

Limpopo, South Africa

## Limpopo Initiation Schools Act, 2016

Act 6 of 2016

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# Limpopo South Africa

## Limpopo Initiation Schools Act, 2016

Act 6 of 2016

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## ACT

To regulate initiation school customs and traditions of traditional communities in the province, to repeal the Limpopo Province Circumcision Schools Act, 1996 (**Act No. 6 of 1996**); and to provide for matters connected therewith.

BE IT ENACTED by the Limpopo Provincial Legislature as follows:—

### 1. Definitions

In this Act, unless the context indicates otherwise—

"**authorised officer**" means the head of the department responsible for traditional affairs or any person delegated by the head of department to perform a function in terms of this Act;

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

"**environmental officer**" means an official designated by the head of the department responsible for environmental matters in the province;

"**health practitioner**" means a health practitioner as defined in the Health Professions Act, 1974 ([Act No. 56 of 1974](#), as amended)

"**initiate**" means a person attending an initiation school in order to undergo traditional practices and rituals in accordance with applicable customs and traditions of the traditional community concerned;

"**initiation surgeon**" means a person, registered in the prescribed manner in the register of surgeons, who is culturally trained in performing traditional practices and rituals;

"**law enforcement agencies**" includes SAPS, provincial or municipal traffic officers and the municipal police;

"**Local House**" means Local Houses of Traditional Leaders established under section 10 of the Limpopo Houses of Traditional Leaders Act, 2005 ([Act No. 5 of 2005](#));

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

"**medical practitioner**" means a medical practitioner registered as such under the Health Professions Act, 1974 ([Act No. 56 of 1974](#));

"**minor**" means a child below the age of 18 years as provided for in the Children's Act, 2005 ([Act No. 38 of 2005](#));

"**permit holder**" means a senior traditional leader who has applied for and is permitted to hold and manage an initiation school;

"**prescribe**" means prescribed by regulations;

**"Provincial House"** means the Limpopo Provincial House of Traditional Leaders established under section 2 of the Limpopo Houses of Traditional Leaders Act, 2005 ([Act No. 5 of 2005](#));

**"SAPS"** means the South African Police Service;

**"senior traditional leader"** means a traditional leader of a specific traditional community who exercises authority over a number of headmen or headwomen in accordance with customary law, or within whose area of jurisdiction a number of headmen or headwomen exercise authority;

**"this Act"** includes the regulations;

**"traditional community"** means a traditional community recognised as such in terms of section 3 of the Limpopo Traditional Leadership and Institutions Act, 2005 ([Act No. 6 of 2005](#));

**"traditional council"** means a traditional council established in terms of section 4 of the Limpopo Traditional Leadership and Institutions Act, 2005 ([Act No. 6 of 2005](#));

**"traditional leader"** means a person duly appointed or recognised as a traditional leader by-

- (a) the person who before the commencement of the [Constitution](#) was-
  - (i) the State President of the Republic within the meaning of the Republic of South Africa Constitution Act, 1983 ([Act No. 110 of 1983](#));
  - (ii) the President, Chief Minister or other chief executive in a government under any other constitution or constitutional arrangement which was in force in an area which forms part of the Republic; and
- (b) the Premier, and includes any person appointed to act temporarily in the place of such a traditional leader; and

**"traditional practice"** means a practice according to the customs, traditions, religion or any other rule of a similar nature observed by a traditional community situated within the Province.

## 2. Object of Act

The object of this Act is to give effect to customary and cultural practices and rituals of traditional communities as enshrined in section 31 of the [Constitution](#).

