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PROVINCIAL NOTICE

The following Bill is hereby published for general information:

Western Cape Liquor Bill [B 8—2005]

P.N. 50/2006 3 February 2006

Any person or organization wishing to comment on the said Bill is requested to lodge such comment in writing before or on 31 March 2006:

- (a) by posting it to:
The Acting Secretary:
Western Cape Provincial Parliament
(Attention: Ms N F Saliwa)
P.O. Box 648
Cape Town
8000
- (b) by email to:
nsaliwa@wcpp.gov.za
- (c) by fax to:
N F Saliwa
(021) 487-1685

R. G. Hindley
Acting Secretary to Parliament

As 'n Nuusblad by die Poskantoor Geregistreer

INHOUD

PROVINSIALE KENNISGEWING

Die volgende Wetsontwerp word hierby vir algemene inligting gepubliseer:

Wes-Kaapse Drankwetsontwerp
[W 8—2005]

P.K. 50/2006 3 Februarie 2006

Enige persoon of organisasie wat kommentaar oor die genoemde Wetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 31 Maart 2006:

- (a) deur dit te pos aan:
Die Waarnemende Sekretaris:
Wes-Kaapse Provinsiale Parlement
(Aandag: me. N F Saliwa)
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Kaaftad
8000
- (b) deur dit te epos aan:
nsaliwa@wcpp.gov.za
- (c) deur dit te faks aan:
N F Saliwa
(021) 487-1685

R. G. Hindley
*Waarnemende Sekretaris van die
Parlement*

Ibhaliswe ePosini njengePhephandaba

IZIQULATHO

ISAZISO SEPHONDO

Lo Mthetho uSayilwayo ulandelayo upapashwa apha ukunika ulwazi ngokubanzi:

UMthetho oSayilwayo woTywala eNtshona Koloni [B 8—2005]

P.N. 50/2006 3 Februwari 2006

Nabani na okanye nawuphi na umbutho onqwenela ukuphawula ngalo Mthetho uSayilwayo kuthethwa ngawo uyacelwa ukuba afake izimvo zakhe phambi okanye ngomhla wama-31 Matshi 2006:

- (a) ngokuwuposela ku:
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R. G. Hindley
UNobhala oBambeleyo

BILL

To provide for the licensing for retail sale of liquor, micro-manufacture of liquor and manufacture of traditional African beer within the Western Cape Province; to establish the Western Cape Liquor Board and its committees; to establish liquor forums; to provide for the appointment of designated liquor officers and inspectors; to provide for the appointment of municipalities as agents of the Liquor Board and as competent licensing authorities.

WHEREAS the Western Cape Provincial Government (“the Government”) recognises that the liquor trade in the historically white towns, suburbs and central business districts and on farms has been regulated by means of a number of legislative systems adapted and reviewed over the years to meet the political, social and economic requirements of the government of the day;

AND WHEREAS a framework will be devised for the continued regulation of the established liquor trade, now in accordance with the Constitution of the Republic of South Africa, 1996, and national and provincial policies, and in doing so will seek to maintain a balance between the interests of the liquor industry and communities;

AND WHEREAS Government recognises the diverse nature of the liquor industry in the Province of the Western Cape (“the Province”) and values the importance of its diverse aspects as a contributor to the economy of the Province and South Africa;

AND WHEREAS Government seeks to reduce the social cost of liquor abuse to society in general;

AND WHEREAS Government seeks to involve the municipalities in the Province in the regulating of the liquor industry;

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

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CHAPTER 1
INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Appeal Tribunal**” means an Appeal Tribunal established in terms of section 14(1); 5
- “**Board**” means the Western Cape Liquor Board established in terms of section 2;
- “**Chairperson**” means the Chairperson of the Board appointed in terms of section 3(1)(a) or a person who temporarily acts as Chairperson in his or her absence; 10
- “**Chief Executive Officer**” means a person appointed in terms of section 16(1);
- “**community policing forum**” means a community policing forum established in terms of section 19 of the South African Police Services Act, 1995 (Act 68 of 1995);
- “**competent authority**” means the Board, or a municipality, authorised as a competent licensing authority in terms of section 18; 15
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**date of issue**” means the date upon which a licence or permit is first issued;
- “**Deputy Chairperson**” means a person appointed in terms of section 3(1)(b);
- “**designated liquor officer**” means a person appointed as such in terms of section 60(1); 20
- “**drugs**” means any dependence-producing substance, any dangerous dependence-producing substance or any undesirable dependence-producing substance as defined in the Drug and Drug Trafficking Act, 1992 (Act 140 of 1992);
- “**family member**” means a person’s spouse, child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption; 25
- “**financial interest**” means the ownership of the shares of a company, the member’s interest of a close corporation, an interest in a partnership and in respect of a business or undertaking any interest which enables the holder thereof to share in the fortunes, including the turn-over of such business or undertaking; 30
- “**inspector**” means a person appointed as such in terms of section 60(4);
- “**issue**”, with regard to a licence, includes the delivery or dispatch of the licence to the person to whom it has been granted or to his or her agent;
- “**licence**” means a licence referred to in section 21;
- “**licensee**” means the person to whom a licence has been issued in terms of section 35 or transferred in terms of section 54; 35
- “**licensed business**” means the business that may be conducted upon the licensed premises as authorised by the Board;
- “**licensed premises**” means the premises upon which liquor may be micro-manufactured, sold, consumed or stored in terms of this Act; 40
- “**liquor**” means any liquid or substance containing more than 1% of alcohol by volume or mass, including traditional African beer and table wine, but excluding methylated spirits and medicine which is subject to registration in terms of the Medicines and Related Substances Act, 1965 (Act 101 of 1965) and products which are not intended for human consumption; 45
- “**Liquor Act**” means the national Liquor Act, 2003 (Act 59 of 2003);
- “**liquor forum**” means a liquor forum established in terms of section 18(2)(d);
- “**manager**” means a person appointed in terms of section 40(1);
- “**manufacture**” means to produce or bottle liquor with the intention of selling it;
- “**manufacturer**” means a person registered as such in terms of the Liquor Act; 50
- “**member**” means a member of the Board;
- “**micro-manufacture**” means to manufacture liquor at or below the prescribed threshold volume in terms of section 4 of the Liquor Act and micro-manufacturer has a corresponding meaning;
- “**Minister**” means the provincial Minister responsible for economic affairs in the Province; 55

