

**NORTH WEST TRADITIONAL LEADERSHIP AND
GOVERNANCE ACT No. 2 OF 2005**

**[DATE OF ASSENTMENT _____]
[DATE OF COMMENCEMENT _____]
(English text signed by the Premier)**

ACT

To provide for the recognition of traditional communities, traditional leadership, institutions; to define the role and functions of traditional leaders; to define the functions of traditional councils; to provide for the appointment, recognition, removal of traditional leaders; to provide for the payment of allowances (sitting, subsistence and traveling) to traditional leaders; to promote cooperative governance and transformation of the traditional leadership institutions; to provide for the provincial code of conduct for traditional leadership; to provide for mechanisms for dispute resolution; to regulate the administration of traditional institutions; and to provide for other incidental matters.

PREAMBLE

WHEREAS National Government has in accordance with the Constitution and National legislation set out: -

- To set a national framework, norms and standards that will define the role of traditional leadership within the system of democratic governance;
- to transform the institution in line with Constitutional imperatives; and
- to restore the integrity and legitimacy of the institution of traditional leadership in line with customary laws and practices;

AND WHEREAS the Constitution recognizes –

- 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 State must respect, protect and promote the institution of traditional leadership in accordance with the dictates of democracy in South Africa;
- the State recognizes the need to provide appropriate support and capacity building to the institution of traditional leadership;
- the institution of traditional leadership must be transformed to be in harmony with the Constitution and the Bill of Rights so that -
 - democratic governance and the values of an open and democratic society may be promoted; and
 - gender equality within the institution of traditional leadership may progressively be advanced; and
- the institution of traditional leadership must –
 - promote freedom, human dignity and the achievement of equality and non sexism;

- derive its mandate and primary authority from applicable customary law and practices;
- strive to enhance tradition and culture;
- promote nation building, 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
- promote an efficient, effective and fair dispute resolution system and a fair system of administration of justice, as envisaged in applicable legislation;

AND WHEREAS the North West Provincial Government is committed to transformation of the institution of traditional leadership;

AND WHEREAS the North West Provincial Government seeks to promote collaboration between the institution and the three spheres of government in line with the dictates of cooperative governance;

AND WHEREAS the North West Provincial Government seeks to provide an enabling environment for the recognition, protection, preservation, transformation and development of traditional communities, institutions, customary law and customs in the North West Province;

NOW BE IT THEREFORE ENACTED by the Legislature of the North West Province as follows: -

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Chapter 1

Interpretation and application

Definitions

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

“bogosana” means the position held by a kgosana;

“bogosi” means the position held by a kgosi;

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

“Executive Council” means the Executive Council of the Province of North West as contemplated in section 132 of the Constitution;

“financial year” means the period commencing on 1 April of any year and ending on 31 March of the succeeding year;

“Gazette” means the Provincial Gazette of the North West Province;

“Head of Department” means a head of a department responsible for the institution of traditional leadership and institutions;

“kgosana” means a hereditary traditional leader who, -

(a) is under the authority of, or exercise authority within the area of jurisdiction of, a senior traditional leader in accordance with customary law; and

(b) is recognized as such in terms of this Act.

“kgosi/kgosigadi” means the person who in accordance with the laws and customs of a particular traditional Community is recognized as the hereditary head of such traditional community and who is a citizen of the Republic of South Africa;

“Legislature” means the Legislature of the Province of North West as contemplated in section 103 of the Constitution;

“motsana” means an outlying village under the authority of a kgosana, within the area of jurisdiction of, a senior traditional leader in accordance with customary authority structure;

“Officer” means an officer of the North West Provincial government and/or the central government;

“Premier” means the Premier of the North West Province elected as contemplated in section 128 of the Constitution and includes acting Premier as contemplated in section 131 of the Constitution;

“Province” means the North West Province;

“Prescribe” means as prescribed by regulation made in terms of this Act;

“regent” means the person who, in accordance with the laws and customs of a particular traditional community/ morafe, acts as the kgosi/ kgosigadi, or kgosana, as the case may be, while the kgosi/ kgosigadi or kgosana is unable or incapable to take up the position or is still under the age of twenty-one years.

“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;

“the Framework Act” means the Traditional Leadership and Governance Framework Act, Act No. 41 Of 2003;

“this Act” means the North West Traditional Leadership And Governance Act, Act No. 2004.

“tradition” includes the traditions, laws and customs practiced by members of a traditional community;

“Traditional Council” means the Council, which is constituted in accordance with the laws and customs of a particular traditional community;

“traditional community” means a traditional community recognized as such in terms of section 3 of this Act;

“traditional leader” includes a kgosi/ kgosigadi, a kgosana and/ or regent.

(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.

Application and Interpretation

2. (1) This Act shall apply only within the boundaries of the North West Province and governs traditional leadership within the Province.

(2) This Act is subject to the Constitution and the Framework Act.

(3) 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.

