

REPUBLIC OF SOUTH AFRICA

CUSTOMARY INITIATION BILL

(As introduced in the National Assembly as a section 76 Bill; Bill published in *Government Gazette* No. 40978 of 14 July 2017) (The English text is the official text of the Bill)

(MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

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, duties, roles and functions of the various role-players who may be 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 rights of persons to enjoy their culture; 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

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;

"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;

"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;

"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;

"Children's Act" means the Children's Act, 2005 (Act No. 38 of 2005);

"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);

"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 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;

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

"Framework Act" means the Traditional Leadership and Governance Framework 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 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 undergoing initiation;

"initiation" means any customary or cultural practices, rituals or ceremonies taking place at an initiation school in accordance with the customs and traditions of a particular community;

"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 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;

"kingship or queenship council" means a kingship or queenship council as defined in section 1 of the Framework Act;

"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 or any applicable provincial legislation;

"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 person who has been registered as a medical practitioner in accordance with the provisions of the Health Professions Act;

"metropolitan municipality" means a metropolitan municipality as defined in 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);

"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);

"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;

"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;

"principal traditional council" means a principal traditional council as defined in section 1 of the Framework Act;

"provincial house" means a provincial house of traditional leaders established in accordance with the provisions of section 16 of the Framework Act or any applicable provincial legislation;

"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);

"this Act" includes any regulations made in terms of any relevant provision of this Act;

"traditional community" means a community recognised as such in terms of section 2 of the Framework Act or any applicable provincial legislation;

"traditional council" means a traditional council as defined in section 1 of the Framework Act;

"traditional health practitioner" means a traditional health practitioner as defined in section 1 of the Traditional Health Practitioners Act;

"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 or any applicable provincial legislation;

"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

"traditional surgeon" means a person who—

- (a) is registered in terms of the Traditional Health Practitioners Act once the relevant provisions of that Act come into operation; or
- (b) prior to the coming into operation of the relevant provisions of the Traditional Health Practitioners Act, is registered with the relevant PICC in accordance with the provisions of this 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;
- (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 physical and mental 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 will have no effect on any action or decision taken in terms of the relevant provision.

(4) (a) Any principal, care-giver, traditional surgeon, medical practitioner 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 25 years old and must have undergone initiation himself or herself.

(5) No person may participate in any aspect of initiation 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(4) of this Act.

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.

CHAPTER 2 OVERSIGHT AND COORDINATING STRUCTURES

Part 1

National Initiation Oversight Committee

Establishment, composition and term of office

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 (NIOC) consisting of—

- (a) two members of the National House designated by the members of the National House from amongst themselves;
- (b) one Commissioner from the CRL Rights Commission designated by the Commission;
- (c) one senior official from the Department designated by the Director-General;
- (d) one senior official from the SAPS designated by the Minister responsible for the SAPS;

- (e) one senior official from the Department of Health designated by the Minister responsible for health;
 - (f) one senior official from the NPA designated by the National Director of Public Prosecutions;
 - (g) 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; and
 - (h) 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—
 - (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.
- (3) At least two members of the NIOC must be women.
- (4) A person contemplated in subsection (1)(h) may, subject to subsection (2), be designated at any stage during the term of the NIOC for the period indicated in such designation.

Chairperson and deputy chairperson

5. (1) The NIOC must, at its first meeting after it has been established, elect a chairperson and deputy chairperson from amongst the members referred to in section 4(1)(a), (b), (d), (e), (f) and (g).
- (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 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;
 - (b) is under 18 years of age;
 - (c) has been convicted of an offence in respect of which he or she was sentenced to imprisonment for more than 12 months without the option of a fine;

- (d) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
- (e) is of unsound mind and has been so declared by a competent court;
- (f) is or becomes a full-time member of a municipal council;
- (g) is elected as a member of a provincial legislature;
- (h) is elected as a member of the National Assembly;
- (i) is appointed as a permanent delegate in the National Council of Provinces; or
- (j) is 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.

Meetings

8. (1) The NIOC must meet at least four times per annum.
- (2) (a) Meetings of the NIOC must be held in Pretoria 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.
- (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.
- (4) (a) Subject to the provisions of section 10(2), minutes and records of the meetings of the NIOC must be kept and filed by the secretariat.
- (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.

