PREMIER'S NOTICES

No.1, 2006

MPUMALANGA TRADITIONAL LEADERSHIP AND GOVERNANCE ACT, 2005 (ACT NO. 3 OF 2005)

It is hereby notified that I, **Thabang Sampson Phathakge Makwetla**, in my capacity as Premier of the Mpumalanga Province, have, in terms of section 121 of the Constitution of the Republic of South Africa, 1996, assented to the Mpumalanga Traditional Leadership and Governance Act, 2005. The Mpumalanga Traditional Leadership and Governance Act, 2005 (Act No. 3 of 2005), is hereby published for general information.

T.S.P. MAKWETLA
PREMIER: MPUMALANGA PROVINCE
DATE: 14 December 2005

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MPUMALANGA TRADITIONAL LEADERSHIP AND GOVERNANCE ACT, 2005

To provide for the recognition and withdrawal of recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide for the recognition and appointment of traditional leaders and their removal from office; to provide for a Provincial Code of Conduct; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution recognises –

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

AND WHEREAS it is necessary to enact Provincial legislation within the framework provided by the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) which Provincial legislation must 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, the achievement of full legitimacy, the upholding of the principle of democratic governance and gender equity;

AND WHEREAS traditional leaders have a particular role to play as custodians of culture and custom, the promotion of unity, the promotion of consensus in respect of development projects and plans and the administration of justice in democratically transformed traditional courts subject to the Constitution;

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

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

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CHAPTER 1

DEFINITIONS AND INTERPRETATION

Definitions

1.(1) In this Act, unless the context otherwise indicates –

"**Code of Conduct**" means the Provincial Code of Conduct contained in Schedule 2;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"**Commission**" means the Commission on Traditional Leadership Disputes and Claims established by section 22 of the Framework Act;

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

"**Department**" means the Department responsible for traditional leadership matters in the Province;

"**financial year**" means the period extending from 1 April in any year to 31 March in the following year;

"**Framework Act**" means the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);

"**imbizo**" means a general meeting of members of the traditional community and "**pitso**", **ummemo** or "**nhlengeleto**" has a corresponding meaning;

"**Indlovukati**" means a queen as defined in section 1 of the Framework Act and "**Kgosigadi**", "**Indlovukazi**", "**Mofumahadi**" or "**Nkosikazi**" has a corresponding meaning;

"**Indvuna**" means a village head without hereditary lineage appointed for that purpose by the Inkhosi and "**Induna**", "**Ntona**", "**Kgosana**", **Ikosana**, "**Ramotse**", **Isikhulu**, or "**Ndhuna**" has a corresponding meaning;

"**Ingwenyama**" means a king as defined in section 1 of the Framework Act and "**Sebata**", "**Ingonyama**", **Isilo** or "**Kgosikgulu**" has a corresponding meaning;

"**Inkhosi**" means a person born from a defined mother in accordance with the traditions, customs and norms of the traditional community concerned and who is recognised as such in terms of section 19 and "**Ikosi**", "**Kgosi**", "**Inkosi**", "**Morena**" or "**Hosi**" has a corresponding meaning;

"**inner royal family**" means a structure consisting of the senior members of the ruling family within a traditional community who has been identified in terms of custom;

"**Libambela**" means any person who, in terms of customary law of the traditional community concerned, acts in a traditional leadership position in a temporary capacity as contemplated in section 23 and "**Ibambela**", "**Monaaswere**", "**Ibamba**", "**Motshwareledi**", "**Ya tshweng mokobobo**" or "**Mukhomeri**" has a corresponding meaning;

"**Local House of Traditional Leaders**" means a Local House of Traditional Leaders established in terms of applicable Provincial legislation;

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

"**Premier**" means the Premier of the Mpumalanga Province as contemplated in section 125 of the Constitution;

"**prescribe**" means prescribe by regulation;

"**Province**" means the Province of Mpumalanga as envisaged in section 103 of the Constitution;

"**Provincial House of Traditional Leaders**" means the Mpumalanga Provincial House of Traditional Leaders established by the applicable legislation;

"**Provincial Legislature**" means the legislative authority of the Province contemplated in section 104(1) of the Constitution;

"**royal family**" means members of the extended royal family within a traditional community who have been identified in terms of the traditions, norms and customs of the traditional community concerned;

"**this Act**" includes regulations made hereunder;

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

"**traditional council**" means a traditional council established in terms of section 5; and

"**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.

(2) Any word or expression to which a meaning has been assigned in the Framework Act, bears the meaning so assigned unless the context indicates otherwise.

Interpretation and application

2.(1) This Act is subject to the Constitution and 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 the Framework Act and 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 detracting from, such seniority.

CHAPTER 2

TRADITIONAL COMMUNITIES AND TRADITIONAL COUNCILS

Recognition of traditional communities

3.(1) A community envisaged by section 2(1) of the Framework Act may apply in writing as prescribed to the Premier to be recognised as a traditional community.

