

LIMPOPO TRADITIONAL LEADERSHIP AND INSTITUTIONS ACT 6 OF 2005

(Signed by the Premier)

[DATE OF COMMENCEMENT: 1 APRIL 2006]

As amended by Act 4 of 2011

ACT

To provide for the recognition of traditional communities; the recognition of traditional councils, the election and appointment of members of traditional councils, recognition of traditional leaders, their removal from office, their roles and functions, recognition of acting traditional leaders and regents, to provide for funds of traditional councils and management thereof; to provide for payment of allowances for travelling expenses of members of traditional councils; to provide for meetings of royal family and traditional councils; to provide for code of conduct; and for matters connected therewith.

PREAMBLE

WHEREAS the Constitution recognises-

- the institution, status and role of traditional leadership according to customary law; and
- a traditional authority that observes a system of customary law;

AND WHEREAS the institution of traditional leadership must-

- promote freedom, human dignity and the achievement of equality and non-sexism;
- strive to enhance tradition and culture;
- promote nation building and harmony and peace amongst people;
- promote the principles of co-operative governance in its interaction with all spheres of government and organs of state;

AND WHEREAS it is necessary to enact provincial legislation within the framework provided by Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003) in order to provide for matters which are peculiar to the Province;

AND WHEREAS it is the intention of the provincial government to transform the institution of traditional leadership in line with the Constitution, by taking into consideration, amongst others, gender equality;

AND WHEREAS it is necessary for traditional leaders within the Province to exercise their powers within a statutory framework that enhances certainty and uniformity;

AND WHEREAS it is within the competence of the Province to legislate on matters of traditional leadership.

BE IT THEREFORE ENACTED by the Provincial Legislature of Limpopo, as follows:

CHAPTER 1 DEFINITIONS, INTERPRETATION AND APPLICATION

1 Definitions

In this Act, unless the context indicates otherwise-

"acting traditional leader" means a traditional leader appointed in terms of section 15;

"area of jurisdiction" means the area of jurisdiction designated for a traditional community and traditional council that have been recognised in terms of this Act;

"Code of Conduct" means the Code of Conduct contained in Schedule 2, and includes the Code of Conduct contained in the Schedule to the Framework Act;

"Commission" means the commission established in terms of section 22 of the Framework Act;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"customary institution or structure" means those institutions or structures established in terms of customary law;

"deputy traditional leader" means a member of the royal family appointed in accordance with customary law to temporarily act in the position of the king, queen, senior traditional leader, headman or headwoman under the circumstances contemplated in section 16(1);

"financial year" means the period starting from 1 April of any year and ending on 31 March of the next succeeding year;

"Framework Act" means the Traditional Leadership and Governance Framework Act, 2003 (Act 43 of 2003);

"headman or headwoman" means a traditional leader who-

- (a) is under the authority of, or exercises authority within the area of jurisdiction of, a senior traditional leader in accordance with customary law; and
- (b) is recognised as such in terms of this Act;

"king or queens" means a traditional leader-

- (a) under whose authority, or within whose area of jurisdiction, senior traditional leaders exercise authority in accordance with customary law; and
- (b) recognised as such in terms of this Act;

"local house of traditional leaders" means a local house of traditional leaders established in terms of the Limpopo Houses of Traditional Leaders Act, 2005;

"provincial house of traditional leaders" means a provincial house of traditional leaders established in terms of the Limpopo Houses of Traditional Leaders Act, 2005;

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

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

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

"this Act" includes any regulations made in terms of section 31;

"traditional community" means a traditional community recognised as such in terms of section 3;

"traditional council" means a council established in terms of section 4;

"traditional leader" means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position, and is recognised in terms of this Act;

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

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

2 Interpretation and application

- (1) This Act is subject to the Framework Act.
- (2) Nothing contained in this Act may be construed as precluding members of a traditional community from addressing a traditional leader by the traditional title accorded to him or her by custom, but such traditional title does not derogate from, or add anything to, the status, role and functions of a traditional leader as provided for in this Act.
- (3) Traditional leaders may acknowledge or recognise the different levels of seniority among themselves in accordance with customs, and none of the definitions contained in section 1 must be construed as conferring or derogating from such seniority.

CHAPTER 2 TRADITIONAL COMMUNITIES AND TRADITIONAL COUNCILS

3 Recognition of traditional communities

- (1) A community envisaged by section 2(1) of the Framework Act may apply to the Premier in writing for recognition as a traditional community.
- (2) An application referred to in subsection (1) must contain the following particulars:
 - (a) a description of the community;
 - (b) the size of the community;
 - (c) the name of the community;
 - (d) the name of the senior traditional leader and headmen or headwomen, if any;
 - (e) names of persons whom the community regards as its leaders in accordance with the community's customary law and their customary designations;
 - (f) the envisaged number of councillors; and