Functions

9. (1) The NIOC—
- (a) 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;
 - (iii) guide the PICCs on the implementation of this Act and initiation practices in general;
 - (iv) make recommendations to the relevant PICC and SAPS 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;
 - (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 receipt of such referred 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
 - (vii) perform any other task relating to initiation as may be directed by the Minister; and
- (b) 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;
 - (iii) conduct initiation awareness campaigns;
 - (iv) oversee initiation awareness campaigns as may be conducted by a PICC;
 - (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 as 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): Provided that the NIOC must, prior to any inspection or investigation as contemplated in subparagraphs (i), (ii) and (vi), inform the relevant PICC of its intention to conduct such an inspection or investigation and the 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 as 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.

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

(b) (i) Before the end of February and August of each year, the NIOC must, in respect of the preceding six months, prepare a report on the performance of its functions as 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.

(c) A report of the NIOC contemplated in paragraphs (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.

(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 as contemplated in subsection (2);
- (iii) any statistics and copies of registers or records as contemplated in section 15 and any information as 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.

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.

(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.

(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 (PICC) consisting of—

- (a) four members of the provincial house elected by the members of the provincial house from amongst themselves;
- (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;
- (d) not more than two persons representing the emergency services within the province, designated by the MEC or MECs responsible for 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.

(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—

- (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;
- (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;

- (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;
- (e) not more than two persons representing the emergency services within the province, designated by the MEC or MECs responsible for 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.

(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—

- (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;
- (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 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.

(4) At least three members of a PICC must be women.

(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.

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, 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 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.

Meetings

- 14.** (1) A PICC must meet at least four times per annum.
- (2) (a) Meetings of a PICC must be held on a date and at a time and place within the particular province 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 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 members of the PICC.
- (4) (a) Subject to the provisions of section 17(3), minutes and records of the meetings of a PICC must be kept and filed by the secretariat.

(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 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 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 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 province, the availability of sufficient and appropriate space and land, and the provisioning of proper habitable structures conducive to initiation practices;
- (f) determine the maximum number of initiates that may be admitted to a specific initiation school;
- (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, to ensure that the overall objectives and directives of this Act are met;
- (h) determine the process to be followed by prospective initiation schools for the purposes of the registration of such schools;
- (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
 - (iii) no illegal activities will form part of the initiation practices:

Provided that a principal must present the curriculum of the particular initiation school to the PICC and list initiation activities which are deemed to be sacred

and secret by the relevant community without having to provide any further details on such activities: Provided further that the PICC may not disclose any information relating to such sacred and secret practices;

- (j) subject to subsection (11), investigate any alleged abuse of initiates at any registered initiation school;
- (k) receive and keep record of medical certificates as contemplated in section 22(1)(c) and 28(1)(c), that has been issued to potential initiates declaring them fit to undergo initiation;
- (l) receive and keep record of all required consent documents as contemplated in section 28;
- (m) monitor and evaluate the general functioning of initiation schools during the initiation period;
- (n) conduct awareness campaigns on initiation within the province;
- (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.

(2) A PICC must keep a comprehensive database of each initiation school which database 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;
- (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 guardian of the initiates;
- (g) 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;
- (h) 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) the date on which circumcision was or is to be done, and the time at which it was done;
- (i) any specific health problems being experienced by an initiate;
- (j) any register and records referred to in subsection (1);
- (k) information relating to the nature and cause of the death of an initiate; and

- (l) information relating to offences as contemplated in section 33(5).
- (3) A PICC—
- (a) may develop a manual or manuals relating to the responsibilities, duties, roles and functions of principals, traditional surgeons, care-givers and traditional health practitioners in respect of initiation practices, schools and activities, which manual or manuals must include provisions relating to educational, health and safety aspects;
- (b) must arrange for the training of principals, traditional surgeons, care-givers and traditional health practitioners on any manual or manuals developed in accordance with the provisions of 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;
- (c) may develop an appropriate code of conduct for all persons involved in initiation; and
- (d) may, subject to section 28(9), develop appropriate forms.
- (4) Any criteria, requirements, process, manual, code of conduct and forms as contemplated in subsection (1)(e), (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.
- (b) If a PICC is unable to resolve any dispute referred to in paragraph (a), such dispute must be referred to the NIOC.
- (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 or initiates, the PICC must, within one day of such investigation, prepare a comprehensive report in this regard and report such abuse to the SAPS.
- (b) A PICC must, within one day of becoming aware of any non-registered initiation school operating in the province, submit a report in this regard to the SAPS.
- (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.

(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 submit a report in this regard to the SAPS.

(7) If an initiation school is closed or deregistered in accordance with the provisions of this Act, the relevant PICC must, where possible, arrange for the initiates who attended such an initiation school to be transferred to another registered initiation school.

