



PROVINCE OF THE EASTERN CAPE  
IPHONDO LEMPUMA KOLONI  
PROVINSIE OOS-KAAP

# Provincial Gazette Igazethi Yephondo Provinsiale Koerant

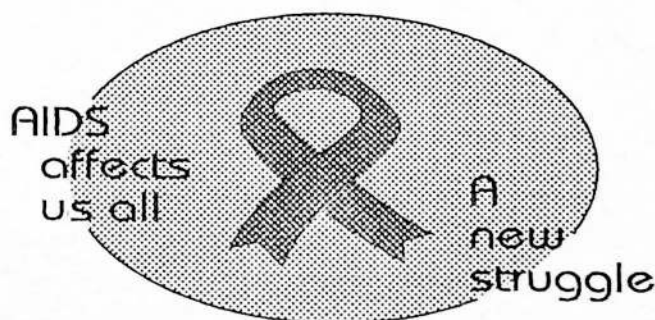
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Vol. 12

BISHO/  
KING WILLIAM'S TOWN, 7 FEBRUARY 2005

**No. 1273**  
(Extraordinary)

**We all have the power to prevent AIDS**



**Prevention is the cure**

**AIDS  
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DEPARTMENT OF HEALTH



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## GENERAL NOTICE

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NOTICE 17 OF 2005

PROVINCE OF THE EASTERN CAPE

PROVINCIAL NOTICE

DEPARTMENT OF HOUSING, LOCAL GOVERNMENT AND TRADITIONAL  
AFFAIRS

NO.

TRADITIONAL LEADERSHIP AND GOVERNANCE BILL, 2004(EASTERN  
CAPE)

The above-mentioned Bill is hereby published for a period of 14 days for comment in terms of the Standing Rules of Procedure of the Eastern Cape Provincial Legislature.

Interested persons are invited to submit their comments to:

The Head of Department  
Department of Housing, Local Government and Traditional Affairs  
Private Bag x0026  
Bisho  
5605

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**PROVINCE OF THE EASTERN CAPE**

**DEPARTMENT OF HOUSING, LOCAL GOVERNMENT AND TRADITIONAL  
AFFAIRS**

**TRADITIONAL LEADERSHIP AND GOVERNANCE BILL, 2004 (EASTERN  
CAPE)**

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*(As introduced)*

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**(BY MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR  
HOUSING, LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS)**

## **BILL**

**To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide a statutory framework for leadership positions within the institution of traditional leadership, the recognition of traditional leaders and the removal from office of traditional leaders; to provide for the functions and roles of traditional leaders; to provide for a code of conduct; and to provide for matters connected therewith.**

## **PREAMBLE**

**WHEREAS** the National Government has, in the White Paper on Traditional Leadership and Governance, set out the norms and standards for, transformation in line with constitutional imperatives and restoration of the integrity and legitimacy of, the institution of traditional leadership in accordance with custom and customary practices;

**AND WHEREAS** the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) was enacted to set norms and standards for traditional leadership and governance throughout the Republic of South Africa;

**AND WHEREAS** there is need for the Government of the Province of the Eastern Cape to enact Provincial legislation within the framework of the Traditional Leadership and Governance Framework Act, 2003 to provide for matters which are peculiar to the Province;

**BE IT THEREFORE ENACTED** by the Legislature of the Province of the Eastern Cape, as follows:—

## **ARRANGEMENT OF SECTIONS**

### **CHAPTER 1**

#### **INTEPRETATION AND APPLICATION**

1. Definitions
2. Interpretation and application
3. Guiding principles
4. Transformation of tribal authorities and areas of jurisdiction

### **CHAPTER 2**

#### **TRADITIONAL COMMUNITIES AND TRADITIONAL COUNCILS**

5. Recognition of traditional communities
6. Establishment and recognition of traditional councils

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7. Designation of chairperson and acting chairperson of traditional council
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9. Functions of traditional councils
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#### ROLES AND FUNCTIONS OF TRADITIONAL LEADERSHIP

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### CHAPTER 6

#### CONDITIONS OF SERVICE

25. Conditions of service of traditional leaders
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**CHAPTER 1****INTERPRETATION AND APPLICATION****Definitions and application**

1. (1) In this Act, unless the context indicates otherwise-

**“code of conduct”** means the national or the Provincial code of conduct contained in Schedule 1;

**“Commission”** means the commission established by section 22 of the Framework Act;

**“customary institution or structure”** means those institutions or structures established in terms of customary law;

**“Framework Act”** means the Traditional Leaders and Governance Framework Act, 2003 (Act No.41 of 2003);

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

**“House of traditional leaders”** means the House of Traditional Leaders as defined in section 1 of the Eastern Cape House of Traditional Leaders Act, 1995(Act No.1 of 1995);

**“iKumkani”** means a **“King”** as defined in section 1 of the Framework Act;

**“iNkosi” or “Morena”** means a **“senior traditional leader”** as defined in section 1 of Framework Act;

**"iNkosana" or "Morenana"** means a headman or headwoman of a traditional community as defined in section 1 of the Framework Act, who is hereditary or non-hereditary;

