

# HOUSE OF TRADITIONAL LEADERS ACT NO. 1 OF 1995 (EASTERN CAPE)

[ASSENTED TO 15 MARCH, 1995]

[DATE OF COMMENCEMENT: 27 MARCH, 1995]

This Act has been updated to *Provincial Gazette* 1392 dated 30 June, 2005.

## as amended by

House of Traditional Leaders Amendment Act, No. 7 of 1997

House of Traditional Leaders Amendment Act, No. 9 of 2001

House of Traditional Leaders Amendment Act, No. 3 of 2005 (Eastern Cape)

## ACT

**To provide for the establishment of a House of Traditional Leaders; to determine the powers, functions and duties of the House; and to provide for matters incidental thereto.**

### ARRANGEMENT OF SECTIONS

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**1. Definitions.**—In this Act, unless the context otherwise indicates—

**“Chairperson”** means a Chairperson, or his or her Deputy, elected in terms of section 9;  
[Definition of “Chairperson” inserted by s. 1 (b) of Act No. 9 of 2001.]

**“Commission on Provincial Government”** . . . . .  
[Definition of “Commission on Provincial Government” deleted by s. 1 (a) of Act No. 9 of 2001.]

**“Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);  
[Definition of “Constitution” substituted by s. 1 (a) of Act No. 7 of 1997.]

**“constituency”** means an area demarcated for the purposes of nominations or elections of members of the House, and may include one or more magisterial districts;  
[Definition of “constituency” inserted by s. 1 (c) of Act No. 9 of 2001.]

**“district”** means a **“district municipality”** as defined in section 1 of the Local government: Municipal Structures Act, 1998 (Act No. 117 of 1998);  
[Definition of “district” inserted by s. 1 (d) of Act No. 9 of 2001 and substituted by s. 1 (a) of Act No. 3 of 2005.]

**"Executive Committee"** means the Executive Committee of the House established in terms of section 10(a);

**"Executive Council"** means the Executive Council of the Province;

**"Framework Act"** means the Traditional Leadership and Governance Framework Act, 2003 (Act No. 42 of 2003);

[Definition of "Framework Act" inserted by s. 1 (b) of Act No. 3 of 2005.]

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

[Definition of "iKumkani" inserted by s. 1 (c) of Act No. 3 of 2005.]

.....

[Definition of "King" inserted by s. 1 (e) of Act No. 9 of 2001 and deleted by s. 1 (d) of Act No. 3 of 2005.]

**"House"** means the House of Traditional Leaders (Eastern Cape) established by section 2;

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

[Definition of "MEC" inserted by s. 1 (f) of Act No. 9 of 2001.]

**"member"** means a member of the House;

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

[Definition of "Premier" inserted by s. 1 (g) of Act No. 9 of 2001.]

**"Province"** means the Province of the Eastern Cape as defined in the Constitution;

**"Provincial Legislature"** means the Legislature of the Province;

**"regulation"** means any regulation made under this Act;

**"standing committee"** means the standing committee of the Provincial Legislature responsible for traditional affairs;

[Definition of "standing committee" inserted by s. 1 (h) of Act No. 9 of 2001.]

**"this Act"** includes a regulation made under this Act;

.....

[Definition of "traditional authority" substituted by s. 1 (b) of Act No. 7 of 1997 and deleted by s. 1 (e) of Act No. 3 of 2005.]

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

[Definition of "traditional community" added by s. 1 (c) of Act No. 7 of 1997 and substituted by s. 1 (f) of Act No. 3 of 2005.]

**"traditional leader"** means the head of a traditional authority appointed or designated as such in terms of any law and includes any descendant of such a leader, any person who is in charge of an administrative area and who is also a member of a royal family, and also includes any member of a royal family.

[Definition of "traditional leader" inserted by s. 1 (i) of Act No. 9 of 2001.]

**"traditional leadership"** means the customary institutions or structures, or customary systems or procedures of governance recognised, utilized or practiced by traditional communities.

[Definition of "traditional leadership" inserted by s. 1 (g) of Act No. 3 of 2005.]

**2. Establishment of House of Traditional Leaders.**—There is hereby established a House of Traditional Leaders to be known as the House of Traditional Leaders (Eastern Cape).

[S. 2 substituted by s. 2 of Act No. 7 of 1997.]