(2) On receipt of an application referred to in subsection (1), the Premier –

(a) may consult relevant stakeholders on the application;
(b) must forward such an application to the Provincial House of Traditional Leaders;
(c) may conduct an investigation in respect of the application to ascertain whether the community concerned qualifies to be recognised as a traditional community; or
(d) may convene a referendum.

(3) The Provincial House of Traditional Leaders must, within thirty days after receipt of an application referred to in subsection (1) –

(a) convene an imbizo to consult with the community concerned, and, if applicable, the Ingwenyama, Indlovukati or Inkhosi under whose authority that community would fall, on the application; and

(b) recommend with reasons to the Premier whether or not to recognise the community concerned as a traditional community.

(4) The Premier must, within 30 days of receipt of the recommendation referred to in subsection (3)(b), make a decision regarding the recognition of the community as a traditional community.

(5) The Premier must consider the recognition of a traditional community that has divided into two or more communities or merged with another traditional community where a review of the position of the division or merger of the communities envisaged in section 4 indicates that newly constituted traditional communities must be recognised.

(6) The Premier must, by notice in the *Provincial Gazette*, publish the recognition of the community as a traditional community.

Withdrawal of recognition of traditional communities

4.(1) The Premier, after consultation with the Provincial House of Traditional Leaders, must consider the withdrawal or the review of the recognition or the division or merger of a traditional community or communities where –

(a) the community concerned requests the Premier in writing to withdraw its recognition as a traditional community;

(b) the community or communities concerned request the Premier to review the position of that community or communities that was or were divided or merged prior to 1994 in terms of applicable legislation;

(c) two or more recognised traditional communities request the Premier that they be merged into a single traditional community; or

(d) a traditional community makes an application as prescribed to the Premier to be divided into two or more traditional communities.

(2) On receipt of a request contemplated in subsection (1), the Premier –

(a) may consult relevant stakeholders on the request;

(b) must forward the request to the Provincial House of Traditional Leaders;

(c) may conduct an investigation on the request to ascertain whether the recognition of the traditional community must be withdrawn; or

(d) may convene a referendum.

(3) The Provincial House of Traditional Leaders must, within 30 days of receipt of a request contemplated in subsection (1) –

(a) convene an imbizo with the traditional community concerned or any other community which may be affected by the request for withdrawal and if applicable, the Ingwenyama, Indlovukati or Inkhosi under whose authority the traditional community falls;

(b) recommend, with reasons, to the Premier whether or not to withdraw the recognition of a traditional community.

(4)(a) The withdrawal of the recognition of a traditional community must be effected by way of a notice in the *Provincial Gazette*.

(b) The notice referred to in subsection (4)(a) must also provide for the withdrawal of the recognition of the traditional council established in terms of section 5 for such traditional community.

Establishment and recognition of traditional councils

5.(1) A traditional community recognised as such in terms of section 3 must, within three months after the publication of its recognition in the *Provincial Gazette*, and subject to section 3 of the Framework Act, establish a traditional council as prescribed.

(2) A traditional council may not have more than 30 members, depending on the needs of the traditional community concerned, appointed in the prescribed manner of whom –

(a) 60 percent must be selected from the traditional leaders and members of the traditional community by the Ingwenyama, Indlovukati or Inkhosi in consultation with the royal family concerned; and

(b) 40 percent must be democratically elected from members of the traditional community.

(3) The term of office of the elected members of a traditional council referred to in subsection (2)*(b)* may not exceed five years.

(4) At least a third of the members of the traditional council appointed in terms of paragraphs *(a)* and *(b)* of subsection (2) must be women: Provided that the Premier may, if satisfied upon certification by the Department that there is an insufficient number of women available to participate in the traditional council, determine as prescribed after consultation with the traditional community concerned, a lower threshold of women to be appointed as members of the traditional council.

(5) Within 30 days after a traditional council has been established in terms of subsection (1), particulars of the establishment of the traditional council and the names of the members thereof must be submitted to the Premier in writing.

(6) The Premier must, if satisfied that the procedure for the appointment of members has been complied with, by notice in the *Provincial Gazette,* recognise the traditional council, and determine the area of its jurisdiction as envisaged in section 6.

(7) A traditional council may establish an executive committee with defined powers and functions.

Determination of area of jurisdiction of traditional councils

6.(1) The Premier, after consultation with the Provincial House of Traditional Leaders and the relevant Local House of Traditional Leaders, must determine the area of jurisdiction of a traditional council and publish such determination as envisaged in section 5(6), in the *Provincial Gazette* for general information.

(2) The Premier may, after consultation with the relevant traditional community or communities and the relevant traditional council or councils, amend the area of jurisdiction of a traditional council which exists at the commencement of this Act, and publish such amendment in the *Provincial Gazette*.

(3) Whenever a dispute arises with regard to the area of jurisdiction of a traditional council, such a dispute may be referred to the Commission or be dealt with as contemplated in section 21 of the Framework Act.

