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THE PRESIDENCY

No. 44

27 January 2010

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 22 of 2009: National House of Traditional Leaders Act, 2009.



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*(English text signed by the President.)
(Assented to 26 January 2010.)*

ACT

To provide for the establishment of the National House of Traditional Leaders; to determine the powers, duties and responsibilities of the House; to provide for support to the House by government; to provide for the relationship between the House and the provincial houses; to provide for the accountability of the House; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution of the Republic of South Africa, 1996, recognises the institution, status and role of traditional leadership according to custom and customary law;

AND WHEREAS the Constitution of the Republic of South Africa, 1996, provides that national or provincial legislation may provide for the establishment of houses of traditional leaders to deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law;

AND WHEREAS the Constitution of the Republic of South Africa Act, 1993 (Act No. 200 of 1993), for the first time in the history of South Africa, provided for the enactment of the Council of Traditional Leaders Act, 1994 (Act No. 31 of 1994), which was repealed in 1997 and replaced by the National House of Traditional Leaders Act, 2000 (Act No. 20 of 2000);

AND WHEREAS from 1994, provinces passed provincial legislation providing for the establishment of provincial houses of traditional leadership;

AND WHEREAS in 2003 the government adopted the White Paper on Traditional Leadership and Governance which provides for another layer of houses of traditional leadership at a district municipal level;

AND WHEREAS the vision of government enunciated in the 2003 White Paper on Traditional Leadership and Governance necessitates the alignment of legislation establishing the National House of Traditional Leaders with the principles of non-sexism, co-operative governance between the houses, nation building, unity and peace among the houses and traditional communities as well as enhancing traditions and culture,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

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Act No. 22, 2009

NATIONAL HOUSE OF
TRADITIONAL LEADERS ACT, 2009

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Definitions

1. In this Act, unless the context indicates otherwise—
 - “**code of conduct**” means the code of conduct contained in Schedule C;
 - “**Department**” means the national department responsible for traditional leadership matters; 35
 - “**Framework Act**” means the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);
 - “**House**” means the National House of Traditional Leaders established by section 2;
 - “**king or queen**” means a person recognised as such in terms of section 9 of the Framework Act; 40
 - “**local house**” means a local house as established in terms of section 17 of the Framework Act, and “**local houses**” has a corresponding meaning;
 - “**member**” means a member of the House elected in terms section 4;
 - “**Minister**” means the Minister responsible for traditional leadership matters; 45
 - “**prescribe**” means prescribed by regulation in terms of section 24;
 - “**provincial house**” means a provincial house of traditional leaders established in terms of applicable provincial legislation, and “**provincial houses**” has a corresponding meaning;
 - “**rules and orders**” means rules and orders of the House as provided for in section 20; 50
 - “**Secretary**” means the Secretary of the House appointed in terms of section 12;

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“senior traditional leader” means a senior traditional leader defined in section 1 of the Framework Act;

“this Act” includes any regulations made under section 24;

“traditional council” means a traditional council defined in section 1 of the Framework Act; and

“traditional leader” means a traditional leader defined in section 1 of the Framework Act.

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Establishment and term of office of House

2. (1) There is hereby established a house of traditional leaders to be known as the National House of Traditional Leaders.

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(2) The term of the House is five years.

(3) Notwithstanding the dissolution of the House in terms of section 21—

(a) every person who on the date of the dissolution of the House is a member remains a member of the House;

(b) the House remains competent to function; and

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(c) the Minister may summon the House to an extraordinary meeting for the dispatch of urgent business,

during the period following such dissolution until the day before the first meeting of the next House.

Composition of House

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3. (1) The House consists—

(a) of three persons who are senior traditional leaders elected by each provincial house: Provided that where on good grounds shown or due to an insufficient number of senior traditional leaders in a provincial house, such provincial house may elect headmen or headwomen.

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(b) where relevant, of persons identified in terms of subsection (2).

(2) The provisions of subsection (1)(b) apply only in cases where a provincial house has not been established, and will be implemented as follows:

(a) Where there are more than three traditional councils performing functions of a local house, the chairpersons of such councils must elect from amongst themselves three representatives to the House; or

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(b) where there are three or a lesser number of traditional councils performing functions of a local house, the chairpersons of such traditional councils must be ex officio members of the House; or

(c) where there are one or more local houses, the senior traditional leaders from within the province must elect from amongst themselves three representatives to the House.

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(3) The chairperson of a traditional council or a local house referred to in subsection (2) must be a senior traditional leader, and if he or she is not a senior traditional leader the traditional council or the local house concerned must elect another member who is a senior traditional leader.

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(4) At least a third of the members of the House must consist of women: Provided that if the Minister is satisfied that there is an insufficient number of women to participate in the House the Minister must, after consultation with the Premier of the province in question and the provincial house concerned, determine a lower threshold.

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Election of members to House

4. (1) The Minister must, within 30 days before the expiry of the term of the House, request the Premiers to notify provincial houses to, subject to section 3, conduct elections for members to serve in the House.

(2) The members of a provincial house that are to serve in the House must be elected, within 21 days after having received the notice from the Premier in terms of subsection

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(1), by members of that provincial house in a meeting called for that purpose and attended by at least two thirds of the members of the house concerned.

(3) The election proceedings must be conducted by the Premier or a person designated by the Premier of the province concerned, observed by officials of the House and the provincial department responsible for traditional affairs. 5

(4) An election contemplated in subsection (3) must be by secret ballot by members of the provincial house concerned in the same meeting where the nominations take place.

(5) Each provincial house must designate one of the members elected in terms of subsections (2), (3) and (4) as leader of the elected members. 10

(6) The Premier must submit to the Minister, in respect of every person elected, such person's—

(a) acceptance of the election;

(b) full name and surname;

(c) identity number; and 15

(d) contact details.

(7) In the event that a provincial house fails to elect one or more of its members to serve in the House, within the time limits referred to in subsection (2), the Premier must designate members of the provincial house concerned to serve in the House.

Qualification for membership of House

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5. No person is eligible to become a member of the House if that person—

(a) is a member of a municipal council, a member of provincial legislature or a member of Parliament;

(b) at the time of the election of members of the House, is serving a sentence of imprisonment; 25

(c) is an unrehabilitated insolvent;

(d) is of unsound mind and has been so declared by a competent court;

(e) has been convicted of a criminal offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic or outside the Republic, if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined or until the time for an appeal has expired: Provided that a disqualification under this paragraph ends five years after the sentence has been completed; 30 35

(f) is not a South African citizen; or

(g) is not permanently resident within the Republic.

Vacation of seats

6. The seat of a member of the House becomes vacant—

(a) upon the death of a member; 40

(b) if the member resigns by written notice;

(c) if the member becomes disqualified in terms of section 5;

(d) if the member becomes a full-time member of a municipal council, a member of a provincial legislature or a member of Parliament;

(e) if a member is convicted of a criminal offence without the option of a fine; 45

(f) if the member, without having obtained leave in accordance with the rules and orders, absents himself or herself from three consecutive meetings of the House;

(g) if the member is removed from the House for breach of the code of conduct appearing in Schedule C; or 50

(h) in the case of a member contemplated in section 3(1), if the member ceases to be a member of a provincial house that elected him or her, or ceases to be a chairperson or member of a local house, as the case may be.

Filling of vacancies

7. (1) Where a vacancy occurs in the House the Minister must, within 14 days, inform the relevant Premier of such a vacancy. 55