the President, Minister and Premier of—

- (a) the acting appointment; and
- (b) the removal of the person who has been **[appointed]** identified as an acting king or queen or principal traditional leader.”.

Amendment of section 15 of Act 41 of 2003

18. Section 15 of the principal Act is hereby amended by—

- (a) the substitution of the words preceding paragraph (a) of the following words:

“(1) A king, queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be, may, after consultation with the royal family, appoint a deputy to act in his or her stead whenever that king, queen, principal traditional leader, senior traditional leader, headman or headwoman—”

- (b) the substitution of subsections (3) and (4) for the following subsections:

“(3) A person who has been appointed as a deputy in terms of subsection (1) may perform the functions that are attached to the kingship or queenship or principal traditional leadership, senior traditional leadership or headmanship in question.

(4) Where a king or queen or a principal traditional leader, has appointed a deputy in terms of subsection (1), the king or queen or principal traditional leader must inform the President, Minister or Premier of such appointment.”

Amendment of section 16 of Act 41 of 2003

19. Section 16 of the Principal Act is hereby amended by the substitution of subsection (3) for the following subsection:

“(3) Provincial legislation must provide for—
 (a) mechanisms or procedures that would allow a sufficient number of women—
 [(a)] (i) to be represented in the provincial house of traditional leaders concerned; and
 [(b)] (ii) to be elected as representatives of the provincial house of traditional leaders to the National House of Traditional leaders; and
 (b) the alignment of the term of provincial houses of traditional leaders with the term of the National House of Traditional Leaders.”

CLAUSE 10

1. On page 7, in line 40, after “leaders” to insert “excluding kings and queens and principal traditional leaders”.
2. On page 7 in line 43, after the expression “**queens**” to insert the expression “principal traditional leader”
3. On page 7, in line 45, to omit “.” and to substitute“; and”
4. On page 7, after line 45, to insert the following new paragraph:
 - (c) the insertion of a new subsection (5):

(5) Provincial legislation must provide for a relationship between a provincial house and local houses as contemplated in section 15 of the National House of Traditional Leaders Act, 2009.”

NEW CLAUSE

1. On page 7, from line 46 to insert the following new clause:

Amendment of section 20 of Act 41 of 2003

20. Section 20 of the principal Act is hereby amended by the addition in subsection (1) after paragraph (n) of the following paragraph:

(o) Education.

CLAUSE 11

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Substitution of Chapter 6 of Act 41 of 2003

21. The following Chapter is hereby substituted for Chapter 6 of the principal Act:

“CHAPTER 6**DISPUTE AND CLAIM RESOLUTION AND COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS****Dispute and claim resolution**

21. (1) (a) Whenever a dispute or claim concerning customary law or customs arises between or within traditional communities or other customary institutions on a matter arising from the implementation of this Act, members of such a community and traditional leaders within the traditional community or customary institution concerned must seek to resolve the dispute or claim internally and in accordance with customs before such dispute or claim may be referred to the Commission.

(b) If a dispute or claim cannot be resolved in terms of paragraph (a), subsection (2) applies.

(2) (a) A dispute or claim referred to in subsection (1) that cannot be resolved as provided for in that subsection must be referred to the relevant provincial house of traditional leaders, which house must seek to resolve the dispute or claim in accordance with its internal rules and procedures.

(b) If a provincial house of traditional leaders is unable to resolve a dispute or claim as provided for in paragraph (a), the dispute or claim must be referred to the Premier of the province concerned, who must resolve the dispute or claim after having consulted—

- (i) the parties to the dispute or claim; and
- (ii) the provincial house of traditional leaders concerned.

(c) A dispute or claim that cannot be resolved as provided for in paragraphs (a) and (b) must be referred to the Commission.

(3) Where a dispute or claim contemplated in subsection (1) has not been resolved as provided for in this section, the dispute or claim must be referred to the Commission.

Establishment of Commission

22. (1) There is hereby established, with effect from the date of coming into operation of this Chapter, a commission known as the Commission on Traditional Leadership Disputes and Claims.

(2) The Commission must carry out its functions in a manner that is fair, objective and impartial.

Appointment of members of Commission

23. (1) (a) The Minister must, after consultation with the National House, appoint a chairperson and not more than four persons, for a period not exceeding five years, as members of the Commission who are knowledgeable regarding customary law, customs and the institution of traditional leadership.

(b) The Minister must publish in the *Gazette* the name of the chairperson, the deputy chairperson and of every person appointed as a member of the Commission, together with the date from which the appointment takes effect.

(2) A member of the Commission is either a full-time or part-time member, as may be determined by the Minister.

(3) If a member of the Commission dies or vacates office before the expiry of the period for which he or she was appointed, the Minister must appoint in terms of subsection (1) a person to fill the vacancy for the unexpired term for which such member had been appointed.

