

REPUBLIC OF SOUTH AFRICA

CUSTOMARY INITIATION BILL

*(As amended by the Portfolio Committee on Cooperative Governance and
Traditional Affairs (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B 7D—2018]

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BILL

To provide for the effective regulation of customary initiation practices; to provide for the establishment of a National Initiation Oversight Committee and Provincial Initiation Coordinating Committees and their functions; to provide for the responsibilities, roles and functions of the various role-players involved in initiation practices as such or in the governance aspects thereof; to provide for the effective regulation of initiation schools; to provide for regulatory powers of the Minister and Premiers; to provide for the monitoring of the implementation of this Act; to provide for provincial peculiarities; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution recognises—

- the right to life;
- the right to bodily and psychological integrity;
- the rights of persons to enjoy their culture;
- the rights of persons to form, join and maintain cultural associations; and
- the rights of children to be protected from maltreatment, neglect, abuse or degradation;

AND WHEREAS customary initiation is practiced by many communities in South Africa as a sacred and respected practice, and in some instances is regarded as a rite of passage to adulthood;

AND WHEREAS initiation is an embodiment of ideals, values and aspirations of both the individual and the community, reflected in the transfer of teachings about culture, tradition and respect (especially for women and the elderly);

AND WHEREAS—

- the customary practice of initiation has been subject to abuse which in many instances has resulted in serious injuries to, and even the death of, initiates;
- initiation schools have not been effectively regulated;
- existing relevant laws only deal with certain aspects of initiation and not with initiation in general; and
- some initiation schools operate for personal financial gain only with little or no concern for the well-being of initiates;

AND WHEREAS—

- government has a duty to protect the lives of initiates;
- government has a duty to set norms and standards within which the customary practice of initiation must take place;
- all role-players involved in initiation must be accountable for their respective responsibilities, duties, roles and functions;

- the customary practice of initiation must, where necessary, be transformed to reflect the Constitutional principles, especially the principles contained in the Bill of Rights; and
- all role-players have an obligation to restore the integrity and legitimacy of the customary practice of initiation;

AND WHEREAS the Constitution provides that national or provincial legislation may provide for cultural matters,

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

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CHAPTER 1

INTERPRETATION, APPLICATION, OBJECTIVES AND PRINCIPLES 25

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**abduction**” means the unlawful removal of a child from the control of his or her parents or customary or legal guardian, as the case may be, or unlawful retention of such child, for the purposes of attending an initiation school, whether registered or not; 30
 - “**abuse**” includes but is not limited to physical or mental abuse, sexual abuse, any form of gender-based violence and any harmful practice that an initiate may be subjected to;
 - “**area of jurisdiction**” means the area of jurisdiction of a traditional council, kingship or queenship council, or principal traditional council as contemplated in sections 3, 3A and 3B of the Framework Act prior to the repeal of that Act by the TKLA or section 16(5)(a) of the TKLA once it commences; 35
 - “**care-giver**” means any person other than a parent or the customary or legal guardian of an initiate who takes care of such initiate during initiation in accordance with the provisions of this Act; 40
 - “**child**” means a person under the age of 18 years as defined in section 1 of the Children’s Act and any reference to ‘children’ has a corresponding meaning;
 - “**Child Justice Act**” means the Child Justice Act, 2008 (Act No. 75 of 2008);
 - “**Children’s Act**” means the Children’s Act, 2005 (Act No. 38 of 2005); 45
 - “**circumcision**”, in relation to a female child, means the removal of the clitoris by any means and, in relation to a male child, means the surgical removal of the foreskin, whether partially or wholly, as part of a customary initiation process;
 - “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977); 50
 - “**CRL Rights Commission**” means the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities as contemplated in section 181(1)(c) of the Constitution and the Promotion and

Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002 (Act No. 19 of 2002);

“**curriculum**” means a set of learning content for initiation and includes any customary or cultural practice that forms part of the initiation process;

“**customary guardian**” means any person other than a parent or legal guardian 5
who, in terms of the customs of a particular community, accepts parental responsibility for a child, including the responsibilities referred to in section 18 of the Children’s Act;

“**Department**” means the national department responsible for traditional affairs;

“**Director-General**” means the Director-General of the Department; 10

“**district municipality**” means a district municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Drugs and Drug Trafficking Act**” means the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);

“**emergency services**” means any services needed as a response to an urgent, 15
impending or recurrent situation for which knowledgeable and expert intervention is required to ensure the welfare of initiates and any other person present at an initiation school, including but not limited to emergency medical services, ambulance services, fire-fighting services and disaster management services;

“**Framework Act**” means the Traditional Leadership and Governance Framework 20
Act, 2003 (Act No. 41 of 2003);

“**General Regulations Regarding Children**” means the General Regulations Regarding Children, 2010, published under Government Notice R.261 in Government *Gazette* No. 33076 of 1 April 2010;

“**genital mutilation**”, in relation to a female child, means the partial or complete 25
removal of any part of the genitals, and includes circumcision of female children;

“**Health Professions Act**” means the Health Professions Act, 1974 (Act No. 56 of 1974);

“**initiate**” means any person who attends an initiation school for the purposes of 30
undergoing customary or cultural practices, rituals or ceremonies in accordance with the customs and traditions of the community concerned;

“**initiation**” means any customary or cultural practices, rituals or ceremonies taking place at an initiation school in accordance with the customs and traditions of the community concerned, and may include teachings relating to ideals, values, 35
aspirations and respect;

“**initiation school**” means any place where initiation takes place and which is registered as an initiation school as contemplated in section 26 of this Act, irrespective of whether such place is located within or outside the area of jurisdiction of a kingship or queenship council, principal traditional council or 40
traditional council;

“**kidnapping**” means the unlawful and intentional deprivation of the freedom of movement of any person for the purposes of attending an initiation school, whether registered or not;

“**kingship or queenship council**” means a kingship or queenship council as defined in section 1 of the Framework Act prior to the repeal of that Act by the 45
TKLA or section 1 of the TKLA once it commences;

“**Liquor Act**” means the Liquor Act, 2003 (Act No. 59 of 2003);

“**local house**” means a local house of traditional leaders established in accordance with the provisions of section 17 of the Framework Act prior to the repeal of that Act by the TKLA, section 50 of the TKLA or any applicable provincial legislation; 50

“**local municipality**” means a local municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**MEC**” means a member of the Executive Council of a province;

“**medical practitioner**” means a general practitioner or family physician in 55
medicine who, in accordance with the provisions of the Regulations Relating to the Registration of Persons as General Practitioners and Family Physicians in Medicine, as published under Government Notice No. R1200 of 28 November 2000, is registered with the Medical and Dental Professional Board established by Government Notice No. R.75 of 16 January 1998;

“**metropolitan municipality**” means a metropolitan municipality as defined in 60
section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Minister**” means the national Minister responsible for traditional affairs;

“**National Health Act**” means the National Health Act, 2003 (Act No. 61 of 2003);

“**National House**” means the National House of Traditional Leaders established in terms of section 2 of the National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009) prior to the repeal of that Act by the TKLA or in terms of section 27 of the TKLA; 5

“**NIOC**” means the National Initiation Oversight Committee established in accordance with the provisions of section 4 of this Act;

“**NPA**” means the National Prosecuting Authority established in terms of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998); 10

“**organised local government in the province**” means a provincial organisation recognised in terms of section 2(1)(b) of the Organised Local Government Act, 1997 (Act No. 52 of 1997);

“**PICC**” means a Provincial Initiation Coordinating Committee established in accordance with the provisions of section 11 of this Act; 15

“**principal**” means the person who has permission to hold an initiation school and who is to be held accountable for the operations and management of such a school;

“**prescribe**” means prescribe by regulation made in terms of section 35 of this Act;

“**principal traditional council**” means a principal traditional council as defined in section 1 of the Framework Act prior to the repeal of that Act by the TKLA or section 1 of the TKLA once it commences; 20

“**provincial house**” means a provincial house of traditional leaders established in accordance with the provisions of section 16 of the Framework Act prior to the repeal of that Act by the TKLA, section 49 of the TKLA or any applicable provincial legislation; 25

“**sacred and secret**” means traditional and religious customs and rituals which are performed and taught before, during and after initiation, and which for traditional or religious reasons are not to be made public;

“**SAPS**” means the South African Police Service established in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995); 30

“**standards for initiation school premises**” means the standards for initiation school premises published under General Notice No. 1229 of 2015 in *Government Gazette* No. 39561 of 24 December 2015 as part of the National Health Norms and Standards for Premises, as may be amended from time to time;

“**this Act**” includes any regulations made in terms of any relevant provision of this Act; 35

“**TKLA**” means the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);

“**traditional community**” means a community recognised as such in terms of section 2 of the Framework Act prior to the repeal of that Act by the TKLA, section 3 of the TKLA or any applicable provincial legislation; 40

“**traditional council**” means a traditional council as defined in section 1 of the Framework Act prior to the repeal of that Act by the TKLA or section 1 of the TKLA once it commences;

“**traditional health practitioner**” means a traditional health practitioner as defined in section 1 of the Traditional Health Practitioners Act; 45

“**Traditional Health Practitioners Act**” means the Traditional Health Practitioners Act, 2007 (Act No. 22 of 2007);

“**traditional leader**” means a person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position and has been recognised in terms of the Framework Act prior to the repeal of that Act by the TKLA, the TKLA or any applicable provincial legislation; 50

“**traditional leadership**” means the customary institutions or structures, or customary systems or procedures of governance, which are recognised, used or practiced by traditional communities; and 55

“**traditional surgeon**” means a person who, subject to section 41, is registered as a traditional surgeon in terms of the Traditional Health Practitioners Act.

Application, objectives, interpretation and prohibitions

2. (1) This Act applies to—
- (a) the customary initiation practices in respect of both male and female initiates; 60
 - (b) all initiation schools; and

- (c) all role-players involved in initiation practices.
- (2) The main objectives of this Act are—
- (a) to protect, promote and regulate initiation and for this purpose—
 - (i) to provide acceptable norms and standards; and
 - (ii) to provide for initiation oversight and coordinating structures at the national and provincial spheres of government with a view to ensure that initiation takes place in a controlled environment;
 - (b) to provide for the protection of life, the prevention of injuries and the prevention of all forms of abuse that initiates may be subjected to as a result of initiation practices;
 - (c) to address the governance aspects of initiation and the roles of all relevant role-players; and
 - (d) to protect the customary practice of initiation and ensure that it is practiced within the Constitutional and other legal prescripts.
- (3) Any provision of this Act that requires the consultation or involvement of a provincial or local house of traditional leaders has to be complied with only in instances where such a house has been lawfully established: Provided that in instances where such a house has not been established, such requirement does not apply and has no effect on any action or decision taken in terms of the relevant provision: Provided further that in instances where such a house has not been established, the relevant Premier or PICC, as the case may be, may, for the purposes of sections 35(4), 37(1) and (4), and 39(5), consult any other relevant body or institution.
- (4)(a) Any principal, care-giver, traditional surgeon or traditional health practitioner who is involved in initiation practices or any aspect of such practice, must, subject to section 37(3) and (4), be at least 40 years old and must have undergone initiation himself or herself.
- (b) A principal must have prior and proven experience as a care-giver for a minimum of five initiation seasons.
- (c) A care-giver, traditional surgeon or traditional health practitioner may only be involved in initiation practices or any aspect of such practice, after a period of 10 years has lapsed since he or she graduated from an initiation school.
- (5) No person may participate in any aspect of initiation if that person is unsuitable to work with children in terms of a finding contemplated in section 120 of the Children's Act or if that person's name is listed—
- (a) in Part B of the National Child Protection Register as contemplated in section 111 of the Children's Act, read with section 118 thereof;
 - (b) in the National Register for Sex Offenders as contemplated in section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); or
 - (c) in the database of a PICC as contemplated in section 33(10) of this Act.
- (6) Nothing contained in this Act may be construed as precluding any person from referring to any principal, care-giver, traditional surgeon or traditional health practitioner in the vernacular of a specific area.
- (7) No role-player who is involved in initiation practices may unfairly discriminate directly or indirectly against an initiate or prospective initiate on the grounds of disability, gender or sexual orientation.
- (8)(a) Every initiate has the right to confidentiality regarding his or her health status.
- (b) A medical certificate required in terms of the provisions of this Act is confidential and must be treated as such by the medical practitioner issuing the certificate and by any person or body to whom such certificate must be submitted in terms of this Act.
- (c) Notwithstanding paragraphs (a) and (b), the confidential status of a medical certificate may not be used as a reason for non-compliance with section 22(1)(c) to (f) or (2).