(4) Traditional leaders may acknowledge or recognize the different levels of seniority among themselves in accordance with custom, and none of the definitions contained in section 1 must be construed as conferring, or detracting from, such seniority.

(5) Customs, traditions or customary laws relating to traditional leadership will continue to operate, subject to the Constitution, the Framework Act and this Act.

Chapter 2

Traditional community and traditional council

Recognition of traditional Community

3. (1) The Premier may, on application by a community, recognize a community as a traditional community in the prescribed form: Provided such a community -

- (a) is subject to a system of traditional leadership in terms of that community's customs and practices; and
- (b) observes a system of customary law.

(2) The Premier shall consult with the community concerned, any other community affected by such application, the Local House of Traditional Leaders having jurisdiction within the area in which the applicant community resides, and the Provincial House of Traditional Leaders.

(3) The Premier shall, subject to the provisions of subsection (2), within a period of 12 months from the date of receipt of the application for recognition decide on such application.

(4) The Premier shall, by notice in the Gazette, publish any decision made in terms of subsection (1) within 30 days from the date of such decision.

(5) The Premier may at any time after the publication of the notice referred to in subsection (4) reverse his or her decision if it is subsequently established that the group of people who have been recognized as a traditional community -

- (a) are not subject to a system of traditional leadership in terms of that community's customs and practices;
- (b) do not observe a system of customary law; and or
- (c) recognition as a traditional community was erroneously granted.

Withdrawal of recognition of a traditional Community

4. (1) The Premier, after consultation with the Provincial House of Traditional Leaders may withdraw the recognition as a traditional community where the community concerned requests the Premier in writing to its recognition as a traditional community.

(2) The Premier, after consultation with the Provincial House of Traditional Leaders may review the recognition or division or the merging of a community or communities as a traditional community where –

- (a) the community or communities concerned requests 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; or
- (b) two more recognized traditional communities request the Premier that they be merged into a single traditional community.

(3) The withdrawal or review of the recognition or division or merging community or communities must be effected by way of a notice in the Gazette.

(4) The notice referred to in subsection (3) must also provide for the withdrawal of the recognition of the traditional council.

Traditional community area

5. (1) The Premier may define an area of any traditional community recognized in terms of section 3 and may likewise modify and redefine such traditional community area.

- (2) Any definition of a traditional community area in terms of subsection (1) shall be made after consultation with members of any traditional community affected by such definition.
- (3) Any definition of a traditional community area in terms of subsection (1) shall be made after consultation with the Local House of Traditional Leaders operating within the area or areas affected by such definition.
- (4) Consultation in terms of subsection (2) shall take place by means of a public meeting of members of any traditional community affected by such definition, convened by the Premier for such purpose.

Constitution of a Traditional Council

6. (1) A traditional community recognized in terms of section 3 shall have a traditional council constituted in accordance with this Act as read with the Framework Act.
- (2) (a) The Premier must determine, in accordance with a prescribed formular, the number of members of a traditional council, taking into consideration the population of the traditional community;
(b) Such number may not be more than 30 members depending on the needs of the traditional community concerned;
(c) At least a third of members of a traditional council must be women; and
(d) A Senior Traditional Leader shall be the chairperson of the traditional council concerned.

(3) The Premier must publish, by notice in the Gazette, the composition of any traditional council referred to in sub-section (1) reflecting the names of the members and the area of jurisdiction of such traditional council.

Disqualification

7. A person who:

- (a) is under eighteen years of age;
- (b) is an unrehabilitated insolvent;
- (c) has been declared by a competent authority to be mentally incapable in terms of the Mental Health Care Act, Act No. 17 of 2002 or other related legislation;
- (d) has been convicted of a criminal offence without the option of a fine;
- (e) who has been removed from an office of trust on account of misconduct;

is disqualified from holding any office or becoming a member or remaining a member of a traditional council constituted in terms of this Act.

Vacation of seat by member of Traditional council

8. (1) Subject to the provisions of this Act and the Constitution, the seat of a member of a traditional council shall become vacant –
- (a) at the death of such member;
 - (b) if such member resigns;
 - (c) if such member ceases to hold the position of kgosi/ kgosigadi, kgosana, as the case may be;

(d) if such member is disqualified in terms of section 7 of this Act.

(2) The kgosi/ kgosigadi, Traditional Council and the Royal family (as may be necessary) shall ensure that any vacancy which may occur as referred to in sub-section (1) is appropriately filled in accordance with this Act within a period of at least three months.