- “**motor vehicle**” means a vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer or an agricultural or other implement designed or adapted to be drawn by such vehicle;
- “**municipality**” means a municipality as established by the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and appointed in terms of section 18 of this Act; 5
- “**permit**” means the document issued by a municipality in respect of a special event in terms of section 49(1) or in respect of the sale of traditional African beer in terms of section 50 of this Act;
- “**premises**” means a place, land, building, part of a building, vessel, aircraft or vehicle; 10
- “**prescribe**” means to prescribe by regulation in terms of this Act;
- “**Province**” means the Province of the Western Cape;
- “**provincial government**” means the government of the Western Cape;
- “**registered person**” means a person registered as a manufacturer or distributor in terms of the Liquor Act; 15
- “**retail food store**” means a business retailing mainly in groceries and foodstuffs;
- “**sell**” includes supply, exchange, offer for sale, display for the purpose of sale or authorise, direct or allow a sale, supply, exchange, offer or display;
- “**special event**” means a fundraising event in aid of an educational or welfare organisation, any exhibition, sports meeting, public function, cultural gathering, or artistic performance; 20
- “**supply**” means, with regard to liquor, to place a person in possession or control thereof;
- “**table wine**” means wine as defined in section 1 of the Liquor Products Act, 1989 (Act 60 of 1989); 25
- “**traditional African beer**” means a fermented liquid as defined in item 8 of Schedule 1 to the Liquor Act; and
- “**this Act**” means the Western Cape Liquor Act, 2005 and includes regulations promulgated in terms thereof. 30

CHAPTER 2

WESTERN CAPE LIQUOR BOARD AND APPEAL TRIBUNAL

Establishment of Western Cape Liquor Board

2. (1) The Liquor Board instituted for the Province in terms of section 5 of the Liquor Act, 1989 (Act 27 of 1989), as amended, continues to exist and function under the name Western Cape Liquor Board, in accordance with the provisions of this Act, as if it was established in terms of this Act. 35
- (2) The Board is an independent juristic person, subject only to the Constitution and the provisions of law.
- (3) The Board must exercise its functions according to the provisions of this Act, impartially and without fear, favour or prejudice. 40

Composition of Liquor Board

3. The Board must be appointed by the Minister and consists of—
- (a) one member with legal qualifications equivalent to those required for admission as an attorney or advocate of the High Court of South Africa and with experience in the administration of justice, and who is appointed by the Minister as Chairperson; 45
 - (b) not more than three (3) members with the qualifications stated in (a) appointed by the Minister as Deputy Chairpersons;
 - (c) a Chief Executive Officer appointed in terms of section 16(1); 50
 - (d) one member, having qualifications equal to those required for registration as a town and regional planner, appointed by the Minister after consultation with the Minister responsible for development planning in the Province;
 - (e) one member who is a police officer of the rank of Superintendent or above, appointed by the Minister after consultation with the provincial Commissioner of the South African Police Services and the Minister responsible for community safety in the Province; 55
 - (f) two members who are citizens of the Province; and

- (g) not more than six (6) additional members with specialised knowledge or qualifications appointed by the Minister, after consultation with the Chairperson, to serve as committee members.

Criteria for appointment

4. No person may be appointed to serve as a member of the Board who— 5
- (a) in the preceding ten (10) years has been convicted of an offence and sentenced to imprisonment without the option of a fine, unless the Minister is of the opinion that the offence was of such a nature that it does not imply that the person is unsuitable to hold office;
- (b) in the preceding ten (10) years has been convicted of any offence in terms of the Liquor Act, 1989 (Act 27 of 1989), unless the Minister is of the opinion that the offence was of such a nature that it does not imply that the person is unsuitable to hold office; 10
- (c) is an unrehabilitated insolvent;
- (d) is less than twenty-one (21) years of age; 15
- (e) has a direct interest in the liquor trade; or
- (f) is the family member of a person with a direct interest in the liquor trade, unless the Minister is of the opinion that the interest of the family member in the liquor trade does not imply that the person is unsuitable to hold office.

Term of office 20

5. (1) Except for the Chief Executive Officer, members are appointed for a term of not more than five (5) years and are eligible for reappointment, for not more than one (1) more term, at the expiry of their term of office.

