

Eastern Cape, South Africa

Eastern Cape Traditional Leadership and Governance Act, 2017

## Regulations on the Election of Members of the Eastern Cape Houses of Traditional Leaders, 2017

Provincial Notice 174 of 2017

Legislation as at 29 August 2017

FRBR URI: /akn/za-ec/act/pn/2017/174/eng@2017-08-29

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PDF created on 19 April 2024 at 09:52.

*Collection last checked for updates: 15 April 2024.*

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## Regulations on the Election of Members of the Eastern Cape Houses of Traditional Leaders, 2017

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## Eastern Cape South Africa

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### Regulations on the Election of Members of the Eastern Cape Houses of Traditional Leaders, 2017 Provincial Notice 174 of 2017

Published in Eastern Cape Provincial Gazette 3905 on 29 August 2017

**Commenced on 29 August 2017**

*[This is the version of this document from 29 August 2017  
and includes any amendments published up to 15 April 2024.]*

#### 1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Eastern Cape Traditional Leadership and Governance Act, 2017 ([Act No. 1 of 2017](#)) shall have the same meaning and, unless the context otherwise indicates-

“**administrative area**” means an area of jurisdiction under the authority of headmanship or headwomanship and within the jurisdictional area of a senior traditional leader in accordance with customary law;

“**area of jurisdiction**” means the area of jurisdiction defined for a local municipality, district or metropolitan municipality in accordance with the applicable legislation;

“**Constitution**” means the [Constitution of the Republic of South Africa, 1996](#);

“**counting officer**” means a person designated to count and announce the results of the election of members of a house of traditional leaders;

“**Department**” means the department responsible for cooperative governance and traditional affairs in the Province;

“**electoral college**” means a college of the group of candidates selected or elected by various traditional councils through community meetings (*imbizos*) for the purpose of electing members of local houses in the Province;

“**Framework Act**” means the Traditional Leadership and Governance Framework Act, 2003 ([Act No. 41 of 2003](#)), as amended;

“**local house**” means a local house established in terms of section 48 of the Act;

“**MEC**” means the member of the Executive Council responsible for Cooperative Governance and Traditional Affairs in the Province;

“**members**” means members of traditional councils, local houses and the Provincial House of Traditional Leaders;

“**presiding officer**” means a person designated to preside over the meeting either of a traditional community, electoral college, local house or the Provincial House of Traditional Leaders;

“**Province**” means the Province of the Eastern Cape established by section 103 of the Constitution;

“**Provincial Gazette**” means the *Provincial Gazette* of the Province;

**“Provincial House”** means the Provincial House of Traditional Leaders contemplated in section 66 of the Act;

**“secretary”** means an official responsible for administration of a traditional council;

**“the Act”** means the Eastern Cape Traditional Leadership and Governance Act, 2017 ([Act No. 1 of 2017](#));

**“traditional community”** means a traditional community recognised as such in terms of section 4 of the Act;

**“traditional council”** means a council established in terms of section 6 of the Act; and

**“traditional leader”** means any person who in terms of customary law of the relevant traditional community, holds a traditional leadership position, and is recognised in terms of the Act.

## 2. Scope of applicability of the regulations

These regulations apply in the process of electing members of houses of traditional leaders in the Province.

## 3. Interpretation

Any person interpreting or applying these regulations must-

- (a) do so in a manner that gives effect to the spirit of the Constitution;
- (b) take into account the Framework Act and the Act; and
- (c) take into account the traditions and customs applicable to a traditional community, provided they do not contradict the Act, Framework Act and the Constitution.

## 4. Establishment of local houses of traditional leaders

- (1) A local house of traditional leaders must be established for the jurisdiction of a district or metropolitan municipality with five or more traditional councils in accordance with section 48 of the Act.
- (2) The Premier must, by notice in the *Provincial Gazette*, establish a local house for each jurisdictional area of a district or metropolitan municipality with recognised traditional councils in accordance with the Act and Framework Act.