**"local house of traditional leaders"** means a local house of traditional leaders referred to in section 12;

**"MEC"** means the Member of the Executive Council responsible for traditional affairs in the Province;

**"municipality"** means a municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998(Act No. 117 of 1998);

**"Premier"** means the Premier of the Province;

**"prescribed"** means prescribed by regulations in the *Gazette*;

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

**"regent"** means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position in a temporary capacity until a successor to that position who is a minor, is recognized as contemplated in section 18;

**"Remuneration Act"** means the Remuneration of Public Office Bearers Act, 1998(Act No. 20 of 1998);

**"royal family"** means the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community, who have been identified in terms of custom, and includes, where applicable, other family members who are close relatives of the ruling family;

**"this Act"** includes regulations made hereunder;

**"traditional community"** means a traditional community recognised as such in terms of section 2;

**"traditional council"** means a council established in terms of section 3;

**"traditional leader"** means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position as iKumkani, iKumkanikazi, iNkosi or iNkosana, and is recognized in terms of this Act;



**"traditional leadership"** means the customary institutions or structures, or customary systems or procedures of governance, recognised, utilised or practised by traditional communities;

**"tribe"** means a tribe that was established or recognised under legislation in force before the commencement of this Act;

**"ubuKhosana"** means headmanship as determined in accordance with custom;

**"ubuKhosi"** means chieftainship as determined in accordance with custom; and

**"ubuKumkani"** means kingship as determined in accordance with custom.

### **Interpretation and application**

2. (1) This Act is subject to the Constitution, the Framework Act and the Remuneration Act.

(2) Any word or expression to which a meaning has been assigned in the Framework Act bears the meaning so assigned, unless the context indicates otherwise.

(3) Nothing contained in this Act may be construed as precluding members of a traditional community from addressing a traditional leader by the traditional title accorded to him or her by custom, but such traditional title does not derogate from, or add anything to, the status, role and functions of a traditional leader as provided for in this Act.

(4) Traditional leaders may acknowledge or recognise the different levels of seniority among themselves in accordance with customs, and none of the definitions contained in subsection (1) must be construed as conferring, or detracting from, such seniority.

(5) Customs, traditions or customary laws relating to traditional leadership continue to operate, subject to the Constitution, the Framework Act and this Act.

### **Guiding principles**

3. (1) The State must respect, protect and promote the institution of traditional leadership in accordance with the dictates of democracy in South Africa.

(2) The institution of traditional leadership must be transformed to be in harmony with the Constitution and the Bill of Rights so that -

- (a) democratic governance and the values of an open and democratic society may be promoted; and

- (b) gender equality within the institution of traditional leadership may progressively be advanced.
- (3) The institution of traditional leadership must -
  - (a) promote freedom, human dignity and the achievement of equality and non-sexism;
  - (b) derive its mandate and primary authority from applicable customary law and practices;
  - (c) strive to enhance tradition and culture;
  - (d) promote nation building and harmony and peace amongst people;
  - (e) promote the principles of cooperative governance in its interaction with all spheres of government and organs of state; and
  - (f) promote an effective and fair dispute resolution system, and a fair system of administration of justice, as envisaged in applicable legislation.

#### **Transformation of tribal authorities and areas of jurisdiction**

4. (1) From 24 September 2004, all tribal authorities must be transformed into traditional councils in accordance with section 28(4) of the Framework Act.
- (2) The boundaries of the councils referred to in subsection (1) are those that existed in respect of the former tribal authorities prior to 24 September 2004.
- (3) The Premier may alter the boundaries of any traditional council referred to in subsection (1) in accordance with prescribed procedures.

## **CHAPTER 2**

### **TRADITIONAL COMMUNITIES AND TRADITIONAL COUNCILS**

#### **Recognition of traditional communities**

5. (1) The Premier may, subject to the provisions of subsection (2), recognize a community as a traditional community if it—
- (a) is subject to a system of traditional leadership in terms of that community's customs; and

(b) observes a system of customary law.

(2) (a) The Premier must, by notice in a local newspaper with wide circulation in the Province or area of the Province concerned, or by such other form of communication as determined by him or her, and after consultation with the Provincial House of Traditional Leaders, the community concerned, and the king or queen under whose authority that community falls, publish his or her intention to recognise a community envisaged in subsection (1) as a traditional community.

(b) The Premier must, in the notice contemplated in subsection (1), invite interested parties to submit their comments to him or her within such period as prescribed.

(c) The Premier must consider the comments submitted to him or her in terms of paragraph (b) and take a decision regarding the recognition of the traditional community.

(d) The Premier may, subject to the provisions of this Act and the Framework Act, after consideration of the comments referred to in paragraph (c), by notice in the *Gazette*, recognize a community as a traditional community.

#### **Establishment and recognition of traditional councils**

6. (1) Once the Premier has recognised a traditional community in terms of section 2, that traditional community must establish a traditional council in terms of subsection (2).

(2) (a) A traditional council must have no less than 9 and no more than 30 members, depending on the needs of the traditional community concerned.

(b) A third of the members of a traditional council must be women.

