



# EASTERN CAPE PROVINCIAL LEGISLATURE

OFFICE OF THE CHAIRPERSON: PORTFOLIO COMMITTEE ON  
CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

Tel: 040 609 1638

Date: 27 August 2020

Fax: 086 645 9143

Enquiries: Ms N. Stuurman

E-mail: [nstuurman@ecleg.gov.za](mailto:nstuurman@ecleg.gov.za)

Ref: RCMAB

## NEGOTIATING MANDATE

To : The Chairperson:  
Select Committee on Security and Justice

Name of Bill : Recognition of Customary Marriages Amendment Bill

Number of Bill : [B 12-2019]

Date of Deliberation : September 2020

### 1. Vote of the Legislature

The Province votes in favour of the Bill and mandates the Eastern Cape delegate to the NCOP to negotiate within the following parameters:

#### (a) Clause 2 of the Bill

- i. It is proposed that consideration should be given to the rights of spouses during divorce or termination of polygamous marriages.
- ii. In the case of a family home, the estate must be calculated and be divided in equal portions. The party who wants to divorce his or her partner must be given his or her portion and the said portion must be divided into equal portions for the purposes of their divorce
- iii. A definition of what constitutes personal property as indicated in clause 2 (1) (c) should be included in order to avoid any confusion.

### 2. General Comments

- (a) Although section 8 (1) is not being amended at this stage, it is proposed that consideration should be given to this clause. As the clause stands, customary marriage may only be dissolved by the court through a decree of divorce on the ground of irretrievable breakdown of the marriage. However, in reality, customary marriages are not always dissolved through courts but between the spouses and their families. In some instances, one spouse just leaves the family homestead without getting a decree of divorce. This presents challenges in the case of death as the marriage still subsists as no decree of divorce was granted.

- (b) The report of the Portfolio Committee attached hereto highlights other issues raised by the stakeholders, relating to the Bill before the Portfolio Committee and are matters that ought to be given consideration by the Department of Justice and Correctional Services.



27 August 2020

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**T MATIWANE (MPL)**

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**DATE**

**CHAIRPERSON OF THE PORTFOLIO COMMITTEE ON CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**