

REPUBLIC  
OF  
SOUTH AFRICA

REPUBLIEK  
VAN  
SUID-AFRIKA

# Government Gazette Staatskoerant

Vol. 353

CAPE TOWN,  
KAAPSTAD 1 NOVEMBER 1994

No. 16061

## GENERAL NOTICE

### NOTICE NO. 1174 OF 1994

PARLIAMENT OF THE REPUBLIC OF  
SOUTH AFRICA

COUNCIL OF TRADITIONAL LEADERS  
BILL

[B 35—94]

The following report of the Select Committee on Constitutional Affairs (National Assembly) and the Select Committee on Constitutional and Provincial Affairs, Public Service and Administration (Senate), dated 19 October 1994, was tabled in the National Assembly and the Senate on 20 October 1994:

## ALGEMENE KENNISGEWING

### KENNISGEWING NR. 1174 VAN 1994

PARLEMENT VAN DIE REPUBLIEK  
VAN SUID-AFRIKA

WETSONTWERP OP DIE RAAD VAN  
TRADISIONELE LEIERS

[W 35—94]

Die volgende verslag van die Gekose Komitee oor Staatkundige Aangeleenthede (Nasionale Vergadering) en die Gekose Komitee oor Staatkundige en Provinsiale Sake, Staatsdiens en Administrasie (Senaat), gedateer 19 Oktober 1994, is op 20 Oktober 1994 in die Nasionale Vergadering en die Senaat ter tafel gelê:

Report of the Select Committee on Constitutional Affairs (National Assembly) and the Select Committee on Constitutional and Provincial Affairs, Public Service and Administration (Senate), dated 19 October 1994, as follows:

The Select Committee on Constitutional Affairs (National Assembly) and the Select Committee on Constitutional and Provincial Affairs, Public Service and Administration (Senate), having conferred on and complied with its terms of reference pursuant to the Resolution adopted by the National Assembly and the Senate on 22 September 1994, beg to report as follows:

- (1) The Committees' terms of reference were to consult traditional authorities by calling for comments on the Council of Traditional Leaders draft Bill, 1994, from traditional authorities resident in South Africa in whatever manner the Committees may have deemed most effective, thereafter to arrange and categorise the comments received, weigh up any conflicting comment on different issues, and prepare a report on the result of their consultation, such report to be tabled in both Houses on or before 20 October 1994.

- (2) Pursuant to this Resolution and by instruction of the Committees, letters dated 22 September 1994, accompanied by sufficient copies of the draft Bill, were sent out by Mr P J Gordhan, Chairperson of the Conferring Committees, to all the provincial Directors-General and the President of Contralesa.

In the letters the Directors-General were requested to forward a copy of an invitation for comment as well as an accompanying copy of the draft Bill to be addressed and delivered to each of the traditional leaders resident in the provinces concerned before 1 October 1994, if possible.

These letters also stipulated that any comments were to be submitted to the Secretary to Parliament by not later than 15 October 1994. It was confirmed that the letters and accompanying draft Bills had in fact reached the provincial administrations.

- (3) In the following table, an indication of the distribution of the documentation by the provincial administrations is given:

| <i>Province/<br/>Organisation</i> | <i>Number of<br/>copies<br/>made avail-<br/>able</i> | <i>To whom<br/>despatched and<br/>date of des-<br/>patchment</i>    | <i>Method<br/>of des-<br/>patch-<br/>ment</i> | <i>Date of<br/>confirma-<br/>tion of<br/>receipt of<br/>docu-<br/>ments</i> | <i>Remarks</i>                                                                                                                                                                                       |
|-----------------------------------|------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Eastern Cape                   | 200                                                  | Acting Direc-<br>tor-General on<br>23/9/94                          | Courier                                       | 28/9/94                                                                     | The Acting Director-General forwarded the documents to Chief Mdutshane for submission to the traditional leaders in the Eastern Cape (see par. (4)(c)).                                              |
| 2. KwaZulu/<br>Natal              | 350                                                  | Director-Gen-<br>eral on 27/9/94                                    | Courier                                       | 28/9/94                                                                     | The Director-General confirmed that the Bill had been forwarded to all traditional leaders in the province. The traditional leaders discussed the Bill jointly on three occasions (see par. (4)(b)). |
| 3. Northern<br>Cape               | 5                                                    | Director-Gen-<br>eral on 27/9/94                                    | Courier                                       | 28/9/94                                                                     | There are no traditional lead-<br>ers in the province.                                                                                                                                               |
| 4. Free State                     | 20                                                   | Representative<br>of the Direc-<br>tor-General on<br>23/9/94        | Given per-<br>son-<br>ally                    | 28/9/94                                                                     | The Director-General requested the Speaker of the provincial legislature to forward the documents to the traditional leaders in the province (see par. (4)(a)).                                      |
| 5. Northern<br>Transvaal          | 200                                                  | Representative<br>of the Acting<br>Director-Gen-<br>eral on 27/9/94 | Given per-<br>son-<br>ally                    | 28/9/94                                                                     | No further information is<br>available.                                                                                                                                                              |
| 6. Eastern<br>Transvaal           | 50                                                   | Representative<br>of the Direc-<br>tor-General on<br>23/9/94        | Given per-<br>son-<br>ally                    | 28/9/94                                                                     | The Director-General referred the documents to Mr Mbatha who submitted the documents to 25 traditional leaders.                                                                                      |

Verslag van die Gekose Komitee oor Staatskundige Aangeleenthede (Nasionale Vergadering) en die Gekose Komitee oor Staatskundige en Provinsiale Sake, Staatsdiens en Administrasie (Senaat), gedateer 19 Oktober 1994, soos volg:

Nadat die Gekose Komitee oor Staatskundige Aangeleenthede (Nasionale Vergadering) en die Gekose Komitee oor Staatskundige en Provinsiale Sake, Staatsdiens en Administrasie (Senaat) beraadslaag het oor en voldoen het aan sy opdrag ooreenkomstig die Besluit aangeneem deur die Nasionale Vergadering en die Senaat op 22 September 1994, het hulle die eer om soos volg verslag te doen:

- (1) Die Komitees se opdrag was om met tradisionele owerhede oorleg te pleeg deur kommentaar oor die Konsepwetsontwerp op die Raad van Tradisionele Leiers, 1994, aan te vra van tradisionele owerhede wat in Suid-Afrika woonagtig is op die wyse wat die Komitees die doeltreffendste ag, om daarna die kommentaar wat ontvang is te rangskik en te kategoriseer, enige botsende kommentaar oor verskillende aangeleenthede teen mekaar op te weeg, en 'n verslag oor die uitslag van hul oorlegpleging voor te berei, welke verslag voor of op 20 Oktober 1994 in beide Huise ter Tafel gelê moes word.
- (2) Na aanleiding van hierdie Besluit en in opdrag van die Komitees is briewe gedateer 22 September 1994, vergesel van genoeg afskrifte van die Konsepwetsontwerp, deur mnr P J Gordhan, Voorsitter van die Beraadslagende Komitees, aan al die provinsiale Direkteurs-generaal en die President van Contralesa gestuur.

In die briewe is die Direkteurs-generaal versoek om, indien moontlik, voor 1 Oktober 1994 'n afskrif van 'n uitnodiging vir kommentaar, sowel as 'n gepaardgaande afskrif van die Konsepwetsontwerp, om geadresseer en afgelewer te word aan elkeen van die tradisionele leiers woonagtig in die betrokke provinsies, aan daardie leiers te stuur.

Dié briewe het ook aangedui dat enige kommentaar teen nie later nie as 15 Oktober 1994 aan die-Sekretaris van die Parlement voorgelê moes word. Bevestiging is verkry dat die briewe en gepaardgaande Konsepwetsontwerpe inderdaad die provinsiale administrasies bereik het.