- (g) a description of the area within which the community generally resides.
- (3) The Premier must, upon receipt of the application referred to in subsection (1), if satisfied that the community concerned complied with the provisions of subsection (2), refer the matter to the provincial house of traditional leaders, the relevant local house of traditional leaders, and any senior traditional leader whose traditional community is, in the opinion of the Premier, likely to have an interest in the matter and if applicable, the king or queen under whose jurisdiction the group would fall, for their comments, which comments must be submitted within 30 days of the referral.
- (4) The Premier must, within three months of receipt of the application referred to in subsection (1), subject to subsection (3), take a decision on whether to recognise the community concerned as a traditional community and inform the community concerned of the said decision.
- (5) Before taking a decision not to recognise the community concerned as a traditional community, the Premier must invite the community concerned to furnish reasons why the application should not be turned down on the basis of the reasons stated by the Premier.
- (6) The Premier must, when recognising a traditional community in terms of subsection (4)-
- (a) simultaneously determine the territorial area of the traditional community concerned;
 - (b) issue a prescribed certificate of recognition to the traditional community in question; and
 - (c) within 30 days of the decision publish details of such recognition by notice in the *Gazette*.

4 Traditional Councils

- (1) The Premier must, when recognising a traditional community in terms of section 3(4), and with due regard to the needs of the traditional community concerned, determine the number of councillors for its traditional council to be established in terms of subsection (2): Provided that the total number must not exceed 30.
- (2) A traditional community recognised by the Premier in terms of this Act must within 30 days after the traditional community has been informed accordingly in terms of section 3(4) establish a traditional council for that traditional community, consisting of men and women who in accordance with the customary law of the traditional community concerned are recognised as councillors as well as other members of the traditional community concerned elected democratically.
- (3) The senior traditional leader of the traditional community referred to in subsection (2), must convene a meeting of all adult members of the traditional community for the purposes of election of members of the traditional council, by giving reasonable notice of such meeting in accordance with the custom of such traditional community. The senior traditional leader or his or her designate presides over such meeting.
- (4) The elected members of the traditional council must as far as possible be sufficiently representative of the wards of the traditional community concerned.
- (5) 60 percent of the members of the traditional council must consist of traditional leaders and members of the traditional community selected by the senior traditional leader and the other 40 percent must consist of elected members.

- (6) (a) At least a third of the members of the traditional council must be women, unless the Premier-
- (i) is satisfied upon certification by the senior traditional leader concerned that there is a sufficient number of women; and
 - (ii) determines the lower threshold of women to be included in the particular traditional council.
- (b) The senior traditional leader must, after the required number of men and the available number of women have been elected, if satisfied that there is insufficient number of women to fill the remainder of vacancies required to be filled by women, adjourn the elections and refer the matter to the Premier in writing for the Premier's directive in terms of paragraph (a).
- (c) The senior traditional leader must, upon receipt of the Premier's directive referred to in paragraph (b) resume the elections within 14 days of such receipt in accordance with such directive.
- (d) The Premier must review the threshold of women to be elected into the traditional council prior to the election of the new traditional council.
- (7) Election of members of the traditional council must be done by way of voting in the manner determined by the Premier or any person designated by the Premier to oversee the elections.
- (8) Particulars of the establishment of the traditional council and the names of the members thereof must be submitted to the Premier in writing, within 60 days after the traditional council has been established in terms of subsection (2).
- (9) The Premier must, upon receipt of the particulars referred to in subsection (8), if satisfied that the provisions of the Act have been complied with, within 30 days recognise the traditional council by notice in the *Gazette*.

5 Term of office of members of traditional councils and oath of office

- (1) Subject to section 6, a member of a traditional council holds office for a period of five years: Provided that a member who holds a casual vacancy holds such office for the remainder of his or her predecessor's term.
- (2) Members of the traditional council must, before assuming office as members, take oath of office in the form of Schedule 3 before a magistrate.

6 Vacation of office and vacancies in traditional councils

- (1) The seat of a member of a traditional council must be vacated-
- (a) upon the death of such member;
 - (b) if the member concerned was appointed following selection by the senior traditional leader and Premier approves a written request by the senior traditional leader that such member be dismissed;
 - (c) if the member resigns;

- (d) if the Premier approves a written request by the majority of the members of the ward in which the member resides that such member be dismissed;
 - (e) if the Premier is satisfied that it is in the best interests of the traditional community concerned that such member must vacate the seat and approves that the member be dismissed; and
 - (f) if the term of office of a member is terminated for reasons mentioned in subsection (2).
- (2) A term of office of a member of a traditional council may be terminated-
- (a) if the member has by reason of a permanent infirmity of mind or body become incapable of properly discharging the duties of his or her office;
 - (b) if the member is negligent or indolent in the performance of the functions of his or her office;
 - (c) if the member conducts himself or herself in a disgraceful manner.
- (3) A vacancy in the traditional council must be filled within 14 days in the manner in which the said vacancy was filled when the traditional council was elected or appointed, provided that nothing performed by the traditional council shall be void merely because the vacancy remained vacant for a period of more than 14 days.