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

- (a) receive and consider an application for the registration of a traditional surgeon as contemplated in section 23(1)(a);
- (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: Provided that this subsection applies until the provisions of the Traditional Health Practitioners Act which will regulate the registration of traditional surgeons come into operation.

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

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

(11) (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—

- (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.

(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.

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 subparagraphs (i) to (xi), establish a technical support team consisting of not more than two representatives each of any or all of—

- (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;
- (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;
- (ix) the emergency services within the particular area;
- (x) the SAPS; and
- (xi) any other interested body as identified by the PICC.

(b) Such 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—

- (i) the CRL Rights Commission;
- (ii) the Department of Justice;
- (iii) the Department of Women;
- (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 as contemplated in section 11(2) and (3) may, in consultation with the Premier, determine whether it is necessary to establish a technical support team.

(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(9).

(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 as contemplated in subsection (1)(a)(i) as a member of the PICC.

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 department or departments as determined by the Premier after consultation with the relevant MEC.

(2) The head of the provincial department 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.

(3) The administrative support contemplated in subsection (2) must include secretariat support.

CHAPTER 3 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—

- (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.

(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.

(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 partnerships and may take the necessary steps to ensure the effective and efficient implementation or termination thereof.

(2) A metropolitan, district or local municipality may, 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 and, where applicable, the provisioning of municipal services at such schools: Provided that it is the responsibility of the principal of an initiation school to engage the relevant municipality in this regard at least three months prior to the commencement of the specific initiation season.

(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 subparagraphs (iii) and (iv), the Minister responsible for health, determine the fees to be paid—

- (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;
- (iii) subject to subsection (4), by a traditional surgeon to the PICC in respect of the registration of such a surgeon; and
- (iv) to a medical practitioner or, subject to subsection (4), to a traditional surgeon for his or her services rendered during initiation.

(b) After the Minister has concluded the consultations contemplated in paragraph (a), but before making a final determination of the fees by notice in the *Gazette*, the Minister must publish the proposed fees in the *Gazette* for public comment.

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

(4) The provisions of subsection (3)(a)(iii) and (iv) apply until such time as fees are determined or prescribed in terms of the Traditional Health Practitioners Act.

Houses of traditional leaders

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 and other legal prescripts, including the relevant provisions of the Children's Act;
- (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—

- (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 the proviso to section 15(8);
- (c) educational material for the purposes of educating all role-players in initiation on the rights, responsibilities, duties, roles and functions of such role-players and the rights of initiates; and
- (d) acceptable standards relating to discipline at initiation schools.

(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,—

- (a) promote the customary practice amongst the traditional communities in the particular area;
- (b) promote good and safe practices, with specific emphasis on the protection of the lives, health and safety of initiates;
- (c) promote compliance with any code of conduct as contemplated in section 15(3)(c);
- (d) assist the NIOC or a PICC, upon their request, to perform their functions provided for in this Act; and
- (e) 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.

(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 as contemplated in section 19(2)(a) and submit a report to the relevant PICC, in the format as may be determined by such PICC,—

- (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)(g), for which initiate or initiates each such care-giver will be responsible;
 - (c) containing the details in respect of a principal, traditional surgeon or care-giver as may be required by the relevant PICC; and
 - (d) indicating whether a specific traditional surgeon—
 - (i) has been registered in accordance with the provisions of section 15(8);
 - (ii) meets the requirements of section 23; and
 - (iii) is suitable to perform the duties of a traditional surgeon as contemplated in this Act.
- (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
 - (d) initiation takes place in an area where there are no traditional leaders, the PICC must assign such functions to any member or members of the PICC or its technical support team.

Principals and care-givers

21. (1) Principals and care-givers have the responsibilities, duties, roles and functions assigned to them by this Act and are subject to screening as contemplated in section 20(2).

(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
- (b) subject to the provisions of section 29, instill discipline amongst the initiates under their guardianship.

(3) Care-givers must provide the parents or, where applicable, the customary or legal guardian of the initiate or initiates with health reports within the timeframes to be agreed upon between such care-giver and the relevant parents or guardian.

(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
- (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.

(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.

(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 as contemplated in section 22(4)(a).

(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.