Guiding principles

- 3.** The customary practice of initiation is subject to the Constitution and must be transformed and adapted so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by—
- (a) protecting the lives and dignity of initiates as referred to in sections 10 and 11 of the Constitution;

- (b) providing initiates with access to sufficient food and water, health care services and, where necessary, emergency medical treatment as referred to in section 27 of the Constitution; and
- (c) protecting and promoting the rights of children as referred to in section 28 of the Constitution. 5

CHAPTER 2

OVERSIGHT AND COORDINATING STRUCTURES

Part 1

National Initiation Oversight Committee

Establishment, composition and term of office 10

4. (1) The Minister must, by notice in the *Gazette* and subject to the provisions of subsection (3) and section 6, establish a National Initiation Oversight Committee consisting of—
- (a) three members of the National House, designated by the members of the National House from amongst themselves; 15
 - (b) one Commissioner from the CRL Rights Commission, designated by the Commission;
 - (c) one member from the Interim Traditional Health Practitioners Council of South Africa, designated by the Council from amongst the members contemplated in section 7(a), (b) and (i) of the Traditional Health Practitioners Act; 20
 - (d) one senior official from the Department, designated by the Minister;
 - (e) one senior official from the Department of Health, designated by the Minister responsible for health;
 - (f) one senior official from the Department of Women, Youth and Persons with Disabilities, designated by the Minister responsible for women, youth and persons with disabilities; 25
 - (g) one senior official from the NPA, designated by the National Director of Public Prosecutions;
 - (h) one senior official from the SAPS, designated by the National Commissioner of the South African Police Service; 30
 - (i) one senior official from the Department of Sports, Arts and Culture who has knowledge of cultural customs, designated by the Minister responsible for Sports, Arts and Culture; and
 - (j) if deemed necessary by the Minister and subject to subsection (4), not more than two other persons designated by the Minister which persons must have a qualification or experience in or knowledge appropriate to— 35
 - (i) anthropology; and
 - (ii) customary law and customs.
- (2) The term of office of the NIOC is five years and must be aligned to the term of office of the National House. 40
- (3) At least three members of the NIOC must be women.
- (4) A person contemplated in subsection (1)(j) may, subject to subsection (2), be designated at any stage during the term of the NIOC for the period indicated in such designation. 45

Chairperson and deputy chairperson

5. (1) The NIOC must, at its first meeting after it has been established, which meeting must be convened and chaired by the Minister or by the Director-General if so directed by the Minister, elect—
- (a) a chairperson from amongst the members referred to in section 4(1)(a), (b) and (c); and 50
 - (b) a deputy chairperson from amongst themselves.
- (2) The chairperson presides over meetings of the NIOC.
- (3) If the chairperson is absent or for any reason unable to exercise or perform the powers or functions contemplated in this Act, or when the office of the chairperson is 55

vacant, the deputy chairperson must act as chairperson during the chairperson's absence or inability, or until a chairperson is elected.

Disqualifications

6. A person is not eligible to be designated as a member of the NIOC if that person—
- (a) is not a South African citizen; 5
 - (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; 10
 - (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 15
 - (j) is prohibited in terms of the provisions of section 2(5).

Vacancies

7. Whenever a vacancy occurs in the NIOC, such a vacancy must, within 30 calendar days of the vacancy having arisen, be filled with a person designated in accordance with the provisions of section 4(1), for the unexpired term of his or her predecessor. 20

Meetings

8. (1) The NIOC must meet at least four times per annum.
- (2) (a) Meetings of the NIOC must be held at a place, on a date and at a time to be determined by the chairperson of the NIOC.
- (b) The chairperson of the NIOC must give notice of any such meeting to the members of the NIOC at least seven calendar days prior to such meeting. 25
- (c) The chairperson of the NIOC may, on request of the Minister or the Director-General, convene a special meeting of which notice must be given to the members of the NIOC at least two calendar days prior to such meeting.
- (3) Five members of the NIOC constitute a quorum. 30
- (4) (a) Minutes and records of the meetings of the NIOC must be kept and filed by the secretariat envisaged in section 10(2).
- (b) The minutes of any meeting must be endorsed by the NIOC at its next meeting and within two weeks of such meeting, be submitted to the Minister and Director-General for their information. 35

Functions

9. (1) (a) The NIOC must—
- (i) monitor the implementation of this Act;
 - (ii) promote compliance with the provisions of this Act amongst all role-players who are involved in initiation practices and initiation schools; 40
 - (iii) guide the PICCs on the implementation of this Act and initiation practices in general;
 - (iv) make recommendations to the relevant PICC in respect of the closing of any non-registered initiation school or the deregistration of any initiation school that does not comply with or meet the requirements of this Act; 45
 - (v) subject to any applicable legislation, consider and resolve any dispute referred to it by a PICC in terms of section 15(5)(b) or (c), within five calendar days from the date of receipt of the referral of a dispute, and the decision of the NIOC in respect of any such dispute is final;
 - (vi) subject to subsection (3), keep comprehensive statistics on initiation; and 50
 - (vii) perform any other task relating to initiation as may be directed by the Minister.
- (b) The NIOC may—
- (i) inspect any initiation school to establish whether such a school meets the requirements set out in this Act;
 - (ii) investigate any alleged abuse of initiates; 55

- (iii) conduct initiation awareness campaigns which must include information on the rights and responsibilities of initiates and their parents or legal or customary guardians as provided for in the Constitution, this Act and any other relevant law;
- (iv) oversee initiation awareness campaigns as may be conducted by a PICC; 5
- (v) operate a hotline where any alleged contravention of the provisions of this Act may be reported;
- (vi) investigate any alleged contravention reported to the hotline contemplated in subparagraph (v); and
- (vii) in consultation with the Department of Health and the Health Professions Council of South Africa established in terms of section 2 of the Health Professions Act, develop guidelines to be used by medical practitioners for the purposes of determining whether a person is fit to participate in initiation practices as contemplated in section 22(1)(c): 10

Provided that the NIOC must, prior to any inspection or investigation contemplated in subparagraphs (i), (ii) and (vi), inform the relevant PICC of its intention to conduct such an inspection or investigation which PICC must designate one of its members to assist the NIOC: Provided further that if the NIOC is not in a position to investigate any alleged abuse as contemplated in subparagraph (ii) or any alleged contravention reported to the hotline contemplated in subparagraph (vi), the NIOC must refer the matter to the relevant PICC for investigation and request such PICC to submit a report to the NIOC. 15

(2) (a) The NIOC must, within seven calendar days from the completion of any inspection or investigation contemplated in subsection (1)(b)(i), (ii) and (vi), prepare and submit a report to the Minister, the relevant Premier, relevant MECs, PICC and, for the purpose of subsection (1)(b)(ii), SAPS. 25

(b) (i) Before the end of March and September of each year, the NIOC must, in respect of the preceding six months, prepare a report on the performance of its functions contemplated in subsection (1) and submit such report to the Minister.

(ii) A report contemplated in subparagraph (i) must, with the approval of the Minister, be submitted to all Premiers, relevant MECs and all PICCs within 14 calendar days from the date of approval by the Minister. 30

(c) A report of the NIOC contemplated in paragraph (a) or (b) may contain recommendations to be implemented by a PICC.

(3) (a) For the purposes of keeping the statistics contemplated in subsection (1)(a)(vi), the NIOC must develop and maintain a database. 35

(b) The database must include—

- (i) copies of the reports contemplated in section 15(1)(p), (2)(a) and (6)(a), which copies must be provided to the NIOC by the PICCs;
- (ii) any report contemplated in subsection (2); 40
- (iii) any statistics and copies of registers or records contemplated in section 15 and any information contemplated in section 15(2)(k) which, upon request of the NIOC, must be submitted by the relevant PICC to the NIOC; and
- (iv) any other information as may be deemed necessary by the NIOC or as may be requested by the Minister. 45

(4) If, during any inspection or investigation contemplated in this section, the NIOC becomes aware of any possible or alleged criminal conduct, the NIOC must immediately report such conduct to the SAPS for investigation.

Administrative and financial support

10. (1) The Department must provide such administrative and financial support to the NIOC as may be required to enable the NIOC to perform the functions assigned to it by this Act. 50

(2) The Director-General must designate officials from the Department to provide specified administrative support, including secretariat support, to the NIOC for the period indicated in such designation. 55

(3) For the purposes of providing financial support to the NIOC, the chairperson of the NIOC must, before a date determined by the Director-General, submit annual estimates of expenditure for the next financial year to the Director-General.

Part 2

Provincial Initiation Coordinating Committees

Establishment, composition and term of office

11. (1) In a province where a provincial house has been established and initiation takes place within such province, the Premier of such province must, subject to subsections (4) and (6) and sections 16(4) and 38, and after consultation with the provincial house, by notice in the *Provincial Gazette* establish a Provincial Initiation Coordinating Committee consisting of— 5

- (a) four members of the provincial house, designated by the members of the provincial house from amongst themselves; 10
- (b) two officials from the provincial government, designated by the MEC responsible for initiation in the province;
- (c) not more than two persons representing the metropolitan, district and local municipalities in whose areas of jurisdiction initiation schools are held, designated by the organised local government in the province; 15
- (d) not more than two persons representing the emergency services within the province, designated by the MEC or MECs responsible for the respective emergency services within the province; and
- (e) the traditional health practitioner of the particular province who, in terms of section 7(c) of the Traditional Health Practitioners Act, is a member of the Interim Traditional Health Practitioners Council of South Africa. 20

(2) In a province where a provincial house has not been established but where traditional leaders have been recognised and initiation takes place within such province, the Premier of such province must, subject to subsections (4) and (6) and sections 16(4) and 38, and after consultation with the National House, by notice in the *Provincial Gazette* establish a PICC consisting of— 25

- (a) two members of the National House, designated by the members of the National House from amongst themselves: Provided that the members of the National House so designated must be conversant with the customary practices of the communities in the province; 30
- (b) two traditional leaders designated by the recognised traditional leaders within such province from amongst themselves: Provided that if there are only one or two recognised traditional leaders within such province, such traditional leader or leaders must be regarded as so designated;
- (c) not more than two officials from the provincial government, designated by the Premier after consultation with the MEC responsible for initiation in the province and the MEC responsible for cultural matters in the province; 35
- (d) not more than two persons representing the metropolitan, district and local municipalities in whose areas of jurisdiction initiation schools are held, designated by the organised local government in the province; 40
- (e) not more than two persons representing the emergency services within the province, designated by the MEC or MECs responsible for the respective emergency services within the province; and
- (f) the traditional health practitioner of the particular province who, in terms of section 7(c) of the Traditional Health Practitioners Act, is a member of the Interim Traditional Health Practitioners Council of South Africa. 45

(3) In a province where a provincial house has not been established and where no traditional leaders have been recognised but initiation takes place within the province, the Premier of such province must, subject to subsections (4) and (6) and sections 16(4) and 38, and after consultation with the National House, by notice in the *Provincial Gazette* establish a PICC consisting of— 50

- (a) two members of the National House, designated by the members of the National House from amongst themselves: Provided that the members of the National House so designated must be conversant with the customary practices of the communities in the province; 55
- (b) not more than two officials from the provincial government, designated by the Premier after consultation with the MEC responsible for cultural matters in the province and any other MEC as deemed necessary by the Premier;

- (c) not more than two persons representing the metropolitan, district and local municipalities in whose areas of jurisdiction initiation schools are held, designated by the organised local government in the province;
 - (d) not more than two persons representing the emergency services within the province, designated by the MEC or MECs responsible for the respective emergency services within the province; and 5
 - (e) the traditional health practitioner of the particular province who, in terms of section 7(c) of the Traditional Health Practitioners Act, is a member of the Interim Traditional Health Practitioners Council of South Africa.
- (4) At least three members of a PICC must be women. 10
- (5) The term of office of a PICC is five years and must, in the case of a PICC contemplated in subsection (1), be aligned to the term of office of the provincial house and must, in the case of a PICC contemplated in subsections (2) and (3), be aligned to the term of office of the National House.
- (6) A person is not eligible to be designated as a member of a PICC if any of the disqualifications referred to in section 6 applies to such a person. 15

Chairperson and deputy chairperson

- 12.** (1) The members of a PICC contemplated in—
- (a) section 11(1) must, at the first meeting of the PICC, elect a chairperson from amongst the members referred to in section 11(1)(a) and a deputy chairperson, 20
from amongst themselves;
 - (b) section 11(2) must, at the first meeting of the PICC, elect a chairperson from amongst the members referred to in section 11(2)(a) or (b) and a deputy chairperson, from amongst themselves; and
 - (c) section 11(3) must, at the first meeting of the PICC, elect a chairperson and a 25
deputy chairperson from amongst themselves.
- (2) The provisions of section 5(2) and (3) apply with the necessary changes to a PICC.

Vacancies

13. Whenever a vacancy occurs in a PICC, such a vacancy must, within 30 calendar days of the vacancy having arisen, be filled with a person designated in accordance with the provisions of section 11(1), (2) or (3), as the case may be, for the unexpired term of his or her predecessor. 30

Meetings

- 14.** (1) A PICC must meet at least four times per annum.
- (2) (a) Meetings of a PICC must be held within the particular province on a date and 35
at a time and place to be determined by the chairperson of the PICC.
- (b) The chairperson of a PICC must give notice of any such meeting to the members of the PICC at least seven calendar days prior to such meeting.
- (c) The chairperson of a PICC may, on request of the Premier or the MEC responsible for initiation in the province, convene a special meeting of which notice must be given 40
to the members of the PICC at least two calendar days prior to such meeting.
- (3) The quorum for any meeting of a PICC is 50 percent plus one of the total number of filled positions of the PICC.
- (4) (a) Minutes and records of the meetings of a PICC must be kept and filed by the 45
secretariat envisaged in section 17(3).
- (b) The minutes of any meeting must be endorsed by the PICC at its next meeting and within two weeks of such meeting, be submitted to the Premier, any relevant MEC of the province, the Director-General and the chairperson of the NIOC for their information.