- (3) In die volgende tabel word 'n aanduiding gegee van die verspreiding van die dokumentasie deur die provinsiale administrasies:

| Provinsie/<br>Organisasie | Aantal af-<br>skrifte be-<br>skikbaar<br>gestel | Aan wie<br>gestuur en<br>datum van af-<br>sending                     | Metode<br>van af-<br>sending      | Datum<br>van beves-<br>tiging van<br>ontvangs<br>van do-<br>kumente | Opmerkings                                                                                                                                                                                                              |
|---------------------------|-------------------------------------------------|-----------------------------------------------------------------------|-----------------------------------|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Oos-Kaap               | 200                                             | Waarnemende<br>Direkteur-<br>generaal op<br>23/9/94                   | Koerier                           | 28/9/94                                                             | Die waarnemende Direkteur-generaal het die dokumente aan Hoofman Mdtshane gegee vir voorlegging aan die tradisionele leiers in die Oos-Kaap (kyk par. (4)(c)).                                                          |
| 2. KwaZulu/<br>Natal      | 350                                             | Direkteur-<br>generaal op<br>27/9/94                                  | Koerier                           | 28/9/94                                                             | Die Direkteur-generaal het bevestig dat die Wetsontwerp aan alle tradisionele leiers in die provinsie gegee is. Die tradisionele leiers het by drie geleenthede die Wetsontwerp gesamentlik bespreek (kyk par. (4)(b)). |
| 3. Noord-Kaap             | 5                                               | Direkteur-<br>generaal op<br>27/9/94                                  | Koerier                           | 28/9/94                                                             | Daar is geen tradisionele leiers in die provinsie nie.                                                                                                                                                                  |
| 4. Vrystaat               | 20                                              | Verteenwoor-<br>diger van die<br>Direkteur-<br>generaal op<br>23/9/94 | Persoon-<br>lik<br>oorhan-<br>dig | 28/9/94                                                             | Die Direkteur-generaal het die Speaker van die provinsiale wetgewer versoek om die dokumente aan die tradisionele leiers in die provinsie te oorhandig (kyk par. (4)(a)).                                               |

| <i>Province/<br/>Organisation</i> | <i>Number of<br/>copies<br/>made avail-<br/>able</i> | <i>To whom<br/>despatched and<br/>date of des-<br/>patchment</i> | <i>Method<br/>of des-<br/>patch-<br/>ment</i> | <i>Date of<br/>confirma-<br/>tion of<br/>receipt of<br/>docu-<br/>ments</i> | <i>Remarks</i>                                                                                                                                                                                                                                 |
|-----------------------------------|------------------------------------------------------|------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7. North West                     | 80                                                   | Director-<br>General<br>27/9/94                                  | Courier                                       | 28/9/94                                                                     | It has not been possible to ascertain the distribution of the documents, except that copies were made available to the Premier, the provincial legal adviser, a Mr Pitri and Mr Moseki (secretary of the traditional leaders in the province). |
| 8. PWV                            | 5                                                    | Acting Direc-<br>tor-General on<br>23/9/94                       | Given per-<br>son-<br>ally                    | 28/9/94                                                                     | There are no traditional leaders in the province.                                                                                                                                                                                              |
| 9. Western Cape                   | 10                                                   | Acting Direc-<br>tor-General on<br>23/9/94                       | Given per-<br>son-<br>ally                    | 28/9/94                                                                     | There are no traditional lead-<br>ers in the province.                                                                                                                                                                                         |
| 10. Contralesa                    | 1                                                    | Chairperson on<br>27/9/94                                        | Courier                                       | 28/9/94                                                                     | No comments have been received.                                                                                                                                                                                                                |

- (4) Comments were received from the Bakwena delegation in the OFS Traditional Leaders' Committee, the Eastern Cape Traditional Leaders and the Traditional Leaders of KwaZulu/Natal.

(a) The Bakwena delegation commented on two aspects of the draft Bill, viz:

- (i) Clause 2(1) does not clearly regulate the composition of the Council by determining the representation from the respective provinces; and
- (ii) Clause 2(2) ought to set out criteria for determining whether members are to be full-time or part-time members of the Council.

As far as Clause 2(1) is concerned, section 184(2) of the Constitution is clear. It provides that the chairperson and members of the Council shall be elected by an electoral college constituted by the members of the various Houses of Traditional Leaders. This electoral college will only be constituted once all provincial Houses of Traditional Leaders have been established, making the determination of the composition of the Council impossible at this stage.

To overcome this difficulty, Clause 4(2)(a) of the draft Bill provides for rules to be made which will prescribe the procedure to be observed at a meeting of the electoral college at which the chairperson and members of the Council are to be elected. These rules must however provide for mechanisms to ensure that no House or Houses of Traditional Leaders unjustifiably dominate the election.

- (b) In his comments, the Director-General of the KwaZulu/Natal provincial administration stated that the Minister of Nature Conservation, Environment Affairs and Traditional Authorities, Inkosi N J Ngubane, consulted with more than 260 traditional leaders in KwaZulu/Natal, that they have produced an amended Bill of the House of Traditional Leaders in the province, that they do not accept the Council of Traditional Leaders draft Bill, and that they recommend that further investigations be conducted into the implications of the draft Bill.

- (c) The Eastern Cape Traditional Leaders proposed a number of amendments to the draft Bill, viz:

- (i) In the long title, provision should also be made for the "establishment" of the Council. Section 184(1) of the Constitution, however, already establishes the Council.
- (ii) Clause 2(2) should clearly regulate the composition of the Council, with each province having the following number of representatives:

| Provinsie/<br>Organisasie | Aantal af-<br>skrifte be-<br>skikbaar<br>gestel | Aan wie<br>gestuur en<br>datum van af-<br>sending                                    | Metode<br>van af-<br>sending       | Datum<br>van beves-<br>tiging van<br>ontvangs<br>van do-<br>kumente | Opmerkings                                                                                                                                                                                                                                                                         |
|---------------------------|-------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Noord-<br>Transvaal    | 200                                             | Verteenwoor-<br>diger van die<br>Waarnemende<br>Direkteur-<br>generaal op<br>27/9/94 | Persoon-<br>lik-<br>oorhan-<br>dig | 28/9/94                                                             | Geen verdere inligting is be-<br>skikbaar nie.                                                                                                                                                                                                                                     |
| 6. Oos-<br>Transvaal      | 50                                              | Verteenwoor-<br>diger van die<br>Direkteur-<br>generaal op<br>23/9/94                | Persoon-<br>lik<br>oorhan-<br>dig  | 28/9/94                                                             | Die Direkteur-generaal het<br>die dokumente na mnr.<br>Mbatha verwys wat dit aan 25<br>tradisionele leiers voorgelê<br>het.                                                                                                                                                        |
| 7. Noordwes               | 80                                              | Direkteur-<br>generaal op<br>27/9/94                                                 | Koerier                            | 28/9/94                                                             | Dit was nie moontlik om vas<br>te stel hoe die dokumente ver-<br>sprei is nie, behalwe dat af-<br>skrifte aan die Premier, die<br>Provinsiale Regsadviseur, 'n<br>mnr Pirri en mnr Moseki<br>(Sekretaris van die<br>tradisionele leiers in die<br>provinsie) beskikbaar gestel is. |
| 8. PWV                    | 5                                               | Waarnemende<br>Direkteur-<br>generaal op<br>23/9/94                                  | Persoon-<br>lik<br>oorhan-<br>dig  | 28/9/94                                                             | Daar is geen tradisionele<br>leiers in die provinsie nie.                                                                                                                                                                                                                          |
| 9. Wes-Kaap               | 10                                              | Waarnemende<br>Direkteur-<br>generaal op<br>23/9/94                                  | Persoon-<br>lik oorhan-<br>dig     | 28/9/94                                                             | Daar is geen tradisionele<br>leiers in die provinsie nie.                                                                                                                                                                                                                          |
| 10. Contralesa            | 1                                               | Voorsitter op<br>27/9/94                                                             | Koerier                            | 28/9/94                                                             | Geen kommentaar is ontvang<br>nie.                                                                                                                                                                                                                                                 |

(4) Kommentaar is ontvang van die Bakwena-afvaardiging in die OVS Tradisionele Leierskomitee, die Oos-Kaapse Tradisionele Leiers en die Tradisionele Leiers van KwaZulu/Natal.

(a) Die Bakwena-afvaardiging het oor twee aspekte van die Konsepwetsontwerp kommentaar gelewer, nl:

(i) Klousule 2(1) reël nie duidelik die samestelling van die Raad deur die verteenwoordiging van die onderskeie provinsies te bepaal nie; en

(ii) Klousule 2(2) behoort kriteria uiteen te sit om te bepaal of lede deeltydse of voltydse lede van die Raad moet wees.