Disqualification as member of traditional council

7. A person may not be appointed as a member of a traditional council if he or she –

(a) is not a South African citizen;
(b) is under 18 years of age;
(c) has been convicted of an offence in respect of which he or she was sentenced to imprisonment for more than 12 months without the option of a fine;
(d) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
(e) is of unsound mind and has been so declared by a competent court;
(f) is or becomes a full-time member of a municipal council;
(g) is elected as a member of a Provincial legislature;
(h) is elected as a member of the National Assembly;

(i) is appointed as a permanent delegate in the National Council of Provinces; or
(j) is elected to, or appointed in, a full-time position in any House of Traditional Leaders.

Vacation of office and filling of vacancies

8.(1) A member of a traditional council vacates his or her office if –

(a) he or she ceases to be a South African citizen;
(b) he or she has been convicted of an offence and sentenced to imprisonment for more than 12 months without the option of a fine;
(c) he or she tenders his or her resignation;
(d) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the traditional council;
(e) the period for which the member was appointed has expired;
(f) the Premier is satisfied that it is in the best interests of the traditional community concerned that such member be removed from office;
(g) he or she becomes disqualified in terms of section 7; and
(h) he or she dies.

(2) (a) If a member of a traditional council dies or vacates his or her office before the expiration of his or her term of office, such a vacancy must be filled in the manner envisaged in section 5 within a reasonable period of the vacancy occurring.

(b) A member appointed to fill a vacancy in terms of subsection (2)(a) holds office for the remainder of his or her predecessor's term of office.

Functions of traditional councils

9.(1) A traditional council must –

(a) administer the affairs of the traditional community in accordance with customs and tradition;
(b) assist, support and guide traditional leaders in the performance of their functions;
(c) support municipalities in the identification of community needs through participation in ward committees;
(d) facilitate the involvement of the traditional community in the development or amendment of the integrated development plan of the municipality in which area of jurisdiction that community resides;
(e) recommend, after consultation with the Provincial House or the relevant Local Houses of Traditional Leaders, appropriate interventions to Government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;
(f) participate in the development of policy and legislation at local level;
(g) participate in development programmes of municipalities and of the Provincial and National spheres of Government;
(h) promote the principles of co-operative governance, integrated development planning, sustainable development and service delivery;
(i) promote indigenous knowledge systems for sustainable development and disaster management;
(j) alert any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction, and contributing to disaster management in general;
(k) share information and co-operate with other traditional councils;
(l) perform the functions conferred by customary law, customs and statutory law consistent with the Constitution; and
(m) perform such other functions as may be prescribed.

(2) A traditional council must –

(a) open a bank account in its name; and
(b) keep proper records of all financial transactions, assets and liabilities of the traditional council.

(3) As soon as is practicable, but not later than two months after the end of each financial year, the traditional council must –

(a) prepare its annual financial statements; and
(b) prepare a register of all gifts and donations received by the traditional council, in respect of the financial year in question, and submit a copy of such register to the Premier and to the Department as prescribed.

(4) The books of account of the traditional council must be audited as prescribed.

(5) A traditional council must hold an annual meeting with its traditional community in order to account for the activities and finances of the traditional council and income received or expenditure incurred by the traditional council.

Support to traditional councils

10. The MEC must, from monies appropriated by the Provincial Legislature for this purpose, provide the traditional council with financial and other resources required by such traditional council for the performance of its functions.

Partnerships between municipalities and traditional councils

11. (1) In conducting their affairs, the municipalities and traditional councils must ensure that they promote the principle of mutual respect by facilitating –

(a) co-ordination in the implementation of policy and legislation;
(b) effective provision of services; and
(c) monitoring the implementation of policy and legislation.

(2) Without derogating from the generality of subsection (1), a traditional council may submit to a municipal council a proposal for the adoption of a by-law which the traditional council may consider necessary in respect of any matter directly affecting its area of jurisdiction.

Community participation

12. (1) A traditional council must create conditions for the traditional community concerned to participate in the affairs of the traditional council as prescribed.

(2) A traditional council must establish appropriate mechanisms, processes and procedures to enable the traditional community to participate in the affairs of the traditional council, and must for this purpose provide for –

(a) the receipt, processing and consideration of petitions and complaints lodged by members of the traditional community concerned;
(b) notification and public comment procedures, where appropriate;
(c) public meetings and hearings by the traditional council, when appropriate;
(d) report-back to the traditional community concerned.

Staff of traditional councils

13.(1) The Department may, in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994), second staff to traditional councils as is necessary to perform the work arising from or connected with the functions of the traditional council.

(2) The staff seconded as such, is accountable and responsible to the Department and the traditional council concerned.

(3) The terms and conditions of service of staff seconded to the traditional council in terms of subsection (1) are as determined by the Public Service Act, 1994.

Meetings of traditional councils

14.(1) A traditional leader of a traditional community is the chairperson of a traditional council established for such a community.

(2) In the event that the traditional leader contemplated in subsection (1) is unable to assume the position of chairperson, he or she may nominate a person to assume the position of chairperson on his or her behalf.

(3) A traditional council must hold an annual meeting and other ordinary meetings as may be prescribed on a day and time determined by the chairperson.

(4) A written notice of the meeting must be given to all members of the traditional council at least four days prior to the date of the meeting.

(5) The procedure to be followed at a meeting of the traditional council must be in accordance with customary laws and customs.