7 Rules and orders of traditional council and committees of traditional council

- (1) The traditional council may, in accordance with the customary law of the traditional community concerned, make rules and orders in connection with the conduct of its business and proceedings including the rules and orders regulating the establishment, constitution, powers and functions, procedures and duration of committees of the traditional council, provided that provision must be made for a standing Executive Committee consisting of the senior traditional leader as chairperson, and the deputy chairperson as well as three other members appointed in terms of subsection (2).
- (2) The senior traditional leader must, before the first sitting of the traditional council, appoint from members of the traditional council a deputy chairperson and three other members of the Executive Committee.
- (3) The members of the Executive Committee appointed by the senior traditional leader in terms of subsection (2) must hold office for a period of five years from the date of their appointment.
- (4) The Executive Committee must perform powers and functions assigned to it under this Act.

8 Meetings of traditional councils

- (1) Every traditional council must hold an ordinary meeting not less than once every three months on a day fixed and an hour appointed by the senior traditional leader and written notice of the day, hour and place where the meeting is to be held must be given to every member of the traditional council at least seven days prior to the fixed date.
- (2) The senior traditional leader may at any time, and must when so required by the Premier or not less than one-third of the total number of members of the traditional council, call a special meeting of the traditional council: Provided that the Premier may himself or herself call such meeting.

- (3) No business must be dealt with at a special meeting other than that specified in the notice thereof, except with the approval of the majority of the members present at such meeting.
- (4) Half of the total number of the members of the traditional council forms a quorum and no proceedings and no decision must be taken unless a quorum is present.
- (5) Subject to the provisions of this Act and of any other applicable law the procedure to be followed at any meeting or other proceedings of a traditional council including the meetings of any standing or occasional committee shall be in accordance with the customary laws of the traditional community concerned and must be presided by the senior traditional leader or any member of the traditional council, designated by the senior traditional leader.
- (6) Every traditional council must keep a minute book in respect of each of its meetings in which the following must be recorded:
 - (a) the date, time and place of the meeting;
 - (b) the names of the members present;
 - (c) a summary of every decision taken at the meeting;
 - (d) if a member so requests, the fact that he or she voted against any decision taken.
- (7) A copy of the minutes must, within 15 days after any meeting, be forwarded to the official designated by the Premier.

9 Withdrawal of recognition of traditional communities and traditional councils

- (1) The Premier may, by notice in the *Gazette*, withdraw the recognition of a traditional community in terms of section 7(1) of the Framework Act, after consultation with the provincial house of traditional leaders, the relevant local house of traditional leaders, the community concerned and if applicable, the king or queen under whose jurisdiction the traditional community concerned falls.
- (2) If the recognition of a traditional community is withdrawn in terms of subsection (1), the recognition of the traditional council is deemed to have been withdrawn when the withdrawal of the recognition of the traditional community takes effect.

CHAPTER 3 COOPERATIVE GOVERNANCE

10 Partnerships between municipalities and traditional councils

- (1) When a traditional council considers it necessary for a by-law to be made in respect of any matter directly affecting the area of its authority it must submit a proposal to the municipal council of the municipality concerned to consider the adoption of such a by-law.
- (2) The proposal referred to in subsection (1), may be accompanied by a draft of the proposed by-law and must be motivated in writing.
- (3) On receipt of the proposal the municipal council must consider the proposed by-law within three months.
- (4) The municipal council to whom a draft by-law has been submitted in terms of subsection (1) must consult with the traditional council concerned before rejecting the proposed by-law.

- (5) A traditional council may enter into service level agreements with the relevant municipality in accordance with any applicable legislation.

11 Support to traditional councils

- (1) The Premier must appoint public servants to manage the administration of traditional councils, taking into consideration the extent of the traditional community areas and the needs of its residents.
- (2) The Premier must determine the functions of the personnel of traditional councils appointed in terms of subsection (1) by notice in the *Gazette*.
- (3) The Premier must, within the provincial government's means, provide traditional councils with financial support to enable the traditional councils to perform their functions.

CHAPTER 4 RECOGNITION OF TRADITIONAL LEADERSHIP POSITIONS

12 Recognition of senior traditional leader, headman or headwoman

- (1) Whenever a position of a senior traditional leader, headman or head woman is to be filled-
- (a) the royal family concerned must, within a reasonable time after the need arises for any of those positions to be filled, and with due regard to the customary law of the traditional community concerned-
 - (i) identify a person who qualifies in terms of customary law of the traditional community concerned to assume the position in question; and
 - (ii) through the relevant customary structure of the traditional community concerned and after notifying the traditional council, inform the Premier of the particulars of the person so identified to fill the position and of the reasons for the identification of the specific person.
 - (b) the Premier must, subject to subsection (2)-
 - (i) by notice in the *Gazette* recognise the person so identified by the royal family in accordance with paragraph (a) as senior traditional leader, headman or headwoman, as the case may be;
 - (ii) issue a certificate of recognition to the person so recognised; and
 - (iii) inform the provincial house of traditional leaders and the relevant local house of traditional leaders of the recognition of a senior traditional leader, headman or headwoman.
- (2) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with customary law, customs or processes, the Premier-
- (a) may refer the matter to the provincial house of traditional leaders and the relevant local house of traditional leaders for their recommendations; or
 - (b) may refuse to issue a certificate of recognition; and
 - (c) must refer the matter back to the royal family for reconsideration and resolution

where the certificate of recognition has been refused.