Ten opsigte van Klousule 2(1) is artikel 184(2) van die Grondwet duidelik. Dit bepaal dat die voorsitter en lede van die Raad gekies word deur 'n kieskollege bestaande uit lede van die onderskeie Huise van Tradisionele Leiers. Hierdie kieskollege sal slegs saamgestel word wanneer alle provinsiale Huise van Tradisionele Leiers ingestel is, wat die bepaling van die samestelling van die Raad in dié stadium onmoontlik maak.

Ten einde hierdie probleem die hoof te bied, maak Klousule 4(2)(a) van die Konsepwetsontwerp voorsiening vir die maak van reëls om die prosedure voor te skryf wat gevolg moet word tydens 'n vergadering van die kieskollege waarop die voorsitter en lede van die Raad verkies moet word. Hierdie reëls moet egter voorsiening maak vir meganismes om te verseker dat geen Huis of Huise van Tradisionele Leiers die verkiesing onregmatig oorheers nie.

(b) In sy kommentaar meld die Direkteur-generaal van die KwaZulu/Natal provinsiale administrasie dat die Minister van Natuurbewaring, Omgewingsake en Tradisionele Owerhede, Inkosi N J Ngunibane, met meer as 260 tradisionele leiers in KwaZulu/Natal oorleg

|                    |   |   |
|--------------------|---|---|
| Western Cape       | — | 0 |
| Eastern Cape       | — | 4 |
| Eastern Transvaal  | — | 3 |
| KwaZulu/Natal      | — | 4 |
| Northern Cape      | — | 0 |
| North West         | — | 2 |
| Northern Transvaal | — | 4 |
| Orange Free State  | — | 2 |
| PWV                | — | 0 |

The opinion of the Committees as set out in paragraph (a) above applies *mutatis mutandis* in this case.

- (iii) Clause 9(1) should also regulate the appointment of the chairperson and not only that of the deputy chairperson, as proposed in the draft Bill. Section 184(2) of the Constitution, however, regulates the appointment of the chairperson, who is to be elected by the electoral college, and not by the Council, as is suggested.
  - (iv) A new Clause should be inserted to regulate the powers, privileges and immunities of members of the Council, similar to the provisions of section 55 of the Constitution relating to members of Parliament. The Committees were of the opinion that these proposals should be considered by them when they consider the Bill formally.
  - (v) A new Clause should be inserted in the Bill, requiring members of the Council to subscribe to an oath or make a solemn affirmation. Again the Committees were of the opinion that this suggestion should be considered by them when they consider the Bill formally.
- (5) Comments were also received—
- (a) from the Northern Transvaal division of Contralesa;
  - (b) from traditional leaders in the Eastern Transvaal; and
  - (c) arising from a meeting of traditional leaders in the Eastern Transvaal, hosted by Sen D M Malatsi.

These documents were received at a very late stage and therefore could not be arranged and categorised. It will, however, be considered by the Committees when the Bill is tabled in Parliament.

- (6) Section 184(3)(a) of the Constitution makes it mandatory for draft legislation pertaining to the Council of Traditional Leaders to be introduced in Parliament not later than six months from the commencement of the Constitution, in other words, by 27 October 1994. The intention thereof was to ensure that there would be no undue delay with the participation of traditional leaders in the new constitutional dispensation, as envisaged in the Constitution.

Notwithstanding the response to the invitation to submit comments and in the light of the constitutional injunction to introduce the legislation in question by 27 October 1994, the Committees were of the opinion that the Council of Traditional Leaders Bill be introduced in Parliament as soon as possible in order to enable them, during their consideration of the Bill, to call for further submissions (oral or written) thereon.

- (7) The Committees, in view of the Legislature's apparent intention for traditional leaders to play a meaningful role in the decision-making process pertaining to traditional authorities, indigenous law and the traditions and customs of traditional communities in the Republic as soon as possible after the commencement of the Constitution, recommend that—
- (a) in accordance with the above-mentioned Resolution, the tabling of this report in Parliament be deemed to conclude the consultation contemplated in section 184(3)(b) of the Constitution;
  - (b) the Council of Traditional Leaders draft Bill, 1994, as referred to the traditional authorities, be introduced in Parliament as soon as possible;
  - (c) provincial Directors-General be requested to provide detailed information on how and to whom the draft Bill and accompanying documents have been distributed, and that the information so

gepleeg het, dat hulle 'n gewysigde Wetsontwerp van die Huis van Tradisionele Leiers in die provinsie voortgebring het, dat hulle nie die Konsepwetsontwerp op die Raad van Tradisionele Leiers aanvaar nie, en dat hulle aanbeveel dat verdere ondersoek ingestel moet word na die implikasies van die Konsepwetsontwerp.

- (c) Die Oos-Kaapse Tradisionele Leiers het verskeie wysigings aan die Konsepwetsontwerp voorgestel, nl:

(i) In die lang titel behoort voorsiening ook gemaak te word vir die "instelling" van die Raad. Artikel 184(1) van die Grondwet stel egter reeds die Raad in.

(ii) Klousule 2(2) behoort duidelik die samestelling van die Raad te reël, waarby elke provinsie die volgende aantal verteenwoordigers het:

|                 |   |   |
|-----------------|---|---|
| Wes-Kaap        | — | 0 |
| Oos-Kaap        | — | 4 |
| Oos-Transvaal   | — | 3 |
| KwaZulu/Natal   | — | 4 |
| Noord-Kaap      | — | 0 |
| Noordwes        | — | 2 |
| Noord-Transvaal | — | 4 |
| Oranje-Vrystaat | — | 2 |
| PWV             | — | 0 |

Die Komitees se mening, soos in paragraaf (a) hierbo uiteengesit, is *mutatis mutandis* van toepassing in hierdie geval.

(iii) Klousule 9(1) behoort ook die aanstelling van die voorsitter te reël en nie slegs dié van die ondervoorsitter nie, soos in die Konsepwetsontwerp voorgestel. Artikel 184(2) van die Grondwet reël egter die aanstelling van die voorsitter, wat deur die kieskollege verkies moet word, en nie, soos voorgestel, deur die Raad nie.

(iv) 'n Nuwe Klousule, soortgelyk aan die bepalinge van artikel 55 van die Grondwet met betrekking tot lede van die Parlement, behoort ingevoeg te word om die bevoegdhede, voorregte en immunitete van lede van die Raad te reël. Die Komitees is van mening dat hierdie voorstelle deur hulle oorweeg behoort te word wanneer hulle die Wetsontwerp formeel oorweeg.

(v) 'n Nuwe Klousule behoort in die Wetsontwerp ingevoeg te word wat van lede van die Raad vereis om 'n eed of plegtige verklaring af te lê. Weer eens is die Komitees van mening dat hierdie voorstel deur hulle oorweeg behoort te word wanneer hulle die Wetsontwerp formeel oorweeg.

- (5) Kommentaar is ook ontvang—

(a) van die Noord-Transvaalse afdeling van Contralesa;

(b) van tradisionele leiers in die Oos-Transvaal; en

(c) na aanleiding van 'n vergadering van tradisionele leiers in die Oos-Transvaal, aangebied deur sen D M Malatsi.

Hierdie dokumente is in 'n baie laat stadium ontvang en kon derhalwe nie gerangskik en gekategoriseer word nie. Dit sal egter deur die Komitees oorweeg word wanneer die Wetsontwerp in die Parlement ter Tafel geleë word.

- (6) Artikel 184(3)(a) van die Grondwet maak dit verpligtend dat konsepwetgewing met betrekking tot die Raad van Tradisionele Leiers nie later nie as ses maande na die inwerkingtreding van die Grondwet by die Parlement ingedien word, met ander woorde, teen 27 Oktober 1994. Die bedoeling daarvan was om seker te maak dat daar geen onbehoorlike vertraging sou wees nie met die deelname van tradisionele leiers in die nuwe grondwetlike bedeling, soos beoog in die Grondwet.