(6) The meetings of the traditional council are open to the public including the media: Provided that the traditional council may exclude the public, including the media, from a meeting when it is reasonable to do so having regard to the nature of the business being deliberated upon.

(7) The chairperson of the traditional council must give notice to the public, in a manner determined by the traditional council, of the time, date and venue of every –

(a) ordinary meeting of the traditional council; and
(b) special meeting of the traditional council, except when time constraints make this impossible.

(8) A special meeting of the traditional council –

(a) may be convened by the chairperson at any time; and
(b) must be convened by the chairperson at such place and time as he or she may determine, within 10 days of receipt by him or her of a written request signed by at least 25 percent of the total number of members of such traditional council: Provided that such written request must state clearly the purpose for which the meeting is to be convened.

Quorum and procedure at meetings

15. (1) A quorum for any meeting of a traditional council is 50 percent of the total number of appointed members plus one.

(2) Any decision by the traditional council must be taken by consensus at a meeting at which a quorum is present: Provided that in the event that consensus cannot be reached, the issue at hand must be put to the vote: Provided further that where there is an equal number of votes, the member presiding has a casting vote in addition to his or her deliberate vote.

(3) A decision taken by the traditional council, or an act performed under its authority, is not invalid merely by reason of –

(a) an interim vacancy in the traditional council; or
(b) the fact that a person who is not entitled to sit as a member of the traditional council sat as a member at the time the decision was taken or the act was authorised by the required majority of members present at the time and entitled to sit as members.

(4) The traditional council must keep a record in respect of each of its meetings and must record –

(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; and
(d) if a member so requests, the fact that he or she voted against any decision taken.

(5) A copy of the minutes must, within 15 days after any meeting, be forwarded to the Department.

Allowances payable to members of traditional councils

16. (1) A member of a traditional council may, subject to the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), be paid an allowance determined by the MEC by notice in the *Provincial Gazette* with the approval of the Member of the Executive Council responsible for finance.

(2) Members of a traditional council must be reimbursed by the Department in respect of reasonable expenditure incurred by them in the exercise of their duties in terms of this Act.

CHAPTER 3

LEADERSHIP POSITIONS WITHIN THE INSTITUTION OF TRADITIONAL LEADERSHIP

Recognition and withdrawal of recognition of Ingwenyama or Indlovukati

17. The recognition and withdrawal of recognition of Ingwenyama or Indlovukati must be done in accordance with sections 9 and 10 of the Framework Act.

Identification of Inkhosi

18. After the birth of a person who qualifies in terms of customary law to assume the position of Inkhosi, the inner royal family must –

(a) identify such a person as the person who will assume the position of Inkhosi in terms of section 19; and
(b) inform the Premier of the particulars of the person so identified.

Recognition of Inkhosi

19.(1) Whenever the position of Inkhosi is to be filled, the following process must be followed:

(a) The inner royal family must, within a reasonable time and after the need arises for the position of Inkhosi to be filled, and with due regard to customary law applicable in that traditional community –

(i) identify a person who qualifies in terms of customary law to assume the position of Inkhosi, after taking into account whether any of the grounds referred to in section 20(1)*(a)*, *(b)* or *(d)* apply to that person; and
(ii) through the relevant customary structure –

(aa) inform the Premier of the particulars of the person so identified to fill the position of Inkhosi; and
(bb) provide the Premier with reasons for the identification of that person as Inkhosi;

(b) The Premier must, subject to subsection (4), recognise a person so identified in terms of subsection (1)*(a)*(i) as Inkhosi.

(2) The recognition of a person as Inkhosi in terms of subsection (1)*(b)* must be done by way of –

(a) a notice in the *Provincial Gazette* recognising the person identified as Inkhosi; and
(b) the issuing of a certificate of recognition to the person so recognised.

(3) The Provincial House of Traditional Leaders must be informed by the Premier of the recognition of an Inkhosi.

(4) When there is evidence or an allegation that the identification of a person referred to in subsection (1)*(a)*(i) was not done in accordance with customary law, customs or processes applicable in that traditional community, the Premier –

(a) may refer the matter to the Provincial House of Traditional Leaders for investigation;
(b) may refuse to recognise the person so identified; and
(c) must refer the matter back to the inner royal family for reconsideration.

Withdrawal of recognition and removal of Inkhosi

20.(1) An Inkhosi may be removed from office on the grounds of –

(a) conviction of an offence which carries a sentence of imprisonment of more than 12 months without the option of a fine;
(b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that Inkhosi to function as such;
(c) wrongful appointment or recognition; or
(d) a transgression of a customary rule or principle that warrants removal.

(2) Whenever any of the grounds referred to in subsection (1)*(a)*, *(b)* and *(d)* come to the attention of the inner royal family and the inner royal family decides to remove an Inkhosi, the inner royal family concerned must, within a reasonable time and through the relevant customary structure –

(a) inform the Premier of the particulars of the Inkhosi to be removed; and
(b) furnish reasons for such removal.