- (3) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (2) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law.

13 Relief of royal duties

- (1) Relief of royal duties shall be on the grounds of-
- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;
 - (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that senior traditional leader, headman or headwoman to function as such;
 - (c) wrongful appointment or recognition;
 - (d) a transgression of a customary rule or principle that warrants removal; or
 - (e) persistent negligence or indolence in the performance of the functions of his or her office.
- (2) Whenever any of the grounds referred to in subsection (1)(a), (b), (d) and (e) come to the attention of the royal family and the royal family decides to remove a senior traditional leader, headman or headwoman, the royal family concerned must, within a reasonable time and through the relevant customary structure-
- (a) inform the Premier of the province concerned of the particulars of the senior traditional leader, headman or headwoman to be removed from office; and
 - (b) furnish reasons for such removal.
- (3) Where it has been decided to remove a senior traditional leader, headman or headwoman in terms of subsection (2), the Premier must-
- (a) withdraw the certificate of recognition with effect from the date of removal;
 - (b) publish a notice with particulars of the removed senior traditional leader, headman or headwoman in the *Gazette*; and
 - (c) inform the royal family concerned, the removed senior traditional leader, headman or headwoman, and the provincial house of traditional leaders as well as the relevant local house of traditional leaders of such removal.
- (4) Where a senior traditional leader, headman or headwoman is removed from office, a successor in line with customs may assume the position, role and responsibilities, subject to section 12.
- (5) Whenever it comes to the attention of the Premier that the grounds referred to in subsection (1)(a) exist and the royal family has not decided to remove the senior traditional leader, headman or headwoman as the case may be, the Premier must forthwith terminate the salary of the traditional leader concerned with effect from the date when the said

grounds came into existence, after the Premier has given the royal family thirty days to respond to the allegations.

14 Recognition of regents

- (1) Where the successor to the position of king, queen, senior traditional leader, headman or headwoman is still regarded as a minor in terms of applicable customary law or customs-
 - (a) the royal family concerned must, within a reasonable time-
 - (i) identify a regent to assume leadership on behalf of the minor; and
 - (ii) through the relevant customary structure, inform the Premier of the particulars of the person identified as regent and the reasons for the identification of that person; and
 - (b) the Premier must, with due regard to applicable customary law or customs, and subject to subsection (2)-
 - (i) by notice in the *Gazette* recognise the regent identified by the royal family in terms of subsection (1);
 - (ii) issue a certificate of recognition to the regent so recognised; and
 - (iii) inform the provincial house of traditional leaders and the relevant local house of traditional leaders of the recognition of the regent concerned; and
 - (c) The Premier must review the recognition of a regent every 12 months.
- (2) Where there is evidence or an allegation that the identification of a person as regent was not done in accordance with customary law, customs or processes, the Premier-
 - (a) may refer the matter to the provincial house of traditional leaders and the relevant local house of traditional leaders for their recommendations; or
 - (b) may refuse to issue a certificate of recognition; and
 - (c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.
- (3) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (2) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family have been done in accordance with customary law.
- (4) The regent recognised in terms of subsection (1) must relinquish his or her position as regent within three months after the successor to the position reaches his or her 25th birthday, and the successor must in the case of a senior traditional leader, headman or headwoman, be recognised by the Premier in terms of section 12.

15 Recognition of acting traditional leaders

- (1) A royal family may, in accordance with the customary law of the traditional community concerned, identify a suitable person who must be a member of the royal family to act as a king, queen, senior traditional leader, headman or headwoman, as the case may be,

where-

- (a) a successor to the position of a king, queen, senior traditional leader, headman or headwoman has not been identified by the royal family concerned in terms of this Act;
 - (b) the identification of a successor to the position of a king, queen, senior traditional leader, headman or headwoman is being reconsidered and resolved in terms of this Act; or
 - (c) a king, queen, senior traditional leader, headman or headwoman, as the case may be, would be absent from his or her area of jurisdiction under circumstances other than those provided for in section 16(1) and for a period of more than six months for-
 - (i) the treatment of illness;
 - (ii) study purposes; or
 - (iii) any other lawful purpose.
- (2) The Premier must, upon appointment of an acting traditional leader in terms of subsection (1)-
- (a) issue a certificate of appointment; and
 - (b) inform the provincial house of traditional leaders and the relevant local house of traditional leaders.
- (3) The Premier must review the appointment of the acting traditional leader every 12 months.
- (4) The Premier must upon request by the royal family remove any person appointed in an acting capacity.

16 Appointment of deputy traditional leaders

- (1) A king, queen, senior traditional leader, headman or headwoman, as the case may be, may, after consultation with the royal family, appoint a deputy who must be a member of the royal family to act in his or her stead whenever that king, queen, senior traditional leader, headman or headwoman-
- (a) becomes a full-time member of a municipal council;
 - (b) is elected as a member of a provincial legislature;
 - (c) is elected as a member of the National Assembly;
 - (d) is appointed as a permanent delegate in the National Council of Provinces; or
 - (e) is elected to, or appointed in, a full-time position in any house of traditional leaders.
- (2) A king, queen, senior traditional leader, headman or headwoman, as the case may be must immediately upon the appointment in terms of subsection (1) inform the Premier, the provincial house of traditional leaders as well as the relevant local house of traditional leaders about the appointment.