## 5. Membership of a local house

- (1) The members of a local house consist of-
  - (a) kings or queens or their representatives;
  - (b) 60% senior traditional leaders; and
  - (c) 40% headmen or headwomen.
- (2) At least one third of the members of a local house must be women.
- (3) The total number of members of each local house shall be in accordance with the formula determined by the Premier by notice in the *Provincial Gazette*.
- (4) Members of a local house must be elected by an electoral college established within the jurisdiction of a district or metropolitan municipality.
- (5) An electoral college contemplated in subregulation (4) shall consist of candidates (traditional leaders) selected or elected during community meetings (*imbizos*).

- (6) The membership of kings or queens, or their representatives in a local house, shall be in accordance with the formula determined by the Premier.

## **6. Qualification for membership of an electoral college**

A person who qualifies to be a member of an electoral college must be a-

- (a) recognised traditional leader and a member of a traditional council recognised in terms of this Act; and
- (b) king or queen recognised in terms of the Framework Act, or
- (c) representative of the king or queen identified in accordance with regulation 8 (16) of these regulations.

## **7. Selection of candidates to constitute electoral colleges**

- (1) The Premier must, by notice in the *Provincial Gazette*, determine the date on which community meetings (*imbizos*) in all traditional councils in the Province must be held for the purpose of selecting or electing three (3) members of a traditional council to serve as members of an electoral college for a district or metropolitan municipality concerned.
- (2) The chairperson of a traditional council must convene a meeting of all administrative areas under the jurisdiction of a traditional council which must be held on the date determined in terms of subregulation (1).
- (3) The meeting contemplated in subregulation (1) must be presided over by the secretary of a traditional council or any designated person.
- (4) All meetings referred to in subregulation (1) must be held on the same day throughout the Province.
- (5) If a traditional council is unable to meet or comply with the requirement of the date contemplated in subregulation (4), a senior traditional leader of a relevant traditional council may determine a different date for holding of a community meeting (*imbizo*) contemplated in subregulation (1), upon informing and obtaining the approval of the Premier: Provided that such a meeting must be held within seven (7) days of the date determined in accordance with subregulation (1).
- (6) Members of a traditional community must select or elect three (3) traditional leaders who are recognised in terms of this Act as candidates of an electoral college to be established within the jurisdiction of a district or metropolitan municipality concerned: Provided that one (1) of the selected or elected candidates must be a senior traditional leader (head of a traditional council).
- (7) Of the three candidates nominated or elected, one (1) must be a senior traditional leader, and one (1) must be a woman
- (8) Where there are only two (2) or three (3) traditional leaders as members of a traditional council, such traditional leaders must be declared to have been selected or elected as candidates.
- (9) The following procedure must be adhered to when selecting or electing candidates for the purpose of constituting an electoral college:
  - (a) The presiding officer must explain the purpose of the meeting and proceed to read the disqualifying provisions from the Act to all community members present, and ascertain their eligibility to participate in the proceedings of the meeting.
  - (b) Thereafter, he or she must call for the nomination of names of candidates who qualify to be nominated as candidates in terms of section 50 and 51 of the Act.
  - (c) All members of a traditional community must participate in the nomination and selection or election of candidates.

- (d) When conducting the nomination process, the presiding officer must ensure that nominated candidates are broadly representative of the traditional leadership positions, and must also ensure that female representation is achieved.
  - (e) Nomination of candidates must be conducted by show of hands and proceed in the following manner:
    - (i) the presiding officer must call for nominations;
    - (ii) a candidate whose name has been proposed, must be seconded by at least five (5) people in attendance of a community meeting (*imbizo*); and
    - (iii) for a nomination to be accepted, a nominee must accept the nomination.
  - (f) In instances where more than three (3) candidates have been nominated as required by subregulation (7), the presiding officer must call for the election, and voting shall be done by secret ballot.
- (10) The people who have been nominated or selected shall be members of an electoral college in their respective jurisdiction.
  - (11) The names and particulars of the selected or elected candidates must be submitted to the Department through the regional offices of traditional affairs within seven (7) days of the date of the community meeting contemplated in subregulation (1).
  - (12) The Premier must, within fourteen (14) days of receipt of the names and particulars of selected or elected candidates, publish such names and particulars by notice in the *Provincial Gazette* for general information.
  - (13) Candidates of an electoral college within a jurisdiction of a local municipality, kingdom or region may hold meetings to propose and agree on the names of traditional leaders to be elected to a local house as their representatives.
  - (14) A traditional council must not select or elect candidates to participate or become candidates of more than one (1) electoral college.
  - (15) A traditional council that falls within the boundaries of two (2) districts or metropolitan municipalities shall participate in a district or metropolitan municipality under which at least 60% of its administrative areas fall.
  - (16) Where 50% of the administrative areas fall within the boundaries of two (2) districts or metropolitan municipalities, such a traditional council shall participate in the district or metropolitan municipality in which the structure or building of a traditional council is located.