(3) Upon receipt of the particulars of the Inkhosi to be removed and the reasons for such removal as contemplated in subsection (2), the Premier must –

(a) withdraw the certificate of recognition of such an Inkhosi;
(b) publish a notice in the *Provincial Gazette* with particulars of the removed Inkhosi; and
(c) inform the inner royal family concerned, the removed Inkhosi and the Provincial House of Traditional Leaders of such removal.

(4) Where an Inkhosi is removed from office, a successor identified in line with customs may, subject to the provisions of this Act, assume the position, role and responsibilities of such Inkhosi.

Recognition and appointment of Indvuna

21.(1) An Ingwenyama, Indlovukati or Inkhosi must, after consultation with the royal family, and with due regard to customary law applicable in that traditional community, identify and appoint a person or persons who qualify in terms of customary law to assume the position of Indvuna.

(2) The recognition of a person as Indvuna in terms of subsection (1) must be done by way of –

(a) a notice in the *Provincial Gazette* recognising the person identified as Indvuna; and
(b) the issuing of a certificate of recognition to the person so recognised.

(3) An Ingwenyama, Indlovukati or Inkhosi must inform the Provincial House of Traditional Leaders of the recognition and appointment of an Indvuna.

Withdrawal of recognition and removal of Indvuna

22.(1) An Indvuna may be removed from office on the grounds of –

(a) conviction of an offence which carries a sentence of imprisonment of more than 12 months without the option of a fine;
(b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that Indvuna to function as such;
(c) wrongful appointment or recognition; or
(d) a transgression of a customary rule or principle that warrants removal.

(2) Upon removal of an Indvuna from office, the Ingwenyama, Indlovukati or Inkhosi must –

(a) withdraw the certificate of recognition of such an Indvuna;
(b) publish a notice in the *Provincial Gazette* with particulars of the removed Indvuna; and
(c) inform the royal family concerned, the removed Indvuna and the Provincial House of Traditional Leaders of such removal.

Recognition of Libambela

23.(1) An inner royal family may, in terms of subsection (2), identify a suitable person as Libambela to the position of Ingwenyama, Indlovukati or Inkhosi where –

(a) a successor to the position of Ingwenyama, Indlovukati or Inkhosi is still regarded as a minor in terms of applicable customary law or customs;
(b) a successor to the position of Ingwenyama, Indlovukati or Inkhosi has not been identified by the inner royal family concerned in terms of section 19*(a)*(i);
(c) the identification of a successor to the position of Ingwenyama, Indlovukati or Inkhosi is being reconsidered in terms of the Framework Act and section 19(4)*(c)* of this Act;
(d) the Ingwenyama, Indlovukati or Inkhosi as the case may be, is absent from his or her area of jurisdiction for a period of more than six months for –

(i) the treatment of ill health;
(ii) study purposes; or
(iii) any other lawful purpose;

(e) the Ingwenyama, Indlovukati or Inkhosi –

(i) becomes a full-time member of a municipal council;
(ii) is elected as a member of a Provincial legislature;
(iii) is elected as a member of the National Assembly;
(iv) is appointed as a permanent delegate in the National Council of Provinces; or
(v) is elected to, or appointed in, a full-time position in any House of Traditional Leaders.

(f) the Ingwenyama, Indlovukati or Inkhosi, as the case may be, has been suspended for an alleged breach of a provision of the Code of Conduct of traditional leaders contemplated in Schedule 2.

(2) Whenever the position of Libambela is to be filled, the following process must be followed:

(a) The inner royal family must, within a reasonable time after the need arises for the position of Libambela to be filled, and with due regard to applicable customary law –

(i) identify a person who qualifies in terms of customary law to assume the position of Libambela after taking into account whether any of the grounds referred to in section 24(2)*(a)*, *(b)* or *(d)* apply to that person; and
(ii) through the relevant customary structure –

(aa) inform the Premier of the particulars of the person so identified to fill the position of the Libambela; and
(bb) provide the Premier with the reasons for the identification of that person as Libambela;

(b) The Premier must, subject to subsection (6), recognise a person so identified in terms of subsection (2)*(a)*(i) as Libambela.

(3) The recognition of a person as Libambela in terms of subsection (2)*(b)* must be done by way of –

(a) a notice in the *Provincial Gazette* recognising the person identified as Libambela; and
(b) the issuing of a certificate of recognition to the person so recognised.

(4) The Provincial House of Traditional Leaders must be informed by the Premier of the recognition of the Libambela.

(5) Where a Libambela has been recognised in respect of the position of Ingwenyama or Indlovukati the Premier must inform the President –

(a) of the particulars of the Libambela so recognised;
(b) when the Libambela is supposed to relinquish his or her position as such; and
(c) of the withdrawal of the recognition and removal of the Libambela.

(6) Where there is evidence or an allegation that the identification of a person to be appointed as Libambela 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 for investigation; or
(b) may refuse to recognise the person so identified; and
(c) must refer the matter back to the inner royal family for reconsideration.

(7) The Premier must, every three years after recognition of a Libambela as envisaged in subsection (2)*(b)*, review the appointment of such person to establish whether the acting appointment is still necessary: Provided that where the Libambela has been recognised as contemplated in subsection (1)*(d)*, *(e)*, or *(f)*, the review of such recognition may be made when the circumstances contemplated in such paragraphs have lapsed.