(c) The members of a traditional council must comprise—

- (i) traditional leaders and members of the traditional community selected by the relevant iNkosi in terms of that community's customs subject to such conditions and requirements as may be prescribed, taking into account the need for overall compliance with paragraph (b); and
- (ii) other members of the traditional community who are democratically elected as prescribed for a term of five years, and who must constitute 40% of the members of the traditional council.

- (d) Where it has been proved that an insufficient number of women are available to participate in a traditional council, the Premier may prescribe a lower threshold regarding the requirements of paragraph (b).
  - (e) The member of the Traditional council appointed under paragraph (c)(i) shall hold office for a period of five years.
- (3) The members of the traditional council shall be persons who –
- (a) are above the age of 21;
  - (b) have no criminal record;
  - (c) are not solvent;
  - (d) are South African Citizens; and
  - (e) reside within the jurisdiction of the traditional council.
- (4) The seat of the traditional council shall be the place selected by the chairperson of the traditional council with the approval of the Premier.
- (5) A traditional community recognized in terms of section 2 must submit to the Premier the names of members of its traditional council, and the Premier must, by notice in the *Gazette*, recognise such a traditional council within a defined area of jurisdiction.
- (6) Before members of the traditional council begin to perform their functions in terms of this Act, they must swear or affirm faithfulness to the traditional council.

**Designation of chairperson and acting chairperson of a traditional council**

7. (1) The members of a traditional council must, from amongst their number –
- (a) designate an iNkosi as the chairperson; or
  - (b) where there is no iNkosi in the traditional council, designate an iNkosana as chairperson.
- (2) The member designated in terms of subsection (1) must serve as chairperson for a period of three years.
- (3) The traditional council may –
- (a) in the event that the chairperson is unable to serve as such, designate any other member as the chairperson; or

- (b) in the event that the chairperson is absent from a meeting of the traditional council, designate any other member as an acting chairperson.

#### **Vacation of seat by member of traditional council**

8. (1) The seat of a member of a traditional council shall become vacant -
- (a) if he or she dies; or
  - (b) if he or she ceases to be a South African citizen; or
  - (c) if he or she fails to attend three consecutive meetings of the traditional council without its special leave; or
  - (d) if he or she is absent from the traditional community for longer than six months without the special leave of the traditional council; or
  - (e) if he or she resigns his or her seat.
- (2) A vacancy amongst -
- (a) the selected members of the traditional council must be filled within ninety days of the vacancy occurring by the iNkosi concerned in accordance with custom; or
  - (b) the elected members of a traditional council must be filled within ninety days of a vacancy occurring by electing members of the traditional community in terms section 6(2)(c)(ii).
- (3) The filling of vacancies for both the selected and elected members of the traditional council must be facilitated by the Department.

#### **Functions of traditional councils**

9. (1) A traditional council has the following functions:
- (a) Administering the affairs of the traditional community in accordance with customs and tradition;
  - (b) Assisting, supporting and guiding traditional leaders in the performance of their functions;
  - (c) Supporting municipalities in the identification of community needs;



- (d) Facilitating the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose area that community resides;
- (e) Recommending, after consultation with the relevant local and provincial houses of traditional leaders, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;
- (f) Participating in the development of policy and legislation at local level;
- (g) Participation in development programmes of municipalities and of the provincial and national spheres of government;
- (h) Promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
- (i) Promoting indigenous knowledge systems for sustainable development and disaster management;
- (j) Alerting any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction, and contributing to disaster management in general;
- (k) Sharing information and co-operating with other traditional councils; and
- (l) Performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.
- (m) Perform such other duties as required by applicable legislation including keeping an eye on-
  - (i) school buildings and community halls;
  - (ii) hospitals and clinics;
  - (iii) fencing,within their areas of jurisdiction;

- (n) to assist the South African Police Services in the prevention of crime.
- (2) In the execution of the functions listed in subsection (1) the traditional council must -
  - (a) keep proper records of its activities and accounts as prescribed;
  - (b) have its financial statements audited;
  - (c) disclose the receipt of gifts; and
  - (d) adhere to the code of conduct.

### **Meetings of traditional councils**

10. (1) Meetings of traditional councils must be held in accordance with such procedures and requirements as determined by it: Provided that such meetings must not be less than once per month.

(2) Decisions of a traditional council must be taken by a majority of fifty percent plus one of the members.

(3) The chairperson must, subject to the provisions of section 4(3)(a) and (b), preside over the meetings of the traditional council.

(4) The chairperson of a traditional council must ensure that minutes of meetings of the traditional council are kept.

### **Meeting of traditional leaders**

11. (1) An iKumkani or iKumkanikazi may hold meetings with iiNkosi and iiNkosana who fall under his or her authority, to discuss matters affecting traditional communities.

(2) An iNkosi must once per month hold one meeting with each iNkosana at the iNkosana's seat.

(3) The iNkosana must hold one meeting per month at the localities that fall under his or her jurisdiction.

(4) The iNkosi must table a report of the meetings that he has held with the iNkosana at the traditional council meeting.

(5) The iNkosana must table a report of the meetings he or she has held at the localities at the meeting with the iNkosi.

(6) At any time the chairperson may, and shall when so required by the Premier or not less than one-third of the total number of members of the traditional council, call a special meeting of the traditional council.