Functions of Traditional Council

9. (1) The traditional council of any traditional community, shall subject to the provisions of this Act, the Constitution and/ or any other law -

(a) administer the affairs of the traditional community in accordance with customs and tradition, and perform such other functions conferred by customary law and customs, consistent with statutory law and the Constitution;

(b) promote the interest, advancement and well-being of members of the traditional community;

(c) subject to the provisions under this Act, administer the finances of the traditional community;

(d) perform such roles and functions as may be delegated or assigned to it by or under any law;

(e) assist, support and guide traditional leaders in the performance of their functions;

(f) support municipalities in the identification of community needs;

(g) facilitate and ensure involvement of its traditional community in the development or amendment of the integrated development plan of a municipality in whose area that community resides;

- (h) participate in the development of policy and legislation at local level through public hearings and active participation in local structures;
- (i) participate in developmental programmes of municipalities, provincial and national spheres of government;
- (j) promoting indigenous knowledge systems for sustainable development and disaster management;
- (k) alerting 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; and
- (l) share information and cooperate with other traditional councils within the province.

(2) The functions assigned to any traditional council in terms of this section shall be performed under the supervision of the North West Provincial Government.

(3) The Premier may take such steps, not inconsistent with this Act, to ensure proper administration and good governance by traditional councils.

Administration of a traditional community

10. (1) A traditional council and kgosi/ kgosigadi shall endeavour to perform their roles and functions in the best interest of their traditional community and be responsible to the Premier for the efficient and effective performance of the functions assigned to such traditional council and kgosi/ kgosigadi in terms of this Act.

(2) The Premier may, subject to the provisions of this Act and the Constitution and with due observance of the traditions applicable in a traditional community, take such steps as may be necessary to ensure the due performance of the functions referred to in subsection (1).

(3) (a) On the recommendation of the Royal family the Premier may, if satisfied that a traditional council is unable to perform the functions assigned to it in terms of the Act in an efficient and effective manner or in a manner which is conducive to good governance and administration, appoint any person to assist the traditional council concerned to perform the functions assigned to such traditional council.

(b) An officer appointed in terms of paragraph (a) shall be competent to exercise and perform any power, authority or function conferred or imposed by law upon any such traditional council and shall be deemed to have been exercised or performed by such traditional council.

(c) The appointment of any officer in terms of this section shall be reviewed after a period of 180 days.

Meeting of Traditional Council

11. (1) A traditional council shall hold an ordinary council meeting at least once every month on a day fixed and appointed by the kgosi/ kgosigadi in council.

(2) A kgosi/ kgosigadi may, at the request of the Premier or his or her delegate, convene a meeting of the traditional council.

(3) At least fifty percent plus one of the total number of members of a traditional council shall form a quorum and no proceedings and no decision in the absence of such quorum shall be valid or be of any force and effect unless such quorum is present at a meeting of a traditional council: Provided that any decision taken or proceedings conducted contrary to the provisions contained in this sub-section, if binding against third parties, shall render such members of a traditional council who participated in such proceedings and supported such decision liable as against such third parties jointly and severally.

(4) The proceedings to be followed at any meeting of a traditional council and of any committee thereof, shall be in accordance with the applicable customary law and customs: Provided that the traditional council or such committee shall cause minutes of any such meetings to be recorded and be kept as permanent record thereof.

(5) The following persons may attend and address any meeting of the traditional council-

- (a) the Premier;
- (b) a Member of the Executive Council;
- (c) an officer of the Provincial and central government of the Republic of South Africa;
- (d) any other person invited by the traditional council.

Staff of traditional councils

12. (1) A traditional council assisted from Government may, with the approval of the Head of Department, appoint such staff and employees as may be necessary to perform the duties and functions of such traditional council in terms of this Act or any other law.

(2) A person appointed in terms of sub-section (1) shall be employed on the such conditions as shall be determined by the traditional council and shall be remunerated from the funds and accounts referred to in section 30 of this Act.

(3) The Premier may on the recommendation of the Head of Department, second an officer on the establishment of the Department to any traditional council to assist such traditional council in the execution of its functions in terms of this Act and may likewise withdraw from such service such officer or employee.

Chapter 3

Traditional Leaders

Recognition of a kgosi/ kgosigadi

13. (1) Bogosi of a traditional community shall be in accordance with the customary law and customs applicable in such a traditional community.

(2) The designation of a kgosi/ kgosigadi to bogosi of a traditional community shall be made by the Royal family in accordance with its customary law and customs.

(3) The Premier may recognize a person designated as contemplated in subsection (1) as kgosi/ kgosigadi of a particular traditional community.

(4) The Premier shall issue a person recognized as kgosi/ kgosigadi with a certificate of recognition.

(5) The Premier shall issue a notice in the Gazette recognizing a kgosi/ kgosigadi and such notice shall be served on the Provincial House of Traditional Leaders for their information.

Removal of kgosi/ kgosigadi

14. (1) A kgosi or kgosigadi may be removed from office 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) mental infirmity which, based on acceptable medical evidence, makes it impossible for that kgosi or kgosigadi to function as such;
- (c) wrongful appointment or recognition; or
- (d) a transgression of a customary rule, principle or code of conduct that warrants the removal from office.