Parents or legal or customary guardian

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

- (a) decide, together with their children and subject to the provisions of section 28, whether the children 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;
- (c) subject to subsection (2), obtain a certificate from a medical practitioner, 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;
- (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;

- (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) satisfy themselves that—
 - (i) the initiation school to be attended by the prospective initiate has been registered with the relevant PICC in accordance with the provisions of this Act; and
 - (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
- (g) 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;
- (b) specifically indicate whether the child has any bleeding disorder or congenital abnormalities; 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.

(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—

- (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;
 - (iii) the initiate is attending an initiation school without the necessary consent as contemplated in section 28;
 - (iv) the initiate has been subject to abuse at the school;
 - (v) a family emergency or natural disaster would warrant 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.

Traditional surgeons

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

- (i) has applied for registration as contemplated in section 15(8) and his or her application has been approved and registered in accordance with the provisions of that section; and
- (ii) has been provided with all required consent forms as contemplated in section 28.

(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 15(8)(b).

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

- (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
- (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.

(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).

(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

- 24.** (1) A male medical practitioner—
- (a) must, subject to section 2(4)(a) and (5), perform male circumcisions as contemplated in section 28(6) or supervise the performance of such circumcisions;
 - (b) may only perform male circumcisions or supervise the performance of such circumcisions if he has been provided with all required consent forms as contemplated in section 28; and
 - (c) must, 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) For the purposes of subsection (1), the relevant community or the parents or legal or customary guardian of an initiate, as the case may be, must, after consultation with the principal of the particular initiation school, invite a male medical practitioner to perform circumcision on any 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.

(3) For the purposes of issuing a certificate as 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 NIOC or relevant PICC must, whenever it becomes aware of a non-registered initiation school and subject to the provisions of section 9(1)(a)(iv) and 15(6)(b) and (c), report such school to the SAPS and the SAPS must forthwith open a docket, close the school and after investigation, submit the docket to the NPA for a decision to prosecute or not to prosecute.

(b) For the purposes of paragraph (a) and subject to section 28(11), the children attending a non-registered initiation school must be regarded as abducted and the SAPS and NPA must deal with such abduction in accordance with the relevant provisions of the Criminal Procedure Act.

(2) (a) The NIOC or relevant PICC must, after having conducted any investigation as contemplated in sections 9(2)(a) and 15(6)(a), submit a report to the SAPS and the SAPS must forthwith open a docket and after investigation, submit the docket to the NPA for a decision to prosecute or not to prosecute.

(b) Whenever the death of an initiate is reported to the SAPS in accordance with the provisions of section 31, the SAPS must forthwith open a

docket, investigate such death and after investigation, submit the docket to the NPA for a decision to prosecute or not to prosecute.

(c) If any investigation conducted by the SAPS as contemplated in paragraphs (a) and (b) 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 SAPS must forthwith close the school.

(3) 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

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) as published in the relevant Provincial *Gazette* in accordance with the provisions of section 15(4).

(b) The provisions of section 15(6) apply to the closing and deregistration of an 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 as must be indicated on the registration certificate.

(3) (a) A PICC must, prior to the commencement of an initiation season and 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 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 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 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 as contemplated in paragraph (a), obtain written approval from the relevant organ of state responsible for the management of such state land,

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.

(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 liable to suspension from holding initiation schools for a period as may be determined by the PICC and may also be liable to any penalties as contemplated in section 33.

(3) (a) If an initiation school commenced before a school holiday and the principal is suspended as contemplated in subsection (2), the relevant PICC must 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.

(b) Any initiation school that commences prior to the relevant provincial school holidays as contemplated in subsection (1), must be closed and may be reopened once the school holidays have commenced.

(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.

(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 as contemplated in section 22(1)(c) has been issued in respect of such person.

(c) Any initiate who is 18 or older than 18, 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.

(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 person between the ages of 16 and 18 may not attend an initiation school for the purposes of being initiated unless such person 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.

(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.

(c) All written consents referred to in paragraphs (a) and (b) must be submitted to the principal of the particular initiation 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.

(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.

(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.

(d) No child or any other person may be forced 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 include consent to such circumcision in the case of male children under the age of 16.

(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.

(c) The circumcision of male initiates who are 18 or older than 18 is subject to the provisions of subparagraphs (i) and (ii) of paragraph (d) 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.

(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—

- (i) a registered medical practitioner; or
- (ii) a registered traditional surgeon—
 - (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.

(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 and such principal must submit copies thereof to the relevant PICC, care-giver, medical practitioner, traditional surgeon and traditional health practitioner.

(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.

(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) Any person who forges any consent or consent form as contemplated in this section or who obtains such consent by means of duress is guilty of an offence and liable to the penalties and other sanctions as provided for in section 33 or any other relevant law.