Withdrawal of recognition and removal of Libambela

24.(1) The recognition of Libambela must be withdrawn where –

(a) the successor to the position of Ingwenyama, Indlovukati or Inkhosi ceases to be a minor in terms of customary law or customs;
(b) the successor to the position of Ingwenyama, Indlovukati or Inkhosi has been identified and recognised as provided for in sections 17, 18 or 19;
(c) the term of office of the Ingwenyama, Indlovukati or Inkhosi contemplated in section 23(1)*(e)* has lapsed; or
(d) the period of suspension of the Ingwenyama or Inkhosi has expired.

(2) A Libambela may be removed from the acting position referred to in section 23 on the grounds of –

(a) conviction of an offence which carries a sentence of imprisonment of more than 12 months without the option of a fine;
(b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that Libambela to function as such;
(c) wrongful appointment or recognition; or
(d) a transgression of a customary rule or principle that warrants removal.

(3) Whenever any of the grounds referred to in subsection (2)*(a)*, *(b)* and *(d)* come to the attention of the inner royal family and the inner royal family concerned decides to remove the Libambela, such inner royal family must, within a reasonable time and through the relevant customary structure –

(a) inform the Premier of the particulars of the Libambela to be removed; and
(b) furnish reasons for such removal.

(4) Where it has been decided to remove the Libambela in terms of subsection (2), the Premier must –

(a) withdraw the certificate of recognition of the Libambela;
(b) publish a notice in the *Provincial Gazette* with particulars of the removed Libambela; and

(c) inform the inner royal family concerned, the removed Libambela and the Provincial House of Traditional Leaders of such removal.

CHAPTER 4

GENERAL PROVISIONS

Implementation of decisions of Commission

25.(1) The Premier must, within 30 days of receipt of a decision of the Commission contemplated in section 26 of the Framework Act, inform the Provincial House of Traditional Leaders and the relevant Local Houses of Traditional Leaders of the decision and if such decision relates to a dispute which affects a traditional community or council, inform such traditional council or community, as the case may be.

(2) The Premier must within a reasonable period implement the decision of the Commission, in so far as the implementation of the decision does not relate to the recognition or removal of an Ingwenyama or an Indlovukati in terms of section 9 and 10 of the Framework Act.

Code of Conduct

26.(1) The Code of Conduct contained in Schedule 2 applies to every traditional leader and all members of traditional councils.

(2) Whenever there is a reasonable suspicion that a traditional leader has breached any of the provisions of the Code of Conduct, the Premier may refer the matter to the inner royal family to take appropriate steps to rectify the breach.

(3) Where the inner royal family has failed to take steps to rectify the breach as contemplated in subsection (2) within a reasonable time or such time limits as the Premier may determine, the Premier may charge the traditional leader in writing with such alleged breach and appoint a suitable person to conduct an inquiry into the alleged breach as contemplated in Schedule 2.

(4) A traditional leader who is suspended from his or her office for any alleged breach of a provision of the Code of Conduct as contemplated in Schedule 2 is not, during the period of his or her suspension, entitled or competent to exercise and perform any power, function or duty conferred and imposed on or associated with his or her office by or in terms of any law.

Delegation

27.(1) The Premier may, subject to such conditions as he or she may determine, and in writing, delegate any power conferred upon him or her by this Act to any member of the Executive Council of the Province.

(2) The delegation referred to in subsection (1) does not preclude the Premier from exercising any such delegated power.

(3) The Premier may set aside, amend or withdraw at any time any decision of the delegate made in the exercise of such powers.

Regulations

28. The Premier may, after consultation with the Provincial House of Traditional Leaders, make regulations relating to –

(a) the form and conditions of application for recognition of a community as a traditional community;
(b) fair procedures relating to the establishment of a traditional council;

(c) the person who must preside over the appointment of the members of the traditional council;
(d) the method of election of the members of the traditional council;
(e) any matter which in terms of this Act is required or permitted to be prescribed;
(f) any matter which is considered necessary or expedient to prescribe for achieving the objects of this Act.

Transitional arrangements

29.(1) 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 section 19 of this Act, subject to a decision of the Commission in terms of section 26 of the Framework Act.

(2) A person who, immediately before the commencement of this Act, had been appointed and was still recognised as a Libambela is deemed to have been recognised as such in terms of section 23.

(3) Any tribe that, immediately before the commencement of this Act, had been established and was still recognised as such, is deemed to be a traditional community contemplated in section 3, subject to –

(a) the withdrawal of its recognition in accordance with the provisions of section 4; or
(b) a decision of the Commission in terms of section 26 of the Framework Act.

(4)(a) The MEC must, by notice in the *Provincial Gazette*, not later than 24 September 2006, disestablish any community authority that had been established and was still recognised in terms of applicable legislation.

(b) The notice providing for the disestablishment of a community authority must regulate the legal, practical and other consequences of the disestablishment, including –

(i) the transfer of assets, liabilities and administrative and other records of the community authority;
(ii) the transfer of staff members, if applicable.