(2) A vacancy on the Board may be filled by the appointment of another member by the Minister. 25

Termination of membership

6. The Minister may terminate the membership of a member if that member—
- (a) has been absent from at least three (3) consecutive meetings of the Board without good cause shown;
- (b) becomes disqualified in terms of section 24; 30
- (c) submits his or her resignation to the Minister; or
- (d) is no longer resident in the Province.

Powers and functions of Liquor Board

7. (1) The Board may consider any of the following matters: 35
- (a) applications made in terms of this Act;
- (b) representations in favour of or against the granting of applications;
- (c) reports submitted to it by liquor officers, inspectors, liquor forums or municipal officials;
- (d) complaints lodged with the Board regarding the conduct of a licensed business; 40
- (e) representations by a licensee or other interested person regarding the rescission of the suspension of the licence or the removal or amendment of any conditions imposed upon a licence;
- (f) appeals against decisions by municipalities to grant or refuse permits;
- (g) any other matter referred to the Board by the Chief Executive Officer or which the Board may or must consider in terms of this Act; or 45
- (h) any other matter that the Minister delegates to the Board.
- (2) Except in respect of (a), (b), (e), (f) and (h), the Chairperson has a discretion to decline to convene a meeting of the Board if in his or her opinion such a meeting is not warranted by the information placed before him or her. 50
- (3) The Board may, after consideration by it of any matter contemplated in—

- (a) (1)(a) and (b), refuse or grant the application subject to such conditions as it may deem appropriate;
- (b) (1)(c), (d) or (g)—
- (i) dismiss the complaint;
 - (ii) withdraw the licence; 5
 - (iii) suspend the licence as a punitive or corrective measure;
 - (iv) impose such conditions upon the licence as it deems appropriate;
 - (v) order the licensee to pay such fine as it may deem appropriate; or
 - (vi) take such other action as it may deem appropriate,
- (c) (1)(e), dismiss the representations or rescind the suspension or conditions imposed; or 10
- (d) (1)(f), grant or dismiss the appeal.
- (4) The Board may at any time upon application by the licensee suspend, withdraw or amend any condition imposed by the Board.
- (5) The members may co-opt to the Board, in respect of any matter, any person who they deem able to assist the Board in considering the matter under consideration. A person so co-opted does not have the right to vote. 15

Meetings and decisions of the Board

8. (1) The Chairperson must determine the time and place for the holding of meetings and may adjourn and reconvene meetings at such times and places as he or she may decide. 20
- (2) The quorum of the Board is constituted by three (3) members, including the Chairperson or Deputy Chairperson or both.
- (3) A Deputy Chairperson must preside over meetings when the Chairperson is absent or unable to preside. 25
- (4) If the Chairperson and Deputy Chairpersons are absent, the Minister must appoint another member as acting Chairperson.
- (5) The decision of the majority of the members present and voting, constitutes a decision of the Board and in the event of an equality of votes on any matter the Chairperson has a casting vote. 30

Recusal of a member with conflicting interest

9. (1) A member of the Board may not vote, attend or in any manner participate in the proceedings at any meeting or hearing of the Board if, in relation to any matter before the Board—
- (a) he or she or his or her family member, partner or business associate is a director, member or partner of, or has a financial interest or other interests in, the business of the applicant for a licence, certification, or any other right or privilege to be granted by the Board; or 35
 - (b) he or she has any interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner. 40
- (2) If at any stage during the course of any proceedings before the Board it appears that a member has or may have any interest contemplated in subsection (1)—
- (a) that member must forthwith and fully disclose the nature of his or her interest and leave the meeting or hearing so as to enable the remaining members to discuss the matter and determine whether that member is precluded from participating in the proceedings at such meeting or hearing by reason of a conflict of interest; and 45
 - (b) such disclosure and the decision taken by the remaining members regarding such determination, must be recorded in the minutes of the proceedings in question. 50

Funding and financial management of the Board

10. (1) The funds of the Board consists of—
- (a) money appropriated by the provincial government; and
 - (b) money accruing to the Board from any other source approved by the Minister after consultation with the Minister responsible for finance in the Province, including fees accruing in terms of this Act. 55

(2) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(3) The Chief Executive Officer must ensure that the Board's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999). 5

(4) The Board must, in each financial year at such time as the Minister determines, submit for approval—

- (a) a business plan for the Board, containing measurable objectives; and
- (b) a statement of the Board's projected income and expenditure, in respect of the following financial year. 10

(5) In any financial year the Board may submit to the Minister for approval supplementary statements of the Board's projected income and expenditure for that financial year.

(6) The Board may not enter into any financial commitment beyond its approved budget and its accumulated reserves. 15

Audit and Annual reports

11. (1) The Auditor-General must audit the financial statements of the Board.

(2) The Board must submit a report on its activities during the previous financial year to the Minister for tabling in the Provincial Parliament within three months after the end of that financial year. 20

(3) The report must—

- (a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;
- (b) state the measurable objectives as set out in its business plan referred to in section 10(4)(a) during the financial year concerned; and 25
- (c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan.

Proceedings of the Liquor Board

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12. (1) The Chairperson must, subject to the provisions of this Act and the regulations hereto, determine the procedure to be followed at meetings.

(2) The Chairperson must notify, in the prescribed manner, any person who may be affected by or has an interest in the consideration of a particular matter to be present at the meeting. 35

(3) A person who has been notified must appear personally at the place and time stipulated in the notice or be represented thereat by an attorney or advocate appearing on his or her behalf.