(7) No business other than that specified in the notice shall be dealt with at a special meeting.

(8) The chairperson of the traditional council shall give notice to every member –

- (a) of the day and hour appointed for the holding of ordinary meetings and such member shall be required to attend such ordinary meetings without further notice;
- (b) of the day and hour of any special meeting and shall specify the purpose of the meeting.

(9) The traditional council may make rules for regulating the proceedings and for preserving order at meetings of the traditional council or any committee, with power to exclude offending members.

#### **Staff of traditional councils**

12. (1) A traditional council may, with the approval of the relevant head of department, appoint such staff as may be necessary to perform the functions assigned to a traditional council in terms of this Act or any other law.

(2) A person referred to in subsection (1) must be appointed on such conditions, including remuneration, as may be determined by the Premier after consultation with traditional councils in the Province.

(3) The relevant head of a Provincial department may second any officer or employee in his or her department, or of the Provincial administration, to assist the traditional council in the execution of its functions, and may withdraw such secondment at any time.

(4) Any person referred to in subsection (3) must, whilst so seconded, remain subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

#### **Withdrawal of recognition of traditional communities**

13. (1) The Premier may consider withdrawal of the recognition of a community as a traditional community as provided for in section 2, only where—

- (a) the community concerned requests that its

recognition as a traditional community be withdrawn;

- (b) a community or communities that was or were divided or merged prior to 1994 in terms of applicable legislation requests the Provincial government to review the position of such community or communities; or
- (c) two or more communities so recognized in terms this Act, request the Premier that they be merged into a single traditional community.

(2) (a) The recognition of a traditional council must be withdrawn at the same time that the recognition of its traditional community is withdrawn as provided for in subsection (3).

(b) The Premier may upon a request contemplated in subsection (1), consult with the Provincial House of Traditional Leaders, any community that may be affected, and, if applicable, the king or queen under whose authority such a community falls, before the withdrawal of the recognition of a traditional community may be effected.

(3) The Premier must consider the request referred to in subsection (1)(a), (b) and (c) and must, subject to the provisions of this Act—

- (a) decide to refuse or grant a request for withdrawal of recognition of a traditional community or communities;
- (b) where the Premier has decided to refuse to grant a request, he or she must in writing advise such community or communities of his or her decision; and
- (c) where the Premier has decided to grant a withdrawal of recognition, he or she must, by notice in the Gazette, withdraw or merge the community or communities concerned.

(4) The Premier must, in terms of section 2, consider the recognition of a separate traditional communities or a merged traditional community where a review of the division or merger of communities envisaged by subsection (1)(b) indicates that newly constituted traditional communities must be recognised.

#### **Admission of individuals into existing traditional communities**

14. (1) Any person may, after following the customary rules or practices of a particular traditional community, be admitted into a traditional community.

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(2) In line with the rights accorded to citizens of South Africa in terms of section 21 of the Constitution, no citizen may be refused the right to reside in the area of any traditional community.

### CHAPTER 3

#### CO-OPERATIVE GOVERNANCE

##### Partnerships between traditional councils and municipalities

15. (1) Traditional councils may enter into partnership agreements with municipalities in order to give effect to the provisions of this Act and to perform their functions in terms of this Act.

(2) Any partnership agreement between a municipality and a traditional council must—

- (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and
- (b) be guided by and based on the principles of co-operative governance.

(3) A traditional council may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and any other applicable legislation.

##### Capacity development for traditional councils

16. The Department must within a period of six months from the date of recognition of a traditional council in terms of section 3 –

- (a) assess the training needs of the members of such traditional council; and
- (b) provide or cause training to be provided to the members of the traditional council;
- (c) monitor the work of traditional councils using such mechanisms as may be prescribed.

##### Trans-provincial issues

17. The Provincial Government may enter into an agreement with any other provincial government on matters of a mutual nature relating to traditional leadership and traditional communities operating within, or resident in, the two provinces.



## CHAPTER 4

## RECOGNITION AND REMOVAL OF TRADITIONAL LEADERS

## Recognition of an iNkosi or iNkosana

18. (1) Whenever the position of an iNkosi or iNkosana is to be filled—
- (a) the royal family concerned must subject to such conditions and procedure as prescribed, within sixty days after the position becomes vacant, and with due regard to applicable customary law—
    - (i) identify a person who qualifies in terms of customary law to assume the position in question, after taking into account whether any of the grounds referred to in section 14(1)(a), (b) and (d) apply to that person; and
    - (ii) through the relevant customary structure, inform the Premier of the particulars of the person so identified to fill the position and of the reasons for the identification of that person; and
  - (b) The Premier must, subject to subsection (3), by notice in the *Gazette*, recognise the person so identified by the royal family as an iNkosi or iNkosana, as the case may be.
  - (c) Before a notice recognizing an iNkosi or iNkosana is published in the *Gazette*, the Premier must inform the Provincial House of Traditional Leaders of such recognition.
  - (d) The Premier must, within a period of thirty days after the date of publication of the notice recognizing an iNkosi or iNkosana issue to the person who is identified in terms of paragraph (a)(i), a certificate of recognition.
- (2) Where the Premier has received evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with the provisions of this Act, customary law or customs the Premier—
- (a) may refer the matter to the Provincial House of Traditional Leaders 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.