(4) The Minister may remove a member of the Commission on the grounds of—

- (a) conviction by a criminal court without an option of a fine;
- (b) physical incapacity;
- (c) such member having been declared insolvent by a court; and
- (d) such member having been declared to be of unsound mind by a court.

Vacancies

24. A vacancy occurs whenever a member of the Commission—

- (a) resigns by giving written notice to the Minister;
- (b) is removed in terms of section 23(5); or
- (c) becomes a member of the National Assembly, a provincial legislature or a full-time member of a municipal council, or becomes a permanent delegate to the National Council of Provinces.

Conditions of appointment of members of Commission

24A. (1) The Minister must, after consultation with the Minister of Finance, determine the conditions of appointment of the members of the Commission, taking into account—

- (a) the role, duties and responsibilities of a member of the Commission;
- (b) affordability in relation to the responsibilities of the Commission; and
- (c) the level of expertise and experience required for a member of the Commission.

(2) Conditions of appointment may differ in respect of—

- (a) the chairperson, and other members of the Commission;
- (b) full-time and part-time members; and
- (c) any other appropriate circumstances.

Support to and reports by Commission

24B. (1) (a) The National Department responsible for traditional affairs must provide administrative and financial support to the Commission so as to enable the Commission to perform all the functions assigned to it.

(b) The Commission may subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), appoint a person or an institution to conduct research on its behalf.

(2) The Commission must quarterly, or when requested by the Minister, provide a comprehensive report on its activities to the Minister.

Functions of Commission

25. (1) The Commission operates nationally in plenary and provincially in committees and has authority to investigate and make recommendations on any traditional leadership dispute and claim contemplated in subsection (2).

(2) (a) The Commission has authority to investigate and make recommendations on—

- (i) a case where there is doubt as to whether a kingship or, principal traditional leadership, senior traditional leadership or headmanship was established in accordance with customary law and customs;
- (ii) a case where there is doubt as to whether a principal traditional leadership, senior traditional leadership or headmanship was established in accordance with customary law and customs
- (iii) a traditional leadership position where the title or right of the incumbent is contested;
- (iv) claims by communities to be recognised as kingships, queenships, principal traditional communities, traditional communities, or headmanships;
- (v) the legitimacy of the establishment or disestablishment of “tribes” or headmanships;
- (vi) disputes resulting from the determination of traditional authority boundaries as a result of merging or division of “tribes”;
- (viii) all traditional leadership claims and disputes dating from 1 September 1927 to the coming into operation of provincial legislation dealing with traditional leadership and governance matters; and
- (ix) gender-related disputes relating to traditional leadership positions arising after 27 April 1994.

(b) A dispute or claim may be lodged by any person and must be accompanied by information setting out the nature of the dispute or claim and any other relevant information.

(c) The Commission may decide not to consider a dispute or claim on the ground that the person who lodged the dispute or claim has not provided the Commission with relevant or sufficient information or the provisions of section 21 have not been complied with.

(3) (a) When considering a dispute or claim, the Commission must consider and apply customary law and the customs of the relevant traditional community as they applied when the events occurred that gave rise to the dispute or claim.

(b) The Commission must—

- (i) in respect of a kingship or queenship, be guided by the criteria set out in section 2A (1) and 9(1); and
- (ii) in respect of a principal traditional leadership, senior traditional leadership or headmanship, be guided by the

customary law and customs and criteria relevant to the establishment of a principal traditional leadership, senior traditional leadership or headmanship, as the case may be.

(c) Where the Commission investigates disputes resulting from the determination of traditional authority boundaries and the merging or division of “tribes”, the Commission must, before making a recommendation in terms of section 26, consult with the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998) where the traditional council boundaries straddle municipal and or provincial boundaries.

(4) Subject to subsection (5) the Commission—

- (a) may only investigate and make recommendations on those disputes and claims that were before the Commission on the date of coming into operation of the Traditional Leadership and Governance Framework Amendment Act, 2009; and
- (b) must complete the matters contemplated in paragraph (a) within a period of five years, which period commences on the date of appointment of the members of the Commission in terms of section 23, or any such further period as the Minister may determine.

(5) Any claim or dispute contemplated in this Chapter submitted after six months after the date of coming into operation of this Chapter may not be dealt with by the Commission.

(6) The Commission—

- (a) may delegate any function contemplated in this section excluding a matter related to kingships or queenships to a committee referred to in section 26A; and
- (b) must coordinate and advise on the work of the committees referred to in section 26A.

(7) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), apply, with the necessary changes, to the Commission.

(8) The Commission may adopt rules for the conduct of the business of the Commission as well as committees referred to in section 26A.