(4) The Chairperson may cause any person to be present at a meeting of the Board to give evidence or produce a document or anything which is in his or her possession or custody or under his or her control. 40

(5) If the Chairperson is satisfied that a person has been duly notified to appear at a meeting of the Board but is not present thereat then the Chairperson may direct that the meeting proceed in the absence of that person.

(6) The Chairperson may order any person present at a meeting of the Board to give evidence or to produce a document or anything which is in his or her possession or custody or under his or her control, and to be questioned by the Board. 45

(7) The Board may inspect and retain for such period as it deems fit any document or article produced to it.

(8) A person giving evidence at a meeting of the Board must do so under oath or affirmation. 50

(9) In considering a matter the Board may, of its own accord, take notice of any fact or circumstance which in its opinion may influence the decision of the Board. If any party requests a postponement to enable it to prepare argument with regard to the matter, the Chairperson may postpone the matter for this purpose. 55

(10) All meetings of the Board are accessible to the public except that the Chairperson may direct that any person whose presence at the meeting is not desirable may not attend or must leave the meeting.

(11) The deliberations and voting of the Board are not accessible to the public.

Committees of the Board

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13. (1) The Chairperson may from the additional members referred to in section 3(g), appoint one or more committees and delegate to the committees such functions of the Board as he or she deems necessary.

(2) Each committee must consist of not less than three (3) Board members, one of whom must be the Chairperson or a Deputy Chairperson.

10

(3) In appointing members of a committee, the Chairperson must have due regard to the knowledge, expertise and experience required by the matter to be considered.

(4) The committees of the Board are governed by the same rules of procedure as those pertaining to the Board.

(5) A committee may refer a matter to the Board for decision.

15

(6) A decision made by a committee is deemed to be a decision of the Board.

The Appeal Tribunal

14. (1) The Minister must, for such term as the Minister may determine, appoint a retired Judge of the High Court of South Africa, a retired senior Magistrate of a Regional Court or a senior legal practitioner to act as an Appeal Tribunal to adjudicate upon appeals against or applications for the review of the decisions of the Board in terms of this Act.

20

(2) The Minister must prescribe the procedure to be followed by the Appeal Tribunal.

(3) A decision of the Appeal Tribunal is final and not subject to further appeal.

(4) If a person, having been duly notified to be present at a meeting of the Appeal Tribunal, fails to attend such meeting or absents himself or herself there from without the consent of the Appeal Tribunal, the meeting may be continued in the absence of such person or the Appeal Tribunal may take such action as it deems fair and just in the circumstances.

25

CHAPTER 3

30

REMUNERATION AND ADMINISTRATION OF BOARD AND TRIBUNAL

Remuneration of Members, Appeal Tribunal and administrative staff

15. Members of the Board and the Appeal Tribunal may receive such remuneration as determined by the Minister after consultation with the Minister responsible for finance.

Administration of Liquor Board and Appeal Tribunal

35

16. (1) The Minister must appoint a Chief Executive Officer who will be responsible for the functioning of the administration of the Board and the Appeal Tribunal.

(2) The Chief Executive Officer is accountable to the Board.

(3) The Chief Executive Officer must, subject to subsection (4), employ members of staff of the Board to do the administrative, secretarial and other work incidental to the performance of the functions of the Board and the Appeals Tribunal.

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(4) The Board in consultation with the Minister and the Minister responsible for finance in the Province—

(a) must determine a human resources policy for the Board and its staff; and

(b) must determine the remuneration and conditions of service of its staff.

45

- (5) The Board must, after consultation with the Chief Executive Officer, determine a code of conduct, applicable to all members of staff of the Board and justifiable for purposes of disciplinary proceedings, to ensure—
- (a) compliance with applicable law;
 - (b) the effective, efficient and economical use of the Board's funds and resources; 5
 - (c) the promotion and maintenance of a high standard of ethics;
 - (d) the prevention of conflicts of interest;
 - (e) the protection of confidential information held by the Board; and
 - (f) professional, honest, impartial, fair, ethical and equitable service.
- (6) The Board may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 10
- (7) The Chief Executive Officer may, after consultation with the Minister, establish and administer a fund for the purpose of combating the negative social consequences of the abuse of liquor and educating persons engaged in the sale and supply of liquor and the general public in the responsible sale, supply and consumption of liquor. 15
- (8) The Chief Executive Officer has the power to engage in such financial transactions as may be required for the operation of a public entity including but not limited to the power to enter into partnerships with other government organs and to engage the services of contractors and service providers. 20
- (9) The Chief Executive Officer may acquire furniture and equipment for use by the Board and the administrative staff.
- (10) The Board may, with the consent of the Minister—
- (a) enter into lease agreements;
 - (b) encumber its movable assets; and 25
 - (c) enter into agreements for the provision of services relating to human resource management and financial management.
- (11) The Chief Executive Officer must promote the responsible sale, supply and consumption of liquor and combat the negative social consequences of liquor abuse and may take such action as he or she may deem fit. 30
- (12) The Chief Executive Officer may refer to a meeting of the Board, any matter to be considered in terms of section 7.
- (13) The Chief Executive Officer may appoint a secretary of the Board who will be responsible for—
- (a) the preparation of agendas; 35
 - (b) the recording of proceedings;
 - (c) the keeping of minutes of the Board and the Appeal Tribunal; and
 - (d) such other duties as the Chief Executive Officer may determine.
- (14) Minutes of proceedings of the Board and the Appeal Tribunal must be kept and retained at the offices of the Board and are available to any person for the purpose of perusing or copying subject to the payment of the prescribed fee and subject to the provisions of the Promotion of Access to Information Act, 2000 (Act 2 of 2000). 40
- (15) The Chairperson may, subject to the provisions of the Promotion of Access to Information Act, 2000 and on good cause shown, direct that a portion or the whole of a record of the proceedings of the Board may not be available for public access in which event such record or portion thereof may not be perused or copied by any person without the prior consent of the Chairperson and upon payment of the prescribed fee. 45