(3) Where a 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.

#### **Misconduct of iNkosi or iNkosana**

**19.** (1) Whenever there is reason to believe that an iNkosi or iNkosana has committed an act of misconduct, in that he or she -

- (a) fails or refuses to comply with any provision of this Act or of any other law with which it is his or her duty to comply;
- (b) disobeys, disregards or makes willful default in carrying out a lawful order given to him or her by a person having authority to give it, or by conduct displays insubordination;
- (c) conduct himself or herself in a disgraceful, improper or unbecoming manner;
- (d) uses intoxicants or stupefying drugs excessively;
- (e) abuses his or her powers or extorts, or by the uses of compulsion or arbitrary means obtains, any tribute, fee, reward or present;
- (f) tries or punishes any person without being duly authorized thereto by or under any law;
- (g) becomes a member or takes part in the affairs of an organization or association whose objects are subversive of or prejudicial to constituted government or law and order;
- (h) is negligent or indolent in the discharge of his or her duties; or
- (i) has, without the special leave of the traditional council of which he or she is the member, failed or neglected to attend three consecutive or ordinary meetings of such council,

the chairperson of the traditional council or Royal family may charge him or her in writing with such misconduct, appoint an officer to enquire into the matter and give such

instructions in regard to the enquiry, at which the iNkosi or iNkosana shall be entitled to be heard as he or she may deem fit.

(2) The officer holding the enquiry shall –

- (a) keep a record of the proceedings;
- (b) at the conclusion of the enquiry, find whether the iNkosi or iNkosana is guilty or not guilty of the misconduct and inform him of his finding; and
- (c) forward to the traditional council the record of the proceedings, a statement of his finding, the reasons therefore, and any observations which he or she might wish to make (hereinafter referred to as the “record of the enquiry”).

(3) if the officer has found the iNkosi or iNkosana guilty of misconduct the traditional council shall within a period of three months –

- (a) caution or reprimand the iNkosi or iNkosana;
- (b) impose on him or her a fine not exceeding one hundred rand, payable or recoverable from his salary or other remuneration; or
- (c) suspend him or her from office with or without salary or other remuneration for a period not exceeding two years.

#### **Removal of iNkosi or iNkosana**

20. (1) An iNkosi or iNkosana 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 that iNkosi or iNkosana 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 –

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- (a) the royal family and the royal family decides to remove an iNkosi or iNkosana, the royal family concerned must, within a reasonable time and through the relevant customary structure—
    - (i) inform the Premier of the particulars of the senior the iNkosi or iNkosana to be removed from office; and
    - (ii) furnish reasons for such removal;
  - (b) any person, such a person must inform the Premier and the Premier must —
    - (i) refer the matter to the royal family under whose jurisdiction the iNkosi or iNkosana falls, for an investigation and a decision, and a report thereon; and
    - (ii) consider the report contemplated in sub-paragraph (i) and act in terms of subsection (3).
- (3) Where it has been decided by a royal family to remove an iNkosi or iNkosana in terms of subsection (2), the Premier must —
- (a) advise the iNkosi or iNkosana of such decision and, in writing, call upon such iNkosi or iNkosana to make representations to him or her why the decision to remove him or her should not be given effect to;
  - (b) consider the representations submitted to him or her and withdraw the certificate of recognition with effect from the date of removal if the decision to remove him or her is in accordance with custom;
  - (c) inform the royal family concerned, the removed iNkosi iNkosana, and the provincial house of traditional leaders concerned, of such removal;
  - (d) publish a notice with particulars of the removed iNkosi or iNkosana in the *Gazette*.
- (4) Where an iNkosi or iNkosana is removed from office, a successor in line with custom may assume the position, role and responsibilities, subject to the provisions of this Act.

### Recognition of regents

21. (1) Where a royal family has identified the successor to the position of iKumkani, iKumkanikazi, iNkosi or iNkosana who is a minor in terms of applicable customary law or customs and advised the Premier, the Premier must —

- (a) within a reasonable time, by notice in the *Gazette*, recognise the person so identified by the royal family as a regent;
- (b) before a notice recognizing a regent is published in the *Gazette*, inform the Provincial House of Traditional Leaders of such recognition;
- (c) The Premier must, within a period of thirty days after the date of publication of the notice recognizing a regent issue to the person who is identified in terms of paragraph (a)(i), a certificate of recognition; and
- (d) three months before the end of every three year period review the recognition of a regent.

(3) Where there is evidence or an allegation that the identification of a person as regent was not done in accordance with customary law, customs or processes, the Premier—

- (a) may refer the matter to the relevant provincial house of traditional leaders 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.

(4) 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 recognize the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family have been done in accordance with customary law.

(5) As soon as the successor to the position of iKumkani, iKumkanikazi, iNkosi, iNkosana ceases to be a minor in terms of customary law -

- (a) the regent recognised in terms of subsection (1) must relinquish his or her position as regent, and



- (b) in the case of an iNkosi or iNkosana, a certificate of recognition contemplated in section 12 must be issued by the Premier after his or her name has been published in the *Gazette*.