## **8. Election of members of local houses by electoral colleges**

- (1) All electoral colleges must meet on the same date at the seat of a district or metropolitan municipality to elect members of local houses of the district or metropolitan municipalities concerned.
- (2) The Premier must, by notice in the *Provincial Gazette*, determine the date on which electoral colleges must hold meetings contemplated in subregulation (1) for the purpose of electing members of local houses in the Province.
- (3) All meetings contemplated in subregulation (1) must be presided over by the person appointed by the MEC.
- (4) The Head of Department may identify other officials from the Department to assist the presiding officers appointed by the MEC in recording the proceedings of the meeting.
- (5) Each member of an electoral college is entitled to vote in a meeting of the electoral college concerned, and shall be entitled to one vote.



- (6) A presiding officer must outline the manner in which the meeting shall unfold, and be satisfied that all the participants understood the proceedings of the meeting.
- (7) A presiding officer must cause the proceedings of the meeting to be recorded in a manner which he or she deems appropriate.
- (8) A presiding officer must present the formula for the determination of the total number of members of the local house concerned to be elected as determined by the Premier.
- (9) A presiding officer must call for the nomination of candidates from among members of an electoral college.
- (10) Nominations must be made by a show of hands, and must be conducted in the following manner:
  - (a) the presiding officer must call for nomination of candidates;
  - (b) a person nominated as a candidate must be seconded by at least three (3) members of an electoral college representing different traditional councils;
  - (c) a person so nominated must rise and indicate whether he or she accepts or declines the nomination;
  - (d) a nominated candidate may decline his or her nomination at any given time before the voting process commences;
  - (e) if the number of nominated candidates exceeds the total number required for a local house concerned as determined by the Premier, the presiding officer must call for voting; and
  - (f) the voting contemplated in paragraph (e) must be done by secret ballot.
- (11) Voting must be done in the following manner:
  - (a) the presiding officer must prepare ballot papers containing the names of all nominated candidates in alphabetical order in the same print with a space next to the name of each nominee to allow voters to make their cross (X);
  - (b) the presiding officer must mark the back of all ballot papers with the official stamp for voting;
  - (c) each voter must vote by making a cross (X) on the ballot paper next to or opposite the name of the nominee he or she wishes to vote for;
  - (d) after making a cross, the voter must place the ballot paper in the ballot box and, without delay, leave the voting area;
  - (e) the presiding officer must provide ballot boxes and open them before voting commences to demonstrate to the voters that the boxes are empty; and
  - (f) the voting process must continue until all members eligible to vote have voted.
- (12) After all candidates have voted, the presiding officer must hand over the proceedings of the voting to the counting officer for the purpose of counting votes and announcing results.
- (13) The counting officer must, before counting commences, and in the presence of officials identified in terms of subregulation (4) and any other observers, examine whether the seals on the ballot box have not been tampered with.
- (14) Counting must be done in the following manner:
  - (a) the counting officer must ensure that the counting of votes commences as soon as practically possible and continue uninterrupted until completed;
  - (b) after examining the seals, the counting officer must open the sealed ballot box and address any irregularities and discrepancies found, and, if the material appears to have been unlawfully tampered with or is missing, the counting officer must investigate the matter;