Revenue accruing to the Provincial Revenue Fund, the Liquor Board or municipalities

- 17.** (1) The fees, penalties and fines referred to in sections 7(3)(b)(v), 35, 52(2) and (4), 53(1), 54(1) and (8), and 69(2)(b) must be paid into the Provincial Revenue Fund. 50
- (2) The fees referred to in sections 16(14) and (15), 27(1) and (2), 49 and 50(4) and (7) must be paid to the Liquor Board or municipality, as the case may be.
- (3) No amount contemplated by this section is refundable.

CHAPTER 4
ROLES OF MUNICIPALITIES

Municipalities as agents of Board and as competent licensing authorities

18. (1) The Minister may, after consultation with the Minister responsible for local government in the Province, appoint municipalities in the Province to act as agents of the Board for the following purposes— 5

- (a) to accept the lodgement of applications made in terms of the provisions of this Act in respect of premises located within the municipal area;
- (b) to inform, as prescribed, interested parties of the applications;
- (c) to deal, as prescribed, with such applications; 10
- (d) to receive objections or reports lodged in respect of applications, representations in support of applications and any other documents which may be lodged with it;
- (e) to transmit, in the prescribed manner, applications together with all documents received in connection therewith to the Board; and 15
- (f) to receive and to transmit to the Board, with or without comment, complaints received from the public in respect of the conduct of licensed premises which merit consideration.

(2) The Minister may, after consultation with the Minister responsible for local government in the Province, appoint municipalities in the Province to act as competent licensing authorities for the following purposes— 20

- (a) to consider and grant or refuse permits for the sale of liquor at special events to take place within the municipal area;
- (b) to consider and grant or refuse permits for the retail sale of traditional African beer within the municipal area; 25
- (c) to determine, by by-law, the days upon which and the hours during which liquor may be sold in the municipal area in respect of each kind of licence;
- (d) to establish a liquor forum; and
- (e) to proclaim by notice such public areas of the municipality within which no person may possess liquor or into which liquor may not be brought except for delivery to licensed premises. 30

(3) The Minister may, for good cause, at any time after consultation with the Minister responsible for local government in the Province, revoke an authority granted to a municipality in terms of subsections (1) and (2), wholly or in part.

Liquor forums 35

19. (1) Where a liquor forum has been established by a municipality in terms of section 18(2)(d), such forum must consist of the following—

- (a) an appropriate official from the municipality to act as Chairperson;
- (b) the designated liquor officer of the South African Police Services;
- (c) a representative of a local community police forum, if such a forum has been established and is functioning; 40
- (d) a representative of an organisation or organisations that are affiliated to a national liquor traders association or a regional association that is affiliated to a national association, including but not limited to the local chambers of commerce representing local licensed liquor traders; and 45
- (e) a representative of the local ratepayers and residents associations within the relevant municipal area and any other local community based interest group determined by the municipality.

(2) Where a liquor forum has been established, such forum may, upon the request of the municipality, act as mediator between the applicant and objectors to the application. 50

(3) The liquor forum may, within a prescribed period from the last day for the lodgement of objections or within such extended period as the Chairperson may on

application allow, lodge a report setting out the results achieved by such mediation and its recommendations for the granting or refusal of the application.

(4) Where, due to the mediation of the liquor forum, an agreement has been reached between the applicant and one or more objectors, the liquor forum must lodge the originals of such agreement with the Board within the period referred to in subsection (3). 5

(5) The Board must, when considering an application, take cognisance of such report, recommendation or agreement, but is not bound to give effect thereto.

CHAPTER 5 LICENSING

10

Licences and permits

20. (1) A person may not micro-manufacture or sell liquor unless authorised to do so in terms of a licence or permit issued in terms of this Act.

(2) A person who is authorised to micro-manufacture or sell liquor must do so in accordance with the conditions of such licence or permit. 15

(3) A person who, without being exempted in terms of section 71(2), micro-manufactures or sells liquor in contravention of subsections (1) and (2) is guilty of an offence.

Categories of licences

21. The Board may grant the following licences— 20

- (a) a licence for the micro-manufacture and sale of liquor for consumption both on and off the premises where the liquor is sold;
- (b) a licence for the sale and consumption of liquor upon the premises where the liquor is sold;
- (c) a licence for the sale of liquor for consumption elsewhere than upon the premises where the liquor is sold; 25
- (d) a licence for the sale of liquor for consumption both on and off the premises where the liquor is sold; and
- (e) a licence for the sale of liquor for consumption on or off the premises upon which the liquor is sold at special events. 30

Kinds of permits

22. A municipality, which has been appointed in terms of section 18 may grant the following permits—

- (a) a permit for the sale of traditional African beer for consumption both on and off the premises upon which such beer is sold; and 35
- (b) a permit for the sale of liquor for consumption on or off the premises upon which the liquor is sold at a special event.