- (3) The Premier must upon receipt of the information about the appointment forthwith issue a certificate of appointment to the appointee.
- (4) A person who has been appointed as a deputy in terms of subsection (1) may perform the functions that are attached to the position in question.
- (5) Where a king or queen has appointed a deputy in terms of subsection (1), the king or queen must inform the President of such appointment.
- (6) The king, queen, senior traditional leader, headman or headwoman, as the case may be, may at any time remove the deputy appointed in terms of subsection (1).

17 Meetings of royal family

- (1) A royal family must, when meeting to discuss matters emanating from this Act, function in accordance with customary law of the traditional community concerned.
- (2) Any royal family must keep a minute book in which shall be recorded in respect of each meeting thereof-
 - (a) the date on which, the time at which and the place where such meeting was held;
 - (b) the names of the members of the royal council present and their designations in accordance with their custom; and
 - (c) the decision taken.
- (3) An officer of the State, designated by the Premier, must supervise the administration of the royal family and must have access to the minute books referred to in subsection (2).

CHAPTER 5 ROLE AND FUNCTIONS OF TRADITIONAL LEADERSHIP

18 Roles and functions of traditional leadership

- (1) A traditional leader performs any function provided for in terms of customary law, or assigned to him or her in terms of any law, subject to section 20 of the Framework Act and without derogating from the generality of the foregoing. The traditional leader performs in addition, in consultation with the traditional council, the following functions:
 - (a) promote the interests of the traditional community concerned;
 - (b) in co-operation with the relevant municipalities and State departments, assist with the administration of the traditional community;
 - (c) actively participate in the development of the area of his or her traditional community;
 - (d) at the request of any government department or the relevant municipality, make known to all residents of the traditional community concerned the provisions of any new law; and
 - (e) performance of any functions allocated by any organ of State in accordance with this Act.
- (2) Organs of state must, upon allocation of functions to a traditional council in terms of

section 20 of the Framework Act, inform the Premier of all functions so allocated.

- (3) A traditional council must generally account to the Premier in relation to the exercise of its powers and the performance of its functions and specifically account to the relevant organ of State with regard to the functions allocated to it by such organ of State.
- (4) The traditional councils must uphold traditional African values.

19 Admission of new individuals into existing traditional communities and removal of existing members from traditional communities

- (1) The traditional council may admit any new individual into the traditional community in accordance with the customary laws of the traditional community concerned.
- (2) No existing member of the traditional community may be removed from the area of the traditional community without that member's consent.
- (3) There shall be a systematic transfer of community members.

20 Determination of boundaries of traditional communities

- (1) The Premier must determine boundaries of traditional councils and publish this information in the *Gazette* for general information.
- (2) The Premier may, after consultation with the provincial house of traditional leaders, in order to resolve a boundary related dispute between two or more traditional communities, amend the existing boundaries of the traditional communities concerned, or any other traditional communities if the amendment is reasonably expected to resolve the boundary related dispute or contribute towards the resolution of the dispute.

CHAPTER 6 CONDITIONS OF SERVICE

21 Salaries and allowances

- (1) The salaries and allowances of traditional leaders are dealt with in terms of the Remuneration of Public Office Bearers Act, 1998 (Act 20 of 1998).
- (2) A member of a traditional council may be paid from the funds of the traditional council, an allowance determined by the Premier.

22 Travelling and subsistence

- (1) When a member of a traditional council is required to travel outside the area of jurisdiction of the council in the course of performance of functions of the council, an allowance determined by the Premier may be paid to him or her to defray subsistence and travelling expenses: Provided that such allowance must not be paid if the member is entitled to receive such allowance in terms of the provisions of any other law or direction or if there is proof that such expenses are catered for by a third party.
- (2) A traditional leader who is not a member of a traditional council may, when performing any functions on behalf of the traditional council, be paid an allowance in accordance with subsection (1).

23 Code of conduct

- (1) A traditional leader or a member of a traditional council must, in addition to the Code of

Conduct laid down in the Framework Act, adhere to the applicable part of the Code of Conduct in Schedule 2 of this Act.

- (2) Any breach of the Code of Conduct referred to in subsection (1) must be dealt with in accordance with the procedure laid down in the said Code.

CHAPTER 7 FINANCIAL MATTERS

24 Funds of traditional council

Funds of a traditional council consist of-

- (a) all monies which in accordance with the customary laws of the traditional community concerned are payable to the traditional council;
- (b) fines collected by the traditional leader or council in accordance with the traditional community's laws and customs;
- (c) all monies derived from any property in possession of the traditional community concerned;
- (d) any donations made by any person for the benefit of the traditional community concerned, provided that any conditional grant or donation must, subject to any applicable legislation or government policy, be administered in accordance with the conditions thereof;
- (e) any monies paid to the traditional council under any law; and
- (f) any amounts received by the traditional council under section 25.