(6) Where a regent has been recognised in respect of the position of an iKumkani or iKumkanikazi, the Premier must inform the President—

- (a) of the particulars of the regent;
- (b) when the regent is supposed to relinquish his or her position as regent; and
- (c) of the withdrawal of the recognition of the regent.

**Persons acting as iKumkani, iKumkanikazi, iNkosi or iNkosana**

22. (1) A Royal family may identify a suitable person to act as iKumkani, iKumkanikazi, iNkosi or iNkosana as the case may be, where—

- (a) the successor to the position of iKumkani, iKumkanikazi, iNkosi or iNkosana has not been identified by the Royal family concerned;
- (b) the identification of a successor to the position of iKumkani, iKumkanikazi, iNkosi or iNkosana is being considered and not yet resolved;
- (c) the iKumkani, iKumkanikazi, iNkosi or iNkosana, as the case may be, is absent from his or her area under the following circumstances for a period of more than six months due -
  - (i) to illness;
  - (ii) for study purposes;
  - (iii) to any other lawful purpose;
- (d) through the relevant structure, it has informed the Premier of the particulars of the person so identified to act as the iKumkani, iKumkanikazi, iNkosi or iNkosana and the reason of the identification of that person.

(2) The Premier must by notice in the *Gazette* recognize the person so identified by the Royal Family as acting iKumkani, iKumkanikazi, iNkosi or iNkosana as the case may be.

(3) Before a notice recognizing an acting iKumkani, iKumkanikazi, iNkosi or iNkosana is published in the *Gazette*, the Premier must inform the Provincial House of Traditional Leaders of such recognition.

(4) The Premier must within the period of 30 days after the date of publication of the notice recognizing the acting iKumkani, iKumkanikazi, iNkosi or iNkosana issue to the person who is identified with a certificate of recognition.

(5) The Premier must every six months review the acting appointment.

(6) The procedure for the removal of an acting person shall be in terms of section 11.

(7) Where an acting person has been recognized in respect of the position of an iKumkani or iKumkanikazi, the Premier must inform the President –

- (a) of the particulars of the acting person; and
- (b) of the withdrawal of the recognition of the acting person.

(8) A person who has been appointed as an acting iKumkani, iKumkanikazi, iNkosi or iNkosana may perform the functions that are attached to ubuKumkani, ubuKhosi or ubuKhosana in question.

#### **Deputy traditional leaders**

23. (1) An iKumkani, iKumkanikazi, iNkosi or iNkosana as the case may be, may, after consultation with the royal family, appoint a deputy to act in his or her stead whenever that iKumkani, iKumkanikazi, iNkosi or iNkosana –

- (a) becomes a full-time member of a municipal council;
- (b) is elected as a member of a provincial legislature;
- (c) is elected as a member of the National Assembly;
- (d) is appointed as a permanent delegate in the National Council of Provinces; or
- (e) is elected to, or appointed in, a full – time position in any house of traditional leaders.

(2) Where a Royal family has appointed a Deputy to act in the position of an iKumkani, iKumkanikazi, iNkosi or iNkosana in terms of applicable customary law or customs and advised the Premier, the Premier must –

- (a) within a reasonable time by notice in the *Gazette* recognize the person so appointed by the Royal family as a Deputy;
  - (b) before the notice recognizing a Deputy is published in the *Gazette*, inform the Provincial House of Traditional Leaders of such recognition;
  - (c) within a period of 30 days after the date of publication of the notice recognizing the Deputy issue to the person who is identified in terms of paragraph (i), a certificate of recognition;
- (3) The recognition contemplated in subsection (2) lapses at the end of the membership, appointment or election contemplated in subsection (1).
- (4) The Deputy iKumkani, iKumkanikazi, iNkosi or iNkosana may be removed from office on the same grounds and following the same procedure as in section 14.
- (5) A person who has been appointed as a Deputy may perform the same functions that are attached to ubuKumkani, ubuKhosi or ubuKhosana in question.
- (5) Where a deputy has been recognized in respect of the position of an iKumkani or iKumkanikazi, the Premier must inform the President -
- (a) of the particulars of the deputy;
  - (b) when the deputy is supposed to relinquish his or her position as a deputy; and
  - (c) of the withdrawal of the recognition of the deputy.

## CHAPTER 5

### ROLES AND FUNCTIONS OF TRADITIONAL LEADERSHIP

#### Roles and functions

24. (1) A traditional leader performs the functions provided for by the customs and customary law of the traditional community concerned, in this Act, in the Framework Act and in other applicable legislation.

(2) A traditional leader performs such additional functions as may be assigned by the National Government or the Provincial Government in terms of section 20 of the Framework Act.

(3) A traditional leader may -

- (a) report to the competent authorities any matter which, in the public interest, ought to be reported to such authorities;
- (b) disseminate official information to the community on matters affecting the community;
- (c) convene imbizo to discuss matters which the community has an interest in; and
- (d) promote the interests of the community and take steps to promote the advancement of the traditional community.

## CHAPTER 6

### CONDITIONS OF SERVICE

#### Conditions of service of traditional leaders

25. Traditional leaders and members of the Provincial and Local Houses of Traditional Leaders must be paid such salaries and allowances as determined by the President in terms of the Remuneration of Public Office Bearers Act, 1998(Act No.20 of 1998).