Criteria for the granting of licences

23. (1) The Board may not grant a licence and a municipality may not grant a permit for the sale of traditional African beer, unless it is satisfied on a balance of probabilities that— 40

- (a) the granting thereof will be in the public interest;
- (b) the applicant is of good character, and not disqualified from holding a licence or permit in terms of section 24;
- (c) the premises upon which the sale or consumption of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the licence; 45
- (d) the granting of the application will not prejudice the residents of a residential area, the learners of a school or the congregants of a religious institution located in the vicinity of the proposed premises. 50

(2) The municipality may not grant a special events permit, unless it is satisfied on a balance of probabilities that—

- (a) the granting thereof will be in the public interest;

- (b) the premises upon which the sale or consumption of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the licence; and
- (c) the granting of the application will not prejudice the residents of a residential area, the learners of a school or the congregants of a religious institution located in the vicinity of the proposed premises. 5

Qualification of applicants

24. (1) A liquor licence or permit for the sale of traditional African beer may not be granted or transferred to an applicant who is disqualified from holding such licence or permit, and a licence or permit which is held by a person who has become disqualified may not be renewed. 10

(2) The following persons are disqualified from holding liquor licences—

- (a) a person who has, within sixty (60) months prior to the lodgement of the application, been sentenced to imprisonment without the option of paying a fine; 15
- (b) a person who has, within sixty (60) months prior to the lodgement of the application, been declared to be unfit to hold a registration by the National Liquor Authority or a licence by any provincial liquor board;
- (c) a person who is an unrehabilitated insolvent;
- (d) a person who is a minor upon the date of consideration of the application; 20
- (e) a person who was the holder of a licence which was cancelled in terms of the provisions of this Act or an Act regulating liquor licences in any other province within a period of twelve (12) months prior to the lodgement of the application; and
- (f) a person who is the spouse of a person described in (a), (b) and (e). 25

(3) If a person is disqualified in terms of subsection (2)(a) to (e), then any company or close corporation in which he or she has a shareholding or member's interest, any trust of which he or she is a trustee or beneficiary and any partnership of which he or she is a partner, is similarly disqualified.

(4) The Board may, on good cause shown, determine that a person who is disqualified in terms of subsection (2)(a) and (b) is deemed to be qualified for the purposes of a particular application or licence. 30

Licensing procedure

25. (1) A person may apply for a licence referred to in section 21 or for a permit in terms of section 22. 35

(2) An application for a licence must be made in the prescribed form and an application for a permit must be made in accordance with the by-laws of the municipality or failing such by-laws, the provisions of this Act and the regulations hereto.

(3) An application in terms of subsection (2) must be lodged with the municipality in which the premises upon which liquor will be sold are located. 40

(4) If the municipality in which such premises are located has not been appointed as an agent of the Board in terms of section 18(1), then the application in terms of subsection (2) must be lodged at the offices of the Board.

(5) If the municipality in which such premises will be located has not been appointed as a competent authority in terms of section 18(2), then an application for a permit in terms of subsection (2) and representations made in terms of section 28 below must be lodged at the offices of the Board. 45

(6) Proof of payment of the prescribed application fee must at the time of lodgement accompany an application in terms of subsection (2). 50

Notice of application

26. (1) An applicant for a licence must, in the prescribed form and on the date of lodgement, publish notices, in the three (3) official languages of the Province in the *Provincial Gazette* and at least one (1) newspaper circulating in the municipal area in which the licensed premises will be located. 55

(2) The applicant must display a notice, in the prescribed form and size and in the three (3) official languages of the Province in a prominent place at the proposed premises

so that it is visible to passers-by: Provided that the Board may condone the non-compliance with this provision on good cause shown.

(3) A notice in terms of subsection (2) must remain in place for the prescribed period from the date of lodgement of the application.

(4) If the premises are in a residential area, the applicant must, within the prescribed period from the date of lodgement of an application, serve notice of the application in the prescribed form on a member of the household over the age of sixteen (16) years of each of the households occupying residences on adjoining properties. 5

(5) The applicant must within the prescribed period provide proof to the municipality or the Board that the provisions of subsections (1), (2) and (4) have been complied with. 10

(6) The municipality or the Board, as the case may be, must, within the prescribed period from the date of lodgement of an application, serve notice of the application in the prescribed form on each of the following—

- (a) the designated liquor officer in whose area of jurisdiction the licensed premises will be located; 15
- (b) the community policing forum, if any, of the area in which the premises will be located;
- (c) the liquor forum, if any, established by the municipality in the area in which the licensed premises are located; and
- (d) any other person or institution which in its judgment may be affected by, or 20 have an interest in, the granting or refusal of the application.

Applications lying for inspection

27. (1) An application and any document lodged in connection therewith, must be open for inspection at the municipal offices from the date upon which such application or document is lodged until it is forwarded to the Board, and any person must be allowed 25 to inspect and copy same upon payment of the prescribed fee.

(2) Where an application is lodged with the Board the application and any documents lodged in connection therewith must be similarly open for inspection and copying, upon the payment of the prescribed fee, at the offices of the Board from the date of lodgement to the date upon which the application is considered by the Board. 30

Representations

28. (1) A person who has an interest in the granting or refusal of an application may, within the prescribed period, make representations for or against such granting or refusal of that application.

