



PROVINCE OF THE EASTERN CAPE  
IPHONDO LEMPUMA KOLONI  
PROVINSIE OOS-KAAP

# Provincial Gazette Igazethi Yephondo Provinsiale Koerant

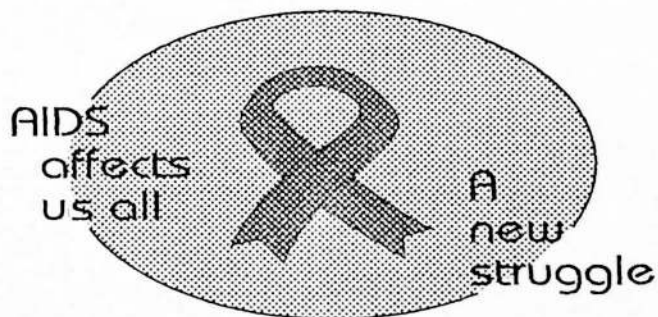
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Vol. 12

BISHO/  
KING WILLIAM'S TOWN, 7 FEBRUARY 2005

**No. 1274**  
(Extraordinary)

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## GENERAL NOTICE

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### NOTICE 18 OF 2005 PROVINCE OF THE EASTERN CAPE

#### PROVINCIAL NOTICE

#### DEPARTMENT OF HOUSING, LOCAL GOVERNMENT AND TRADITIONAL AFFAIRS

NO.

#### HOUSE OF TRADITIONAL LEADERS AMENDMENT BILL, 2004(EASTERN CAPE)

The above-mentioned Bill is hereby published for a period of 14 days for comment in terms of the Standing Rules of Procedure of the Eastern Cape Provincial Legislature.

Interested persons are invited to submit their comments to:

**The Head of Department  
Department of Housing, Local Government and Traditional Affairs  
Private Bag x0026  
Bisho  
5605**

02040000

**PROVINCE OF THE EASTERN CAPE**

**DEPARTMENT OF HOUSING, LOCAL GOVERNMENT AND  
TRADITIONAL AFFAIRS**

**HOUSE OF TRADITIONAL LEADERS AMENDMENT BILL,  
2004(EASTERN CAPE)**

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*(As Introduced)*

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**(BY THE MEMBER OF THE EXECUTIVE COUNCIL  
RESPONSIBLE FOR HOUSING, LOCAL GOVERNMENT AND  
TRADITIONAL AFFAIRS)**

[        ] Words in bold square brackets indicate omissions from existing enactments

\_\_\_\_\_ Words underlined with a solid line indicate insertions in the Existing enactments

## BILL

To amend the House of Traditional Leaders Act, 1995(Act No. 1 of 1995); to change the status of appointment of the chairperson and the deputy chairperson of the House of Traditional Leaders from part-time to full-time; to bring the House of Traditional Leaders Act, 1995, in line with the Traditional Leadership and Governance Framework Act, 2003; and to provide for matters incidental thereto.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape as follows:

### AMENDMENT OF SECTION 1 OF ACT 1 OF 1995

1. Section 1 of the House of Traditional Leaders Act, 1995(Act No. 1 of 1995), hereinafter referred to as the “principal Act”, is hereby amended by the -

- (a) substitution for the definition of “**district**” of the following definition:

“**district**’ means a [magisterial district as defined in section 1 of the Magistrates Courts Act, 1944(Act No. 32 of 1944)]’district municipality’ as defined in section 1 of the Local Government: Municipal Structures Act, 1998(Act No. 117 of 1998);”;

- (b) insertion after the definition of “**Executive Council**” of the following definition:

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

- (c) insertion after the definition of “**Framework Act**” of the following definition:

“‘iKumkani’ means a ‘King’ as defined in section 1 of the Framework Act;”;

- (d) deletion of the definition of “**King**”;
- (e) deletion of the definition of “**traditional authority**”;
- (f) substitution for the definition of “**traditional community**” of the following definition:

**“‘traditional community’ means [all residents living within the territory of any traditional area or community observing traditional values and customs defined or established in terms of any law including the administrative areas or communities mentioned in the Rules relating to the Nomination of Members and the Composition of the House of Traditional Leaders (Eastern Cape)] a traditional community recognized as such in terms of section 2 of the Framework Act;”;**

- (g) insertion after the definition of “**traditional leader**” of the following definition:

“‘traditional leadership’ means the customary institutions or structures, or customary systems or procedures of governance, recognized, utilized or practiced by traditional communities;”.

## **AMENDMENT OF SECTION 3 OF ACT 1 OF 1995**

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The House shall, subject to the provisions of this Act, consist of a total of [32 part-time] 38 members, made up of -

- (a) 32 part-time members nominated by the relevant traditional leadership and constituencies; and
- (b) six part-time members selected to represent iiKumkani, as *ex officio* members;

Provided that the chairperson and the deputy chairperson elected in terms of section 9, and such other members as the MEC may determine, shall serve as full-time members.”.

### SHORT TITLE

3. This Act is called the House of Traditional Leaders Amendment Act, 2004(Eastern Cape).

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## **EXPLANATORY MEMORANDUM ON HOUSE OF TRADITIONAL LEADERS AMENDMENT BILL, 2004**

### **Part A**

#### **General principles**

##### **Background**

The House of Traditional Leaders, 1995 (Act No. 1 of 1995)(Eastern Cape), provides that the members of the House of Traditional Leaders is made up of 38 members who must be part-time. On the other hand national legislation, the National House of Traditional Leaders Act, 1997(Act No. 10 of 1997), provides in section 13(2) as follows:

- “(2) The President may, after consultation with the National House, determine that certain members of the National House shall be full-time members of the National House.”.

The President has acted in terms of section 13(2) and determined that the Chairperson and Deputy Chairperson of the National House shall be full-time members of the National House.

The Department of Housing, Local Government and Traditional Leaders seeks to amend such that the Chairperson and Deputy Chairperson of the Eastern Cape of Traditional Leaders are full-time members in line with the determination made by the President in terms of section 13(2) of the National House of Traditional Leaders Act, 1997.

##### **Policy implications**

The White Paper on Traditional Leadership and Governance issued by the Department of Provincial and Local Government in 2003, and which forms the basis for the Traditional Leadership and Governance Act, 2003(Act No. 41 of 2003), provides in paragraph 4.7.3.2 that the Chairperson and Deputy Chairperson of the provincial houses of traditional leaders should be full-time members.

The decision of the Department of Housing, Local Government and Traditional Leaders to amend the House of traditional Leaders Act, 1995(Eastern Cape), is consistent with National policy and legislation.

### **Constitutional implications**

This Bill falls within Schedule 4 of the Constitution of the Republic of South Africa, 1996(Act No. 108 of 1996), which is an area of concurrent National and Provincial legislative competence.

### **Consultations**

The Eastern Cape House of Traditional Leaders was consulted and the Bill was published in the Provincial Gazette for a period of 14 days in terms of rule 147 of the Standing Rules of Procedure of the Eastern Cape Provincial Legislature, and no comments were received.

## **Part B**

### **Clause-by-clause analysis**

- Clause 1 - amends section 1 of the principal Act;
- Clause 2 - amends section 3 of the principal Act;
- Clause 3 - provides for the short title of the Act.