Functions

- 15.** (1) A PICC must coordinate all initiation schools, practices and activities within 50
the particular province and must, for this purpose—
- (a) promote cooperation between traditional leadership, government and any other role-players in respect of initiation schools and practices;
 - (b) receive and consider an application by a principal to open and hold an 55
initiation school;

- (c) register any initiation school whose application has been approved and issue a letter confirming such registration to the principal;
 - (d) keep a register of all registered initiation schools and screened principals as contemplated in section 20(2);
 - (e) determine the number of initiation schools to be allowed within a particular municipal area in the province taking into account criteria as may be determined by the PICC, including the proximity of the schools to one another, the number of available traditional surgeons in the municipal area, the availability of sufficient and appropriate space and land, the availability of proper habitable structures conducive to initiation practices, the provision of municipal services at such initiation schools and accessibility of the schools; 5
 - (f) determine the maximum number of initiates that may be admitted to a specific initiation school; 10
 - (g) develop criteria and requirements with which prospective initiation schools must comply prior to such schools being registered and opened, including health, water, sanitation and safety requirements, and taking into account the standards for initiation school premises insofar as such standards are not inconsistent with this Act, to ensure that the overall objectives and directives of this Act are met; 15
 - (h) determine the process to be followed by prospective initiation schools for the purposes of the registration of such schools; 20
 - (i) consider the curriculum of any prospective initiation school with a view to ensure that—
 - (i) the provisions of section 29(3) are complied with;
 - (ii) where applicable, male circumcision will be performed in accordance with the provisions of this Act; and 25
 - (iii) no illegal activities form part of the initiation practices:
Provided that a principal must present the curriculum of the particular initiation school to the PICC, excluding any initiation activities which are deemed to be sacred and secret by the relevant community: Provided further that the principal must declare to the PICC that no such sacred and secret activities are illegal or harmful; 30
 - (j) subject to subsection (11), investigate any alleged abuse of initiates at any initiation school;
 - (k) receive and keep record of medical certificates contemplated in sections 22(1)(c) and 28(1)(c), that has been issued to potential initiates declaring them fit to undergo initiation; 35
 - (l) receive and keep record of all required consent documents contemplated in section 28;
 - (m) monitor and evaluate the general functioning of initiation schools during the initiation period; 40
 - (n) conduct awareness campaigns on initiation within the province, which must include information on the rights and responsibilities of initiates and their parents or legal or customary guardians as provided for in the Constitution, this Act and any other relevant law; 45
 - (o) coordinate the flow of information between different role-players, including information relating to interventions in initiation schools; and
 - (p) investigate any matter referred to it by the NIOC in accordance with the provisions of section 9(1)(b) and upon conclusion of such investigation, submit a report to the NIOC. 50
- (2) A PICC must keep a comprehensive database of each initiation school which must at least include—
- (a) any reports relating to initiation as conducted at such schools;
 - (b) the daily visitor records of such schools;
 - (c) financial reports containing details of all income and expenditure; 55
 - (d) detailed information on all initiates, including their full names, identity numbers, age, gender, race, ethnic group and residential address;
 - (e) the full names and contact details, including residential address, of the parents or customary or legal guardians of the initiates;
 - (f) the full names, identity number, age, gender, qualifications and contact details, including residential address, of any medical practitioner or traditional surgeon who is involved in initiation at the particular initiation school; 60

- (g) detailed information on any principal, care-giver, traditional health practitioner or any other person involved in initiation at the particular initiation school, including their full names, identity numbers, age, gender and contact details, including residential address;
 - (h) where applicable, the date on which circumcision was done, the time at which it was done and, in respect of each relevant initiate and notwithstanding paragraph (f), the name and identity number of the medical practitioner or traditional surgeon who performed circumcision on such initiate; 5
 - (i) any specific health problems being experienced by an initiate;
 - (j) any register and records referred to in subsection (1); 10
 - (k) information relating to the nature and cause of the hospitalisation and any loss of life of an initiate; and
 - (l) information relating to offences contemplated in section 33(10).
- (3) A PICC—
- (a) may develop a manual relating to the responsibilities, roles and functions of principals, traditional surgeons, care-givers and traditional health practitioners in respect of initiation practices, schools and activities, which must include provisions relating to educational, health and safety aspects; 15
 - (b) must arrange for the training of principals, traditional surgeons, care-givers and traditional health practitioners on any manual developed in accordance with paragraph (a) or, in collaboration with the provincial department responsible for health or any other relevant department, arrange for their training on any matter which would enable them to perform their responsibilities, duties, roles and functions in respect of initiation in general and as contemplated in this Act; 20 25
 - (c) may develop an appropriate code of conduct for all persons involved in initiation;
 - (d) may, subject to section 28(9), develop appropriate forms; and
 - (e) may inspect any initiation school to establish whether such a school meets the requirements set out in this Act or any criteria developed by the relevant PICC. 30
- (4) Any criteria, requirements, process, manual, code of conduct and forms as contemplated in subsection (1)(g) or (h) or subsection (3)(a), (c) or (d), must be approved by the PICC and published in the Provincial *Gazette*.
- (5) (a) A PICC must, subject to any applicable legislation and within five calendar days from receiving a dispute, consider and resolve any dispute relating to initiation arising amongst principals, traditional surgeons, care-givers, initiates, families of initiates, traditional leaders, traditional health practitioners, service providers and the parents or legal or customary guardians of initiates. 35
- (b) If a PICC is unable to resolve any dispute referred to in paragraph (a), such dispute must be referred to the NIOC within two days of the expiry of the five calendar days referred to in paragraph (a). 40
- (c) In any instance where a PICC is or becomes a party to any dispute referred to in paragraph (a), such dispute must be referred to the NIOC.
- (6) (a) If, following an investigation contemplated in subsection (1)(j), a PICC finds evidence of the abuse of any initiate, the PICC must, within one day of such investigation, prepare a comprehensive report in this regard and report such abuse to the SAPS. 45
- (b) A PICC must, within one day of becoming aware of any non-registered initiation school operating in the province, investigate the matter, close the school and, where necessary, submit a report to the SAPS to investigate any possible abduction or kidnapping as contemplated in section 25(1)(b). 50
- (c) (i) A PICC must, within one day of becoming aware that any registered initiation school no longer meets the requirements of this Act, submit a report in this regard to the relevant principal and request the principal to, within two calendar days, rectify the shortcomings of the initiation school as reflected in the report. 55
- (ii) If the relevant initiation school still does not meet the requirements of this Act after the two days referred to in subparagraph (i), the PICC must deregister such initiation school and close it.
- (7) (a) If an initiation school is closed or deregistered in accordance with the provisions of this Act, the relevant PICC must, where possible and taking into account the customs of the particular community or communities, arrange for the initiates who 60

attended such an initiation school to be transferred to another registered initiation school.

(b) Before any initiates are transferred as contemplated in paragraph (a), the relevant PICC must arrange for such initiates to be examined by a medical practitioner to establish— 5

- (i) whether they are fit to continue with initiation; and
- (ii) whether any medical certificate that was previously issued as contemplated in sections 22(1)(c) and 28(1)(c) is still appropriate.

(c) The relevant PICC must arrange for the transportation of initiates contemplated in paragraph (a). 10

(8) A PICC may, on conditions as may be determined by the PICC, delegate any of the responsibilities, roles and functions contemplated in this section, except the responsibilities, roles and functions referred to in subsections (1)(b), (e), (f), (g), (h) and (i), (3)(d), (4), (5), (6) and section 41(2), to any member of the PICC or a member of a technical support team as contemplated in section 16. 15

(9) For the purposes of subsection (1)(e) to (h), the PICC may consult any knowledgeable person.

(10) (a) A PICC may, with due regard to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), determine the process to be followed when any alleged abuse of initiates is investigated as contemplated in section 15(1)(j) and such process must at least provide for— 20

- (i) the period within which a specific investigation must be concluded;
- (ii) the manner in which interviews must be conducted and recorded; and
- (iii) the manner in which evidence must be collected, including medical reports and photographic evidence. 25

(b) A PICC may determine the format in which an investigative report must be prepared, including the minimum information to be included in such report and the manner in which any confidential information must be collected and reported on.

(11) (a) If any of the persons referred to in subsection (2)(f) and (g) is substituted prior to the opening or during the holding of an initiation school, the principal of such school must inform the relevant PICC accordingly. 30

(b) Any substitute contemplated in paragraph (a) must comply with the relevant requirements of this Act.

(12) If, during any inspection or investigation contemplated in this section, a PICC becomes aware of any possible or alleged criminal conduct, the PICC must immediately report such conduct to the SAPS for investigation. 35

Technical support teams

16. (1) (a) The PICC contemplated in section 11(1) may, after consultation with the head of each of the provincial government departments, traditional leadership councils or institutions referred to in subparagraphs (i) to (xi), establish a technical support team consisting of not more than two representatives each of any or all of— 40

- (i) the provincial department responsible for health;
- (ii) the provincial department responsible for traditional affairs;
- (iii) the provincial department responsible for basic education;
- (iv) the provincial department responsible for arts and culture; 45
- (v) the provincial department responsible for social development;
- (vi) the provincial department responsible for safety and security;
- (vii) the relevant kingship or queenship councils, principal traditional councils or traditional councils;
- (viii) the relevant metropolitan, district and local municipalities; 50
- (ix) the emergency services within the particular area;
- (x) the SAPS; and
- (xi) any other interested body as identified by the PICC.

(b) The PICC may, when necessary and after consultation with the head of each of the national government departments or institutions referred to in subparagraphs (i) to (vii), co-opt to the technical support team not more than two representatives each from any or all of— 55

- (i) the CRL Rights Commission;
- (ii) the Department of Justice;
- (iii) the Department of Women; 60
- (iv) the Department of Health;

- (v) the Department of Social Development;
 - (vi) the Department of Home Affairs; and
 - (vii) the NPA.
- (2) (a) The PICC contemplated in section 11(2) and (3) may, in consultation with the Premier, determine whether it is necessary to establish a technical support team. 5
- (b) If such a technical support team is to be established, the provisions of subsection (1) apply in so far as it is relevant in the particular province.
- (3) A technical support team must perform the functions delegated to it by the PICC, as contemplated in section 15(8).
- (4) A Premier may, after consultation with the MEC responsible for initiation and the MEC responsible for health in the relevant province, include a representative of the provincial department of health contemplated in subsection (1)(a)(i) as a member of the PICC. 10

Administrative and financial support

17. (1) The administrative and financial support to a PICC and its technical support team, including the conditions and requirements relevant to such support, must be provided for by the provincial departments as determined by the Premier after consultation with the relevant MECs. 15
- (2) The heads of the provincial departments contemplated in subsection (1) must, after consultation with each other, designate officials from their respective departments to provide specified administrative support to the PICC or its technical support team for the period indicated in such designation. 20
- (3) The administrative support contemplated in subsection (2) must include secretariat support.

CHAPTER 3 25

ROLE-PLAYERS

Government

18. (1) (a) National and provincial departments and municipal councils may, in respect of initiation practices in general and initiation schools in particular, enter into partnerships with each other and with— 30
- (i) the principal of an initiation school or principals of initiation schools jointly within the province; and
 - (ii) the kingship or queenship council, principal traditional council or traditional council in whose area of jurisdiction an initiation school is held or such councils jointly within the province. 35
- (b) Any partnership contemplated in paragraph (a) must be in writing and—
- (i) must, in addition to any other provisions, contain clear provisions on the responsibilities of each party and the termination of such partnership; and
 - (ii) may not bind any person, body or institution who is not a party to such partnership. 40
- (c) The NIOC, in the case of a partnership where a national department is a party thereto, and a PICC, in the case of any other partnership, must monitor such partnership and may take the necessary steps to ensure the effective and efficient implementation or termination thereof.
- (2) (a) A metropolitan, district or local municipality may, upon request of the principal of a prospective initiation school, in relevant municipal plans or by any other means applicable within such municipality, and after consultation with a kingship or queenship council, principal traditional council or traditional council falling within the municipal area, if any, make provision for the designation of appropriate and accessible land for the purpose of conducting initiation schools. 45 50
- (b) A metropolitan, district or local municipality may, subject to section 21(11), enter into a partnership or agreement with a principal for the provision of municipal services at the relevant initiation school.
- (3) (a) The Minister may, by notice in the *Gazette* and after consultation with all Premiers, the National House, provincial houses and, for the purposes of subparagraph (iii), the Minister responsible for health, determine the fees to be paid— 55

- (i) by any prospective initiate to a principal for the purposes of attending such a school;
 - (ii) by the principal to the PICC in respect of the registration of such school; and
 - (iii) by the parents or legal or customary guardian of an initiate to a medical practitioner for his or her services rendered during initiation. 5
- (b) Before making a final determination of the fees, the Minister must by notice in the *Gazette*, publish the proposed fees for public comment.
- (c) Fees determined in accordance with this subsection must be revised on advice and at the request of the NIOC after the NIOC has consulted with all PICCs.

Houses of traditional leaders 10

- 19.** (1) The National House and provincial houses must, in respect of initiation, promote—
- (a) the customary practice and the legal obligations pertaining thereto;
 - (b) compliance with Constitutional principles, the provisions of this Act and any other legal prescripts pertaining to customary initiation, including the relevant provisions of the Children’s Act; 15
 - (c) good and safe practices; and
 - (d) accountability amongst all role-players.
- (2) The National House must, after consultation with the provincial houses and in any instance where a provincial house has not been established, after consultation with the Premier or any MEC designated by the Premier for this purpose, develop— 20
- (a) criteria to be used for the purposes of the screening of principals, traditional surgeons, care-givers and traditional health practitioners as contemplated in section 20(2);
 - (b) the minimum requirements for the registration of traditional surgeons, subject to the provisions of section 41(3); 25
 - (c) educational material for the purposes of educating all role-players in initiation on the rights, responsibilities, roles and functions of such role-players and the rights of initiates; and
 - (d) acceptable standards relating to discipline at initiation schools. 30
- (3) The National House may, on request of the NIOC or any PICC and after consultation with the relevant role-players, develop a manual as contemplated in section 15(3)(a).