(2) Whenever any of the grounds referred to in subsection (1) come to the attention of the Royal Family and the Royal Family decides to remove the kgosi or kgosigadi, the Royal Family must within a reasonable time inform the Premier of such decision and the reasons therefor.

(3) The Premier shall upon receipt of such decision and reasons therefor, withdraw the certificate of recognition of such a kgosi/ kgosigadi by -

- (a) publishing a notice of withdrawal of recognition of such kgosi/ kgosigadi in the Gazette;
- (b) informing the Royal Family concerned, the kgosi/ kgosigadi concerned and the Provincial House of Traditional Leaders of such removal.

(4) The Royal Family shall after taking a decision to remove a kgosi or kgosigadi, identify a successor in accordance with the applicable customs and customary law and the provisions of this Act.

Recognition of regents

15. Where the successor to a position of kgosi/ kgosigadi or kgosana identified in terms of section 13 or section 19 is still regarded as a minor in terms of applicable customs or customary laws –

- (a) the royal family concerned must, within a reasonable time –
 - (i) identify a regent in accordance with the applicable customs and customary law, to assume leadership on behalf of the minor; and
 - (ii) inform the Premier of such appointment, and the reasons for such an appointment.
- (b) the Premier may, with due regard to the applicable customary law and customs, recognize the regent identified by the Royal Family.
- (c) The Royal Family shall review the regency of an acting kgosi every three years and submit a report to the Premier.

Recognition of an acting kgosi/ kgosigadi

16. (1) The identification of an acting kgosi/ kgosigadi to bogosi of a traditional community shall be made by the Royal family in accordance with its customary law and customs.
- (2) The Premier may recognize a person identified as contemplated in subsection (1) as an acting kgosi/ kgosigadi of a particular traditional community.
- (3) The Premier must issue a person recognized as an acting kgosi/ kgosigadi with certificate of recognition.
- (4) The Premier must issue a notice in the Gazette recognizing an acting kgosi/ kgosigadi and such notice must be served on the Provincial House of Traditional Leaders for their information.

Recognition of Deputy kgosi/ kgosigadi

17. (1) A kgosi/ kgosigadi may, after consultation with the Royal Family, appoint a deputy to act in his or her stead whenever that kgosi/ kgosigadi—
- (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) The Premier may –
- (a) recognize a person designated as contemplated in subsection (1) as a deputy kgosi/ kgosigadi of a particular traditional community;
 - (b) recognize a person designated as contemplated in subsection (3) as deputy kgosi/ kgosigadi.

Role and functions of kgosi/ kgosigadi

18. (1) A kgosi/ kgosigadi recognized in terms of section 8, shall subject to this Act and the Constitution –
- (a) administer the affairs of the traditional community;
 - (b) maintain peace in the traditional community, by conciliating and mediating disputes between members;
 - (c) forthwith report to the competent authorities –
 - (i) the death of any person within the traditional community area from violence or any other unnatural causes;
 - (ii) the outbreak of any contagious or infectious disease or epidemic;
 - (iii) any allegation of an act of witchcraft or divination;
 - (iv) the commission of any offence which cannot lawfully be disposed through the exercise of the powers in cooperation with the traditional council and jurisdiction conferred upon such kgosi/ kgosigadi;

(d) take such steps, which are necessary and effective, to make known to the members of the traditional community the provisions of any new law or policy;

(e) convene and attend meetings of the traditional council to discuss the affairs of the traditional community: Provided that such meetings shall be convened at least once every calendar month;

(f) take such steps which are necessary to make known to the members of the motsana the provisions of any new law or policy;

(g) convene and attend meetings of the traditional community to discuss the affairs of the traditional community: Provided that such meetings shall be convened and attended by members of traditional community; Provided that such meetings shall be convened at least once every six months;

(h) take note of any problems, grievances or matters, if any, raised by any member of the traditional community at any meeting as referred to in paragraph (h) and shall take such steps which are necessary to attempt to resolve such grievance, problem or matter, as the case may be;

(i) generally seek to promote the interests of the traditional community and shall take such reasonable steps which may be necessary to promote the well-being and advancement of the traditional community.

(2) A kgosi/ kgosigadi shall enjoy the status, rights and privileges conferred upon such kgosi/ kgosigadi by customs and traditions applicable within the traditional community concerned;

(3) A kgosi/ kgosigadi shall be entitled, in the lawful execution of his/her functions, to loyalty, respect, support and obedience of any member of the traditional community;

Identification of kgosana

19. (1) Bogosana of a traditional community shall be in accordance with the customary law and customs applicable in such a traditional community.

(2) The identification of a kgosana of a traditional community shall be made by the Royal Family in accordance with its customary law and customs.

(3) The Premier may recognise a person identified as contemplated in sub-section (1) as kgosana of a particular traditional community.

(4) The Premier shall issue a person so recognised as kgosana with a certificate of recognition.

(5) The Premier shall issue a notice in the Gazette recognise a kgosana and such notice shall be served on the Local House of Traditional Leaders for information.