(11) 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.

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 discourages misconduct and immoral behavior.

(b) If an initiate is guilty of misconduct or immoral behavior, 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.

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

(3) (a) 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 and nation building.

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

Water, sanitation, food, health care and liquor

30. (1) The principal of an initiation school, together with 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.

(b) In any instance where the parents, family or legal or customary guardians would not be 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.

(3) A principal must, notwithstanding the provisions of section 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) In terms of section 10(1) of the Liquor Act, read with the definitions of "minor" and "liquor" in section 1 of that Act, no liquor, including traditional beer, may be sold or supplied to any person under the age of 18 and therefore a principal and care-givers must ensure that no alcohol is sold or supplied to initiates under the age of 18 except if a moderate quantity of alcohol is supplied for the purposes of administering a religious sacrament as contemplated in section 10(2) of the Liquor Act.

(b) In any instance where liquor is 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.

Death of initiate

31. (1) In the event that an initiate passes away 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;
- (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

(b) must arrange for a qualified counsellor, who has undergone initiation himself or herself, to provide counselling to the remaining initiates.

(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)(h) 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 Government *Gazette* after consultation with the Minister responsible for finance.

(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)(h) except if such a member is a government official.

Offences

33. (1) Subject to subsection (2), any person who contravenes any provision of this Act is guilty of an offence and will be liable on conviction to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.

(2) The provisions of subsection (1) do not substitute the provisions relating to offences provided for in section 305 of the Children's Act, sections 34 and 35 of the Liquor Act, section 49 of the Traditional Health Practitioners Act or any other relevant law.

(3) Any child or other person who is forced to attend an initiation school without complying with all the consent requirements as contemplated in section 28, is respectively regarded as abducted or kidnapped and such abduction or kidnapping must be dealt with in accordance with the provisions of the Criminal Procedure Act.

(4) 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 subsections (1), (2) or (3), enter the details of such conviction in the database referred to in section 15(2).

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.
- (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
 - (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, may—
- (a) dismiss an appeal against a decision of a traditional council, a PICC or the NIOC, as the case may be, and confirm the relevant decision; or
 - (b) uphold an appeal and set aside or vary the specific decision, wholly or in part, and 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.
- (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 has been lodged.

Regulations

- 35.** (1) The Minister may, by notice in the *Government 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, duties, roles and functions of—
 - (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;

- (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;
- (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 *Government Gazette* for public comment.

(3) Subject to subsections (4) and (5), a Premier may, by notice in the *Provincial Gazette*, make regulations regarding—

- (a) in respect of initiation, the responsibilities, duties, 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
- (b) any matter relating to initiation schools within the province.

(4) Before any regulations are made under subsection (3), the Premier must 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 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).

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.

(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 met.

(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.

(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 met within the province.

Provincial peculiarities

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.

(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)(a) and 28(2).

(4) In the absence of provincial legislation as 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 as contemplated in subsection (3).

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.

(2) (a) If any of the responsibilities, duties, 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, duties, 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(9), delegate such responsibilities, duties, roles and functions to any of the structures provided for in the provincial legislation.

(b) If any of the responsibilities, duties, roles or functions provided for in this Act in respect of any role-player as contemplated in Chapter 3 of this Act is not included in the provincial legislation referred to in subsection (1), such responsibilities, duties, 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.

(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.

(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 provision of this Act prevails.

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, duties, roles and functions as provided for in such provincial legislation or as may be delegated to such structures in terms of subsection (2).

(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, duties,

roles and functions to any local initiation structure as contemplated in subsection (1)(a).

(b) For the purposes of a delegation contemplated in paragraph (a), the provisions of sections 15(9) and 20(3) apply with the necessary changes.

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

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

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

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

(3) A PICC must monitor the execution of any delegated responsibilities, duties, 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).

(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).

(5) (a) In the absence of provincial legislation as 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, duties, 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.

(b) The provisions of subsections (2)(b) to (f), (3) and (4) apply with the necessary changes to any delegation made under paragraph (a).

(c) The provisions of subsection (1)(b) do not apply to a delegated responsibility, duty, role or function contemplated in paragraph (a).

(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 contemplated in sections 4 and 11 respectively, but excluding a PICC contemplated in section 38, must be established within three months from the date of commencement of this Act.

(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.

Short title and commencement

41. This Act is called the Customary Initiation Act, 2017, and takes effect on a date determined by the President by proclamation in the *Gazette*.