Traditional leaders

- 20.** (1) Traditional leaders are overall responsible for initiation practices taking place within the areas of jurisdiction of their kingship or queenship councils, principal traditional councils or traditional councils and must, in this regard— 35
- (a) promote the customary practice amongst the traditional communities in the particular area;
 - (b) promote compliance with Constitutional principles, the provisions of this Act and any other legal prescripts pertaining to customary initiation, including the relevant provisions of the Children’s Act; 40
 - (c) promote good and safe practices, with specific emphasis on the protection of the lives, health and safety of initiates;
 - (d) promote compliance with any code of conduct contemplated in section 15(3)(c); 45
 - (e) assist the NIOC or a PICC, upon their request, to perform their functions provided for in this Act; and
 - (f) conduct regular inspections at initiation schools within their areas and report any abuse of initiates and non-compliance with the provisions of this Act or any other relevant law to the relevant PICC. 50
- (2) The traditional leaders contemplated in subsection (1) must screen principals, traditional surgeons, care-givers and traditional health practitioners in accordance with the criteria developed by the National House in terms of section 19(2)(a) and submit a report to the relevant PICC, in the format as may be determined by such PICC— 55
- (a) indicating whether a specific principal or care-giver meets the requirements provided for in this Act and is suitable to perform the duties of a principal or care-giver, as the case may be;

- (b) indicating, subject to the provisions of section 22(1)(h), for which initiate or initiates each such care-giver will be responsible;
 - (c) containing details, other than the information contemplated in section 15(2)(g), in respect of a principal, traditional surgeon or care-giver as may be required by the relevant PICC; and 5
 - (d) indicating whether a specific traditional surgeon—
 - (i) is registered;
 - (ii) meets the requirements of section 23; and
 - (iii) is suitable to perform the duties of a traditional surgeon contemplated in this Act. 10
- (3) If, in respect of the functions contemplated in subsection (2)—
- (a) any traditional leader is unable to perform such functions;
 - (b) a specific traditional leader is also the principal of an initiation school;
 - (c) there are no recognised traditional leaders in a particular province but initiation takes place within such province; or 15
 - (d) initiation takes place in an area where there are no traditional leaders,
- the PICC must assign such functions to any member of the PICC or its technical support team.

Principals and care-givers

21. (1) Principals and care-givers have the responsibilities, roles and functions assigned to them by this Act and are subject to the screening contemplated in section 20(2). 20
- (2) Principals and care-givers must—
- (a) have no history or criminal record related to the abuse of children, violent actions or conduct against any person or any substance abuse; and 25
 - (b) subject to the provisions of section 29, instil discipline amongst the initiates under their guardianship.
- (3) Care-givers must provide the parent or, where applicable, the customary or legal guardian of the initiate with health reports within the timeframes to be agreed upon between such care-giver and the relevant parent or guardian. 30
- (4) In the case of male initiation practices where circumcision is part of the initiation process, the care-givers must, subject to subsection (2), be males who themselves have been subjected to initiation and circumcision and must—
- (a) subject to subsection (5), take precautionary measures to ensure the speedy recovery of initiates after circumcision; and 35
 - (b) take care of the relevant initiate or initiates until the completion of the initiation practices.
- (5) (a) Care-givers are responsible for the monitoring of initiates and must, if any initiate displays any symptoms of ill-health, serious injury, infection or excessive, recurring or continuous bleeding, whether as a result of circumcision or not, immediately inform the principal and the parents or legal or customary guardian of such initiate. 40
- (b) Immediately upon being informed of any of the conditions referred to in paragraph (a) by the care-giver or by a traditional surgeon as contemplated in section 23(3)(a), the principal must arrange for the initiate to receive medical attention. 45
 - (c) If the principal is not available, the care-giver must immediately arrange for the initiate to receive medical attention.
- (6) In the case of female initiation practices the care-givers must, subject to subsection (2), be females who themselves have been subjected to initiation.
- (7) A principal must designate a specific area where sick initiates may be attended to, taking into account the provisions of section 22(4)(a). 50
- (8) A principal must ensure that all provisions of section 28, with the exception of section 28(9)(b), (10) and (11) are complied with.
- (9) A principal must provide the relevant PICC with the information contemplated in section 15(2)(f) and (g). 55
- (10) A principal must, subject to section 22(1)(f), inform all role-players involved in initiation practices at the particular initiation school of any special needs of initiates who have disabilities, and must ensure that such needs are taken care of, including the provision of sign language practitioners and braille services where applicable.

(11) (a) For the purposes of a partnership or agreement contemplated in section 18(2)(b), a principal must engage the relevant municipality at least three months prior to the commencement of the specific initiation season.

(b) A principal is responsible for the payment of municipal services provided by a municipality at an initiation school. 5

(c) The relevant municipality may exempt a principal from the payment contemplated in paragraph (b) and such exemption must be stipulated in the partnership or agreement contemplated in section 18(2)(b).

Parents or legal or customary guardian

22. (1) The parents or, where applicable, the legal or customary guardian of an initiate, must— 10

(a) decide, together with the child concerned and subject to the provisions of section 28, whether such child should attend an initiation school or not;

(b) in the case where male circumcision forms part of the initiation process, decide together with the child whether he should be circumcised medically or traditionally or not at all; 15

(c) subject to subsection (2), obtain a certificate from a medical practitioner who is practicing within the province where the relevant initiation school is located, indicating whether a prospective initiate is fit to participate in the initiation practices and that he or she has no medical, physical or psychological condition that may cause complications during or after initiation; 20

(d) disclose to the relevant principal and care-giver whether the prospective initiate is on medication in order for the specific care-giver to administer such medication to such initiate; 25

(e) disclose to the relevant principal and care-giver whether the prospective initiate has any other health condition that may impact on such initiate's participation in any initiation practice;

(f) disclose to the relevant principal and care-giver whether the prospective initiate has any disability, including the special needs of such disabled initiate, and whether such disability may limit his or her participation in initiation activities; 30

(g) satisfy themselves that—

(i) the initiation school to be attended by the prospective initiate is registered with the relevant PICC in accordance with the provisions of this Act; and 35

(ii) the principal of the relevant initiation school, the care-giver who will be responsible for the prospective initiate, any relevant traditional health practitioner and, where applicable, the traditional surgeon who will be performing male circumcision, have been screened and found suitable in accordance with the provisions of this Act; and 40

(h) designate a care-giver for the prospective initiate, subject to the screening of care-givers as contemplated in section 20(2).

(2) A certificate contemplated in subsection (1)(c), must—

(a) be obtained within 21 calendar days prior to the day on which an initiation school is to commence; 45

(b) specifically indicate whether the child has any bleeding or breathing disorder, congenital abnormalities or any disability; and

(c) be submitted to the principal of the particular initiation school and the relevant care-giver by the parents or legal or customary guardian of the initiate, as the case may be. 50

(3) The parents or, where applicable, the legal or customary guardian of an initiate, must ensure that the academic education of an initiate, subject to the provisions of section 27, is not compromised as a result of his or her attendance of an initiation school.

(4) The parents or, where applicable, the legal or customary guardian of an initiate, have the right— 55

(a) to attend to such initiate who falls sick during initiation; and

(b) to remove such initiate from an initiation school in any instance where—

(i) the initiate requires medical attention;

(ii) the initiate requests to be removed from the initiation school; 60

- (iii) the initiate is attending an initiation school without the necessary consent contemplated in section 28;
- (iv) the initiate is or has been subjected to any abuse at the school;
- (v) a family emergency or natural disaster warrants such removal; or
- (vi) such parents, legal or customary guardian are of the opinion that the relevant initiation school, the principal of such school or any traditional surgeon, traditional health practitioner or care-giver involved in any initiation practices at such initiation school does not meet or no longer meets the requirements of this Act. 5

Traditional surgeons 10

23. (1) (a) A traditional surgeon may, subject to section 2(4) and (5), only participate in initiation practices if such surgeon—

- (i) is registered; and
- (ii) has been provided with all required consent forms contemplated in section 28 and medical certificates contemplated in section 22(1)(c). 15

(b) A traditional surgeon must, at all times during his or her participation in initiation practices, be in possession of the letter confirming his or her registration as contemplated in section 41(2)(b).

(2) In the case of initiation where male circumcision forms part of the initiation process— 20

- (a) a registered male traditional surgeon may only perform such circumcision under the conditions provided for in section 28(6) and subject to the provisions of sections 22(1)(c) and 27 and subsection (1)(a)(ii) of this section;
- (b) the traditional surgeon must observe due care and diligence, and maintain appropriate health and hygienic standards as provided for in the General Regulations Regarding Children and as may be prescribed in terms of the Traditional Health Practitioners Act; and 25
- (c) the traditional surgeon is, together with the relevant care-giver as contemplated in section 21(4)(b) and subject to subsection (3), responsible for the treatment and care of the initiates during the circumcision process and any treatment that may be required following the circumcision. 30

(3) (a) In any instance where any initiate displays any symptoms of ill-health, serious injury, infection or excessive, recurring or continuous bleeding, whether as a result of circumcision or not, and the relevant care-giver is not available, the traditional surgeon must inform the principal and the parents or legal or customary guardian of such initiate as contemplated in section 21(5)(a). 35

(b) If neither the principal nor the care-giver is available, the traditional surgeon must immediately arrange for the initiate to receive medical attention as contemplated in section 21(5)(b).

Medical practitioners 40

24. (1) A male medical practitioner may—

- (a) subject to section 28(6), perform male circumcisions or supervise the performance of such circumcisions;
- (b) only perform male circumcisions or supervise the performance of such circumcisions if he has been provided with all required consent forms contemplated in section 28; and 45
- (c) if he deems it necessary for medical reasons based on the medical certificate contemplated in section 22(1)(c), refer an initiate to a hospital for the purposes of circumcision.

(2) (a) For the purposes of subsection (1), the parents or legal or customary guardian of an initiate, as the case may be, may, after consultation with the principal of the particular initiation school, invite a male medical practitioner to perform circumcision on the relevant male initiate or to supervise the performance of such circumcision as contemplated in section 28(6) within the confines of the customs and traditions of the particular community. 50 55

(b) If the parents or legal or customary guardian does not invite a medical practitioner as contemplated in paragraph (a), the principal of the particular initiation school must arrange for a medical practitioner to perform circumcision or supervise the performance of such circumcision as contemplated in section 28(6).

(3) For the purposes of issuing the certificate contemplated in section 22(1)(c), a medical practitioner must take into account any guidelines as may be developed in terms of section 9(1)(b)(vii).

South African Police Service and National Prosecuting Authority

25. (1) (a) The SAPS must, upon receipt of a report contemplated in section 15(12) 5
investigate the matter and after investigation, submit the docket to the NPA for a
decision whether to prosecute or not.

(b) The SAPS must, for the purpose of section 15(6)(b) also investigate whether the
initiates who were attending the non-registered initiation school could be regarded as
abducted or kidnapped, and submit the docket to the NPA for a decision whether anyone 10
should be prosecuted for abduction or kidnapping.

(2) (a) The SAPS must, upon receipt of a report contemplated in sections 9(2)(a) and
15(6)(a), forthwith comply with the provisions of section 110(4) of the Children's Act,
investigate the matter and after investigation, submit the docket to the NPA for a
decision whether to prosecute or not. 15

(b) Whenever the death of an initiate is reported to the SAPS in accordance with the
provisions of section 31, the SAPS must forthwith investigate such death and after
investigation, submit the docket to the NPA for a decision whether to prosecute or not.

(c) If any investigation conducted by the SAPS as contemplated in paragraphs (a) and
(b) *prima facie* reveals that the abuse or the death of an initiate was as a result of
negligence or intention by any person involved in initiation at the particular initiation
school, the PICC must close that initiation school. 20

(3) If any initiate is forced to attend an initiation school without complying with all
the consent requirements contemplated in section 28, the SAPS must investigate
whether such initiate could be regarded as abducted or kidnapped, and submit the docket 25
to the NPA for a decision whether anyone should be prosecuted for abduction,
kidnapping or any other applicable offence.

(4) If it is reported to the SAPS that any sacred or secret initiation activity as
contemplated in the proviso to section 15(1)(i) may be illegal, the SAPS must
investigate such activity and submit the docket to the NPA for a decision whether, 30
subject to section 33(9), any person must be prosecuted or not.

(5) No person may interfere with the exercising of any duty by a member of the SAPS
or NPA in terms of this Act on any grounds, including customary grounds.

CHAPTER 4

INITIATION SCHOOLS 35

Registration

26. (1) (a) An initiation school must be registered in accordance with the provisions
of section 15(1)(c) and must meet the criteria and requirements for registration as
contemplated in section 15(1)(g).

(b) The provisions of section 15(6) apply to the closing and deregistration of an 40
initiation school.

(2) An initiation school must be registered at least three months prior to the
commencement of an initiation season and such registration is valid only for a specific
initiation season indicated on the registration certificate.

(3) (a) A PICC must, prior to the commencement of an initiation season and by notice 45
in the relevant Provincial *Gazette* and any local newspaper circulating in any area where
initiation is practiced, publish a list, in the format as may be determined by the PICC,
containing details of all registered initiation schools.

(b) A PICC must, by notice in the relevant Provincial *Gazette* and any local newspaper
circulating in any area where initiation is practiced, publish a list, in the format as may 50
be determined by the PICC, containing details of all initiation schools that have been
deregistered or closed and the reasons for such deregistration or closure.

(4) (a) In instances where an initiation school is to be held on land within the area of
jurisdiction of a traditional council, including state land which is lawfully occupied by
a traditional community in terms of any relevant legislation, the principal of such school 55
must obtain written approval from the traditional council to use the specific land for the
purposes of holding such initiation school.

- (b) In instances where an initiation school is to be held outside the area of jurisdiction of a traditional council, the principal of such school must—
- (i) in the case of privately-owned land, obtain written approval from the owner or lawful occupier of such land; or
 - (ii) in the case of state land other than state land contemplated in paragraph (a), obtain written approval from the relevant organ of state responsible for the management of such state land, 5
- to hold such initiation school on such privately-owned or state land, as the case may be.