Removal of kgosana

20. (1) A kgosana may be removed from office 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) mental infirmity which, based on acceptable medical evidence, makes it impossible for that kgosana to function as such;
- (c) wrongful identification and recognition; or
- (d) a transgression of a customary rule, principle or code of conduct that warrants the removal.

(2) Whenever any of the grounds referred to in subsection (1) come to the attention of a kgosi/ kgosigadi and the Royal Family, such kgosi/ kgosigadi and the Royal Family decides to withdraw the appointment of a kgosana, a kgosi/ kgosigadi concerned must within a reasonable time inform the Premier of such decision and the reasons thereof.

(3) The Premier shall upon receipt of such decision and reasons therefor, withdraw the certificate of recognition of such a kgosana by -

- (a) publishing a notice of withdrawal of recognition of such kgosana in the Gazette;
- (b) informing the kgosi/ kgosigadi and the Royal Family concerned, the kgosana concerned and the relevant Local House of Traditional Leaders of such removal.

(4) The kgosi/ kgosigadi and the Royal Family shall after taking a decision to remove a kgosana, appoint a successor in accordance with the applicable customary law and customs and the provisions of this Act.

Recognition of an acting kgosana

21. (1) Bogosana of a traditional community shall be in accordance with the customary law and customs applicable in such a traditional community.

(2) The identification of an acting kgosana to bogosana of a traditional community shall be made by the Royal Family in accordance with its customary law and customs.

(3) The Premier may confirm a person designated as contemplated in subsection (1) as an acting kgosana of a particular traditional community.

(4) The Premier shall issue a person recognised as an acting kgosana with certificate of recognition.

(5) The Premier shall issue a notice in the Gazette recognizing an acting kgosana and such notice shall be served on the Local House of Traditional Leaders for information.

Recognition of a Deputy kgosana

22. (1) A kgosana may, after consultation with the kgosi/ kgosigadi and the Royal Family, appoint a deputy to act in his or her stead whenever that kgosana —

- (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) The Premier may recognise a person identified as contemplated in subsection (1) as a deputy kgosana of a particular traditional community.

Functions of kgosana

23. A kgosana appointed in terms of section 14, shall, subject to this Act and the Constitution –
- (a) perform such functions as are entrusted to a kgosana in terms of customary law and customs.
 - (b) perform such other functions as may be prescribed;
 - (c) obey and execute the lawful instructions of the kgosi/ kgosigadi.
 - (d) attempt to settle any dispute between any members of the motsana and shall refer such dispute to the tribal court where such attempts to settle such dispute are unsuccessful.

Royal family

24. The Royal family must –
- (a) take such lawful steps that may be necessary to protect the bogosi of the traditional community concerned; and
 - (b) in accordance with the customary law and customs of the traditional community designate a person who is the rightful incumbent and/or successor to the bogosi of the traditional community.

Meetings of Royal family

25. (1) A Royal family must, when meeting to discuss matters emanating from this Act, function in accordance with prescripts of this Act, customs and customary law of the traditional community concerned.

(2) A Royal family must keep a minute book in which shall be recorded minutes of minutes of each meeting -

(a) the date, the time and venue of the meeting;

(b) the names of the members of the Royal family members present and their respective designation;

(c) the issues for consideration; and

(d) the decisions of the meeting.

Chapter 4

Conditions of service

Sitting, subsistence and traveling allowances

26. (1) A member of a traditional council shall be paid such allowances as may be prescribed.

(2) A member of a traditional council who is in the full time employment of the State is not entitled to the allowances contemplated in subsection (1), but is entitled to such benefits as his or her conditions of service provide.

Code of conduct and breach of the code

27. (1) The code of conduct contained in the Schedule II applies to a kgosi/ kgosigadi or kgosana and a traditional council.

(2) Whenever there is reasonable suspicion that a traditional leader has breached any provision of the code of conduct, the Premier may charge him or her in writing with such alleged breach and may appoint a suitable person to conduct an enquiry of the alleged breach in line with the provisions of the code.

(3) A kgosi/ kgosigadi or kgosana who is suspended from his or her office for the alleged breach of a provision of the code of conduct as contemplated in Schedule II is not entitled or competent to exercise and perform any function conferred or imposed on or associated with his or her office by or in terms of any law.

Chapter 5

Financial matters

Levies

28. A traditional council may not impose any levy to be paid by any member of the traditional community or by any section of members of the traditional community.

Voluntary contributions

29. A traditional council may request members of the traditional community or any section of the members of the traditional community to make any voluntary contribution to the traditional community account: Provided that no such voluntary contribution shall be binding, unless the majority of the members of such traditional community or such section thereof, as the case may be, who attend any meeting convened for such purpose, have consented to the payment of such voluntary contribution: Provided further that the payment of any such voluntary contribution may only be made for purposes of financing any specific project or projects.