(5) A tribal authority or tribal council that, immediately before the commencement of the Framework Act, had been established and was still recognised as such, is deemed to be a traditional council contemplated in section 5 of this Act and must perform the functions referred to in section 9: Provided that such a tribal authority or tribal council must comply with section 5 of this Act not later than 24 September 2005.

(6)(a) The MEC must, by notice in the *Provincial Gazette*, not later than 24 September 2005, disestablish any Regional Authority, Ibandla Lamakhosi, Council of Chiefs, a ward authority functioning under tribal authorities or any other traditional structure that had been established in terms of applicable legislation.

(b) The notice providing for the disestablishment of a Regional Authority, Ibandla Lamakhosi, Council of Chiefs, a ward authority functioning under tribal authorities or any other traditional structure contemplated in subsection (6)(a) must regulate the legal, practical and other consequences of the disestablishment, including –

(i) the transfer of assets, liabilities and administrative and other records to the Department, a Local House of Traditional Leaders or a Municipality, as circumstances may require;
(ii) the vacation of office by office bearers of such a Regional Authority, Ibandla Lamakhosi, Council of Chiefs, ward authority functioning under tribal authorities or other traditional structure, if applicable; and
(iii) the transfer of staff members.

Repeal of laws and savings

30.(1) Subject to the provisions of subsection (2), the laws mentioned in the second column of Schedule 1 are hereby repealed to the extent indicated in the third column of Schedule 1.

(2) 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 the corresponding provision of this Act.

Short title and commencement

31. This Act is called the Mpumalanga Traditional Leadership and Governance Act, 2005, (Act No. 3 of 2005) and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

SCHEDULE 1

Repeal of Laws

No. and year of law	Short title	Extent of repeal
Act No. 38 of 1927	Black Administration Act	The whole to the extent assigned to the Province
Act No. 68 of 1951	Black Authorities Act	The whole to the extent assigned to the Province
Proclamation No. 110 of 1957	Regulation prescribing the duties, powers, privileges and conditions of service of Chiefs and Headmen	The whole to the extent assigned to the Province

BOPHUTHATSWANA

No. and year of law	Short title	Extent of repeal
Act No. 4 of 1976	Bophuthatswana Registration and Control of Dogs Act	The whole
Act No. 8 of 1977	Bophuthatswana Registration of Customary Unions Act	The whole
Act No. 23 of 1978	Bophuthatswana Traditional Authorities Act	The whole
Act No. 23 of 1979	Bophuthatswana Wheel Tax Act	The whole

KANGWANE

No. and year of law	Short title	Extent of repeal
Act No. 3 of 1988	Kangwane Payment of Allowances to Members of the Regional Authority Act	The whole
Act No. 5 of 1980	Licensing and Control of Dogs Act	The whole

KWANDEBELE

No. and year of law	Short title	Extent of repeal
Act No. 5 of 1983	KwaNdebele Levying of Taxes by Traditional Authorities Act	The whole
Act No. 8 of 1984	KwaNdebele Traditional Authorities Act	The whole
Act No. 9 of 1987	KwaNdebele Traditional Authorities Amendment Act	The whole
Act No. 10 of 1989	KwaNdebele Levying of Taxes by Traditional Authorities Amendment Act	The whole
Act No. 12 of 1989	KwaNdebele Traditional Authorities Second Amendment Act	The whole
Act No. 7 of 1990	KwaNdebele Traditional Authorities Amendment Act	The whole
Act No. 18 of 1991	KwaNdebele Traditional Authorities Amendment Act	The whole

LEBOWA

No. and year of law	Short title	Extent of repeal
Act No. 2 of 1975	Lebowa Tribal Rates Act	The whole
Act No. 2 of 1978	Lebowa Allowances of Members of Regional Authorities Amendment Act	The whole
Act No. 6 of 1978	Lebowa Tribal Rates Amendment Act	The whole
Act No. 3 of 1984	Lebowa Royal Allowance Amendment Act	The whole
Act No. 4 of 1990	Lebowa Royal Allowance Amendment Act	The whole

SCHEDULE 2

Code of Conduct of traditional leaders and members of traditional councils

General conduct of traditional leaders

1. A traditional leader –

(a) must perform the functions allocated to him or her in good faith, diligently, honestly and in a transparent manner;
(b) must fulfil his or her role in an effective and efficient manner;
(c) must comply with any applicable legislation, promote nation building and principles of democracy and an open society;
(d) must act in the best interests of the traditional community or communities he or she serves and must promote unity amongst traditional communities;
(e) must foster good relations with the organs of state, other traditional leaders and traditional communities with whom he or she interacts;
(f) may not conduct himself or herself in a disgraceful improper or unbecoming manner;
(g) must not use his or her position or confidential information obtained because of his or her position, for personal gain or in order to improperly benefit another;
(h) must obey a lawful order given to him or her by a person having authority to give such an order;
(i) may not abuse his or her powers or extort or by use of compulsion or by arbitrary means, obtain any tribute, fee, reward or gift;
(j) may not try or punish any person without being authorised to do so by or under any law;
(k) must not excessively use intoxicating liquor or drugs.