Ten spyte van die reaksie op die uitnodiging om kommentaar voor te lê en in die lig van die grondwetlike opdrag om die betrokke wetgewing teen 27 Oktober 1994 in te dien, is die Komitees van mening dat die Wetsontwerp op die Raad van Tradisionele Leiers so spoedig moontlik in die Parlement ingedien moet word ten einde hulle in staat te stel om, ten

- obtained be taken into consideration during the next phase of consultation after the Bill has been tabled;
- (d) the Director-General of KwaZulu/Natal be requested to furnish further information and reasons for the rejection of the draft Bill in order to assist in the further processing in respect of the Bill;
  - (e) as far as they deem it necessary, consult further with the traditional authorities and other concerned persons resident in the Republic by calling for oral or further written submissions while considering the Bill;
  - (f) for the purposes of paragraph (e) above, the Premiers of the provinces, the relevant members of the provincial Executive Councils and Contralesa be requested to assist in—
    - (i) the identification of spokespersons in the ranks of traditional authorities in the provinces;
    - (ii) the logistical arrangements relating to the further consultation process; and
    - (iii) publicising the further consultation process;
  - (g) for the purposes of paragraph (e) above, the Bill, after it has been introduced, be given as wide media coverage as possible, including the publication thereof in the *Government Gazette*; and
  - (h) subject to the implementation of the further process of consultation as outlined in paragraphs (e), (f) and (g) above, and the proper evaluation of the various submissions received, every endeavour be made to enable Parliament to adopt a Bill as soon as possible, preferably before the end of the present parliamentary session.

Pursuant to the recommendation of the Committees in paragraph (7)(g) of the Report, the Council of Traditional Leaders Bill, as it was introduced in the Senate on 26 October 1994, is hereby published for general information and comments. Interested persons are hereby invited to submit any written comments to the Secretary to Parliament by no later than 12:00 on 7 November 1994. Comments can be sent to:

The Secretary to Parliament  
P.O. Box 15  
CAPE TOWN  
8000

The above-mentioned Committees may, during their consideration of the Bill, hear evidence from interested parties. Interested parties can call the Secretary of the Committees, Mr M Philander, at telephone (021) 403-2829 by no later than 12:00 on 7 November 1994 to make the necessary arrangements in this regard.

The Bill is also available in other official languages. Inquiries in this regard can be directed to Mr M Philander.

tye van hul oorweging van die Wetsontwerp, verdere voorleggings (mondeling of skriftelik) daaroor aan te vra.

- (7) In die lig van die Wetgewer se klaarblyklike bedoeling dat tradisionele leiers so spoedig moontlik na die inwerkingtreding van die Grondwet 'n betekenisvolle rol moet speel in die besluitnemingsproses ten opsigte van tradisionele owerhede, inheemse reg en dié tradisies en gewoontes van tradisionele gemeenskappe in die Republiek, beveel die Komitees aan dat—
- (a) in ooreenstemming met bogenoemde Besluit, die tertafellegging van hierdie verslag in die Parlement geag word die oorlegpleging beoog in artikel 184(3)(b) van die Grondwet af te handel;
  - (b) die Konsepwetsontwerp op die Raad van Tradisionele Leiers, 1994, soos verwys na die tradisionele owerhede, so spoedig moontlik by die Parlement ingedien word;
  - (c) provinsiale Direkteurs-generaal versoek word om gedetailleerde inligting te verskaf oor hoe en aan wie die Konsepwetsontwerp en gepaardgaande dokumente beskikbaar gestel is, en dat die inligting wat op dié wyse verkry word in aanmerking geneem word tydens die volgende fase van oorlegpleging nadat die Wetsontwerp ter Tafel gelê is;
  - (d) die Direkteur-generaal van KwaZulu/Natal versoek word om verdere inligting en redes te verstrek vir die verwerping van die Konsepwetsontwerp ten einde behulpsaam te wees met die verdere prosessering ten opsigte van die Wetsontwerp;
  - (e) vir sover hulle dit nodig ag, hulle verder oorleg pleeg met die tradisionele owerhede en ander betrokke persone woonagtig in die Republiek deur mondelinge of verdere skriftelike voorleggings te vra wanneer hulle die Wetsontwerp oorweeg;
  - (f) vir die doeleindes van paragraaf (e) hierbo, die Premiers van die provinsies, die betrokke lede van die provinsiale Uitvoerende Rade en Contralesa versoek word om behulpsaam te wees met—
    - (i) die identifisering van segspersone in die geledere van tradisionele owerhede in die provinsies;
    - (ii) die logistieke reëlins met betrekking tot die verdere proses van oorlegpleging; en
    - (iii) die bekendmaking van die verdere proses van oorlegpleging;
  - (g) vir die doeleindes van paragraaf (e) hierbo, die Wetsontwerp, nadat dit ingedien is, so wye mediadekking moontlik geniet, met inbegrip van die publikasie daarvan in die *Staatskoerant*; en
  - (h) onderworpe aan die implementering van die verdere proses van oorlegpleging, soos omskryf in paragrawe (e), (f) en (g) hierbo, en die behoorlike evaluering van die onderskeie voorleggings ontvang, elke moontlike poging aangewend word om die Parlement in staat te stel om so spoedig moontlik 'n Wetsontwerp aan te neem, verkieslik voor die einde van die huidige parlementêre sessie.

Na aanleiding van die aanbeveling van die Komitees in paragraaf (7)(g) van die Verslag, word die Wetsontwerp op die Raad van Tradisionele Leiers, soos dit op 26 Oktober 1994 in die Senaat ingedien is, hierby vir algemene inligting en kommentaar gepubliseer. Belanghebbendes word hierby uitgenooi om enige skriftelike kommentaar nie later nie as 12:00 op 7 November 1994 by die Sekretaris van die Parlement in te dien. Kommentaar kan versend word aan:

Die Sekretaris van die Parlement  
Posbus 15  
KAAPSTAD  
8000

Bovermelde Komitees kan, wanneer hulle die Wetsontwerp oorweeg, getuienis aanhoor van belanghebbendes. Belanghebbendes kan die Sekretaris van die Komitees, mnr M Philander, teen nie later nie as 12:00 op 7 November 1994 by telefoon (021) 403-2829 in dié verband skakel.

Die Wetsontwerp is beskikbaar in ander amptelike tale. Navrae in dié verband kan aan mnr M Philander gerig word.

# BILL

To provide for the composition of, the election of representatives to and the powers and functions of the Council of Traditional Leaders; for procedures according to which such powers and functions have to be exercised and performed; and to provide for matters incidental thereto.

**B**E IT ENACTED by the Parliament of the Republic of South Africa as follows:—

## Definitions

1. In this Act, unless the context otherwise indicates—
- (i) "Council" means the Council of Traditional Leaders established by section 184(1) of the Constitution; (iii) 5
  - (ii) "electoral college" means the electoral college contemplated in section 184(2) of the Constitution and constituted in terms of section 4; (ii)
  - (iii) "House" means a House of Traditional Leaders contemplated in section 183 of the Constitution. (i) 10

## Composition of Council

2. (1) The Council shall consist of an elected chairperson and 19 elected representatives.
- (2) The President shall, after consultation with the chairperson of the Council, determine which members shall be full-time and which members shall be 15 part-time members.

## Powers and functions of Council

3. The Council shall, in addition to the powers and functions entrusted to it by section 184 of the Constitution, have the powers conferred upon and the functions assigned to it by this Act or any other law, and shall exercise such powers and 20 perform such functions in accordance with the provisions of this Act and section 184 of the Constitution.

## Composition of electoral college and election of representatives to Council

4. (1) The chairperson and members of the Council shall be elected by an electoral college constituted by the members of the Houses. 25
- (2) (a) The President shall make rules with regard to—
- (i) the way in which the electoral college referred to in subsection (1) shall be constituted;
  - (ii) the fair distribution among the various Houses of representatives on the Council; and 30
  - (iii) the procedure to be observed at the election of the chairperson and members of the Council.
- (b) A person designated by the President shall—
- (i) convene the electoral college within 60 days of the commencement of this Act or within 30 days after a vacancy has arisen in the Council or 35 the Council has been dissolved in terms of this Act, as the case may be; and
  - (ii) preside over such meeting.