#### Allowances for members of traditional councils

26. (1) A member of a traditional council must be paid such allowances as may be prescribed.

(2) A member of a traditional council who is in the full-time employment of the state is not entitled to the allowances contemplated in subsection (1), but is entitled to such benefits as his or her conditions of service provide for.

#### Code of conduct

27. The Code of Conduct contained in the Schedule apply to every traditional leader and traditional council in the Province.

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## CHAPTER 7

### FINANCIAL MATTERS

#### Funding

28. The moneys required for the performance of the powers and duties of traditional leaders and institutions in terms of this Act must be paid out of the funds appropriated by the Legislature for this purpose.

#### Funds of traditional councils

29. (1) Funds a traditional council consist of –

- (a) all monies which in accordance with the customs and customary law of the traditional community concerned are payable to the traditional council;
- (b) fines collected by a traditional leader or traditional council in accordance with the traditional community's customs and customary law;
- (c) all monies derived from any property in the possession of the traditional community concerned;
- (d) any donations made by any person for the benefit of the traditional community concerned which the donor had directed should be deposited into the account of a traditional council; and
- (e) any monies paid to the traditional council under this Act or any other law.

(2) The funds referred to in subsection (1) must be utilized for such purposes as may be prescribed.

#### Levies

30. A traditional council may not impose any levy on any member of the traditional community or on any section of the traditional community.

#### Voluntary contributions

31. (1) A traditional council may request members of a traditional community, or any section of a traditional community, to make voluntary contributions.

(2) No such contribution must be collected unless the majority of the members of such traditional community have, at a meeting convened for the purpose consented to the payment of such voluntary contribution.



(3) Such voluntary contributions must only be made for purposes of financing a specific project.

### **Financial control and accountability**

32. (1) The Public Finance Management Act, 1999(Act No. 1 of 1999), applies to the management of the funds referred to in sections 28 and 29.

(2) Traditional councils must keep such books of account as may be prescribed, and such books must be audited by the Auditor-General.

(3) The person who must account for the funds of the traditional council must be designated by the Premier after consultation with the traditional council concerned.

## **CHAPTER 8**

### **GENERAL**

#### **Implementation of decisions of Commission**

33. (1) The Premier must, within 30 days of the receipt of the decision of the Commission, inform the Provincial House of Traditional Leaders and the relevant local houses of traditional leaders of the decision, and if such decision relates to a dispute which affects a traditional community or council, inform the traditional council or community, as the case may be.

(2) The Premier must, within a reasonable period, implement the decision of the Commission.

#### **Delegation**

34. (1) The Premier may, subject to such conditions as he or she may determine and writing, delegate any powers conferred on him or her by this Act, except the power to make regulations, to a member of the Executive Council of the Province.

(2) The delegation referred to in subsection (1) does not preclude the Premier from exercising any such delegated power.

(3) The Premier may set aside, amend or withdraw, at any time, any decision of the delegate made in the exercise of such power.

### Regulations

35. The Premier may, after consultation with the Provincial House of Traditional Leaders, make regulations relating to -

- (a) any matter which in terms of this Act is required or permitted to be prescribed; and
- (b) in general, any matter which is considered necessary or expedient to prescribe for achieving the objects of this Act, including rules for the conduct of meetings of traditional councils.

### Dissolution of community authorities

36. (1) The Premier, must in the *Gazette*, within one year of the commencement of this Act, disestablish any regional authority, tribal authority or community authority that have been established in terms of applicable legislation before the commencement of this Act.

(2) The notice disestablishing a regional authority, tribal authority or community authority must regulate the legal, practical and other consequences of the disestablishment, including -

- (a) the transfer of assets, liabilities and administrative and other records to an appropriate Provincial department, a municipality or local house of traditional leaders, as the circumstances may require;
- (b) the vacation of any office of any office-bearer of such regional authority, tribal authority or community authority; and
- (c) the transfer of staff of such regional authority, tribal authority or community authority.

### Repeals and savings

37. (1) The laws listed in Column 1 of Schedule 2 are hereby repealed to the extent indicated in Column 2 thereof.

(2) Despite the repeal of laws referred to in subsection (1), anything or act done in terms of such laws must be deemed to have been done in terms of the corresponding provisions of this Act.

### Short title and commencement

38. This Act is called the Eastern Cape Traditional Leadership and Governance Act, 2004, and comes into operation on a date determined by the Premier by proclamation in the *Gazette*.

## Code of conduct

1. A traditional leader -

- (a) must perform the functions allocated to him or her in good faith, diligently, honestly and in a transparent manner;
- (b) must fulfill his or her role in an efficient manner;
- (c) may not conduct himself or herself in a disgraceful, improper or unbecoming manner;
- (d) must comply with any applicable legislation;
- (e) must act in the best interest of the traditional community or communities he or she serves;
- (f) must promote unity amongst traditional communities;
- (g) may not embark on actions that would create division within or amongst traditional communities;
- (h) must promote nation building;
- (i) may not refuse to provide a service to a person on political or ideological grounds;
- (j) must foster good relations with the organs of state with whom he or she interacts;
- (k) must promote the principles of a democratic and open society; and
- (l) must disclose gifts received.