**2A. Duration and dissolution of House.**—(1) Subject to subsection (2), the House shall continue for a period of five years as from the date on which the first meeting of the House after its constitution takes place.

(2) Notwithstanding the dissolution of the House by virtue of the provisions of subsection (1), the Premier may, by proclamation in the *Gazette*, summon the House to an extraordinary meeting for the consideration of urgent business, and—

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

(b) the House shall remain competent to exercise or to perform its powers and functions, during the period following such dissolution up to and including the day immediately preceding the day on which the first meeting of the House after such dissolution takes place.

[S. 2A inserted by s. 2 of Act No. 9 of 2001.]

**3. Members of House.**—(1) The House shall, subject to the provisions of this Act, consist of a total of 38 members, made up of—

- (a) 32 part-time members nominated by the relevant traditional leadership and constituencies, and
- (b) six part-time members selected to represent iKumkani, as *ex officio* members;

Provided that the Chairperson and the Deputy Chairperson, elected in terms of section 9 from the members set out in (a) and (b) above, shall become full time members after their election; and

Provided further that, the MEC may determine, in consultation with the House of Traditional Leaders, other members to also serve as full time members.

[Sub-s. (1) substituted by s. 3 (a) of Act No. 9 of 2001 and by s. 2 of Act No. 3 of 2005.]

(2) The MEC shall, after taking into consideration the recommendations of the standing committee or other committees of the Provincial Legislature designated by the Speaker for this purpose, make rules and prescribe a procedure with regard to—

- (a) the way in which the nominations shall be conducted in order to ensure the full participation by traditional communities in the selection of candidates to be nominated to the House;
- (b) the fair distribution among the various traditional communities in the Province of representatives in the House;
- (c) any other matter relating to the nomination of the members.

[Sub-s. (2) substituted by s. 3 (a) of Act No. 7 of 1997 and by s. 3 (b) of Act No. 9 of 2001.]

(3) A traditional authority contemplated in subsection (1) may at any time, after consultation with the traditional community concerned, revoke the nomination of a member selected by it and shall thereupon nominate another member in the prescribed manner.

[Sub-s. (3) substituted by s. 3 (b) of Act No. 7 of 1997.]

(4) Members of the House shall hold office for a period of five years.

[Sub-s. (4) substituted by s. 3 (c) of Act No. 7 of 1997 and by s. 3 (c) of Act No. 9 of 2001.]

(5) Despite subsection (4), the term of office of a member shall terminate on dissolution of the House in terms of section 2A.

[Sub-s. (5) substituted by s. 3 (d) of Act No. 9 of 2001.]

**4. Seat and meetings of House.**—(1) The House shall meet at the seat of the Provincial Legislature unless the Chairperson of the House, in accordance with the rules and orders of the House, and in consultation with the MEC, directs otherwise.

(2) There shall, with the approval of the MEC, be an ordinary meeting of the House at least once in every year during a sitting of the Provincial Legislature.

(3) Subject to subsections (2) and (4), the House shall sit during such period and on such days and during such hours as it may determine.

(4) The Executive Committee may at any time, and if so directed by the MEC shall, call a special meeting of the House on a day to be determined by the said Committee with the approval of the MEC and at such special meeting only such matters as are placed before the House, and agreed to by the MEC, shall be dealt with: Provided that if a special meeting be called by direction of the MEC, only such matters which necessitated the calling of the special meeting shall be dealt with.

(5) . . . . .

[S. 4 amended by s. 4 of Act No. 9 of 2001. Sub-s. (5) deleted by s. 4 of Act No. 7 of 1997.]

**5. Qualification for membership of House.**—No person shall be qualified to be a member of the House unless

- (a) he or she is over the age of 21 years; and

(b) he or she is a traditional leader.

[S. 5 substituted by s. 5 of Act No. 9 of 2001.]

**6. Persons disqualified from being members.—**(1) No person shall be entitled to be a member if he or she—

(a) at the time of the first election of the Provincial Legislature held under the Constitution is serving a sentence of imprisonment of more than 12 months without the option of a fine;

(b) at any time after the promulgation of the Constitution is convicted of an offence in the Republic or outside the Republic, if the conduct constituting such offence would have constituted an offence in the Republic, and for which he or she has been sentenced to imprisonment for a period of more than 12 months without the option of a fine, unless he or she has received a pardon;

(c) is an unrehabilitated insolvent;

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

(e) was nominated otherwise than, in terms of a rule or regulation made in terms of this Act; or

[Para. (e) added by s. 5 (b) of Act No. 7 of 1997.]