25 Levy of traditional council rate

- (1) A traditional council may, with the approval of the Premier, levy a traditional council rate upon every taxpayer of the traditional area concerned.
- (2) The levy of a traditional council rate under subsection (1) shall be made known by the Premier by notice in the *Gazette* and shall be of force from the date mentioned in such notice.
- (3) Any taxpayer referred to in subsection (1), who fails to pay the traditional council levy may be dealt with in accordance with the customary laws of the traditional community concerned.

26 Opening of accounts for finances of traditional councils

- (1) The Premier must cause to be opened in respect of each traditional council, an account into which shall be paid all amounts received in terms of section 24 and from which all expenditure incurred in connection with any matter within the power of the traditional council concerned must be met.
- (2) The control of the account referred to in subsection (1) vests in the Premier: Provided that the Premier may on such conditions as the Premier may deem fit, delegate any powers with regard to the said account to the traditional council concerned.
- (3) The Premier may, with consent of the traditional council concerned, invest monies standing to the credit of the account of a traditional council which are not required for immediate use

or as a reasonable balance for current expenditure on call or short-term deposit at any bank or other financial institution registered in the Republic to such extent and subject to such terms and conditions as the Premier may determine.

27 Accounting Officer for finances of traditional councils

The Director General is the accounting officer for the funds of the traditional councils.

28 Quarterly financial reports

Every traditional council must in respect of each financial year, within 15 days after the end of each quarter, submit to the Director General, a comprehensive report on income and expenditure for the preceding quarter and annually after the end of the financial year and at the time determined by the Premier, submit to the Director General, a comprehensive report on the traditional council's income and expenditure for the preceding year.

29 Keeping of records

- (1) A traditional council must keep proper records of all its activities and income and expenditure;
- (2) A traditional council must make the records referred in subsection (1) available to be audited by the Auditor-General.

30 Implementation of decisions of commission

- (1) The Premier must, within seven days of receipt of the decision of the commission in terms of section 26(2) of the Framework Act, refer such decision to the provincial house of traditional leaders for its advice on implementation.
- (2) The provincial house of traditional leaders must submit its advice contemplated in subsection (1) to the Premier within 14 days of receipt: Provided that the Premier may, if he or she deems it necessary, require the provincial house of traditional leaders to submit its advice within a specified shorter period.
- (3) The Premier must implement the decision of the commission within 30 days of receipt of such decision from the commission.

31 Regulations

The Premier may make regulations relating to-

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

32 Delegation

- (1) The Premier may delegate any of his or her powers or functions in terms of this Act to any person.
- (2) A delegation referred to in subsection (1) may be withdrawn at any time by the Premier and does not prevent the Premier from exercising the power or function while the power or function is so delegated.

33 Transitional arrangements

- (1) Any provision in this Act requiring consultation with a body which has not yet been established shall remain inoperative to the extent that it requires such consultation, until the relevant body is established.
- (2) Any traditional leader who was appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to have been recognised as such in terms of the relevant provisions of this Act.
- (3) A person who, immediately before the commencement of this Act, had been appointed and was still recognised as a regent, or had been appointed in an acting capacity or as a deputy, is deemed to have been recognised or appointed as such in terms of the relevant provisions of this Act.
- (4) Any tribe that, immediately before the commencement of this Act, existed under the provisions of any law, is deemed to be a traditional community established under this Act.
- (5) A tribal authority or tribal council that, immediately before the commencement of this Act, existed under the provisions of any law, is deemed to be a traditional council established under this Act: Provided that such traditional council must comply with the provisions of section 4 within one year of the commencement of this Act.
- (6)
 - (a) The Premier may, by notice in the *Gazette* disestablish any community authority that has been established and is still recognized in terms of applicable legislation.
 - (b) The notice disestablishing a community authority must regulate the legal, practical and other consequences of the disestablishment, including –
 - (i) the transfer of assets, liabilities, administrative and other records of the community authority; and
 - (ii) the transfer of members of staff, if any.

34 Repeal of laws and savings

- (1) Subject to the provisions of subsections (2) and (3), the laws mentioned in the second column of Schedule 1 are hereby repealed to the extent indicated in the third column of Schedule 1 as from a date determined by the Premier by notice in the *Gazette*.
- (2) Different dates may so be determined by the Premier in respect of different laws.
- (3) Anything done under a provision of a law repealed by subsection (1) and which is capable of being done under a provision of this Act must be deemed to have been done under that provision of this Act.

35 Short title

This Act is called the Limpopo Traditional Leadership and Institutions Act, 2005 and comes into operation on a date determined by the Premier by proclamation in the *Gazette*.

SCHEDULE 1 REPEALED LAWS

Act No. & Year	Short title	Extent of repeal
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Act 29 of 1991	Venda Traditional Leaders Proclamation	The Whole
Act 38 of 1927	Black Administration Act	To the extent that this Act is assigned to the Province

SCHEDULE 2 CODE OF CONDUCT

Part A: Members of traditional councils

1 Definitions

In this Schedule 'partner' means a person who permanently lives with another person in a manner as if married.