(9) Provincial legislation must provide for a mechanism to deal with disputes and claims related to traditional leadership: Provided that such a mechanism must not deal with matters to be dealt with by the Commission.

Recommendations of Commission

26. (1) A recommendation of the Commission is taken with the support of at least two thirds of the members of the Commission.

(2) A recommendation of the Commission must, within two weeks of the recommendation having been made, be conveyed to—

- (a) the President and the Minister where the position of a king or queen is affected by such a recommendation; and
- (b) the relevant provincial government and any other relevant functionary to which the recommendation of the Commission applies in accordance with applicable provincial legislation in so far as the consideration of the recommendation does not relate to the recognition or removal of a king or queen in terms of section 9, 9A or 10.

(3) The President or the other relevant functionary to whom the recommendations have been conveyed in terms of subsection (2) must, within a period of 60 days make a decision on the recommendation.

(4) If the President or the relevant functionary takes a

decision that differs with the recommendation conveyed in terms of subsection (2), the President or the relevant functionary as the case may be must provide written reasons for such decision.

(5) (a) The Premiers must, on an annual basis and when requested by the Minister, provide the President and the Minister with a report on the implementation of their decisions on the recommendations of the Commission.

(b) A copy of the report referred to in paragraph (a) must be submitted to the relevant provincial house for noting.

Committees of Commission

26A. (1) There is hereby established provincial committees to deal with disputes and claims relating to traditional leadership.

(2) (a) Each provincial committee contemplated in subsection (1) consists of as many members as the Premier concerned may determine after consultation with the Minister and the Commission and such members are appointed by the Premier, by the notice in the *Provincial Gazette*, for a period not exceeding five years.

(b) The term of office of committee members must be linked to that of members of the Commission contemplated in section 23(1)(a).

(c) The committee members of the Commission must have the same knowledge as the members of the Commission as contemplated in section 23(1)(a).

(3) Each provincial committee contemplated in subsection (1) must be chaired by a member of the Commission designated by the Minister after consultation with the Premier concerned and the Commission: Provided that a member of the Commission may chair more than one committee.

(4) The provisions of sections 24, 24A, 24B and 25(2) to (5) and (7) apply, with the necessary changes, to provincial committees.

(5) A provincial committee must perform such functions as delegated to it by the Commission in terms of section 25(6) after a review as contemplated in section 28(10).

(6) A provincial committee may make final recommendations on all matters delegated to it in terms of 25(6): Provided that where a committee is of the view that exceptional circumstances exist it may refer the matter to the Commission for advice.

(7) The provisions of section 26(2)(b) apply, with the necessary changes, to the recommendations of a committee.

(8) Each provincial committee must, on a quarterly basis or when requested by the Commission, submit a report to the Commission on all disputes and claims dealt with by such provincial committee during the period covered by the report.

CLAUSE 12

1. On page 8, in line 7, to omit “**President**” and to substitute “**Minister**”;

CLAUSE 13

1. On page 8, in line 30, to omit “**five**” and to substitute “seven”.
2. On page 8, in line 37. to omit “**five**” and to substitute “seven”.
3. On page 8, from line 42, to omit paragraphs (c) and (d) and to substitute:
 - (c) the addition of the following subsections:

“(8) (a) Where, pursuant to an investigation conducted in terms of subsection (7), the Commission has decided that a paramountcy qualifies to be recognised as a kingship or queenship, such a paramountcy is deemed to be recognised as a kingship or queenship in terms of section 3A.

(b) The incumbent paramount chiefs, in respect of the kingships and queenships contemplated in paragraph (a), who were recognised before the commencement of this Act, are deemed to be kings or queens, subject to investigation and recommendation of the Commission in terms of section 25(2).

(9) (a) Where, pursuant to an investigation conducted in terms of subsection (7), the Commission has decided that a paramountcy does not qualify to be recognised as a kingship or queenship, such a paramountcy will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a kingship or queenship in terms of section 2A.

(b) Where, pursuant to an investigation conducted in terms of subsection (7), the Commission has decided that a paramount chief does not qualify to be recognised as a king or queen, such a paramount chief, regent or acting paramount chief will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a king or queen in terms of section 9 or a regent or acting king or queen in terms of sections 13 and 14 respectively.

(c) A kingship or queenship and a king or queen recognised in terms of paragraph (a) and (b) lapses—

- (i) if, on the date of the coming into operation of the Traditional Leadership and Governance Framework Amendment Act, 2009, the position is vacant;
- (ii) on the death of the incumbent king or queen where the position of such king or queen is occupied by a permanent incumbent;
- (iii) where the position of the incumbent king or queen is occupied by a regent or an acting incumbent, on the death of such regent or acting incumbent or on the date of the recognition of a successor,

where after the kingship or queenship and the king or queen will be deemed to be a principal traditional community and principal traditional leader respectively, as contemplated in sections 2B and 10A.