(f) becomes a member of Parliament or the Provincial Legislature.

[Para. (f) added by s. 6 (b) of Act No. 9 of 2001.]

(2) For purposes of subsection (1) (b) no person shall be regarded as having been convicted of an offence until an appeal against the conviction or sentence has been heard and finalised, or, if no appeal against the conviction or sentence has been noted, the time for noting such an appeal has expired.

(3) The MEC may, after consultation with the House appoint a tribunal to investigate any matter relating to a member's qualification for membership of the House and, upon presentation of a report, take such decision as may be necessary on the qualification or otherwise of a member to continue to be such a member.

[Sub-s. (3) added by s. 5 (c) of Act No. 7 of 1997.]

(4) If the MEC is of the opinion that a person whose membership has been investigated in terms of subsection (3) does not qualify to remain a member of the House, he or she shall refer the matter for consideration by the House.

[Sub-s. (4) added by s. 5 (c) of Act No. 7 of 1997.]

(5) After the House has considered the matter, the House shall refer it to the constituency concerned to exercise the powers vested upon it by section 3 (3) of this Act.

[S. 6 amended by s. 6 (a) of Act No. 9 of 2001. Sub-s. (5) added by s. 5 (c) of Act No. 7 of 1997 and substituted by s. 6 (c) of Act No. 9 of 2001.]

**7. Vacation of seats.—**(1) The seat of a member shall become vacant—

(a) upon the death of such member;

(b) if he or she resigns his or her seat by written notice under his or her hand, to the Secretary to the House; or

(c) if he or she becomes disqualified in terms of section 6.

(2) If a member vacates his or her seat, the vacancy shall be filled as soon as possible in accordance with section 3 for the unexpired term of office of such member.

[S. 7 substituted by s. 7 of Act No. 9 of 2001.]

**8. Powers, functions and duties of House.—**(1) The House shall deal with matters relating to—

(a) traditional leadership;

(b) the role of traditional leaders;

(c) customary law;

(d) the customs of communities observing a system of customary law,

and shall present an annual report to the Legislature;

[Sub-s. (1) substituted by s. 6 (a) of Act No. 7 of 1997.]

(2) The House—

- (a) shall consider and advise on claims and counterclaims pertaining to the institutions of traditional leadership;
- (b) shall consider all Bills referred to it by the Provincial Legislature and the National Assembly and submit comments thereon; and
- (c) may make a code of conduct for members of the House.  
[Sub-s. (2) deleted by s. 6 (b) of Act No. 7 of 1997 and re-inserted by s. 8 (a) of Act No. 9 of 2001.]

(3) The House may, on the request of the MEC or the Provincial Legislature, investigate and make available information to the Provincial Government on traditional leadership, traditional authorities, customary law and customs.  
[Sub-s. (3) deleted by s. 6 (b) of Act No. 7 of 1997 and re-inserted by s. 8 (a) of Act No. 9 of 2001.]

(4) . . . . .  
[Sub-s. (4) deleted by s. 6 (b) of Act No. 7 of 1997.]

(5) . . . . .  
[Sub-s. (5) deleted by s. 6 (b) of Act No. 7 of 1997.]

(6) The House may exercise such other powers and shall perform such duties as are or may be conferred or imposed on it under any other law including the Constitution.

(7) The House shall exercise its powers, functions and duties only in accordance with provisions of this Act or any other law, including the Constitution, and the MEC may, in terms of a procedure to be prescribed, object to any issue, debate or discussion which in his opinion falls outside the jurisdiction of the House.  
[S. 8 amended by s. 8 (b) of Act No. 9 of 2001.]

**9. Chairperson and Deputy Chairperson.**—(1) At its first meeting after it has been convened under section 4 (5) the House, with the MEC as chairperson, shall elect one of its members to be the Chairperson, and shall thereafter elect one of its members as the Deputy Chairperson of the House.