- (c) if no discrepancies are found, the counting officer must open the sealed box and proceed as follows:
    - (i) the counting officer must reject a ballot paper that indicates-
      - (aa) the identity of the voter;
      - (bb) a vote cast for more than one candidate;
      - (cc) no mark, or that is marked in such a way that it is not reasonably possible to determine the voter's choice;
      - (dd) that it is not an original ballot paper issued by the presiding officer; and
      - (ee) no official stamp at the back;
    - (ii) the counting officer must-
      - (aa) mark "rejected" on the back of each rejected ballot paper; and
      - (bb) file all rejected ballot papers separately; and
  - (d) the counting must be done manually.
- (15) Announcement of election results must be conducted in the following manner:
- (a) the counting officer must determine the results of the count of all ballot papers cast in the seat of an electoral college concerned, and record the results accordingly;
  - (b) the counting officer must announce the provisional results of the electoral college concerned after completion of the ballot paper statement;
  - (c) once the results of each electoral college have been finalised, the presiding officers must forward the results and election report to the Department; and
  - (d) the Department must gazette names and particulars of the elected members of local houses by notice in the *Provincial Gazette* within fourteen (14) days of the date of receipt of such names: Provided that such gazetting of names and particulars must be done after each local house has selected or elected its representatives to the Provincial House, and vacancies left by the selected or elected representatives have been filled.
- (16) Where the king or queen does not assume his or her seat in the local house and, as such, decides to appoint a representative, the following procedure shall apply:
- (a) the king or queen must, in writing, inform the Premier of the particulars of his or her representative at least three (3) days before the determined date of meetings of electoral colleges;
  - (b) such representative must be a recognised traditional leader and must reside within the jurisdiction of a kingdom concerned;
  - (c) a person serving as a representative of the king or queen in a local house shall not be eligible to be selected or elected as a representative of a local house concerned in the Provincial House;
  - (d) the names and particulars of all representatives must be published by notice in the *Provincial Gazette* together with the names and particulars of elected members of local houses.
- (17) A person representing a king or queen in a local house is responsible for the performance of functions of a local house concerned and is entitled to benefits, allowances and privileges enjoyed by other members of a local house.
- (18) When selecting or electing members of a local house, members of an electoral college must ensure that the list of elected or selected members is double the number of members representing each local municipality in a local house as prescribed in the formula.

- (19) All candidates elect in the reserve list shall be eligible to fill any vacancy in a local house: Provided that a candidate elect obtained the highest number of votes in the elections contemplated in these regulations will fill the vacancy in a local house concerned.
- (20) A traditional leader who has been elected as part of the 20% of traditional leaders participating in a municipal council-
  - (a) may be eligible to be elected as a member of a local house;
  - (b) must, within seven (7) days of the date of election to a local house, resign from a municipal council, and must submit a copy of the resignation letter to the Department.
- (21) If the traditional leader contemplated in subregulation (20) has not resigned and submitted the resignation letter contemplated therein, he or she forfeits membership to the local house.

## **9. Election ties**

- (1) After the counting of all votes, and before the announcement of results at the meeting of an electoral college, election ties shall be resolved by conducting a draw using envelopes with the names of the candidates who are involved in the tie placed therein.
- (2) The draw of an envelope must be presided over and conducted by the presiding officer who will, at his or her discretion, select anyone to pick up an envelope.
- (3) A candidate whose name has been picked first must be declared elected.
- (4) Where the required minimum of one third representation of women has not been reached, the female candidate should be declared elected in order to satisfy the provisions of gender representation as contemplated in the Act: Provided that, where only women candidates are involved in a tie, the draw must still be conducted.
- (5) The results of the draw shall form part of the results announced at an electoral college meeting for that purpose.

## **10. Swearing in of members of local houses**

- (1) Members of a local house must be sworn in by a local magistrate before assuming the functions of a local house.
- (2) Members of local houses must be sworn in within fourteen (14) days of the date of publication of the election results by the Premier by notice in the *Provincial Gazette*.
- (3) A local house must adopt such rules to provide for other positions and subcommittees as may be necessary to conduct its business.