## 3. Application procedure for permit to hold initiation school

- (1) A senior traditional leader must apply to the relevant district office of the department responsible for traditional affairs, in the prescribed format for a permit to hold an initiation school and such application must be accompanied by—
  - (a) documents as prescribed;
  - (b) a certificate by an environmental officer; and
  - (c) a certificate by a health practitioner.
- (2) A committee comprising of members of the Provincial House and the authorised officer must, within the prescribed period, scrutinise the application for compliance with the requirements of subsection (1).
- (3) If the committee is satisfied that the application meets the requirements of subsection (1), the committee must, within the prescribed period, submit the application together with the committee's recommendation to the MEC.
- (4) Where an application does not meet the requirements of subsection (1), the committee must, within the prescribed period, refer that application to the applicant, directing the applicant to supplement or remedy the defective application within the prescribed period from the date of referral.

- (5) If the applicant fails to comply with subsection (4), the committee must refer the application to the MEC for a decision.

#### **4. Site inspection**

- (1) The authorised officer may inspect the site to which the permit relates.
- (2) Where an authorised officer conducts the inspection, the authorised officer must furnish a report to the MEC regarding the suitability of the site.

#### **5. Powers of MEC**

- (1) The MEC must consider the application in terms of section (3) and the site inspection report in terms of section (4) and may-
  - (a) grant the permit on such conditions as the MEC may determine; or
  - (b) refuse the permit.
- (2) Where the MEC rejects the application for the permit, the MEC must furnish the applicant with written reasons for the decision within 5 working days.
- (3) The MEC may, at any time, on reasonable grounds, amend, suspend or revoke a permit.

#### **6. Appeal procedure**

- (1) An applicant who is aggrieved by a decision of the MEC may, within the prescribed period, lodge an appeal with the Premier.
- (2) The Premier may, on good cause shown, condone the late lodging of an appeal.
- (3) An appeal must include the following:
  - (a) a copy of the application to hold an initiation school;
  - (b) a written statement on the grounds of appeal;
  - (c) the notice sent to the applicant by the MEC after a decision was taken in terms of [section 5](#) (1) (b); and
  - (d) any other information which is relevant to the appeal.

#### **7. Hearing of appeal**

- (1) The Premier must constitute an appeal authority by appointing a competent person with knowledge of traditional practices, traditional rituals or the law to consider the appeal within the prescribed period and make recommendations to the Premier.
- (2) The Premier—
  - (a) may confirm, set aside or amend a decision of the MEC; and
  - (b) must, in writing, notify the applicant and the MEC of the decision.

#### **8. Closing down of initiation school**

- (1) The MEC may, where necessary, with the assistance of the law enforcement agencies —
  - (a) close down an initiation school operating without a permit or operating in contravention of the conditions imposed in the permit; and
  - (b) make such arrangements as may be appropriate to take care of the initiates.

- (2) Where the MEC, on reasonable grounds, believes that the initiation school is not being conducted properly, or that an initiate's state of health is in jeopardy, the MEC may order the immediate closing down of that initiation school and ensure that initiates in need of medical care are provided with the necessary medical treatment.

## **9. Prohibition of holding initiation school without permit**

No person may hold an initiation school-

- (a) without a valid permit issued in terms of [section 5\(1\)\(a\)](#);
- (b) which contravenes a condition imposed in a permit.

## **10. Inspection and submission of reports**

- (1) The MEC may, in consultation with the MEC responsible for health matters in the province and the Provincial House, designate a person in the employ of the public service and who has previously graduated from an initiation school, to conduct an inspection at any initiation school being held within the Province in order to ensure that such school is being conducted in full compliance with this Act.
- (2) Where the MEC has reason to believe that-
  - (a) a transgression, maltreatment, overcrowding or other similar deed is occurring at an initiation school; or
  - (b) conditions prevailing in the area in which an initiation school is being held are detrimental to the health or well-being of the initiates,the MEC may, after consultation with the Provincial House and the MEC responsible for health matters in the province, cause the matter to be investigated.
- (3) After receiving the investigation report, the MEC may take such steps as the MEC deems necessary to address the matter.
- (4) The permit holder must duly record in a register and report to the MEC, the full personal particulars of initiates.
- (5) The permit holder must immediately report to the Provincial House, the MEC and the SAPS, the personal particulars of initiates that die at the initiation school and the corrective measures put in place to avoid a recurrence of such deaths.
- (6) At the completion of the initiation school, the permit holder must submit a complete report, in the prescribed form, to the MEC.