# WETSONTWERP

Om voorsiening te maak vir die samestelling van, die verkiesing van verteenwoordigers in en die bevoegdhede en werksaamhede van die Raad van Tradisionele Leiers; vir die prosedures waarvolgens sodanige bevoegdhede en werksaamhede uitgeoefen en verrig moet word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika soos volg:—

## Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- 5 (i) "Huis" 'n Huis van Tradisionele Leiers beoog in artikel 183 van die Grondwet; (iii)
  - (ii) "kieskollege" die kieskollege beoog in artikel 184(2) van die Grondwet en saamgestel ingevolge artikel 4; (ii)
  - 10 (iii) "Raad" die Raad van Tradisionele Leiers ingestel by artikel 184(1) van die Grondwet. (i)

## Samestelling van Raad

2. (1) Die Raad bestaan uit 'n verkose voorsitter en 19 verkose verteenwoordigers.
- (2) Die President bepaal, na oorleg met die voorsitter van die Raad, watter 15 lede voltydse en watter lede deeltydse lede sal wees.

## Bevoegdhede en werksaamhede van Raad

3. Benewens die bevoegdhede en werksaamhede wat deur artikel 184 van die Grondwet aan die Raad toevertrou word, het die Raad die bevoegdhede en werksaamhede wat deur hierdie Wet of enige ander wet daaraan verleen of 20 opgedra word, en die Raad oefen sodanige bevoegdhede uit en verrig sodanige werksaamhede ooreenkomstig die bepalings van hierdie Wet en artikel 184 van die Grondwet.

## Samestelling van kieskollege en verkiesing van verteenwoordigers in Raad

4. (1) Die voorsitter en lede van die Raad word verkies deur 'n kieskollege 25 saamgestel deur die lede van die Huise.
- (2) (a) Die President moet reëls uitvaardig met betrekking tot—
- (i) die wyse waarop die kieskollege bedoel in subartikel (1) saamgestel moet word;
  - 30 (ii) die regverdige verdeling tussen die onderskeie Huise van verteenwoordigers in die Raad; en
  - (iii) die prosedure wat by die verkiesing van die voorsitter en lede van die Raad gevolg moet word.
- (b) 'n Persoon aangewys deur die President moet—
- 35 (i) die kieskollege binne 60 dae na die inwerkingtreding van hierdie Wet of binne 30 dae nadat 'n vakature in die Raad ontstaan of die Raad ingevolge hierdie Wet ontbind het, na gelang van die geval, byeenroep; en
  - (ii) by so 'n vergadering voorsit.

(3) The President shall make rules with regard to the convening of and procedure to be observed at a special meeting of the electoral college at which the passing of a vote of no confidence in the Council or the impeachment of the chairperson or a member of the Council is to be discussed.

#### Duration of Council

5. (1) The Council elected in terms of section 4 shall, subject to subsection (2), continue for five years as from the date of such election, at the expiry of which a new election shall be held in accordance with this Act: Provided that members of the Council shall be eligible for re-election.

(2) If during the period referred to in subsection (1) the Council is dissolved in terms of section 7, the Council as constituted then, shall continue for the period up to the day immediately preceding the election held in pursuance of such dissolution.

(3) Notwithstanding any dissolution of the Council—

(a) every person who at the date of the dissolution is a member of the Council shall remain a member thereof; and

(b) the Council shall remain competent to perform its functions, during the period for which the Council continues in terms of subsection (2) after the dissolution.

(4) If the Council is dissolved and a new Council is elected, this section shall apply *mutatis mutandis* in respect of such new Council save that the new Council shall continue for the unexpired part of the period referred to in subsection (1).

#### Removal from office of chairperson or member of Council

6. The chairperson or a member of the Council shall cease to hold office on a resolution adopted at a special meeting by a majority of at least two-thirds of the total number of members of the electoral college and impeaching the chairperson or a member of the Council on the ground of a serious violation of the Constitution or any other law of the Republic, or of misconduct or inability rendering him or her unfit to exercise and perform his or her powers and functions as chairperson or member.

#### Vote of no confidence

7. If at a special meeting the electoral college passes a vote of no confidence in the Council by a majority of at least two-thirds of the total number of members of the electoral college, the Council shall be dissolved and a new election in terms of this Act shall be held.

#### Meetings of Council

8. (1) The Council shall meet in Cape Town, unless the chairperson of the Council, in accordance with the rules and orders of the Council, directs otherwise.

(2) There shall be an ordinary meeting of the Council at least once every year during a sitting of Parliament.

(3) Subject to subsections (2), (4) and (5), meetings of the Council shall be held at a time and place as determined by the Council or, if authorised thereto by the Council, by the chairperson.

(4) The Executive Committee of the Council may at any time, and if so requested by the President shall, convene a special meeting of the Council on a date determined by the said Committee with the approval of the President and at such special meeting only such matters as are placed before the Council shall be dealt with: Provided that if such special meeting is called by the direction of the President, only such matters as necessitated the calling of the special meeting shall be dealt with.

(5) The chairperson shall within 30 days of the first election of the Council in terms of section 4, convene the Council in the manner he or she may deem expedient.

(3) Die President moet reëls uitvaardig met betrekking tot die byeenroeping van en procedure wat gevolg moet word by 'n spesiale vergadering van die kieskollege waarop 'n voorstel van wantroue in die Raad of die ampsontheffing van die voorsitter of 'n lid van die Raad bespreek gaan word.

## 5 Duur van Raad

5. (1) Die Raad ingevolge artikel 4 verkies duur, behoudens subartikel (2), vir vyf jaar vanaf die datum van bedoelde verkiesing, na afloop waarvan 'n nuwe verkiesing ooreenkomstig hierdie Wet gehou moet word: Met dien verstande dat lede van die Raad herkiesbaar is.

10 (2) Indien die Raad gedurende die tydperk in subartikel (1) bedoel ingevolge artikel 7 ontbind, bly die Raad, soos dit op daardie tydstip saamgestel is, voortbestaan vir die tydperk tot die dag onmiddellik voor die verkiesing wat na aanleiding van sodanige ontbinding gehou word.

(3) Ondanks enige ontbinding van die Raad—

15 (a) bly elke persoon wat op die datum van die ontbinding 'n lid van die Raad is, aan as 'n lid daarvan; en

(b) bly die Raad bevoeg om sy werksaamhede te verrig, gedurende die tydperk waartydens die Raad ingevolge subartikel (2) na die ontbinding bly voortbestaan.

20 (4) Indien die Raad ontbind en 'n nuwe Raad verkies word, is hierdie artikel *mutatis mutandis* ten opsigte van so 'n nuwe Raad van toepassing behalwe dat die nuwe Raad duur vir die onverstreke gedeelte van die tydperk bedoel in subartikel (1).

## Ampsontheffing van voorsitter of lid van Raad

25 6. Die voorsitter of 'n lid van die Raad hou op om sy of haar amp te beklee by 'n besluit wat op 'n spesiale vergadering deur 'n meerderheid van minstens twee derdes van die totale getal lede van die kieskollege aangeneem is en wat die voorsitter of 'n lid van die Raad van sy of haar amp onthef op grond van 'n ernstige oortreding van die Grondwet of 'n ander wet van die Republiek, of van  
30 wangedrag of onvermoë wat hom of haar ongeskik maak om sy of haar bevoegdhede en werksaamhede as voorsitter of lid uit te oefen en te verrig.

## Voorstel van wantroue

7. Indien die kieskollege op 'n spesiale vergadering 'n voorstel van wantroue in die Raad deur 'n meerderheid van minstens twee derdes van die totale getal  
35 lede van die kieskollege aanneem, ontbind die Raad en word 'n nuwe verkiesing ingevolge hierdie Wet gehou.

## Vergaderings van Raad

8. (1) Die Raad vergader in Kaapstad tensy die voorsitter van die Raad, ooreenkomstig die reëls en orders van die Raad, anders gelas.

40 (2) Daar moet minstens een keer per jaar tydens 'n sitting van die Parlement 'n gewone vergadering van die Raad gehou word.

(3) Behoudens subartikels (2), (4) en (5), word vergaderings van die Raad gehou op 'n tyd en plek wat deur die Raad of, indien deur die Raad daartoe gemagtig, deur die voorsitter, bepaal word.