Initiation seasons

27. (1) Initiation seasons must be held during the relevant provincial school holidays and may not interfere or overlap with official school terms. 10

(2) If an initiation school commences before a school holiday or continues beyond a school holiday, or is held outside the period for initiation submitted to the PICC as part of the application process, the relevant principal is, in addition to the provisions of section 33(4), also liable to suspension from holding initiation schools for a period as may be determined by the PICC. 15

(3) (a) If the principal is suspended as contemplated in subsection (2), the relevant PICC must, subject to subsection (1), replace such suspended principal with a person who meets the requirements of this Act and may, in appointing the replacement principal, give preference to a principal of another initiation school being held in the relevant area. 20

(b) Any initiation school that—

(i) commences prior to the relevant provincial school holidays as contemplated in subsection (2), must be closed and may be reopened once the school holidays commences; or 25

(ii) continues beyond the relevant school holiday, must forthwith be closed.

(4) The provisions of this section do not apply to an initiation school that is attended exclusively by initiates who have already completed secondary education.

Consent, prohibitions, age and circumcision

28. (1) (a) Initiation is a voluntary customary practice and no person may be forced or coerced into attending any initiation school or undergo any initiation practices. 30

(b) No person may attend an initiation school unless all the relevant consent requirements of this section have been complied with and a medical certificate contemplated in section 22(1)(c) has been issued in respect of such person.

(c) Any initiate who is 18 or older, is responsible for obtaining the medical certificate contemplated in section 22(1)(c) and (2), and must submit such certificate to the relevant principal and care-giver. 35

(2) Subject to section 37(3) and (4), no person under the age of 16 may attend an initiation school for the purposes of being initiated.

(3) (a) A child between the ages of 16 and 18 may not attend an initiation school for the purposes of being initiated, unless such child and his or her parents or customary or legal guardian, as the case may be, give written consent for him or her to undergo initiation. 40

(b) A person who is 18 or older may not attend an initiation school for the purposes of being initiated, unless such person gives written consent to undergo initiation. 45

(c) All written consents referred to in paragraphs (a) and (b) must be submitted to the principal of the particular initiation school prior to the commencement of such school, and such principal must submit copies thereof to the relevant PICC.

(4) In terms of section 12(3) of the Children's Act, genital mutilation or circumcision of female children is prohibited and therefore the consent contemplated in this section may not include consent to such mutilation or circumcision and may not form part of any initiation practice. 50

(5) (a) In terms of section 12(4) of the Children's Act, virginity testing of children under the age of 16 is prohibited and therefore the consent contemplated in this section may not include consent to such virginity testing in the case of children under the age of 16. 55

(b) Virginity testing of children who are between the ages of 16 and 18 is subject to the provisions of section 12(5), (6) and (7) of the Children's Act and regulations 3 and 4 of the General Regulations Regarding Children, and may only form part of an

initiation process if the provisions of that section and regulations have been complied with.

(c) Virginity testing of any person who is 18 or older may only be performed as part of an initiation process if such person has given written consent for such virginity testing. 5

(d) No child or any other person may be forced or coerced to undergo virginity testing as part of an initiation process.

(6) (a) In terms of section 12(8) of the Children's Act the circumcision of male children under the age of 16 is prohibited except if such circumcision is performed for religious or medical purposes and therefore the consent contemplated in this section may not, in the case of male children under the age of 16, include consent to any circumcision other than circumcision that is allowed in terms of the said section 12(8). 10

(b) The circumcision of male children between the ages of 16 and 18 is subject to the provisions of section 12(9) and (10) of the Children's Act and regulations 5 and 6 of the General Regulations Regarding Children, and may only form part of an initiation process if the provisions of that section and regulations have been complied with: Provided that in addition to the consent required by section 12(9)(a) of the Children's Act, the consent referred to in subsection (3)(a) and (b) of this section must include consent to be circumcised where such circumcision forms part of the initiation process. 15

(c) The circumcision of male initiates who are 18 or older is subject to paragraph (d)(i) and (ii) of this subsection, regulation 5(2) of the General Regulations Regarding Children and any conditions as may be prescribed under section 43(3)(a) of the National Health Act, and may only form part of the initiation process if the initiate gives written consent to be circumcised. 20

(d) The circumcision of male initiates contemplated in paragraph (b) is subject to regulations 5 and 6 of the General Regulations Regarding Children and any conditions as may be prescribed under section 43(3)(a) of the National Health Act and may, subject to sections 23 and 24, only be performed by— 25

(i) a registered medical practitioner; or

(ii) a registered traditional surgeon— 30

(aa) who is also a registered medical practitioner; or

(bb) under the supervision of a registered medical practitioner if such traditional surgeon is not a registered medical practitioner.

(7) Except for male circumcision in accordance with the provisions of subsection (6), no initiate may be subjected to any physical harmful activities during initiation, including the cutting of the skin or any other manner of permanent marking the skin, and therefore the consent contemplated in this section may not include consent to such physical harmful activities. 35

(8) If any written consent is lawfully given for virginity testing or male circumcision, such consent must be submitted to the principal of the particular initiation school prior to the commencement of such school and such principal must submit copies thereof to the relevant PICC, care-giver, medical practitioner, traditional surgeon, traditional health practitioner and the person who performs a virginity test. 40

(9) (a) If any consent or other forms as contemplated in this section or any other provision of this Act are prescribed in terms of the Children's Act or the General Regulations Regarding Children, such prescribed forms must be used for the purposes of this Act. 45

(b) If any consent or other forms have not been prescribed as contemplated in paragraph (a), a PICC may, subject to section 15(4), develop appropriate forms.

(10) No consent may be given by any initiate or any other person contemplated in subsection (3)(a) and (b), for such an initiate to attend a non-registered initiation school. 50

Discipline and teachings

29. (1) (a) The principal of an initiation school and the relevant care-givers must ensure discipline amongst initiates at all times and must ensure that the teachings at such initiation school discourage misconduct. 55

(b) If an initiate is guilty of misconduct, the principal must, subject to the provisions of section 28(7), take corrective steps in accordance with the customs of the particular community.

(c) Notwithstanding the provisions of paragraphs (a) and (b), an initiate may under no circumstances be abused or assaulted under the guise of discipline. 60

(2) Any discipline imposed at an initiation school is subject to the standards contemplated in section 19(2)(d).

(3) (a) Initiation teachings may include cultural and religious elements and should be aimed at teaching the initiates about their ancestry, belief systems, the challenges and responsibilities of adulthood, family values, national identity, nation building and social cohesion. 5

(b) Initiation teachings must be included in the curriculum to be submitted to a PICC as contemplated in section 15(1)(i).

(c) Initiation teachings may not be prejudicial, biased or discriminatory.

Water, sanitation, food, health care, liquor and drugs 10

30. (1) The principal of an initiation school and the relevant care-givers, must, subject to any criteria as may be developed in terms of section 15(1)(g), ensure that initiates at all times have access to clean water, appropriate sanitation facilities and are provided with food.

(2) (a) The food referred to in subsection (1) must be provided by the parents or families of initiates or, where applicable, by the legal or customary guardians. 15

(b) In any instance where the parents, family or legal or customary guardians are not in a position to provide such food, such parents, family or legal or customary guardians must inform the relevant principal and he or she may provide reasonable assistance in respect of the provisioning of food to the relevant initiates. 20

(3) A principal must, notwithstanding sections 21(4)(b) and 23(2)(c), ensure that initiates have access to health care facilities whenever the need arises, taking into account any requirements as may be contained in a manual contemplated in section 15(3)(a).

(4) (a) Subject to paragraph (b), no initiate or any person involved in initiation may, at an initiation school, use, possess, deal in, supply or manufacture any liquor as defined in section 1 of the Liquor Act. 25

(b) In any instance where a moderate quantity of liquor is to be supplied for purposes of a religious sacrament which forms part of an initiation practice, it may only be provided to initiates to whom such sacrament applies and only in the presence and under the supervision of any of the persons referred to in section 10(2) of the Liquor Act. 30

(5) No initiate or any person involved in initiation may, at an initiation school, use, possess, deal in, supply or manufacture any drug as contemplated in the Drugs and Drug Trafficking Act.

Death of initiate 35

31. (1) In the event that an initiate dies while attending an initiation school, the principal of such school must immediately inform—

- (a) the parents or legal or customary guardian of such initiate, as the case may be;
- (b) the SAPS;
- (c) the relevant PICC; 40
- (d) the relevant traditional surgeon and, where applicable, medical practitioner; and
- (e) where applicable, the relevant senior traditional leader.

(2) Upon being informed of the death of an initiate, the PICC—

- (a) may, subject to subsection (3), assist the parents or legal or customary guardian of the initiate, as the case may be, with the funeral arrangements, taking into account any relevant customs; and 45
- (b) must arrange for a qualified counsellor, who has undergone initiation himself or herself, to provide counselling to the remaining initiates and, if requested by them, to the parents or legal or customary guardian of the deceased initiate. 50

(3) The assistance provided by a PICC as contemplated in subsection (2)(a) may not include any financial contribution.

CHAPTER 5

GENERAL PROVISIONS

Allowances and expenditure

32. (1) A member of the NIOC referred to in section 4(1)(j) who is not a government official, an office bearer as referred to in section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997) or a member of any institution referred to in Chapter 9 of the Constitution, may receive an allowance as may be determined by the Minister by notice in the *Gazette* after consultation with the Minister responsible for finance. 5

(2) The NIOC is responsible for the travel and accommodation expenditure related to the work of the NIOC of any member referred to in section 4(1)(j), except if such a member is a government official. 10

Offences

33. (1) Any person who—

(a) holds a non-registered initiation school or is involved in any initiation practices at such non-registered initiation school; 15

(b) accepts at any initiation school, whether registered or not, an initiate who is under the age of 16; or

(c) accepts an initiate at an initiation school or is involved in any initiation practices at such initiation school without having received the required medical certificate or consent contemplated in section 28(1) and (3), 20

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both a fine and such imprisonment.

(2) A person who forces any person to attend an initiation school or who forges any consent or consent form as contemplated in section 28 or obtains such consent by means of duress, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment. 25

(3) Any traditional surgeon who is not registered, whether in accordance with the provisions of section 41 of this Act or in terms of the Traditional Health Practitioners Act, but performs duties at an initiation school, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment, or to any relevant fine or imprisonment as may be provided for in terms of the Traditional Health Practitioners Act. 30

(4) Any—

(a) principal, care-giver, traditional health practitioner or, subject to subsection (3), traditional surgeon, including any substitute contemplated in section 15(11), who does not meet any requirements provided for in this Act or determined in terms of this Act, or falsely pretends to meet such requirements; 35
or

(b) principal who contravenes section 27(2), 40

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment.

(5) Any person who is involved in any initiation practices or any of the structures provided for in this Act and fails to disclose the information referred to in section 2(5)(a) and (b), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment. 45

(6) Any alleged offences relating to—

(a) the death of an initiate;

(b) the abduction or kidnapping of an initiate;

(c) male or female circumcision, genital mutilation or virginity testing as part of initiation practices; 50

(d) the abuse of initiates;

(e) the use, possession, supply or manufacturing of liquor or drugs or dealing in liquor or drugs by an initiate or any other person involved in initiation; or

(f) the involvement of a medical practitioner at an initiation school, 55

must be dealt with in terms of the offence clauses provided for in the Criminal Procedure Act, the Children's Act, the Health Professions Act, the Drugs and Drug Trafficking Act or the Liquor Act, as the case may be.

(7) Subject to subsection (6), if any principal, care-giver or traditional surgeon does not arrange medical attention for an initiate as contemplated in section 21(5) or 23(3), such principal, care-giver or traditional surgeon is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years, or to both a fine and such imprisonment. 5

(8) If—

(a) any principal does not comply with the provisions of section 21(9) and (10), section 26(4) or section 29(3)(c);

(b) any parents or legal or customary guardian of an initiate fails to disclose the information contemplated in section 22(1)(d), (e) or (f); or 10

(c) any traditional surgeon fails to comply with the provisions of section 23(1)(b), such principal, parents, legal or customary guardian, or traditional surgeon, as the case may be, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

(9) If any initiation activity was declared not to be illegal as contemplated in the proviso to section 15(1)(i), but found to be illegal following the investigation by the SAPS, the principal who made the declaration and any other person who authorised, arranged or supervised such illegal activity may be prosecuted in terms of the provisions of the relevant law. 15

(10) A PICC must, in respect of any principal, care-giver, traditional surgeon or any other person involved in initiation who has been convicted of an offence as contemplated in this section, enter the details of such conviction in the database referred to in section 15(2). 20

Appeals

34. (1) Any person who is aggrieved by a decision of a traditional council or a PICC may lodge an appeal to the relevant Premier. 25

(2) Any person who is aggrieved by a decision of the NIOC may lodge an appeal to the Minister.

(3) An appeal contemplated in subsections (1) and (2) must be lodged—

(a) within 30 calendar days after the aggrieved person has been informed of the specific decision; and 30

(b) in the manner as may be prescribed by the relevant Premier or the Minister, as the case may be.

(4) The relevant Premier or the Minister, as the case may be—

(a) may dismiss the appeal against a decision of a traditional council, a PICC or the NIOC, as the case may be, and confirm the relevant decision; or 35

(b) may uphold an appeal and set aside or vary the specific decision, wholly or in part; and

(c) must, in writing, inform the person who lodged the appeal and the relevant traditional council, the relevant PICC or the NIOC, as the case may be, of his or her decision and the reasons for such decision. 40

(5) Any appeal lodged in terms of this section must be dealt with by the relevant Premier or the Minister, as the case may be, within 30 calendar days from the date on which the appeal was lodged.