2. A traditional council must -

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- (a) perform the functions allocated to it in good faith, diligently, honestly and in a transparent manner;
- (b) execute its duties in an efficient manner;
- (c) comply with any applicable legislation;
- (d) act in the best interest of the traditional community it serves;
- (e) give effect to the principles governing public administration set out in section 195 of the Constitution; and
- (f) foster good relations with the organ of state which whom it interacts.

**SCHEDULE 2****LAWS REPEALED**

<b>ACT</b>	<b>EXTENT OF REPEAL</b>
1. Black Administration Act, 1927(Act No. 38 of 1927)	Section 1 and 2 (7), (7) bis, (7) ter and (8)
2. Black Authorities Act, 1951(Act No. 68 of 1951)	The whole
3. Proclamation No. R 110 of 1957 (Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service of Chiefs and Headmen)	The whole
4. Transkeian Authorities Act, 1965(Act No. 4 of 1965)	The whole
5. Proclamation No. 118 of 1969 (land Regulations)	The whole
5. Republic of Transkei Constitution Act, 1976(Act No. 15 of 1976	Section 66 and Schedules 4 and 10
6. Administrative Authorities Act, 1984 (Act No. 37 of 1984)(Ciskei)	The whole



## EXPLANATORY MEMORANDUM ON THE TRADITIONAL LEADERSHIP AND GOVERNANCE BILL, 2004 (EASTERN CAPE)

### PART A

#### (General principles)

##### Background

The Traditional Leadership and Governance Bill, 2004 (Eastern Cape) flows from the White Paper on Traditional Leadership and Governance developed by the Department of Provincial and Local Government in consultation with provinces and finally approved by National Cabinet. The Department of Provincial and Local Government then developed, introduced a Bill which culminated in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) (hereinafter referred to as the "Framework Act").

The Framework Act provides for provinces to develop their own legislation which is consistent with the provisions thereof. The Department of Housing, Local Government and Traditional Affairs (hereinafter referred to as the "Department") developed its own Provincial Bill on traditional leadership and institutions.

##### Policy context

The Bill provides for the recognition of traditional communities, traditional councils, statutory framework for leadership positions within the institution of traditional leadership, traditional leaders and their removal from the institution. The Bill also provides for the functions and roles of traditional leadership and the code of conduct for traditional leaders.

##### Constitutional implications

The Traditional Leadership and Governance Bill falls within Schedule 4 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), which is an area of concurrent legislative competence between National Government and the provinces.

##### Consultations

Stakeholder	Contact person	Address	Comment	Response
Eastern Cape House of Traditional Leaders	Prince Burns-Ncamashe	House of traditional leaders, Industrial	Recognition of Sub-headmen (OoNozithetyana/IiNduna) as part	In line with the Framework Act, Sub-

		Showgrounds	of traditional leadership	headmen are not formally recognised
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## PART B

### (Clause-by-clause analysis)

- Clause 1 - provides definitions
- Clause 2 - provides for interpretation and application
- Clause 3 - provides guiding principles
- Clause 4 - provides for transformation of tribal authorities and areas of jurisdiction
- Clause 5 - provides for recognition of traditional communities
- Clause 6 - provides establishment and recognition of traditional councils
- Clause 7 - provides for designation of chairperson and acting chairperson Of traditional council
- Clause 8 - provides for vacation of seat by member of traditional council
- Clause 9 - sets out the functions of the traditional council
- Clause 10 - provides for meetings of the traditional councils
- Clause 11 - provides for meetings of traditional leaders
- Clause 12 - provides for the staff of traditional councils
- Clause 13 - provides for withdrawal of recognition of traditional Communities
- Clause 14 - provides for admission of individuals into existing traditional Communities
- Clause 15 - provides for partnership between traditional councils and Municipalities
- Clause 16 - provides for capacity development for traditional councils

- Clause 17 - provides for trans-provincial issues
- Clause 18 - provides for recognition of an iNkosi or iNkosana
- Clause 19 - provides for misconduct of iNkosi or iNkosana
- Clause 20 - provides for removal of an iNkosi or iNkosana
- Clause 21 - provides for recognition of regents
- Clause 22 - provides for persons acting as iKumkani, iKumkanikazi, iNkosi or iNkosana
- Clause 23 - provides for deputy traditional leaders
- Clause 24 - provides for roles and function of traditional leadership
- Clause 25 - provides for conditions of service of traditional leaders
- Clause 26 - provides for allowances for members of traditional councils
- Clause 27 - provides for code of conduct
- Clause 28 - provides for funding of traditional councils
- Clause 29 - provides for funds of traditional councils
- Clause 30 - provides for levies
- Clause 31 - provides for voluntary contribution
- Clause 32 - provides for financial control and accountability
- Clause 33 - provides for implementation of decisions of Commission
- Clause 34 - provides for delegation
- Clause 35 - provides for regulations
- Clause 36 - provides for dissolution of community authorities
- Clause 37 - provides for repeal and savings
- Clause 38 - sets out the short title of the Bill

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