Breaches of Code of Conduct by Traditional Leaders

2.(1) If there is a reasonable suspicion that a traditional leader has breached a provision of this Code of Conduct, the Premier may refer the matter to the inner royal family as contemplated in section 26 for investigation failing which an inquiry may be conducted regarding the traditional leader concerned by the person appointed by the Premier in terms of that section.

(2) At an inquiry contemplated in subitem (1), a traditional leader must be given a reasonable opportunity to be heard: Provided that the proceedings shall not be invalidated by failure of his or her attendance of the inquiry.

(3) The person appointed to conduct the inquiry must –

(a) at the conclusion of the inquiry, find whether the traditional leader is guilty of a breach of the provision of the Code of Conduct and inform such traditional leader of such finding; and
(b) forward to the Premier, the record of the proceedings, a statement of the finding, the reasons therefor, and any observations which he or she deems necessary to make.

(4) If the traditional leader has been found guilty of a breach of the Code of Conduct, the Premier may –

(a) caution or reprimand the traditional leader;
(b) compel the traditional leader to go for rehabilitation for alcoholism, drug dependency or any other improper addiction;
(c) impose on the traditional leader a fine not exceeding ten thousand rand, payable or recoverable from any remuneration to be paid to him or her in terms of the applicable legislation for the benefit of the Provincial Revenue Fund in such instalments as the Premier may determine;
(d) direct that for such period not exceeding two years as the Premier may determine, he or she must not be paid any remuneration;
(e) suspend the traditional leader from official duties for a specified period not exceeding two years;
(f) remove the traditional leader from office; or
(g) impose on him or her any two or more of the penalties referred to in paragraphs (a), (b) and (c) jointly.

(5) A traditional leader who has been convicted by a competent court of law of any offence referred to in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or of any offence which, in the opinion of the Premier, is tantamount to misconduct, is deemed, on account of such conviction, to have been found guilty of misconduct in terms of this schedule, in which event the provisions of subitem (4) applies with the necessary changes.

(6) Whenever a traditional leader has been charged with a breach of the Code of Conduct or with any offence contemplated by subitem (5), the Premier may suspend such traditional leader until such time that –

(a) the traditional leader has been found guilty of a breach of the Code of Conduct or of such other offence as contemplated in subitem (5); or
(b) the traditional leader has been acquitted in respect of the charge of the breach of the Code of Conduct or such other offence as contemplated in subitem (5) or the charge of breach of the Code of Conduct or the criminal prosecution against him or her is withdrawn or abandoned.

General conduct of members of traditional councils other than traditional leaders

3. A member of a traditional council must –

(a) perform the functions allocated to him or her in good faith, diligently, honestly and in a transparent manner;
(b) execute his or her duties in an efficient manner;
(c) comply with any applicable legislation;
(d) act in the best interest of his or her traditional community;
(e) give effect to the principles governing public administration as set out in section 195 of the Constitution;
(f) foster good relations with the organs of state with whom the traditional council interacts;
(g) not abuse his or her powers or extort or by use of compulsion or arbitrary means, obtain any tribute, fee, reward or gift.

Breaches of Code of Conduct by members of traditional council

4.(1) If there is a reasonable suspicion that a member of a traditional council has breached a provision of this Code of Conduct, an inquiry may be conducted regarding such member by a person appointed by the Ingwenyama, Indlovukati or Inkhosi.

(2) At an inquiry contemplated in subitem (1), a member of a traditional council must be given a reasonable opportunity to be heard: Provided that the proceedings shall not be invalidated by failure of his or her attendance of the inquiry.

(3) The person appointed to conduct the inquiry must –

(a) at the conclusion of the inquiry, find whether the member of the traditional council is guilty of any breach of a provision of the Code of Conduct and inform such member of the traditional council of the findings; and
(b) forward to the Ingwenyama, Indlovukati or Inkhosi concerned and to the Department, the record of the proceedings, a statement of the finding, the reasons therefor, and any observations which he or she deems necessary to make.

(4) If the member of a traditional council has been found guilty of a breach of the Code of Conduct, the Ingwenyama, Indlovukati or Inkhosi concerned may –

(a) caution or reprimand the member of the traditional council;
(b) impose on the member of the traditional council a fine not exceeding five thousand rand payable in such instalments as may be determined;
(c) direct that for such period not exceeding two years as may be determined, he or she must not be paid any allowance;
(d) suspend from the activities of the traditional council, a member of such traditional council for a certain period not exceeding twelve months;

(e) remove the member of the traditional council from office; or
(f) impose on him or her any two or more of the penalties referred to in paragraphs *(a)*, *(b)* and *(c)* jointly.

(5) Whenever a member of a traditional council has been charged with a breach of the Code of Conduct, the Ingwenyama, Indlovukati or Inkhosi concerned may suspend him or her until such time that the member of a traditional council –

(a) has been found guilty of a breach of the Code of Conduct; or
(b) has been acquitted in respect of the charge of the breaching of the Code of Conduct or the charge of breaching of the Code of Conduct against him or her is withdrawn or abandoned.