(10) The Commission must review all claims and disputes that have not been disposed of on the date of the coming into operation of the Traditional Leadership and Governance Framework Amendment Act, 2009 and if the Commission is of the opinion that any such claim or dispute should not be dealt with by the Commission or a provincial committee, subject to section 21 refer the claim or dispute to the relevant province for resolution of the claim or dispute and inform the parties to the matter concerned accordingly.

(11) (a) The Commission established by section 22 as amended by the Traditional Leadership and Governance Framework Amendment Act, 2009 (hereinafter referred to as “new Commission”), is the successor in law of the Commission as it existed immediately before that Amendment Act (hereinafter referred to as “old Commission”).

(b) All disputes and claims that were before the old Commission are deemed to have been lodged with the new Commission.”.

CLAUSE 12

1. On page 9, in line 17, after the expression “**councils**” to insert the following words “**non-traditional leader members of traditional sub-councils, non traditional leader members of principal traditional councils**”;

CLAUSE 13

1. On page 9, in line 31, after the expression “**council**” to insert the following words “**non-traditional leader members of traditional sub-councils, non traditional leader members of principal traditional councils**”;
2. On page 9, in line 32 after the expression “**council**” to insert the following words “**non-traditional members of kingship or queenship councils**”; and
3. On page 9, in line 44, after the expression “**traditional council**” to insert the following words “**non-traditional leader members of traditional sub-councils, non traditional leader members of principal traditional councils**”.

CLAUSE 14

1. On page 10, in line 4, after the first expression “**councils**” to inset the following words “**non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils**”;
2. On page 10, in line 13, after the expression “**councils**” to insert the following words “**non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils**”;
3. On page 10, in line 14, after the expression “**councils**” to insert the following words “**non-traditional members of kingship or queenship councils**”;
4. On page 10, in line 28, after the expression “**council**” to insert the following words “**non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils**”;
5. On page 10, in line 29, after the expression “**council**” to insert the following expression “**non-traditional members of kingship or queenship councils**”;
6. On page 10, in line 46 after the first expression “**council**” to insert the following words “**non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils**”;
7. On page 10, in line 46 after the second expression “**council**” to insert the following words “**non-traditional members of kingship or queenship councils**”;
8. On page 10, in line 54 after the expression “**council**” to insert the following words “**non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils**”;

9. On page 10, in line 55 after the expression “**council**” to insert the following words “**non-traditional members of kingship or queenship councils**”;
10. On page 10, in line 60 after the expression “**councils**” to insert the following words “**non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils**”; and
11. On page 10, in line 61 after the expression “**councils**” to insert the following words “**non-traditional members of kingship or queenship councils**”.

CLAUSE 15

1. On page 11, in line 10 after the expression “**council**” to insert the following words “**non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils**”; and
2. On page 11, in line 11 after the expression “**council**” to insert the following words “**non-traditional members of kingship or queenship councils**”.

CLAUSE 16

1. On page 11, in line 19 after the expression “**council**” to insert the following words “**non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils**”; and
2. On page 11, in line 20 after the expression “**council**” to insert the following words “**non-traditional members of kingship or queenship councils**”.

LONG TITLE

1. On page 1 to omit the long title and to substitute:

To amend the Traditional leadership and Governance Framework Act, 2003, so as to substitute definitions and to insert definitions; to provide for the recognition of kingships or queenships and the withdrawal of such recognition by the President on the recommendation of the Minister; to provide for the establishment and recognition of principal traditional communities; to further regulate the establishment of traditional councils; to provide for the establishment and recognition of kingship or queenship councils; to provide for the establishment and recognition of principal traditional councils; to provide for the establishment of sub-traditional councils; to provide for the functions of traditional councils; to provide for regulatory powers; to provide for a principal traditional leadership as a forth position of traditional leadership to further regulate the recognition and removal of kings and queens; to provide for the recognition and removal of principal traditional leaders; to further regulate the recognition and appointments of regents, persons acting as traditional leadeers abnd deputy traditional leaders; to further regulate the election of members of local houses of traditional leaders; to provide for a relationship between a provincial house and local houses; to further regulate the roles

of traditional leaders; to provide for the reconstitution and operation of the Commission on traditional leadership Disputes and Claims; to provide anew for the transitional provisions relating to tribal authorities, community authorities and paramountcies; to amend the remuneration of Public Office Bearers Act, 1998, so as to make provision for the remuneration of non-traditional leader members of traditional councils, traditional sub-council, principal traditional councils and kingships or queenship councils; and to provide for matters connected therewith.

CLAUSE 17

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Short title and commencement

30. This Act is called the Traditional Leadership and Governance Framework Amendment Act, 2009, and Chapter 6 comes into operation on 1 February 2010.

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