Traditional council accounts

30. (1) The Premier shall cause to be opened for each traditional council a trust account, into which shall be paid such amounts as are hereinafter specified and from which all expenditure incurred in connection with any matter specified within the duties and functions of the traditional community concerned shall be met.

(2) The Premier may on good cause shown by a traditional council and being satisfied that there are sufficient controls and financial systems, permit such a traditional council to open a trust account, into which shall be paid such amounts as are hereinafter specified and from which all expenditure incurred in connection with any matter specified within the duties and functions of the traditional community concerned shall be met.

(3) There shall be paid into an account opened as referred to in subsection (1) and (2) –

- (a) all fees, charges and voluntary contributions which are payable to the traditional community;
- (b) all cash proceeds derived from any property or right to title of the traditional community;
- (c) any donation or gift made by any person, institution or organization to and for the benefit of the traditional community;
- (d) any other amounts derived from any sources whatsoever for the benefit of a traditional community

(4) Subject to the approval of the Premier, a traditional council referred to in subsection (1) may invest any surplus funds from a traditional community's account with any financial institution or body corporate: Provided that the Premier may prescribe such conditions as it may deem fit in connection with such investment.

(5) A traditional council shall, in respect of each financial year submit to the Premier for his/her approval estimates of the revenue and expenditure for each traditional community account referred to in sub-section (1): Provided that such estimates shall reach the Premier not later than the last day of February of the year preceding such financial year.

(6) No expenditure shall be incurred and no payments shall be made from an account referred to in sub-section (1), except in accordance with the estimates of expenditure from such account approved in terms of sub-section (5): Provided that any recurring expenditure, as determined from time to time may be paid as well as such payments which a traditional council may be obliged to make in accordance with any contract, agreement or debt lawfully entered into or incurred or in accordance with an order of any competent court.

(7) Notwithstanding the provisions contained in sub-section (6) the Premier may authorize the payment of any amount from account referred to in sub-section (1) on the submission of any revised estimates of expenditure from such account if the Premier is satisfied that such amount is due, that the payment thereof is necessary and that funds are available.

Auditing of books and accounts of traditional communities

31. (1) The books and accounts of every traditional community, recognized in terms of section 3 must be audited by the Auditor-General.

(2) The Auditor-General shall as soon as possible after an audit of the books and accounts of a traditional community, transmit a copy of his/ her report on the books and accounts of such traditional community concerned to the Premier and to such traditional community: Provided that the Auditor-General may at any time, if he/she considers it desirable, transmit a special report on any matter connected with his/her powers and duties under this Act to the Premier and to such traditional community.

(3) In the execution of any audit in terms of subsection (1) of the books and accounts of any traditional community contemplated in subsection (5), the provisions of section 188 of the Constitution Act 1996 and section 3 of the Auditor General Act, 1995 shall be applicable.

(4) A report contemplated in subsection (2) of this section shall, within the period prescribed by regulation in terms of this Act, be submitted to the traditional Council of the community concerned for consideration, and after consideration thereof such authority shall submit to the Premier its comments thereon, including its findings and decisions thereon.

Chapter 6

Governance matters

Legal proceedings against traditional Communities and Traditional Councils

32. Any legal proceedings by or against a traditional community or traditional council may be instituted by or against the kgosi or kgosigadi of that traditional community or traditional council in his/ her official capacity: Provided —

(a) that a traditional community or traditional council shall not be responsible for the personal obligations of a kgosi or kgosigadi or kgosana;

(b) that in respect of the land occupied by the traditional community or traditional council, be bound in any way whatsoever by any contract entered into or liability incurred by any kgosi or kgosigadi or kgosana unless it has been approved after having been adopted at a meeting in accordance with the rules governing land of the traditional community concerned.

Partnership with municipalities

33. (1) There shall be partnership arrangements between all levels of municipalities and traditional communities to ensure service delivery at a local level.

(2) Any partnership between a municipality and a traditional council must—

- (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and
- (b) be guided by and based on the principles of co-operative governance.

(3) A traditional council may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and any other applicable legislation.

(4) A traditional council and municipality involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute.

Support to traditional councils and performance monitoring

34. (1) The Provincial Government and municipality must adopt legislative and other measures as may be necessary to support and strengthen the capacity of traditional councils to enable them to fulfill their functions.

(2) The Provincial Government must finance traditional councils to enable them to perform their functions from monies appropriated by the Provincial Legislature.

(3) The Provincial Government must monitor the work of traditional councils using such mechanisms as may be prescribed.

Capacity building

35. (1) The Head of Department must assess the needs of a traditional council and its members, formulate a skills needs data base.

(2) Provide a training programme, aimed at improving the skills of members to perform their function and meet the required service delivery standards.

Development programmes

36. All organs of the Provincial Government must, in the execution of their functions, promote the involvement of traditional leadership in provincial and local development programmes.