2 General conduct of members of traditional councils

A member of the traditional council must-

- (a) perform the functions of office in good faith, honestly and in a transparent manner; and
- (b) at all times act in the best interest of the traditional community and in such a way that the credibility and integrity of the traditional community are not compromised.

3 Attendance at meetings

A member of the traditional council must attend each meeting of the traditional council and of a committee of which that member of the traditional council is a member, except when-

- (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the traditional council; or
- (b) that member of the traditional council is required in terms of this Code to withdraw from the meeting.

4 Sanctions for non-attendance of meetings

- (1) A traditional council may impose a fine as determined by the standing rules and orders of the traditional council on a member of the traditional council for:
 - (a) not attending a meeting which that member of the traditional council is required to attend in terms of item 3; or
 - (b) failing to remain in attendance at such a meeting.
- (2) A member of the traditional council who is absent from three or more consecutive meetings of a traditional council, or from three or more consecutive meetings of a committee, which that member of the traditional council is required to attend in terms of item 3, must be removed from office as a member of the traditional council.
- (3) Proceedings for the imposition of a fine or the removal of a member of the traditional council must be conducted in accordance with a uniform standing procedure which each traditional council must adopt for the purposes of this item. The uniform standing procedure

must comply with the rules of natural justice.

5 Disclosure of interests

- (1) A member of the traditional council must-
 - (a) disclose to the traditional council, or to any committee of which that member of the traditional council is a member, any direct or indirect personal or private business interest that that member of the traditional council, or any spouse, partner or business associate of that member of the traditional council may have in any matter before the council or the committee; and
 - (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the member of the traditional council's direct or indirect interest in the matter is trivial or irrelevant.
- (2) A member of the traditional council who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the traditional community, must disclose full particulars of the benefit of which the member of the traditional council is aware at the first meeting of the traditional council at which it is possible for the member of the traditional council to make the disclosure.
- (3) This section does not apply to an interest or benefit which a member of the traditional council, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the traditional community.

6 Personal gain

- (1) A member of the traditional council may not use the position or privileges of a member of the traditional council, or confidential information obtained as a member of the traditional council, for private gain or to improperly benefit another person.
- (2) Except with the prior consent of the traditional council, a member of the traditional council may not-
 - (a) be a party to or beneficiary under a contract for-
 - (i) the provision of goods or services to the traditional community; or
 - (ii) the performance of any work otherwise than as a member of the traditional council for the traditional community;
 - (b) obtain a financial interest in any business of the traditional community; or
 - (c) for a fee or other consideration appear on behalf of any other person before the council or a committee.
- (3) If more than one quarter of the members of the traditional council object to consent being given to a member of the traditional council in terms of subitem (2), such consent may only be given to the member of the traditional council with the approval of the Premier.

7 Declaration of interests

- (1) When elected or appointed, a member of the traditional council must within 60 days

declare in writing to an officer of the State designated by the Premier the following financial interests held by that member of the traditional council:

- (a) shares and securities in any company;
 - (b) membership of any close corporation;
 - (c) interest in any trust;
 - (d) directorships;
 - (e) partnerships;
 - (f) other financial interests in any business undertaking;
 - (g) employment and remuneration;
 - (h) interest in property;
 - (i) pension; and
 - (j) subsidies, grants and sponsorships by any organisation.
- (2) Any change in the nature or detail of the financial interests of a member of the traditional council must be declared in writing to the officer referred to in sub-item (1) annually.
- (3) Gifts received by a member of the traditional council above a prescribed amount must also be declared in accordance with subitem (1)-
- (4) The traditional council must determine which of the financial interests referred to in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

8 Rewards, gifts and favours

A member of the traditional council may not request, solicit or accept any reward, gift or favour for-

- (a) voting or not voting in a particular manner on any matter before the traditional council or before a committee of which that member of the traditional council is a member;
- (b) persuading the traditional council or any committee in regard to the exercise of any power, function or duty;
- (c) making a representation to the traditional council or any committee of the council;
or
- (d) disclosing privileged or confidential information.

9 Unauthorised disclosure of information

- (1) A member of the traditional council may not without the permission of the traditional council or a committee disclose any privileged or confidential information of the council or committee to any unauthorised person.

- (2) For the purpose of this item 'privileged or confidential information' includes any information-
- (a) determined by the traditional council or committee to be privileged or confidential;
 - (b) discussed in closed session by the council or committee;
 - (c) disclosure of which would violate a person's right to privacy; or
 - (d) declared to be privileged, confidential or secret in terms of law.
- (3) This item does not derogate from the right of any person to access information in terms of national legislation.

10 Community property

A member of the traditional council may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the traditional community to which that member of the traditional council has no right.