Regulations 45

35. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—

(a) any matter that must or may be prescribed in terms of this Act;

(b) in respect of initiation, any matter relating to the responsibilities, roles and functions of— 50

(i) the NIOC;

(ii) a PICC;

(iii) any sphere of government, houses of traditional leaders, traditional leaders, principals, care-givers, parents or legal or customary guardians of initiates; or

(iv) traditional surgeons or traditional health practitioners: Provided that regulations in respect of traditional surgeons or traditional health practitioners may not be in contradiction with the provisions of the Traditional Health Practitioners Act; 55

(c) any matter relating to initiation schools; and

- (d) any ancillary or administrative matter that is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Before any regulations are made under subsection (1), the Minister must—
- (a) in respect of any regulations as contemplated in subsection (1), consult the Premiers of all provinces, the National House and all provincial houses; 5
 - (b) in respect of regulations as contemplated in subsection (1)(b)(iv), consult the Minister responsible for health; and
 - (c) publish any draft regulations in the *Gazette* for public comment.
- (3) Subject to subsections (4) and (5), a Premier may, by notice in the Provincial *Gazette*, make regulations regarding— 10
- (a) in respect of initiation, the responsibilities, roles and functions of—
 - (i) the relevant PICC;
 - (ii) the traditional leaders, principals and care-givers involved in initiation within the province; and
 - (iii) the parents or legal or customary guardians of initiates attending initiation schools within the province; and 15
 - (b) any matter relating to initiation schools within the province.
- (4) Before any regulations are made under subsection (3), the Premier must—
- (a) consult the MEC responsible for initiation in the province, the MEC responsible for health in the province, the provincial house, the PICC and organised local government within the province; and 20
 - (b) publish the draft regulations in the Provincial *Gazette* for public comment.
- (5) Regulations made by a Premier under subsection (3) may not be inconsistent with any provisions of this Act or any regulations made by the Minister under subsection (1).
- (6) Any regulations made by the Minister or a Premier under this section must be tabled in Parliament or the relevant provincial legislature, as the case may be, for noting. 25

Monitoring

- 36.** (1) The Department may monitor the implementation of this Act and any regulations made in terms of this Act, and may submit reports in this regard and make recommendations on such implementation to the Minister, the Premiers and the NIOC or any PICC. 30
- (2) The Minister may, after having received a report or recommendations contemplated in subsection (1) and after consultation with any relevant Premier, the NIOC or any relevant PICC, take the necessary steps to ensure that the provisions of this Act are implemented. 35
- (3) (a) The Department responsible for initiation within a province may, together with any other department designated by the Premier, monitor the implementation of this Act and any regulations made in terms of this Act within such province, and may submit reports in this regard and make recommendations on such implementation to the Premier, any relevant MEC and the relevant PICC. 40
- (b) Upon receipt of a report contemplated in paragraph (a), the Premier of a province may, after consultation with the Minister, take the necessary steps to ensure that the provisions of this Act and any regulations made in terms of this Act are implemented within the province.

Provincial peculiarities 45

- 37.** (1) To accommodate any specific provincial area or community peculiarities, a Premier may, after consultation with the Minister, any relevant MEC, the provincial house and the PICC, by notice in the Provincial *Gazette* determine that the provisions of this Act relating to principals, care-givers or traditional surgeons apply to and must be complied with by the persons or bodies indicated in such notice and to the extent specified in such notice. 50
- (2) A Premier must inform the Minister, any relevant MEC, the NIOC, the provincial house and the PICC of any determination made in terms of subsection (1).
- (3) Provincial legislation may determine a higher minimum age than the minimum age provided for in sections 2(4) and 28(2). 55
- (4) In the absence of provincial legislation contemplated in subsection (3), a Premier may, after consultation with the Minister, any relevant MEC, the provincial house and the PICC, by notice in the Provincial *Gazette* determine a higher minimum age than the minimum age provided for in sections 2(4) and 28(2).

Provincial legislation providing for a PICC

38. (1) If, at the commencement of this Act, any provincial legislation already makes provision for a PICC as contemplated in section 11, for a technical support team as contemplated in section 16 or a similar structure, and for other initiation structures, such PICC, technical support team or similar structure and other initiation structures, irrespective of whether their composition in terms of the provincial legislation corresponds with the relevant provisions of section 11 or 16 of this Act, but subject to subsections (2), (3), (4) and (5), continue to exist and function in terms of such provincial legislation. 5

(2) (a) If any of the responsibilities, roles or functions of a PICC as provided for in section 15 or any other section of this Act is not included in the provincial legislation referred to in subsection (1), such responsibilities, roles and functions must, at the commencement of this Act, be deemed as having been assigned to the PICC established in terms of the provincial legislation and such PICC may, in writing and subject to section 15(8), delegate such responsibilities, roles and functions to any of the structures provided for in the provincial legislation. 10 15

(b) If any of the responsibilities, roles or functions provided for in this Act in respect of any role-player contemplated in Chapter 3 of this Act is not included in the provincial legislation referred to in subsection (1), such responsibilities, roles and functions must, at the commencement of this Act, be deemed as having been assigned to such role-player if such role-player has been provided for in the provincial legislation or to any corresponding role-player provided for in the provincial legislation. 20

(3) The provisions of section 39(2)(c), (d), (e) and (f), (3) and (4) apply with the necessary changes to any delegation made under subsection (2)(a).

(4) Any provision of this Act that is not provided for in the provincial legislation referred to in subsection (1), must apply in the relevant province in addition to the provisions of such provincial legislation. 25

(5) In the event of any conflict between a provision of the provincial legislation referred to in subsection (1) and sections 26, 27, 28 and 33 of this Act, the relevant provisions of this Act prevails. 30

Local initiation structures and municipalities

39. (1) (a) In addition to the structures provided for in this Act, provincial legislation may provide for the establishment of local initiation structures to perform the responsibilities, roles and functions as provided for in such provincial legislation or as may be delegated to such structures in terms of subsection (2). 35

(b) The provisions of section 17 apply with the necessary changes in respect of the administrative and financial support to be provided to the local initiation structures in so far as such support is not provided for in the provincial legislation contemplated in paragraph (a).

(2) (a) A PICC may, subject to paragraph (b) and any conditions as the PICC may determine, in writing, delegate any of its responsibilities, roles and functions to any local initiation structure contemplated in subsection (1)(a). 40

(b) For the purposes of a delegation contemplated in paragraph (a), the provisions of sections 15(8) and 20(3) apply with the necessary changes.

(c) The delegation in terms of paragraph (a) does not prevent the exercise of the relevant responsibility, role or function by the PICC: Provided that the PICC must give prior notice of its intention to exercise the responsibility, role or function to the relevant local initiation structure. 45

(d) A PICC may at any time, in writing, withdraw or amend a delegation.

(e) A local initiation structure to which a responsibility, role or function is delegated, may not further delegate it. 50

(f) Notice must be given in the Provincial *Gazette* of any responsibility, role or function delegated in terms of this subsection.

(3) A PICC must monitor the execution of any delegated responsibilities, roles and functions contemplated in subsection (2) and submit reports in this regard to the department responsible for initiation in the province which reports must be dealt with in accordance with the provisions of section 36(3). 55

(4) A PICC must inform the Premier, any relevant MEC, the provincial house, the NIOC and organised local government within the province of any delegation made in terms of subsection (2). 60

(5) (a) In the absence of provincial legislation contemplated in subsection (1)(a), a PICC may, after consultation with the Premier, any relevant MEC, the provincial house and organised local government within the province, in writing and subject to any conditions as the PICC may determine, delegate any of the responsibilities, roles or functions contemplated in subsection (2)(a) to a specific metropolitan, district or local municipality or to such municipalities in general within the province: Provided that such a municipality must, prior to a delegation being made, agree thereto. 5

(b) The delegation contemplated in paragraph (a) may be included in an implementation protocol contemplated in section 35 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). 10

(c) Subsections (2)(b) to (f), (3) and (4) apply with the necessary changes to any delegation made under paragraph (a).

(d) The delegation or implementation protocol contemplated in paragraphs (a) and (b), must include the provision of financial support to the relevant municipality by the provincial departments as contemplated in section 17(1). 15

(6) In the event of any conflict between a provision of the provincial legislation referred to in subsection (1)(a) and any provision of this Act, the relevant provision of this Act prevails.

Implementation of Act

40. (1) The NIOC and a PICC, excluding a PICC contemplated in section 38, must be established within three months from the date of commencement of this Act. 20

(2) The criteria and process required in terms of section 15(1)(g) and (h) respectively, must be developed by a PICC within three months from the date of establishment of such PICC or, in the case of a PICC contemplated in section 38, within three months from the date of commencement of this Act. 25

Interim arrangements

41. (1) A traditional surgeon must apply to the relevant PICC for registration.

(2) A PICC must, taking into account the requirements developed by the National House contemplated in section 19(2)(b),—

(a) receive and consider an application for the registration of a traditional surgeon; 30

(b) register any traditional surgeon whose application has been approved and issue a letter confirming such registration to the traditional surgeon; and

(c) keep a register of all registered traditional surgeons.

(3) The provisions of subsections (1) and (2) only apply until the provisions of the Traditional Health Practitioners Act which regulate the registration of traditional surgeons come into operation. 35

(4) (a) The Minister may, by notice in the *Gazette* and after consultation with all Premiers, the National House, provincial houses and the Minister responsible for health, determine the fees to be paid, subject to subsection (5)— 40

(i) by a traditional surgeon to the PICC, in respect of the registration of such a surgeon; and

(ii) to a traditional surgeon for his or her services rendered during initiation.

(b) Before making a final determination of the fees, the Minister must, by notice in the *Gazette*, publish the proposed fees for public comment. 45

(c) Fees determined in accordance with this subsection must be revised on advice and at the request of the NIOC, after the NIOC has consulted with all PICCs.

(5) The provisions of subsection (4) only apply until such time as fees are determined or prescribed in terms of the Traditional Health Practitioners Act.

Short title and commencement 50

42. This Act is called the Customary Initiation Act, 2020, and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CUSTOMARY INITIATION BILL, 2018

1. OBJECTS OF THE BILL

- 1.1 In recent years, the customary practice of initiation amongst traditional communities has been subject to abuse. In many instances it has resulted in the death of initiates, in particular male initiates, while numerous initiates have suffered serious bodily harm.
- 1.2 One of the main reasons for this unfortunate situation is the ineffective regulation of initiation schools. There are existing national and provincial laws dealing with initiation, however these laws only deal with certain aspects of initiation, such as male circumcision. Although existing laws already address critical aspects of initiation, the application thereof is limited. There is currently no law that deals with the customary practice of initiation in general.
- 1.3 Government and traditional leadership institutions have adopted a zero tolerance stance towards the death of initiates as a result of initiation practices. Therefore, to ensure that the lives of initiates are protected, it has become necessary to make provision for the effective governance of initiation. For this purpose, the Department of Traditional Affairs (“the Department”), together with the National House of Traditional Leaders (“the NHTL”), conducted research on customary initiation over the past few years. Based on the research, the Department developed an initiation policy that was subjected to further research, extensive consultation and refinement until it was approved by Cabinet in April 2016. Cabinet also approved that national legislation be drafted based on the principles contained in the approved policy.
- 1.4 The approach that was followed with the development of both the Customary Initiation Bill (“the Bill”) as well as the Initiation Policy, is not to interfere with customs as such, but to address matters of governance as far as it concerns customary initiation. Nevertheless, where necessary, the Bill does deal with specific aspects of initiation that have resulted in loss of life or serious bodily harm.
- 1.5 Although initiation is undeniably a cultural practice and cultural matters are a concurrent legislative competency in terms of the Constitution, it is the responsibility of national government to set norms and standards. National government has a duty to take the necessary steps to protect the lives of its citizens even if it means that this would require the regulation of the governance aspects relating to a cultural or customary practice. It is, however, very important to note that it is not the intention to criminalise the customary practice of initiation, but to deal with the abuse of the practice of initiation as well as the abuse of initiates themselves which often result in bodily harm or death.
- 1.6 Although there is often public reference to “illegal” initiation schools, the fact remains that such schools cannot be regarded as “illegal” in the absence of legislation requiring that such schools be registered and must comply with certain requirements. Whether a specific initiation school is regarded as illegal or not, will at this stage depend on the provisions of the specific provincial legislation, if any. At national level, there is currently no legislation in this regard.
- 1.7 Therefore, the main objectives of this Bill can be summarised as follows:
 - (a) To protect, promote and regulate initiation and for this purpose to—
 - (i) provide acceptable norms and standards; and
 - (ii) provide for structures at national and provincial levels with a view to ensure that initiation takes place in a controlled and safe environment.

- (b) To provide for the protection of life, the prevention of injuries and the prevention of abuse in any form experienced by initiates before, during and after initiation (physical and mental abuse).
- (c) To provide clarity on the various responsibilities, roles and functions of the key role-players in customary initiation.