(2) The Chairperson and Deputy Chairperson shall, subject to the provisions of the new constitutional text contemplated in section 73 of the Constitution and the other provisions of the Constitution, hold office for a period of five years from the date on which they were elected by the House and when their period of office has expired they shall be eligible for reelection.

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

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

(5) If any of the circumstances described in subsection (4) apply with reference to both the Chairperson and the Deputy Chairperson, a member of the House designated in terms of the rules and orders of the House shall act as Chairperson while the said circumstances prevail.

(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.

(7) The Chairperson, the Deputy Chairperson or any other member designated for that purpose in terms of the rules and orders of the House, shall preside over meetings of the House.

(8) While presiding at a meeting of the House, the Chairperson, Deputy Chairperson or other member presiding shall not have a deliberative vote, but shall have and exercise a casting vote in the event of an equality of votes.

(9) The Chairperson or Deputy Chairperson shall vacate his or her office if he or she—

- (a) ceases to be a member;
- (b) is removed from office by resolution of the House; or
- (c) resigns by lodging his or her resignation in writing with the Secretary to the House.

(10) If the office of Chairperson or Deputy Chairperson becomes vacant, the House, under the chairpersonship of the MEC or a person designated by the MEC, shall elect a member to fill the vacancy: Provided that the Chairperson shall in such event preside at the election of a Deputy Chairperson.  
[S. 9 amended by s. 9 of Act No. 9 of 2001.]

**10. Rules and orders.**—The House may, subject to the provisions of this Act and the Constitution, make rules

and orders in connection with the conduct of its business and proceedings, including rules and orders regulating—

- (a) the establishment, constitution, powers and functions, procedures and duration of committees of the House: Provided that provision shall be made for a standing Executive Committee consisting of the Chairperson, Deputy Chairperson and three other members elected by the House;
- (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 House; and
- (d) the designation of members as presiding officers to preside over meetings of the House, as and when the Chairperson so requires.

**11. Quorum.**—The presence of at least one third, or when a vote is taken on a Bill, of at least half, of all the members other than the Chairperson or other presiding member, shall be necessary to constitute a meeting of the House.

**12. Requisite majorities.**—All questions before the House shall be determined by a majority of votes cast.

**13. Moneys payable to members.**—(1) There shall be paid from moneys appropriated by the Provincial Legislature for this purpose to a member of the House such remuneration or allowances as determined by the President of the Republic of South Africa in terms of section 5 of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998).

[Sub-s. (1) substituted by s. 10 (a) of Act No. 9 of 2001.]

(2) Those members of the House who receive remuneration and allowances by virtue of their responsibilities as traditional leaders shall continue to receive such remuneration and allowances while serving in the House, shall not receive any remuneration and allowances and shall be entitled to receive allowances by virtue of subsections (1) and (3).

[Sub-s. (2) substituted by s. 10 (b) of Act No. 9 of 2001.]

(3) . . . . .

[Sub-s. (3) deleted by s. 10 (c) of Act No. 9 of 2001.]

**14. Administration of House.**—(1) (a) The Premier shall, after consultation with the House, appoint a person as Secretary to the House; and

(b) the administrative Head of the Office of the Premier shall designate officers of his or her Department to assist the Secretary in the exercise and performance of his or her functions: Provided that there may be appointed or seconded in accordance with the laws governing the public service, such staff as may be necessary to perform the administrative functions and duties of the House, respectively.

[Sub-s. (1) substituted by s. 7 of Act No. 7 of 1997.]

(2) Persons appointed under this section shall be remunerated out of and as a charge to the Provincial Revenue Fund and their conditions of service shall be provided for by an Act of the Provincial Legislature.

**14A. Savings.**—All officers seconded or appointed after the commencement of this Act to do the administrative work or to exercise any power or function in terms of this Act shall be deemed to be designated or appointed in terms of section 14 of this Act.

[S. 14A inserted by s. 8 of Act No. 7 of 1997.]

**15. Regulations.**—The Premier may, subject to section 10, make regulations on any other matter on which he or she deems it necessary or expedient to make regulations in order to achieve the objects of this Act or which in terms of this Act requires to be prescribed, provided that any regulation made after the establishment of the House shall be made only after consultation with the House.

**16. Administration of Act.**—This Act shall be administered by the Premier.

**17. Short title.**—This Act shall be called the House of Traditional Leaders Act (Eastern Cape), 1995.

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