45 (4) Die Uitvoerende Komitee van die Raad kan te eniger tyd, en moet indien deur die President daartoe versoek, 'n spesiale vergadering van die Raad byeenroep op 'n datum deur bedoelde Komitee met die instemming van die President bepaal en by so 'n spesiale vergadering word slegs daardie aangeleenthede behandel wat voor die Raad gelê word: Met dien verstande dat, indien so  
50 'n spesiale vergadering in opdrag van die President byeengeroep word, slegs daardie aangeleenthede behandel word wat die byeenroeping van die spesiale vergadering genoodsaak het.

(5) Die voorsitter moet binne 30 dae vanaf die eerste verkiesing van die Raad ingevolge artikel 4, die Raad op die wyse wat hy of sy dienstig ag, byeenroep.

**Chairperson and deputy chairperson**

9. (1) At its first meeting after it has been convened under section 8(5) the Council shall elect one of its members as deputy chairperson of the Council.

(2) The chairperson and deputy chairperson shall, subject to sections 5, 6 and 7, hold office from the date on which they were elected until the duration of the Council in respect of which they were elected has expired: Provided that they shall be eligible for re-election at the expiration of their term of office. 5

(3) The chairperson shall be vested with all the powers and functions conferred upon or assigned to him or her by this Act and the rules and orders.

(4) If the chairperson is absent or is for any reason unable to exercise or perform the powers or functions vested in the office of chairperson; or when the office of chairperson is vacant, the deputy chairperson shall act as chairperson during the chairperson's absence or inability or until a chairperson is elected. 10

(5) If any of the circumstances described in subsection (4) applies with reference to both the chairperson and the deputy chairperson, a member of the Council designated in terms of the rules and orders shall act as chairperson while the said circumstances prevail. 15

(6) The deputy chairperson or the member designated in terms of subsection (5), while acting as chairperson, may exercise the powers and shall perform the functions vested in the office of chairperson. 20

(7) The chairperson, the deputy chairperson or any other member of the Council designated for this purpose in terms of the rules and orders, shall preside over meetings of the Council.

(8) While presiding at a meeting of the Council, the chairperson, deputy chairperson or other member presiding shall not have a deliberative vote, but shall have and exercise a casting vote in the case of an equality of votes. 25

(9) The chairperson or deputy chairperson shall vacate his or her office if he or she is impeached in terms of section 6, and may resign by lodging his or her resignation in writing with the Secretary to the Council.

(10) If the office of deputy chairperson becomes vacant, the members of the Council shall elect a member to fill the vacancy. 30

**Vacation of seat and filling of vacancies**

10. (1) The seat of a member of the Council shall become vacant—

- (a) if he or she is impeached in terms of section 6;
- (b) upon his or her death; or
- (c) if he or she resigns his or her seat by written notice under his or her hand. 35

(2) A vacancy shall be filled as soon as possible in terms of section 4.

**Rules and orders**

11. The Council may make rules and orders to regulate its business and proceedings, including rules and orders regulating— 40

- (a) the establishment, constitution, powers, functions, procedures and duration of committees of the Council: Provided that provision shall be made for a standing Executive Committee consisting of the chairperson, deputy chairperson and three other members elected by the Council; 45
- (b) restrictions on access to such committees;
- (c) the competency of any such committee to perform or dispose of its business and proceedings at venues other than the seat of the Council; and 50
- (d) the designation of members to preside over meetings of the Council.

**Quorum**

12. The presence—

- (a) of at least one third; or
- (b) when a vote is taken on a Bill, of at least half, 55

**Voorsitter en ondervoorsitter**

9. (1) By die eerste vergadering van die Raad nadat dit kragtens artikel 8(5) byeengeroep is, verkies die Raad een van sy lede as ondervoorsitter van die Raad.
- (2) Die voorsitter en ondervoorsitter beklee hul amp, behoudens artikels 5, 6 en 7, vanaf die datum waarop hulle verkies is totdat die tydskuur van die Raad ten opsigte waarvan hulle verkies is, verstryk het. Met dien verstande dat hulle by die verstryking van hulle ampstermyn herkiesbaar is.
- (3) Die voorsitter is beklee en belas met al die bevoegdhede en werksaamhede wat deur hierdie Wet en die reëls en orders aan hom of haar verleen of opgedra word.
- 10 (4) Indien die voorsitter afwesig is of om enige rede nie die bevoegdhede of werksaamhede wat in die amp van voorsitter setel, kan uitoefen of verrig nie, of wanneer die amp van voorsitter vakant is, tree die ondervoorsitter as voorsitter op gedurende die voorsitter se afwesigheid of onvermoë of totdat 'n voorsitter verkies word.
- 15 (5) Indien enige van die omstandighede in subartikel (4) vermeld met betrekking tot sowel die voorsitter as die ondervoorsitter geld, neem 'n lid van die Raad wat ingevolge die reëls en orders aangewys is, waar as voorsitter solank genoemde omstandighede voortduur.
- (6) Die ondervoorsitter of die lid ingevolge subartikel (5) aangewys, kan die bevoegdhede uitoefen en moet die werksaamhede verrig wat in die amp van voorsitter setel, terwyl hy of sy as voorsitter waarneem.
- (7) Die voorsitter, die ondervoorsitter of enige ander lid van die Raad wat ingevolge die reëls en orders vir die doel aangewys is, sit voor by vergaderings van die Raad.
- 25 (8) Terwyl hy of sy by 'n vergadering van die Raad voorsit, het die voorsitter, ondervoorsitter of ander lid wat voorsit nie 'n beraadslagende stem nie, maar wel 'n beslissende stem wat hy of sy moet uitoefen in die geval van 'n staking van stemme.
- (9) Die voorsitter of ondervoorsitter ontruim sy of haar amp indien hy of sy ingevolge artikel 6 van sy of haar amp onthef word, en kan bedank deur sy of
- 30 haar bedanking skriftelik by die Sekretaris van die Raad in te dien.
- (10) Indien die amp van ondervoorsitter vakant raak, kies die lede van die Raad 'n lid om die vakature te vul.

**Ontruiming van setel en vul van vakatures**

10. (1) Die setel van 'n lid van die Raad raak vakant—
- 35 (a) indien hy of sy ingevolge artikel 6 van sy of haar amp onthef word;
- (b) by sy of haar afsterwe; of
- (c) indien hy of sy skriftelik onder sy of haar handtekening uit sy of haar setel bedank.
- (2) 'n Vakature word so gou moontlik ingevolge artikel 4 gevul.

**40 Reëls en orders**

11. Die Raad kan reëls en orders maak wat sy werksaamhede en verrigtinge reël, met inbegrip van reëls en orders wat die volgende aangeleenthede reël, naamlik—
- 45 (a) die instelling, samestelling, bevoegdhede, werksaamhede, prosedures en duur van komitees van die Raad: Met dien verstande dat voorsiening gemaak moet word vir 'n staande Uitvoerende Komitee, bestaande uit die voorsitter, ondervoorsitter en drie ander lede deur die Raad verkies;
- (b) beperkings op toegang tot sodanige komitees;
- 50 (c) die bevoegdheid van so 'n komitee om sy werksaamhede en verrigtinge te verrig of af te handel op 'n ander plek as die setel van die Raad; en
- (d) die aanwysing van lede om voor te sit by vergaderings van die Raad.

**Kworum**

12. Die teenwoordigheid—
- (a) van minstens een derde; of
- 55 (b) wanneer daar oor 'n Wetsontwerp gestem word, van minstens die helfte,

of all the members of the Council other than the chairperson or other presiding member, shall be necessary to constitute a meeting of the Council.

#### **Requisite majorities**

13. All questions before the Council shall be determined by a majority of votes cast. 5

#### **Moneys payable to members**

14. (1) There shall be paid out of and as a charge to the National Revenue Fund to a member of the Council such remuneration and allowances as determined by the President, having due regard to the recommendations of the Commission on Remuneration of Representatives contemplated in section 207 of the Constitu- 10  
tion.

(2) Those members of the Council who receive remuneration and allowances by virtue of their membership of a House and who continue to receive such remuneration and allowances while serving on the Council, shall not receive any remuneration and allowances by virtue of subsection (1), except to the extent 15  
required to place those members in the position in which they would have been were it not for such membership.

(3) The remuneration and allowances contemplated in this section may differ according to whether a member is a full-time or part-time member of the Council. 20

#### **Administration of Council**

15. (1) The Council may, in consultation with the Public Service Commission, appoint a secretary and such other staff as may be necessary for the discharge of the work of the Council.