11 Breach of Code

- (1) If the traditional council, on reasonable suspicion, is of the opinion that a provision of this part of the Code of Conduct has been breached, the traditional council must-
- (a) authorise an investigation of the facts and circumstances of the alleged breach;
 - (b) give the member of the traditional council a reasonable opportunity to reply in writing regarding the alleged breach; and
 - (c) report the matter to a meeting of the traditional council after paragraphs (a) and (b) have been complied with.
- (2) A report in terms of subitem (1)(c) is open to the public.
- (3) The traditional council must report the outcome of the investigation to the Premier.
- (4) The senior traditional leader must ensure that each member of the traditional council when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the traditional council meets.
- (5) A traditional council may-
- (a) investigate and make a finding on any alleged breach of a provision of this Code;
or
 - (b) establish a special committee-
 - (i) to investigate and make a finding on any alleged breach of this Code; and
 - (ii) to make appropriate recommendations to the traditional council.
- (6) If the council or a special committee finds that a member of the traditional council has breached a provision of this part of the Code of Conduct, the council may-
- (a) issue a formal warning to the member of the traditional council;

- (b) reprimand the member of the traditional council;
 - (c) request the Premier to suspend the member of the traditional council for a period;
 - (d) fine the member of the traditional council; and
 - (e) request the Premier to remove the member of the traditional council from office.
- (7)
- (a) Any member of the traditional council who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (6) may within 14 days of having been notified of the decision of traditional council appeal to the Premier in writing setting out the reasons on which the appeal is based.
 - (b) A copy of the appeal must be provided to the traditional council.
 - (c) The traditional council may within 14 days of receipt of the appeal referred to in paragraph (b) make any representation pertaining to the appeal to the Premier in writing.
 - (d) The Premier may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the member of the traditional council and the council of the outcome of the appeal.
- (8) The Premier may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the member of the traditional council should be suspended or removed from office.
- (9) If the Premier is of the opinion that the member of the traditional council has breached a provision of this Code, and that such contravention warrants a suspension or removal from office, the Premier may-
- (a) suspend the member of the traditional council for a period and on conditions determined by the Premier; or
 - (b) remove the member of the traditional council from office.
- (10) Any investigation in terms of this item must be in accordance with the rules of natural justice.
- (11) The Premier may order that the provisions of the Limpopo Commissions of Inquiry Act, 2001 (Act 4 of 2001) must apply to any inquiry in terms of this part of the Code of Conduct.

Part B All traditional leaders

1 Misconduct

A traditional leader is guilty of misconduct and may be dealt with in accordance with the provisions of item 2, if the traditional leader-

- (a) contravenes or fails to comply with any provisions of this Act or fails to perform any duty or to discharge any obligation imposed upon the traditional leader by or under any other law;

- (b) is negligent, careless or indolent in the discharge of his or her duties;
- (c) is unable to execute his or her duties in an efficient manner;
- (d) disobeys, disregards or makes wilful default in carrying out a lawful order given to him by a person having authority to give it;
- (e) conducts himself or herself in a disgraceful, improper or unbecoming manner;
- (f) is found guilty by a court of law, for any offence with an element of violence or dishonesty.

2 Procedure in cases of misconduct

- (1) If a traditional leader is accused of misconduct as defined in item 1, the traditional council of the traditional community concerned must enquire into the allegations in accordance with the customary law of the traditional community concerned. An enquiry in terms of this subitem must observe the rules of natural justice.
- (2) If the traditional council is, after the enquiry referred to in subitem (1), of the opinion that a traditional leader is guilty of misconduct, the traditional council may, in consultation with the royal family, refer the results of its enquiry together with a recommendation on the appropriate measures to the Premier.
- (3)
 - (a) The Premier must, within seven days of receipt of the results of the enquiry in terms of subitem (2), refer the matter to the provincial house of traditional leaders for its recommendation.
 - (b) The provincial house of traditional leaders must consider the matter and refer its recommendation to the Premier within 14 days of receipt of the matter from the Premier.
- (4) If after receipt of the recommendation of the provincial house of traditional leaders the Premier is satisfied that the traditional leader is guilty of misconduct, the Premier may, with due regard to the recommendations of the traditional council and the provincial house of traditional leaders-
 - (a) caution or reprimand the traditional leader;
 - (b) impose on the traditional leader a fine;
 - (c) direct that the traditional leader must not be paid remuneration for a specific period;
 - (d) impose a combination of paragraphs (b) and (c); or
 - (e) refer the matter to the royal family with an instruction that the matter be dealt with in accordance with section 13 of this Act, if the Premier is satisfied that the matter falls within the ambit of the said section.
- (5) The Premier may, in his or her discretion, before acting in terms of subitem (4), appoint a committee to carry out a further inquiry into the alleged misconduct.
- (6) The Premier may order that the provisions of the Limpopo Commissions of Inquiry Act, 2001 (Act 4 of 2001) must apply to any inquiry in terms of subitem (5).

SCHEDULE 3 OATH OF OFFICE

I, _____, do swear to be faithful to the _____ traditional community and do solemnly and sincerely promise at all times to promote that which will advance and to oppose all that may harm the traditional community; to obey, observe, uphold and maintain the customary laws of the traditional community and all other laws of the Republic of South Africa; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice unto all; and to devote myself to the well-being of the traditional community and its people.

May the Almighty God by His grace guide and sustain me in keeping this oath with honour and dignity.

So help me God.