Chapter 7

General matters

Implementation of decisions of national commission

37. (1) The Premier must, within 30 days of receipt of the decision of the Commission contemplated in section 26 of the Framework Act, inform the party or parties affected, the Local House of Traditional Leaders concerned and Provincial House of Traditional Leaders of the decision.

(2) The Premier must implement the decision of the Commission as directed by the Commission, and if no such direction is provided the Premier must implement the decision within 30 days of receipt of such decision.

Commissions of inquiry into disputes and other matters relevant to bogosi or bogosana of traditional communities, and powers of Premier following commission's report.

38. (1) The Premier may appoint a commission to inquire into and submit a report to him/ her in regard to—
- (a) any dispute in connection with the recognition of a kgosi or kgosigadi or the appointment of a kgosana; or
 - (b) the question as to whether any person recognised as kgosi or kgosigadi or confirmed as kgosana —
 - (i) is subject to a permanent infirmity of mind or body which renders him/ her incapable of discharging the duties of his/her office or discharging them properly; or
 - (ii) generally acts or has acted or conducts himself/ herself in a manner detrimental to good and effective government and/or administration of the traditional community in question, or fails or has failed to act or to conduct himself/ herself in a manner conducive to good and effective government of such traditional community, or is otherwise unfit for the duties of his/her office; or
 - (iii) is the rightful incumbent of the office of kgosi or kgosigadi or kgosana (as the case may be);
 - (iv) is guilty of fraud or gross irregularity in connection with the administration of the affairs of the traditional community or is otherwise guilty of maladministration of such affairs.

(2) (a) At any inquiry by a commission referred to in subsection (1), representations may be made and evidence may be presented to the commission by or on behalf of the kgosi or kgosigadi or kgosana in relation to whom the inquiry is held, and by or on behalf of any member of the traditional community in question and, where applicable, by or on behalf of the person claiming to be entitled to bogosi or bogosana (as the case may be).

(b) A failure or refusal on the part of any person referred to in paragraph (a) to attend an inquiry held by the commission or to make any representations or present any evidence in the course of the proceedings before the commission, shall not in any way invalidate the proceedings before or the findings of the commission.

(3) The commission shall, as soon as may be reasonably practicable after the conclusion of its inquiry, submit to the Premier its report, containing its findings and recommendations.

(4) The Premier may, after having considered the report, findings and recommendations of the commission—

(a) settle or decide the matter in dispute in such manner as he/she deems fair and equitable and for that purpose issue such directions as he/she deems fit;

(b) in the circumstances contemplated by paragraph (a) of subsection (1)—

(i) in the case of a kgosi or kgosigadi, revoke his recognition as such;

- (ii) in the case of a kgosana withdraw confirmation as such;
- (c) in the circumstances contemplated by paragraph (b) of that subsection, depose the kgosi or kgosigadi or kgosana concerned (as the case may be), and, for the purposes of paragraph (b) or (c) of this subsection, recognise or confirm, as the kgosi or kgosigadi or kgosana respectively, any other member of the particular traditional community qualified for that purpose.

Offences and penalties

39. Kgosi/ kgosigadi, or kgosana, who –

(a) Willfully and unlawfully, directly or indirectly extracts, accepts, agrees to accept or attempts to obtain for himself or for any other person, any gift, reward or any other consideration whatsoever, other than the allowances to which such kgosi/ kgosigadi, or kgosana, is entitled to receive in terms of this Act or in terms of any regulations published in terms of this Act, for or on account of the services or functions performed or the doing or refraining from doing or having done or refrained from doing anything in the capacity as kgosi/ kgosigadi, or kgosana, shall be guilty of an offence and shall be liable, on conviction to pay a fine not exceeding five thousand rand or to imprisonment not exceeding two years.

(b) Wilfully and unlawfully fails or refuses to comply with any procedural provisions in this Act or the regulations, shall be guilty of an offence and shall on conviction be liable to pay a fine and/ or to undergo imprisonment not exceeding six months.

(c) Without the consent of the traditional council concerned, allows, induces or authorizes any person to take up residence or in any way to occupy land registered in the name of or in trust for any traditional community or any land referred to in Schedule 1, shall be guilty of an offence and shall, on conviction be liable to pay a fine and/or to undergo imprisonment not exceeding two years.

(d) Without of the consent of the traditional council concerned, takes up residence or in any way occupies land registered in the name of or in trust for any traditional community or any land referred to in Schedule 1, shall be guilty of an offence and shall, or conviction be liable to pay a fine and/ or to undergo imprisonment not exceeding two years.

Delegation

40. The Premier may delegate any of his or her powers or functions in terms of this Act in accordance with the provision of the North West Delegation of Powers Act, 1994

Regulations

41. (1) The Premier may make regulations –
- (a) providing for the form of application for recognition as a traditional community.
 - (b) providing for the administration, control, accounting, auditing of accounts of traditional councils, the procedure to be followed in the connection therewith.