2. CLAUSE BY CLAUSE ANALYSIS

- 2.1 The long title of the Bill provides a brief overview of the content of the Bill, while the Preamble refers to the most important challenges experienced with customary initiation. This is followed by the arrangement of sections and clause 1, which contains definitions for words and phrases that are used in the Bill.
- 2.2 Clause 2 of the Bill determines that the Bill applies to the customary initiation practices in respect of both male and female initiates, all initiation schools and all role-players involved in initiation. The clause also briefly states the objectives of the Bill. Of particular importance is that the clause prohibits any person found unsuitable to work with children in terms of section 120 of the Children's Act or any person whose name has been entered in Part B of the National Child Protection Register or in the National Register for Sex Offenders, to participate in any aspect of initiation. The clause furthermore requires of any principal of an initiation school, any care-giver and traditional surgeon who is involved in initiation to be at least 40 years old, and to have undergone initiation himself or herself.
- 2.3 Clause 3 of the Bill confirms that the customary practice of initiation is subject to the Constitution, especially the sections of the Constitution referred to in the clause 3.
- 2.4 Chapter 2 of the Bill deals with the proposed initiation oversight and coordinating structures at both national and provincial level. Part 1 of Chapter 2 (clauses 4 to 10) makes provision for a National Initiation Oversight Committee (NIOC):
 - (a) In terms of clause 4 of the Bill, the NIOC must consist of three members of the NHTL, one Commissioner of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission), one member from the Interim Traditional Health Practitioners Council, one senior official from the Department of Traditional Affairs, one senior official from the Department of Health, one senior official from the Department of Women, Youth and Persons with Disabilities, one senior official from the National Prosecuting Authority (NPA), one senior official from the South African Police Service (SAPS), one senior official from the Department of Sports, Arts and Culture and not more than two other persons designated by the Minister. These two persons must have a qualification or experience in or knowledge of anthropology and customary law and customs. At least three members of the NIOC must be women.
 - (b) Clause 5 of the Bill determines that the members of the NIOC must from amongst themselves elect a chairperson and deputy chairperson.
 - (c) Clause 6 of the Bill sets out the disqualifications that would make a person unsuitable to be a member of the NIOC.
 - (d) Any vacancy that may arise in the NIOC must be filled within 30 days in terms of clause 7 of the Bill.
 - (e) Meetings of the NIOC are dealt with in clause 8 of the Bill. The NIOC must meet at least four times per annum. It is anticipated that these meetings will in practice be aligned with the beginning and end of the summer and winter initiation seasons.
 - (f) The functions of the NIOC are set out in clause 9 of the Bill. The NIOC will be expected to monitor the implementation of the Bill once enacted and to provide guidance to the envisaged provincial initiation coordinating committees. The NIOC may also investigate cases of alleged abuse at initiation schools and may conduct initiation awareness campaigns. Awareness campaigns must include information on the rights and

responsibilities of initiates and their parents or legal or customary guardians. Furthermore, the NIOC will be allowed to operate an initiation hotline where any alleged contravention of the provisions of the Bill may be reported (this will include cases of non-registered initiation schools or the alleged abuse of initiates). The NIOC must, twice per annum, prepare reports on their activities for the preceding six months and is compelled to immediately report any possible or alleged criminal conduct that it becomes aware of, to the SAPS for investigation.

- (g) In terms of clause 10 of the Bill, the administrative and financial support that will be required to ensure that the NIOC is in a position to function effectively, must be provided for by the Department.

2.5.1 Part 2 of Chapter 2 makes provision for Provincial Initiation Coordinating Committees (PICCs):

- (a) Clause 11 of the Bill makes provision for the establishment of PICCs. The important role of traditional leaders in these structures, especially members of the provincial houses of traditional leaders, is clear from this clause. However, while there are seven provinces with provincial houses of traditional leaders, there is one province (Gauteng) where there are recognised traditional leaders but no provincial house, and one province (Western Cape) where there are no recognised traditional leaders and no provincial house, but initiation practices do take place within these provinces. Clause 11(1), (2) and (3) therefore makes provision for these different permutations as far as the composition of the PICCs are concerned. The one common factor is that traditional leaders will form part of all the PICCs. At least three members of a PICC must be women.
- (b) In terms of clause 12 of the Bill, the chairperson and deputy chairperson of a PICC must be elected by the members of the PICC from amongst themselves.
- (c) Clause 13 deals with vacancies that may arise in the membership of a PICC and clause 14 deals with meetings of a PICC. These clauses are in general aligned with the clauses relevant to the NIOC.
- (d) The functions of the PICCs are set out in clause 15 of the Bill. Amongst the most important functions of a PICC is the registration of initiation schools. A PICC must receive and consider an application to open and hold an initiation school, register successful applications and keep a register of all registered schools. A PICC has to develop criteria and requirements with which initiation schools must comply. A PICC must deregister and close non-compliant initiation schools and non-registered initiation schools and submit reports to the SAPS in respect of any alleged abuse at such initiation schools. Some of the other functions of a PICC include—
- investigations into the alleged abuse of initiates as well as inspections to establish whether initiation schools meet required criteria;
 - keeping records of medical certificates of initiates;
 - monitoring of the general functioning of initiation schools; and
 - conducting initiation awareness campaigns within the particular province, which campaigns must include information on the rights and responsibilities of initiates, their parents or legal or customary guardians.

2.5.2 A PICC must furthermore keep a comprehensive database per initiation school and may develop manuals relating to the responsibilities, roles and functions of the principals of initiation schools, care-givers and traditional surgeons:

- (a) A PICC is a relatively small structure. Therefore, to assist a PICC with the implementation of the provisions of the Bill once enacted and to ensure that such provisions are enforced, clause 16 of the

Bill makes provision for the establishment of a technical support team by each PICC. Such a technical support team may consist of representatives of various provincial departments, the relevant traditional structures, municipalities, emergency services and the SAPS. Where necessary, a PICC may also co-opt representatives from the CRL Rights Commission, the NPA and the national departments of Justice, Women, Health and Social Development.

- (b) In terms of clause 17 of the Bill, the administrative and financial support to a PICC and its technical support team must be provided for by the provincial department or departments as determined by the Premier. The administrative support includes secretariat support.

2.6 Chapter 3 of the Bill deals with the responsibilities, roles and functions of various role-players:

- (a) Clause 18 of the Bill determines that government (national, provincial and local) may enter into partnerships with each other, with principals of initiation schools and with traditional structures in respect of initiation practices in general and initiation schools in particular. Furthermore, to ensure uniformity, the Minister may determine the fees to be paid by initiates for attending an initiation school and by principals for the registration of an initiation school. Fees relating to traditional surgeons are dealt with under clause 41.
- (b) In terms of clause 19 of the Bill, the NHTL must, amongst others, develop criteria to be used for the purposes of the screening of principals, traditional surgeons and care-givers. The NHTL must also develop educational material in respect of the rights, responsibilities, roles and functions of role-players and the rights of initiates. Clause 19 must be read with clause 15(3)(a) in terms of which a PICC may request the NHTL to develop a manual relating to the responsibilities, roles and functions of principals, traditional surgeons and care-givers.
- (c) Clause 20 of the Bill deals with traditional leaders and stipulates clearly that they are overall responsible for initiation practices within the areas of their structures (kingship or queenship council, principal traditional council or traditional council). On the one hand it is their task to promote the customary practice of initiation, but on the other hand it is their duty to ensure that it is done safely and with due regard to the health and well-being of initiates. Another important function of traditional leaders is the fact that they have to screen the principals, traditional surgeons and care-givers and submit a report in this regard to the relevant PICC. It should be noted that the parents or legal or customary guardians of initiates will have to select a care-giver, but the traditional leader has to do the screening. Since there may be instances where a traditional leader is not in a position to perform the duties referred to in this clause, while there is also one province where there are no recognised traditional leaders but where initiation is practiced, the Bill determines that in such unique instances the PICC may perform the duties of a traditional leader as contemplated in clause 20(2).
- (d) In the case of principals and care-givers, clause 21 provides strict criteria to be met before such persons may perform the functions assigned to them in the Bill. Principals and care-givers must have no history or criminal record related to the abuse of children. In the case of male initiation where circumcision forms part of the process, the care-givers must be males who themselves have undergone initiation and circumcision. A principal must inform all role-players if there are initiates with disabilities and, specifically, whether they have special needs.
- (e) The responsibilities, roles and functions of the parents of initiates are set out in clause 22 of the Bill. This also applies to the legal or customary guardians of initiates. The parents or legal or customary guardians must decide, together with the child concerned, whether he or she should attend an initiation school or not and in the case of male initiates, whether they should be circumcised traditionally or medically. However, such circumcision will be subject to the provisions of clause 28(6) of the Bill.

The parents or legal or customary guardians must also obtain a medical certificate indicating whether a prospective initiate is fit enough to undergo initiation. They must furthermore satisfy themselves that the particular initiation school is a registered one and that the persons involved in the school have been screened. They must also designate care-givers, subject to the screening process required by the Bill. Clause 22 also contains the rights of parents or legal or customary guardians such as their right to attend to initiates who fall sick during initiation and to remove them from initiation schools under certain circumstances.

- (f) In terms of clause 23, a traditional surgeon may only participate in initiation practices if he or she is registered. This may be registration in terms of the Traditional Health Practitioners Act or interim registration with a PICC as contemplated in the Bill. A traditional surgeon may only perform circumcisions under the conditions provided for in clause 28(6).
- (g) In terms of clause 24, a male medical practitioner may perform circumcisions or supervise the performance of such circumcisions, as provided for in clause 28(6).
- (h) The critical responsibilities, roles and functions of the SAPS and the NPA are set out in clause 25 of the Bill. The SAPS will be responsible for the investigation of alleged abuse of initiates and cases where initiates died as a result of attending initiation schools. The SAPS will also have to investigate cases of alleged abduction and kidnapping and any other case of possible or alleged illegal activity reported to them. The SAPS must submit their dockets to the NPA for further action to be taken against alleged perpetrators.

2.7 Chapter 4 of the Bill focusses on initiation schools:

- (a) Clause 26 of the Bill deals with the registration of initiation schools. All initiation schools must meet the criteria for registration as determined by a PICC. This will enable each PICC to develop criteria based on the unique circumstances in each province. The registration of an initiation school shall be valid only for one initiation season. A PICC must give notice in the relevant Provincial *Gazette* of all registered and deregistered initiation schools. If an initiation school is to be held on privately or certain state-owned land, the principal of the school must obtain the approval of the relevant land owner.
- (b) In terms of clause 27 of the Bill, an initiation season may under no circumstances interfere or overlap with official school terms.
- (c) Clause 28 of the Bill is a very important provision that deals with consent, certain prohibitions, age and circumcision:
 - (i) It is stated clearly in clause 28(1) that initiation is a voluntary customary practice and no person may be forced to undergo initiation. In terms of clause 28(2) the minimum age for any person to attend an initiation school is 16. This is in line with the age requirements of the Children's Act. It will therefore be an offence if children younger than 16 attend initiation schools.
 - (ii) Clause 28(3) determines who has to give consent for an initiate to undergo initiation, whether such initiate is a child or not. This includes consent to be given by the initiate himself or herself.
 - (iii) Clause 28(4) and (5) reaffirms the provisions of the Children's Act in respect of which female genital mutilation or circumcision is totally prohibited, while virginity testing of children under the age of 16 is also prohibited. Virginity testing of children who are 16 or older may only be done if the provisions of section 12(5), (6) and (7) of the Children's Act are complied with.
 - (iv) Clause 28(6) deals with male circumcision. Again the provisions of the Children's Act are reaffirmed. The Bill also states that if circumcision is part of the initiation practice, specific consent must be given for the initiate to be circumcised. An initiate also has the right to refuse to be circumcised. Of particular importance is that where male circumcision forms part of the initiation process, it may only be done by a registered medical practitioner or a registered traditional surgeon who is also a registered

medical practitioner. If the traditional surgeon is not also a registered medical practitioner, he may only perform circumcision under the supervision of a registered medical practitioner. It is therefore clear that the Bill intends to minimize the risks associated with male circumcision as has been experienced in recent years. The clause furthermore states that any person who forges any consent contemplated in this clause, is guilty of an offence. Lastly, the clause makes it clear that no person may give consent for an initiate to attend a non-registered initiation school.

- (d) Clause 29 of the Bill determines that no initiate may be abused or assaulted under the guise of discipline. The clause further states that initiation teachings should include cultural and religious elements and should be aimed at teaching the children about their ancestry, belief systems, the challenges and responsibilities of adulthood, family values, national identity, nation building and social cohesion. Initiation teachings may not be prejudicial, biased or discriminatory.
- (e) In terms of clause 30 of the Bill, the principals of initiation schools and care-givers must ensure that initiates have access to clean water, appropriate sanitation services and health care when needed. Food must be provided by the families of the initiates. Initiates or other persons involved in initiation may not use, possess, supply or manufacture drugs or liquor at an initiation school and may also not deal in drugs or liquor at such school.
- (f) Clause 31 of the Bill determines what has to be done in instances where an initiate dies while attending an initiation school. The principal of the relevant initiation school must immediately report any such death to the parents or legal or customary guardian of the initiate and to the SAPS. The relevant PICC must arrange counselling for the remaining initiates.

2.8.1 Chapter 5 of the Bill contains provisions of a general nature:

- (a) As mentioned earlier, the envisaged NIOC may include two persons designated by the Minister. It is possible that these persons will not be government officials, public office bearers or members of an institution referred to in Chapter 9 of the Constitution. It may therefore be necessary to provide some kind of remuneration for such persons. Clause 32 of the Bill therefore determines that the Minister may, after consultation with the Minister of Finance, determine allowances to be paid to such members of the NIOC.
- (b) During the consultations on the policy that preceded the Bill, many commentators made it clear that one of the reasons why there has been an increase in the number of initiation schools which operate without having any regard to the well-being of initiates, is the fact that there is no real deterrent. For this reason, the Bill makes provision for offences in clause 33. The clause identifies various possible contraventions of the law and determines that a person who is found guilty of any such contravention may be liable to a fine or imprisonment. The periods of imprisonment vary from one year to 15 years, depending on the nature of the offence. Possible contraventions include, amongst others, any person who—
 - operates a non-registered initiation school;
 - accepts a prospective initiate who is under the age of 16 years into an initiation school;
 - accepts an initiate without the necessary required medical certificate or other consent forms;
 - forces any person to attend initiation; and
 - causes or is involved in the death of an initiate or the abduction or kidnapping of an initiate.