(2) Persons appointed under this section shall be remunerated out of and as a 25  
charge to the National Revenue Fund.

#### **Short title and commencement**

16. This Act shall be called the Council of Traditional Leaders Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 30

van al die lede van die Raad behalwe die voorsitter of ander voorsittende lid, is nodig om 'n vergadering van die Raad uit te maak.

#### **Vereiste meerderhede**

13. Alle vrae voor die Raad word beslis deur 'n meerderheid van die stemme  
5 wat uitgebring word.

#### **Gelde betaalbaar aan lede**

14. (1) Daar word aan 'n lid van die Raad, uit en ten laste van die Nasionale Inkomstefonds, die vergoeding en toelaes betaal wat deur die President met behoorlike inagneming van die aanbevelings van die Kommissie op Besoldiging  
10 van Verteenwoordigers beoog in artikel 207 van die Grondwet, bepaal word.

- (2) Daardie lede van die Raad wat uit hoofde van hul lidmaatskap van 'n Huis vergoeding en toelaes ontvang en wat voortgaan om sodanige vergoeding en toelaes te ontvang terwyl hulle in die Raad dien, ontvang nie enige vergoeding en toelaes uit hoofde van subartikel (1) nie, behalwe in die mate wat nodig is om  
15 daardie lede in die posisie te plaas waarin hulle sou gewees het indien dit nie vir sodanige lidmaatskap was nie.

- (3) Die vergoeding en toelaes in hierdie artikel beoog, kan verskil na gelang daarvan of 'n lid 'n voltydse of deeltydse lid van die Raad is.

#### **Administrasie van Raad**

- 20 15. (1) Die Raad kan in oorleg met die Staatsdienskommissie, 'n sekretaris en die ander personeel aanstel wat nodig is vir die uitvoering van die werksaamhede van die Raad.

- (2) Persone kragtens hierdie artikel aangestel, word uit en ten laste van die Nasionale Inkomstefonds besoldig.

#### **25 Kort titel en inwerkingtreding**

16. Hierdie Wet heet die Wet op die Raad van Tradisionele Leiers, 1994, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

## MEMORANDUM ON THE OBJECTS OF THE COUNCIL OF TRADITIONAL LEADERS BILL, 1994

1. Section 184(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (the Constitution), establishes the Council of Traditional Leaders (the Council), consisting of a chairperson and 19 members. In terms of section 184(2) of the Constitution, the chairperson and members are to be elected by an electoral college constituted by the members of the various Provincial Houses of Traditional Leaders.

2.1 The constitutionally prescribed powers of the Council are—

- (i) to advise and make recommendations to the national government on any matter pertaining to traditional authorities; indigenous law or the traditions and customs of traditional communities in South Africa; and
- (ii) at the request of the President, to advise him or her on any matter of national interest.

2.2 In addition, any parliamentary Bill pertaining to traditional authorities, indigenous law or the traditions and customs of traditional communities, must, once it has been passed in one House of Parliament and before it is passed by the second House, be referred to the Council for its comments, which it must give within 30 days of such referral. If the Council registers opposition to that Bill, the second House cannot pass the Bill for a period of 30 days as from the date of receipt of such opposition (section 184(5) of the Constitution).

3. Section 184(3)(a) of the Constitution requires legislation providing for the composition, the election of representatives to and the powers and functions of the Council as well as for procedures applicable to the exercise and performance of such powers and functions and for any other matters incidental to the establishment and functioning of the Council, to be introduced in Parliament within six months of the commencement of the Constitution. Before the legislation can be introduced in Parliament section 184(3)(b) of the Constitution requires the traditional authorities to be consulted, in a manner determined by resolution of Parliament, to establish their views on the contents of the legislation. On 22 September 1994 Parliament resolved that the Select Committee on Constitutional Affairs (National Assembly) and the Select Committee on Constitutional and Provincial Affairs, Public Service and Administration (Senate), sitting as Conferring Committees, must call for comments from traditional authorities in South Africa in whatever manner they deem to be most effective and thereafter to arrange and categorise the comments received, weigh up any conflicting comments, prepare a report on the result of their consultation and table the report in Parliament by 20 October 1994. Parliament further resolved that the tabling of this report in Parliament would conclude the consultation process contemplated in the Constitution but would not preclude further consultation.

4. This Bill gives effect to the above-mentioned section 184(3)(a) of the Constitution and the most important clauses thereof are elucidated below.

4.1 Clause 2, echoing section 184(1) of the Constitution, provides that the Council shall consist of an elected chairperson and 19 elected representatives. It also empowers the President to determine, after consultation with the chairperson of the Council, which members will serve in a full-time and which members will serve in a part-time capacity.

4.2 Clause 4 provides for the composition of the electoral college and the election of representatives to the Council. In terms thereof the chairperson and members of the Council are elected by an electoral college constituted by members of the Houses of Traditional Leaders, as contemplated in section 183 of the Constitution. The President shall, however, for the purposes of this election make rules which, *inter alia*, must make provision for the way in which the electoral college shall be constituted, the fair distribution of representatives among the Provincial Houses and the procedure to be observed at the election of the chairperson and members of the Council. The clause also makes provision for the convening of the electoral college after the commencement of the Act as well as for subsequent meetings of the electoral college when vacancies in the

## MEMORANDUM OOR DIE OOGMERKE VAN DIE WETSONTWERP OP DIE RAAD VAN TRADISIONELE LEIERS, 1994

1. Artikel 184(1) van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993) (die Grondwet), stel die Raad van Tradisionele Leiers (die Raad) in wat bestaan uit 'n voorsitter en 19 lede. Ingevolge artikel 184(2) van die Grondwet word die voorsitter en lede gekies deur 'n kieskollege wat saamgestel word deur die lede van die onderskeie Provinsiale Huisse van Tradisionele Leiers.

2.1 Die grondwetlik voorgeskrewe bevoegdheid van die Raad is—

- (i) om die nasionale regering te adviseer en aanbevelings aan daardie regering te doen ten opsigte van enige aangeleentheid wat betrekking het op tradisionele owerhede, inheemse reg of die tradisies en gebruike van tradisionele gemeenskappe in Suid-Afrika; en
- (ii) om, op versoek van die President, hom of haar oor enige aangeleentheid van nasionale belang te adviseer.

2.2 Hierbenewens moet enige parlementêre Wetsontwerp wat betrekking het op tradisionele owerhede, inheemse reg of die tradisies en gebruike van tradisionele gemeenskappe, nadat dit deur een Huis van die Parlement aanvaar is en voordat dit deur die tweede Huis aanvaar word, na die Raad vir sy kommentaar verwys word, wat vermeldde kommentaar binne 30 dae vanaf sodanige verwysing moet lewer. Indien die Raad sy teenkanting teen daardie Wetsontwerp aandui, aanvaar die tweede Huis nie die Wetsontwerp nie voordat 'n tydperk van 30 dae verloop het vanaf die datum van ontvangs van sodanige teenkanting (artikel 184(5) van die Grondwet).

3. Artikel 184(3)(a) van die Grondwet vereis dat wetgewing wat voorsiening maak vir die samestelling, die verkiesing van verteenwoordigers en die bevoegdheid en werksaamhede van die Raad, sowel as vir die prosedures van toepassing op die uitoefening en verrigting van sodanige bevoegdhede en werksaamhede en vir enige ander aangeleenthede in verband met die instelling en funksionering van die Raad, nie later nie as ses maande na die inwerkingtreding van die Grondwet by die Parlement ingedien moet word. Alvorens die wetgewing by die Parlement ingedien kan word, vereis artikel 184(3)(b) van die Grondwet dat daar met die tradisionele owerhede oorleg gepleeg moet word op 'n wyse bepaal by besluit van die Parlement, om hul sienswyse oor die inhoud van die wetgewing vas te stel. Op 22 September 1994 het die Parlement besluit dat die Gekose Komitee oor Staatkundige Aangeleenthede (Nasionale Vergadering) en die Gekose Komitee oor Staatkundige en Provinsiale Sake, Staatsdiens en Administrasie (Senaat), wat as Beraadslagende Komitees optree, kommentaar van tradisionele owerhede in Suid-Afrika moet aanvra op die wyse wat hulle die doeltreffendste ag, waarna hulle die kommentaar wat ontvang is, moet rangskik en kategoriseer, enige botsende kommentaar teen mekaar moet opweeg, 'n verslag oor die uitslag van hulle oorlegpleging moet voorberei en die verslag teen 20 Oktober 1994 in die Parlement ter tafel moet lê. Die Parlement het verder besluit dat die tertafellegging van hierdie verslag in die Parlement die oorlegplegingsproses, soos beoog in die Grondwet, sal afhandel maar dat dit nie verdere oorlegpleging uitsluit nie.