(2) A copy of the representations must be lodged with the municipality and must be served by the person who has an interest in the granting or refusal of the application, on the applicant or his or her representative and the designated liquor officer. 35

(3) Proof of such service must be lodged with the representations.

(4) A person making representations must set out the following—

- (a) his or her full name and address; 40
- (b) his or her identity number or if a company or close corporation its registration number;
- (c) if applicable, the name and address of his or her representative;
- (d) the nature of his or her interest in the grant or refusal of the application; and
- (e) comprehensive grounds for the objection or support. 45

(5) The applicant may lodge a response to representations against the application with the municipality within the prescribed period.

Forwarding of documents

29. The municipality must, within the prescribed period, forward to the Board the following— 50

- (a) the original application and all documents lodged therewith;

- (b) proof of compliance with section 26(1) and (2) relating to notification and publication of the application;
- (c) the report of the designated liquor officer;
- (d) the original representations made in relation to the application, if any;
- (e) reports and agreements, lodged by the liquor forum, if any; 5
- (f) proof of payment of the prescribed application fee; and
- (g) any other document or article lodged with it in connection with the application.

Consideration of applications

30. (1) The Board or any committee or staff member must, within a reasonable time from the date of receipt of the application, examine the application in order to determine whether it is technically correct and complies with the provisions of this Act and the regulations thereto. 10

(2) If the Board, committee or staff member referred to in subsection (1) determines that the application is incomplete or defective, it or he or she must, within a reasonable time from receipt of the application, issue a notice of incomplete or defective filing as prescribed, calling on the applicant to supplement or remedy the defect in the application within fourteen (14) days of date of request. 15

(3) If an applicant fails to comply adequately with the aforesaid notice within the time stipulated, the Board may— 20

- (a) decline to consider the application;
- (b) postpone the consideration of the application pending compliance with the notice; or
- (c) refuse the application.

(4) The Board may, when considering an application, take cognisance of the following— 25

- (a) the application and reports lodged in response thereto;
- (b) representations in support of or against the application, responses to representations against applications and any other document or article lodged in relation to the application; and
- (c) subject to section 12(9) any matter which, in the opinion of the Board, should be taken into consideration. 30

(5) If an application, a document accompanying it, representations or a report is defective in any respect or if any person fails to lodge any document or adhere to a reasonable time period or time limit, the Board may condone the defect or failure if there has been substantial compliance with this Act or the regulations and if such condonation is not likely to prejudice any person. 35

Suitability of premises

31. A licence or permit may not be issued unless the Board or municipality is satisfied that the applicant has the right to use the premises concerned for the purpose to be authorised by the licence or permit. 40

Incomplete premises

32. The Board may, when granting an application for a licence in respect of incomplete premises, direct that the licence may not be issued until the applicant complies, within a time period stipulated, with such conditions, relating to the completion of the premises, as the Board may deem fit to impose. 45

Education and training

33. The Board may, when granting a licence, direct that the licence may not be issued until the applicant or an employee or employees of the applicant have undergone such training and education as the Board may prescribe.

Conditional approval 50

34. (1) The Board may, when granting a licence in respect of sections 31, 32 and 33 direct in writing that the licence may not be issued until the applicant complies with such conditions as the Board may deem appropriate to impose.

- (2) The Board may at any time, upon application by the applicant— 55
- (a) amend or withdraw the conditions;

- (b) extend the time period stipulated; or
- (c) approve an amendment of the plan of the premises.

(3) If the applicant fails to comply with the aforesaid conditions within such period as the Board may determine from the date of the granting of the licence, then the granting of the licence will lapse and the licence will be deemed not to have been granted. 5

(4) When the applicant complies with the conditions stipulated by the Board, the Board must issue the licence as prescribed and subject to section 35.

Issuing of licences and permits

35. The Board or municipality, as the case may be, must, after granting an application, subject to sections 31, 32, 33, and 34 issue a licence or permit document to the applicant in the prescribed form setting out the conditions of the licence, subject to payment of the prescribed fee. 10

Death or incapacity of applicant

36. If an applicant for a licence or permit—

- (a) dies; 15
- (b) his or her estate is sequestrated;
- (c) is declared incapable of handling his or her own affairs by a competent court; or
- (d) being a company or close corporation, is liquidated,

prior to the date of consideration of the application then the executor, trustee, curator or liquidator appointed may exercise all the powers and rights which the applicant would have had save for such death, sequestration, declaration or liquidation. 20

CHAPTER 6 CONDITIONS FOR LICENCES

Standard licence conditions 25

37. (1) It must be a condition of every licence for the consumption of liquor upon the premises on which the liquor is sold that liquor must be consumed upon the licensed premises only and that no liquor sold may be removed from the licensed premises.

(2) It must be a condition of every licence for consumption of liquor off the licensed premises that no container containing liquor may be opened and no liquor may be consumed upon the licensed premises except for tasting purposes as approved by the Board. 30

(3) If premises are licensed for the consumption of liquor both on and off the licensed premises then subsections (1) and (2) do not apply to those premises.

(4) The licensee of premises upon which the business of a retail food store is carried on may not sell liquor other than table wine. 35

(5) Failure to comply with the conditions set out in subsections (1), (2) and (4) is an offence.