## **11. Vacation of seat by a member of a local house**

- (1) The seat of a member of a local house becomes vacant if the provision of section 53 becomes applicable to such a member.
- (2) A vacancy of a local house must be filled within sixty (60) days

## **12. Filling of vacancy**

- (1) Whenever a seat of a member of a local house becomes vacant, the chairperson of a local house concerned must, within fourteen (14) days, inform the Premier of such vacancy.
- (2) A vacancy which occurs within six (6) months prior to the end of term of office of such a local house shall not be filled.

- (3) When filling any vacancy in a local house, the reserve list of members elect shall be used to obtain a replacement for the vacancy: Provided that the replacement shall be drawn from the affected local municipality (constituency): Provided further that such candidate elect has obtained the highest number of votes in the election contemplated in regulation 8.
- (4) A member elected as a replacement to fill the vacancy shall hold membership for the remainder of his or her predecessor's term of office
- (5) Where there is no person available in the reserve list to take up the membership of a local house in terms of subregulation (3), new elections must be conducted.
- (6) The Premier must, within sixty (60) days of being informed of such vacancy, by notice in the *Provincial Gazette*, convene a meeting of all members of the electoral college concerned for the purpose of electing a replacement.
- (7) Election for the purpose of filling a vacancy shall be conducted in accordance with regulation 8 of these regulations.

### **13. Appointment of presiding and counting officers**

- (1) Whenever a member of a local house is to be elected, the MEC in consultation with the Premier may appoint-
  - (a) departmental officials consisting of general managers and senior managers to preside over the election of members of local houses and count the results of the election process; or
  - (b) officials from other sector departments in the Province to conduct and preside over the elections, as well as count the results of the election process: Provided that it has been proven that there is a lack of capacity or shortage of staff on the part of the Department.
- (2) Appointed presiding and counting officers shall be bound by these regulations in conducting elections, and shall observe all the rules governing the conducting of elections of members of houses of traditional leaders to the extent that they are applicable in the elections.

### **14. Election of representatives to the Provincial House**

- (1) Members of local houses established in terms of section 48 of the Act must meet on the same date at the seat of the district or metropolitan municipality concerned to select or elect representatives to the Provincial House.
- (2) The Premier must, by notice in the *Provincial Gazette*, determine the date on which members of local houses must hold meetings for the purpose of selecting or electing their representatives to the Provincial House.
- (3) The provisions of section 57 of the Act apply for the election of representatives of local houses in the Provincial House of Traditional Leaders.
- (4) When electing or selecting representatives to the Provincial House, members of a local house must ensure that-
  - (a) elected or selected representatives come from different magisterial areas under the jurisdiction of a district or metropolitan municipality;
  - (b) elected or selected members are broadly representative of different tribes falling under the jurisdiction of a district or metropolitan municipality; and
  - (c) a sufficient number of women are elected or selected as part of the representatives to the Provincial House, unless the Premier, after consulting with members of a local house, establishes that there is an insufficient number of women within a local house.

- (5) The total number of members to be elected as representatives of local houses in the Provincial House must be in accordance with the formula determined by the Premier by notice in the *Provincial Gazette* for each local house.
- (6) The provisions of regulation 9 apply with the necessary changes for the appointment of presiding officers.
- (7) The provisions of regulation 8 apply with the necessary changes for the selection or election of representatives of local houses to the Provincial House.
- (8) A chairperson of a local house must submit the names and particulars of the selected or elected representatives of the Provincial House to the Premier.

## **15. Membership and composition of the Provincial House**

- (1) The provisions of section 68 of the Act apply for the membership and composition of the Provincial House of Traditional Leaders in the Province.
- (2) All representatives, as selected or elected by members of local houses, must attend the meeting convened by the Premier on the date and venue determined by him or her for the purpose of the provisions of section 76 of the Act.
- (3) The Premier must, by notice in the *Provincial Gazette*, determine the date on which members of the Provincial House must meet for the purpose of electing the chairperson and deputy chairperson of the Provincial House and representatives to the National House of Traditional Leaders.