4. Hierdie Wetsontwerp gee uitvoering aan 184(3)(a) bovermelde artikel van die Grondwet en die belangrikste klousules daarvan word hieronder toegelig.

4.1 Klousule 2, wat artikel 184(1) van die Grondwet herhaal, maak daarvoor voorsiening dat die Raad uit 'n verkose voorsitter en 19 verkose verteenwoordigers sal bestaan. Die President word ook gemagtig om, na oorleg met die voorsitter van die Raad, te bepaal watter lede in 'n voltydse en watter lede in 'n deeltydse hoedanigheid sal dien.

4.2 Klousule 4 maak voorsiening vir die samestelling van die kieskollege en die verkiesing van verteenwoordigers in die Raad. Daarvolgens word die voorsitter en lede van die Raad verkies deur 'n kieskollege, saamgestel deur lede van die Huisse van Tradisionele Leiers, soos beoog in artikel 183 van die Grondwet. Die President moet egter vir die doeleindes van dié verkiesing reëls uitvaardig wat, onder andere, voorsiening moet maak vir die wyse waarop die kieskollege saamgestel moet word, die regverdige verdeling van verteenwoordigers tussen

Council arise or if the Council is dissolved. It furthermore empowers the President to make rules with regard to the convening of and procedures to be observed at special meetings of the electoral college relating to the passing of a vote of no confidence in the Council or the impeachment of the chairperson or a member of the Council.

4.3 Clause 5 regulates the duration of the Council. In terms thereof the Council will serve for a term of five years from the date of an election, after which a new election will be held. Members are, however, eligible for re-election. If the Council is dissolved prior to the expiry of its term of five years, it shall continue as such until the election of a new Council, and its members will, during that period, remain members thereof and the Council will remain competent to perform its functions. The newly elected Council will, however, only continue for the unexpired portion of the original period of five years.

4.4 Clause 6 regulates the removal from office of the chairperson or a member of the Council. In terms thereof the chairperson or a member can be removed from office by a two thirds majority decision of the electoral college. The grounds for such removal include a serious violation of the Constitution or any other law of the Republic, misconduct or inability.

4.5 Clause 7 regulates a vote of no-confidence in the Council and provides that if the electoral college passes a vote of no confidence in the Council by a two-thirds majority resolution at a special meeting thereof, the Council shall be dissolved and that a new election in terms of the Bill must be held.

4.6 Clause 8 regulates the meetings of the Council. The Council shall meet at least once a year during a sitting of Parliament. It also provides for the holding of special meetings when necessary. The Council will meet in Cape Town unless the chairperson directs otherwise. The first meeting of the Council must be held within 30 days of the first election of the Council (clause 8(5)).

4.7 Clause 9 sets out the duties and functions of the chairperson and the deputy chairperson and clause 10 regulates the vacation of seats and the filling of vacancies in the Council. Clause 11 empowers the Council to make rules and orders relating to its business and proceedings, which includes the power to establish committees. An Executive Committee, consisting of the chairperson, deputy chairperson and three members elected by the Council must, however, in terms thereof, be appointed.

4.8 In terms of clause 12, one third of the members of the Council is required to constitute a quorum and when a vote is taken on a Bill, one half of the members. All questions before the Council must be determined by a majority of votes cast (clause 13).

4.9 Clause 14 regulates the remuneration of members of the Council. They will receive the remuneration and allowances as determined by the President, having due regard to the recommendations of the Commission on Remuneration of Representatives, contemplated in section 207 of the Constitution. The remuneration and allowances may differ according to whether a member serves in a full-time or part-time capacity. In terms of clause 15, the Council can, in consultation with the Public Service Commission, appoint a secretary and other staff to assist it in its work.

die Provinsiale Huise en die prosedure wat by die verkiesing van die voorsitter en lede van die Raad gevolg moet word. Die klousule maak ook voorsiening vir die byeenroeping van die kieskollege na die inwerkingtreding van die Wet sowel as vir daaropvolgende vergaderings van die kieskollege wanneer vakatures in die Raad ontstaan of indien die Raad ontbind sou word. Dit magtig ook die President om reëls te maak betreffende die byeenroeping van en prosedures wat gevolg moet word by spesiale vergaderings van die kieskollege wat verband hou met 'n voorstel van wantroue in die Raad of die ampsontheffing van die voorsitter of 'n lid van die Raad.

4.3 Klousule 5 reël die ampstermyn van die Raad. Daarvolgens dien die Raad vir 'n termyn van vyf jaar vanaf die datum van 'n verkiesing, waarna 'n nuwe verkiesing gehou moet word. Lede is egter herkiesbaar. Indien die Raad voor die einde van sy termyn van vyf jaar ontbind word, bly hy voortbestaan tot die verkiesing van 'n nuwe Raad en gedurende vermelde tydperk bly die lede daarvan aan as lede en die Raad bly bevoeg om sy werksaamhede te verrig. Die nuut verkose Raad duur egter slegs vir die onverstreke gedeelte van die oorspronklike tydperk van vyf jaar.

4.4 Klousule 6 reël die ampsontheffing van die voorsitter of 'n lid van die Raad. Ingevolge hiervan kan die voorsitter of 'n lid van sy of haar amp onthef word by 'n tweederdemeerderheidsbesluit van die kieskollege. Die gronde vir sodanige ampsontheffing sluit in 'n ernstige skending van die Grondwet of 'n ander wet van die Republiek, wangedrag of onvermoë.

4.5 Klousule 7 reël 'n voorstel van wantroue in die Raad en bepaal dat indien die kieskollege op 'n spesiale vergadering 'n voorstel van wantroue in die Raad met by 'n tweederdemeerderheids aanvaar, die Raad ontbind en dat 'n nuwe verkiesing kragtens die Wetsontwerp gehou moet word.

4.6 Klousule 8 reël die vergaderings van die Raad. Die Raad moet minstens een keer per jaar tydens 'n sitting van die Parlement byeenkom. Daar word ook voorsiening gemaak vir spesiale vergaderings wat, indien nodig, gehou kan word. Die Raad vergader in Kaapstad tensy die voorsitter anders gelas. Die eerste vergadering van die Raad moet binne 30 dae vanaf die eerste verkiesing van die Raad gehou word (klousule 8(5)).

4.7 Klousule 9 sit die pligte en werksaamhede van die voorsitter en onder-voorsitter uiteen en klousule 10 reël die ontruiming van setels en die vul van vakatures in die Raad. Klousule 11 magtig die Raad om reëls en orders uit te vaardig wat verband hou met sy werksaamhede en verrigtinge wat die bevoegdheid insluit om komitees in te stel. 'n Uitvoerende Komitee, bestaande uit die voorsitter, ondervoorsitter en drie lede wat deur die Raad verkies word, moet ingevolge daarvan aangestel word.

4.8 Ingevolge klousule 12 word die teenwoordigheid van 'n derde van die lede van die Raad vereis om 'n kworum uit te maak en wanneer daar oor 'n Wetsontwerp gestem word, die helfte van die lede. Alle vrae voor die Raad word beslis deur 'n meerderheid van stemme uitgebring (klousule 13).

4.9 Klousule 14 reël die vergoeding van lede van die Raad. Hulle ontvang die vergoeding en toelaes, soos deur die President, met inagneming van die aanbevelings van die Kommissie op Besoldiging van Verteenwoordigers beoog in artikel 207 van die Grondwet, bepaal. Die vergoeding en toelaes kan verskil na gelang daarvan of 'n lid in 'n voltydse of deeltydse hoedanigheid dien. Ingevolge klousule 15 kan die Raad, in oorleg met die Staatsdienskommissie, 'n sekretaris en ander personeel aanstel om hom by die verrigting van sy werksaamhede behulpzaam te wees.

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