2.8.2 The clause, however, also states that it does not replace any provisions relating to offences contained in the Criminal Procedure Act, the Children's Act, the Liquor Act, the Drugs and Drug

Trafficking Act or the Child Justice Act. In other words, any contravention of the provisions of those laws or of the Bill which falls within the scope of those laws will be dealt with in terms of the offence clauses of those laws:

- (a) Clause 34 of the Bill makes provision for aggrieved persons to appeal against decisions of a PICC or the NIOC to the Premier of the relevant province or to the Minister respectively. The clause also provides for timeframes within which appeals must be dealt with.
- (b) In terms of clause 35 of the Bill the Minister may make regulations relating to, amongst others, the responsibilities, roles and functions in respect of initiation of the NIOC, a PICC, any of the role-players referred to in the Bill and initiation schools. Before making any such regulations, the Minister must conduct certain consultations and also publish the draft regulations in the *Government Gazette* for public comment. The clause also makes provision for regulatory powers of the Premiers, but states that such regulations may not be inconsistent with the provisions of the Bill or regulations made by the Minister.
- (c) Clause 36 of the Bill provides for the effective monitoring of the implementation of the provisions of the Bill once enacted. The main purpose of such monitoring is to ensure compliance with the provisions of the law and also to establish whether there are any possible shortcomings.
- (d) During consultations on the policy that preceded the Bill, it was mentioned that there may be some areas where the person or persons holding initiation schools are not referred to as principals. The same applies to care-givers. During consultations on the Bill, it was brought to the attention of the Department that some provinces require a higher minimum age than 16 for initiates. Therefore, to allow for provincial peculiarities to be accommodated, clause 37 of the Bill determines that a Premier may by notice in the *Provincial Gazette* determine that the relevant provisions of the Bill relating to principals and care-givers apply to the persons or bodies mentioned in the notice. Any such person or body will therefore be subjected to the provisions of the Bill. The clause furthermore authorises provinces to determine a higher minimum age for initiates than the one provided for in the Bill.
- (e) The Eastern Cape Provincial Customary Male Initiation Practice Act, 2016 (Act No. 5 of 2016) (Eastern Cape Act, 2016) came into operation on 2 December 2016. The Department scrutinised the Eastern Cape Act and established that it is largely based on the national Initiation Policy approved by Cabinet in April 2016. The Eastern Cape Act, 2016, also makes provision for a PICC although the composition thereof is slightly different from what is proposed in the Bill. In order for the PICC provided for in the Eastern Cape Act, 2016, to continue to function once the Bill is enacted, clause 38 of the Bill recognises provincial legislation that already provides for a PICC. The clause furthermore determines that any functions of a PICC provided for in the Bill that are not included in provincial legislation, shall automatically be regarded as assigned to the provincial PICCs. However, to ensure that certain national norms and standards are complied with, clause 38(5) of the Bill determines that in the event of any conflict between a provision of the provincial legislation and clauses 26 (registration of initiation schools), 27 (initiation seasons), 28 (consent requirements) and 33 (offences) of the Bill, the relevant provisions of the Bill prevail.

- (f) During consultations on the Bill, certain provinces informed the Department that they depend on local initiation structures and municipalities to perform the responsibilities, roles and functions as provided for in initiation legislation. The Bill therefore, in clause 39, acknowledges such structures and makes provision for such structures to implement the provisions of this Bill once enacted.
- (g) Clause 40 of the Bill requires of the NIOC and PICCs to be established within three months from the date of commencement of this Bill.
- (h) Clause 41 makes provision for interim arrangements such as the registration of traditional surgeons until such time that the relevant provisions of the Traditional Health Practitioners Act come into operation.
- (i) Clause 42 of the Bill contains the short title of the Bill. The Bill is to be known as the Customary Initiation Bill.

3. FINANCIAL IMPLICATIONS

- 3.1 As mentioned earlier, the majority of members of the envisaged NIOC and PICCs will be government officials, public office bearers or members of institutions referred to in Chapter 9 of the Constitution. Since they already receive salaries, there will be no additional expenditure in this regard. However, the Department and respective provincial departments will have to make provision for the travel and accommodation expenditure related to the work of the members, which will mostly be limited to initiation seasons. Allowances may be payable to two members of the NIOC as explained under paragraph 2.8.1(a) above.
- 3.2 The recommended awareness campaigns on initiation may have additional financial implications for which the Department and provinces will have to find resources.

4. CONSULTATION

- 4.1 It is important to note that the Bill is based on the principles contained in the Policy on the Customary Practice of Initiation in South Africa which was approved by Cabinet in April 2016. The policy was extensively consulted on during the past few years and since all the inputs and comments received during the consultations contributed towards the improvement and finalisation of the policy, such inputs and comments therefore also contributed towards the content of the Bill. The consultations on the policy included the following:
 - (a) The following departments and institutions were consulted and attended consultative workshops which were held in August 2011:
 - Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission)
 - Commission on Traditional Leadership Disputes and Claims
 - Department of Arts and Culture
 - Department of Communications
 - Department of Health
 - Department of Higher Education
 - Department of Justice and Constitutional Development
 - Department for Women, Children and People with Disabilities (as it was known at the time)
 - Eastern Cape Department of Local Government and Traditional Affairs
 - Eastern Cape House of Traditional Leaders
 - Free State Department of Cooperative Governance, Human Settlements and Traditional Affairs
 - Gauteng Department of Local Government and Housing
 - Independent Complaints Directorate

- Limpopo Department of Cooperative Governance and Human Settlements
 - Limpopo Provincial House of Traditional Leaders
 - Mpumalanga Department of Cooperative Governance and Traditional Affairs
 - Mpumalanga Provincial House of Traditional Leaders
 - North West Department of Local Government and Traditional Affairs
 - Northern Cape Department of Cooperative Governance, Human Settlements and Traditional Affairs
 - Northern Cape Provincial House of Traditional Leaders
 - South African Local Government Association (SALGA).
- (b) An Initiation Indaba was held with key role-players on 7 June 2013. The participants at the Indaba agreed that initiation has to be conducted in line with 12 guiding principles, with the ultimate goal of protecting the lives of the initiates. These guiding principles formed the basis of the approved policy and consequently of the Bill.
- (c) In the course of 2014, the draft policy was referred to 18 national departments for comment (including key departments such as Health and the SAPS) and 32 provincial departments (these were all the provincial departments responsible for traditional affairs, health, social development and policing). In the case of the Western Cape, the policy was referred to the Office of the Director-General. In addition to the government departments, the policy was also referred to the following stakeholders:
- African Religion
 - Commission for Gender Equality
 - Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission)
 - CONTRALESA
 - Government Communications and Information Services (GCIS)
 - Health Professions Council of South Africa (HPCSA)
 - Human Sciences Research Council (HSRC)
 - National House of Traditional Leaders (who in turn referred the draft policy to all provincial houses of traditional leaders)
 - National Interfaith Council of South Africa (NICSA)
 - National Prosecuting Authority (NPA)
 - Public Protector
 - Secretariat for Police
 - South African Council for Social Services Professions
 - South African Human Rights Commission (SAHRC)
 - South African Law Reform Commission
 - South African Local Government Association (SALGA)
 - Traditional Healers Organisation.
- (d) Comments were received from—
- Department of Basic Education
 - Department of Cooperative Governance
 - Department of Justice: Chief Directorate: Promotion of the Rights of Vulnerable Groups
 - Department of Justice: Directorate: Gender Issues
 - Department of Rural Development and Land Reform
 - Department of Women
 - Eastern Cape: Department of Traditional Affairs
 - Gauteng: Department of Cooperative Governance and Traditional Affairs
 - Human Science Research Council
 - KwaZulu-Natal: Department of Health
 - National House of Traditional Leaders
 - National Prosecuting Authority (NPA)
 - Provincial Government: Western Cape
 - SA Council for Social Service Professions.
- (e) After the refinement of the policy based on the comments received, Cabinet approved in April 2015 that the policy be published in the

Government *Gazette* for public comment. It was therefore published in *Gazette* No. 38814 of 22 May 2015. The closing date for comments was 21 June 2015. Comments were received from the following institutions:

- Centre for Child Law (University of Pretoria)
- Commission for Gender Equality
- Johannesburg Child Welfare
- Legal Resource Centre
- Save the Children South Africa
- Western Cape Provincial Government.

4.2 In addition to the extensive consultation on the policy referred to above, the following consultations were done in respect of the Bill:

- (a) In May and July 2016, the Bill was referred for comments to—
- the National House of Traditional Leaders who in turn referred it to all provincial houses of traditional leaders
 - in the case of the Western Cape Province, to the Office of the Director-General
 - in the case of all other provinces, to all provincial departments responsible for traditional affairs, health, social development and policing or safety and security (thus a total of 32 provincial departments)
 - the following national departments:
 - Arts and Culture
 - Basic Education
 - Cooperative Governance
 - Environmental Affairs
 - Government Communications (GCIS)
 - Health
 - Home Affairs
 - Justice
 - Presidency
 - Rural Development and Land Reform
 - SAPS
 - Social Development
 - Women
 - the Commission for Gender Equality (CGE)
 - the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission)
 - the Human Rights Commission
 - the Financial and Fiscal Commission
 - the National Prosecuting Authority (NPA).
- (b) Comments were received from:
- Commission on Gender Equality (CGE)
 - Department of Basic Education (two separate comments)
 - Department of Environmental Affairs
 - Department of Health
 - Department of Rural Development and Land Reform
 - Eastern Cape Provincial Government
 - Free State Provincial Government
 - Free State Provincial House of Traditional Leaders
 - Gauteng Provincial Government (including Metros)
 - Gauteng: Department of Health
 - KwaZulu-Natal: Department of Health
 - Mpumalanga Provincial Government
 - National House of Traditional Leaders
 - National Prosecuting Authority (NPA)
 - Presidency
 - SAPS
 - Western Cape Provincial Government.
- (c) On 5 July 2016, a meeting was held with representatives from the Eastern Cape Provincial Government to discuss and compare the provisions of

the Bill and the Eastern Cape Initiation Bill [which has since become law as mentioned under paragraph 2.8.2(e) above].

- (d) Also on 5 July 2016, a meeting was held with representatives from the Gauteng Provincial Government and the Gauteng Metropolitan Municipalities to discuss the contents of the Bill and the implementation challenges being experienced in Gauteng.
- (e) A meeting was held with representatives of the Department of Health and the Interim Traditional Health Practitioners Council on 22 September 2016.
- (f) A meeting was held with representatives of the South African Police Services on 10 October 2016.

4.3 In June 2017, Cabinet approved that the Bill be published in the *Government Gazette* for public comment. The Bill was published in *Gazette* No. 40978 of 14 July 2017 and the closing date for comments was 14 August 2017. Comments were received from the following institutions:

- Centre for Unity in Diversity
- City of Cape Town Metropolitan Municipality
- City of Johannesburg Metropolitan Municipality
- Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission)
- National House of Traditional Leaders (NHTL)
- National Prosecuting Authority (NPA)
- Tshaba Tsohle Initiation & Tradition
- Western Cape Provincial Government (Department of the Premier).

5. CONSTITUTIONAL IMPLICATIONS

The Bill promotes the Constitutional rights of initiates and seeks to provide protection to any person who is subjected to abuse during initiation practices. The Bill falls within the concurrent legislative competency in respect of “cultural matters” as provided for in Part A of Schedule 4 to the Constitution, 1996.

6. COMMUNICATION IMPLICATIONS

Once enacted, the Department of Traditional Affairs will, in conjunction with the Government Communication Information Systems (GCIS), communicate the provisions of the Act to all relevant stakeholders.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the national Department of Traditional Affairs are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution, since it deals with “cultural matters” which is listed in Schedule 4 to the Constitution.

7.2 The State Law Advisers considered the tagging of the Bill in light of Chapter 4 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), which provides for procedures that Bills must follow in Parliament. Section 76 of the Constitution provides for the parliamentary procedure for ordinary Bills affecting the provinces. In terms of section 76(3) a Bill must be dealt with in accordance with the procedure established by either section 76(1) or section 76(2) if it falls within a functional area listed in Schedule 4.

7.3 In *Tongoane and Others v Minister of Agriculture and Land Affairs and Others*¹, the Constitutional Court (“the CC”) dealt with the question of tagging. The CC determined the proper test for tagging of the Communal Land Rights Act, 2004² (“the CLARA”), by analysing the provisions of the CLARA and found that CLARA, in substantial measure, affects indigenous

¹ 2010 (8) BCLR 741 (CC).

² [Act No. 11 of 2004].

law, customary law and traditional leadership which are areas of concurrent national and provincial legislative competence, and are functional areas listed in Schedule 4 to the Constitution. The CC held in paragraph 58 of the judgment that:

“ . . . What matters for the purpose of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill ‘in substantial measure fall within a functional area listed in schedule 4’. This statement refers to the test to be adopted when tagging Bills. This test for classification or tagging is different from that used by this court to characterise a Bill in order to determine legislative competence. This involves the determination of the subject matter or the substance of the legislation, its essence, or true purpose and effect, that is, what the [legislation] is about.”.
(Footnote omitted)

- 7.4 The CC held that the test for tagging must be informed by its purpose. Tagging is neither concerned with determining the sphere of government that has the competence to legislate on a matter, nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how a Bill must be considered by the provinces and in the National Council of Provinces, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interest, concerns and capacities of the provinces, the more say the provinces should have on its content.³
- 7.5 To determine whether the provisions of the Bill in substantial measure fall within a functional area listed in Schedule 4, the Bill ought to be considered against the provisions of the Constitution relating to the tagging of Bills as well as against the functional areas listed in Schedule 4 and Schedule 5 to the Constitution.
- 7.6 This test compels us to consider the substance, purpose and effect of the subject matter of the Bill. The Bill deals with “cultural matters” which is a matter listed in Part A of Schedule 4 to the Constitution. Part A lists functional areas of concurrent national and provincial competence. The Bill is an ordinary Bill affecting provinces and should thus be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution.
- 7.7 The State Law Advisers are of the opinion that it is necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains provisions pertaining to customary law or customs of traditional communities.

³ See fn 1 above at para [60].