- (c) providing for the appointment, dismissal, termination and conditions of service of an officer or employee of a traditional community.
- (d) providing for the formular and number of traditional council members.
- (e) functions of traditional leaders.
- (f) provide for time periods within which audit reports must be submitted to traditional councils. and
- (g) provide for mechanisms for monitoring performance of traditional councils.

(2) Make any other regulation whether or not relating to any matter specifically referred to in this section which he/she may deem essential to ensure the effective operation of any traditional council and the administration of this Act.

(3) Regulations made in terms of this section in respect of one traditional community may be different from regulations made in respect of any other traditional community or which may differ from area to area under any traditional community.

(4) Regulations may provide penalties for contravention thereof.

(5) Notwithstanding the provisions of section 42, the regulations in force at the coming into operation of this Act, shall remain in force as far as they can be applied until such regulations have been withdrawn, repealed or amended as contemplated in section 42(1).

Repeal of Laws and savings

42. (1) The laws specified in Schedule I of this Act, in so far as they have been assigned to and apply to the Province and any proclamation or Government Notice issued in terms of such laws, are repealed to the extent specified in the third column thereof.

(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 that provision of this Act.

Transitional arrangements

43.(1) All tribal authorities established in terms of Act No. 23 of 1978 shall continue until such time that it is substituted by the newly reconstituted traditional councils contemplated in section 5.

(2)(a) Any notice defining an area of residence of a recognized traditional community which was issued under a law repealed in terms of section 36 shall be deemed to have been issued in terms of this Act; and

(b) the Premier may redefine an area contemplated in paragraph (a).

(3) (a) The Premier must, by notice in the Provincial Gazette, within one year of the commencement of this Act disestablish Regional Authorities, Community Authorities, and tribal authorities that have been established in terms of applicable legislation before the commencement of this Act.

(b) A notice disestablishing Regional Authorities, Community Authorities, and tribal authorities must regulate the legal, practical and other consequences of the disestablishment, including —

(i) the transfer of assets, liabilities and administrative and other records to an appropriate provincial department, or a municipality or local house of traditional leaders, or a traditional community and traditional council as circumstances may require;

(ii) the vacation of office of any office bearer of such a regional authority or community authority; and

(iii) the transfer of staff of such a regional authority or community authority.

(4) Anything done in pursuance of the powers and functions conferred upon or assigned to any competent authority by or by virtue of any provision of any law repealed in terms of this Act, shall be deemed to have been done by the appropriate authority in pursuance of the powers and functions conferred upon or assigned to such authority by virtue or in terms of the corresponding provisions in this Act.

(5) A tribal authority authorized to maintain a separate trust account from the trust account established in terms of Act No. 23 of 1978 shall continue to operate such an account on such terms and conditions as were attached to their authorization to maintain the account.

Short title and commencement

44. (1) This Act shall be called the North West Traditional Leadership and Governance Act, 2004, and shall come into operation on a date fixed the Premier by notice in the Gazette.

(2) Different dates for commencement of different sections of this Act may be proclaimed.

SCHEDULE 1

Act Number and year	Short title	Extent of Repeal
23 of 1978	Bophuthatswana Traditional Authorities Act	The whole to the extent assigned to the province
38 of 1927	Black Administration Act	The whole to the extent assigned to the province
7 of 1976	Pounds Act	The whole to the extent assigned to the province
4 of 1976	Registration and Control of Dogs Act	The whole to the extent assigned to the province
7 of 1977	Registration of Customary Unions Act	The whole to the extent assigned to the province
23 of 1979	Bophuthatswana Wheel Tax Act	The whole to the extent assigned to the province
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
Proclamation No. 129 of 1967	Regulations for the Control of Residents on and the Occupation of Privately Owned or Tribally Owned Land in Black Areas	The whole to the extent assigned to the province
Proclamation No. 196 of 1967	Betterment areas Proclamation	The whole to the extent assigned to the province

Schedule II

CODE OF CONDUCT

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 efficient manner;
- (c) may not conduct himself or herself in an improper or unbecoming manner;
- (d) must comply with any applicable legislation;
- (e) must act in the best interest of the traditional community or communities he or she serves;
- (f) must promote unity amongst traditional communities;
- (g) may not embark on actions that would create division within or amongst traditional communities;
- (h) must promote nation building;
- (i) may not refuse to provide any service to a person based on political or ideological grounds;
- (j) must promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
- (k) must foster good relations with the organs of state with whom he or she interacts;
- (l) must promote the principles of a democratic and open society; and
- (m) must disclose gifts received.

2. A traditional council must—

- (a) perform the functions allocated to it in good faith, diligently, honestly and in a transparent manner;
- (b) execute its duties in an efficient manner;
- (c) comply with any applicable legislation;
- (d) act in the best interest of the traditional community it serves;
- (e) give effect to the principles governing public administration set out in section 195 of the Constitution;
- (f) must promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery; and
- (g) foster good relations with the organs of state with whom it interacts.