## **11. Prohibition against abduction**

- (1) No person may -
  - (a) abduct, force, coerce or compel another to attend an initiation school; or
  - (b) be subjected to any activity taking place at an initiation school against that person's will.
- (2) The MEC must, as soon as he or she becomes aware that a person has been abducted, forced, coerced or compelled to attend an initiation school, direct the permit holder to immediately report the matter to the Senior Traditional Leader, Provincial House of Traditional Leaders and the South African Police Service.

## **12. Attending initiation school**

- (1) No child under the age of 12 years must be admitted to an initiation school for initiation.

- (2) No permit holder must admit a minor to an initiation school for initiation without his parent's or legal guardian's written consent in the prescribed format.
- (3) A person above the age of 18 years may voluntarily enrol at an initiation school for initiation.
- (4) The initiates referred to in subsection (2) and (3) must, when applying to attend initiation school for ritual practices, attach a medical certificate issued by a medical practitioner certifying that such initiate is medically fit to undergo the initiation procedure in accordance with the traditional practices and rituals of that particular traditional community.
- (5) A child over the age of 12 years and under the age of 18 years who enrolls himself at an initiation school for ritual practices without the written consent of his or her parent or legal guardian, must not undergo initiation rituals until the traditional leader in charge and the permit holder have been notified and obtains a medical certificate referred to in subsection (4) and the written consent of the parent or legal guardian as contemplated in subsection (2).
- (6) No permit holder may admit an initiate referred to in-
  - (a) subsection (2) to the initiation school without the required medical certificate and permission;
  - (b) subsection (3) without the required medical certificate, referred to in this section.
- (7) Taking into consideration the initiate's age, maturity and stage of development, every initiate has the right to refuse initiation.
- (8) An initiate who attend the initiation school shall pay the prescribed fees to the permit holder.

### 13. Role of Department of Health

The MEC responsible for health matters in the province must, through specific programmes, assist initiates to obtain the necessary medical certificates in terms of this Act.

### 14. Persons who may perform initiation rituals

- (1) Only a person who has graduated from an initiation school and is registered in the prescribed manner as an initiation surgeon in the register of surgeons may perform initiation rituals to an initiate.
- (2) In performing traditional rituals, the person referred to in subsection (1) must observe due care and diligence and maintain prescribed health standards.
- (3) The Provincial House must establish and maintain a register of initiation surgeons in the prescribed manner.
- (4) The permit holder is responsible for the care, safety and well-being of initiates.

### 15. Duration of initiation school

- (1) The MEC must, subject to subsection (2) and in consultation with the Member of the Executive Council responsible for education matters, determine the dates on which the initiation schools operates.
- (2) The dates when the initiation school is to be held must not conflict with the academic schooling calendar.

### 16. Offences

A person who contravenes the provisions of [section 9](#), [11\(1\)](#), [12\(1\)](#), (2), (6) and [14\(1\)](#), (2) or (4) commits an offence and liable on conviction to a fine or period of imprisonment not exceeding five years, or to both such fine and imprisonment not exceeding five years.

**17. Regulations**

The MEC may, after consulting relevant Provincial Portfolio Committee, make regulations regarding—

- (a) the timeframes—
  - (i) for lodging an application for initiation schools; and
  - (ii) to finalise an appeal;
- (b) the categories and upper limits of fees payable by initiates attending an initiation school;
- (c) the requirements for the registration of an initiation surgeon and the keeping of the register thereof; and
- (d) any other matter necessary to achieve the object of this Act.

**18. Repeal of laws**

The Northern Province Circumcision Schools Act, 1996 ([Act No.6 of 1996](#)) is hereby repealed.

**19. Short title and commencement**

This Act is called the Limpopo Initiation Schools Act, 2016 and comes into operation on a date determined by the Premier by proclamation in the gazette.