Deliveries

38. (1) It must be a condition of every licence issued for the consumption of liquor off the licensed premises that— 40

- (a) liquor may not be delivered from any vehicle unless the liquor was ordered from the licensed premises before the despatch of the liquor and an invoice was issued, the original of which was retained on the licensed premises;
- (b) liquor may be delivered only to the address shown on the invoice described in paragraph (a); and 45

(c) a copy of the invoice described in paragraph (a) must be retained in the delivery vehicle from the time of despatch to the time of delivery of the liquor.

(2) Accepting delivery of liquor purchased from a supplier unaccompanied by an invoice describing the name, address and licence number of the supplier as well as the nature, quantity and purchase price of the liquor supplied is an offence. 5

Financial Interests

39. (1) A licensee may not, without the prior consent of the Board, transfer a financial interest in the licensed business to any other person.

(2) The Board may not grant consent in terms of subsection (1) if the person to whom the financial interest is intended to be transferred, is disqualified in terms of section 24 from holding a licence or is not of good character. 10

(3) A licence must be issued in the name of the person who operates, conducts and benefits from the operation of the licensed business and may not be issued in the name of a nominee or agent.

(4) A licensee may not lease the licence to or allow any other person to carry on business in terms of the licence. 15

(5) Failure to comply with subsections (1) and (4) is an offence.

Management

40. (1) The Board must, unless the applicant is a natural person, when granting a licence, appoint as manager of the licensed business a natural person who is resident in the Province, and who is nominated by the applicant. 20

(2) The licensee may at any time in the prescribed manner nominate a natural person resident in the Province to be the manager of the licensed business in which event the Board may appoint such person as manager.

(3) The Board may request the designated liquor officer to furnish a report on the suitability of the nominated person. 25

(4) The Board may not appoint as manager a person who is disqualified from holding a liquor licence in terms of section 24 or is not of good character.

(5) The Board may as a precondition to such appointment direct that the proposed manager must undergo such training and education as the Board may specify. 30

(6) A manager appointed in terms of this section is responsible for the management of the business and is subject to the same duties, obligations and liabilities as the licensee.

(7) The appointment of a manager in terms of this section does not release the licensee from any duties, obligations or liabilities imposed upon it by this Act or the conditions of the licence. 35

(8) The appointment of a manager in terms of this section remains valid until the appointment of a new manager.

(9) If a person who has been appointed as a manager in terms of this section ceases to manage the licensed business or becomes disqualified from doing so, the licensee must, within thirty (30) days from such event, apply in terms of subsection (2) for the appointment of a manager in his or her place. 40

(10) If a licensee fails to comply with subsection (9), his, her or its licence may be suspended in terms of section 59.

Alterations of licensed premises or nature of business

41. (1) Except with the prior consent of the Board granted upon application in the prescribed manner, a licensee may not— 45

(a) materially change the nature of the business in respect of which a licence was granted from that described in the application considered by the Board when granting the licence; or

(b) carry out any structural alteration, addition, reconstruction or extension of or to the licensed premises. 50

(2) Failure to comply with subsection (1) is an offence.

Children

42. (1) No person may sell liquor to a person under the age of eighteen (18) years.

(2) No person may give or supply liquor to a person under the age of eighteen (18) years or allow such a person in his or her care or under his or her supervision to consume liquor, except where it is given or supplied *bona fide* in negligible quantities and in the performance of a religious ceremony or service. 5

(3) A licensee may not allow a person under the age of eighteen (18) years to consume liquor on premises of which he or she is the licensee or which is under his or her control.

(4) A licensee may not allow a person under the age of eighteen (18) years to be in a part of licensed premises upon which such a person may not be in terms of this Act or in terms of a condition of the licence. 10

(5) A person under the age of eighteen (18) years may not obtain or consume liquor in contravention of this Act or mislead any person regarding his or her age in order to obtain or to consume liquor or to gain access to parts of licensed premises which such person may not enter. 15

(6) Failure to comply with subsections (1), (2), (3), (4) or (5) is an offence.

Employers and employees

43. (1) A person may not employ a person under the age of eighteen (18) years in connection with the sale or supply of liquor unless such person is—

- (a) of or above the age of sixteen (16) years; 20
- (b) is undergoing training in catering services; and
- (c) is apprenticed to the licensee.

(2) An employer may not—

- (a) supply liquor to a person as an inducement to secure his employment;
- (b) supply liquor to an employee instead of wages; 25
- (c) deduct from an employee's wages the cost of liquor supplied to the employee or any other person on his or her behalf; or
- (d) withhold payment of the wages of an employee pending the repayment of a debt in respect of the sale of liquor.

(3) A licensee, or a person on his or her behalf, may not receive or hold any document or movable property as security or in pledge for the payment of a debt relating to the sale of liquor. 30

(4) Failure to comply with subsections (1), (2) or (3) is an offence.

Access to licensed premises

44. (1) A licensee may not permit a person under the age of eighteen (18) years to— 35

- (a) be in a room or any place on licensed premises where liquor is sold over a counter, except when meals are being served to diners seated at tables in such room or place;
- (b) be in a room or place which the Board has demarcated as an area in which persons under the age of eighteen (18) years are not allowed to be; or 40
- (c) be on premises, not being a retail food store, licensed only for the sale of liquor for consumption off the licensed premises, unless such person is accompanied either by a parent or a guardian or by an adult with the consent of a parent or a guardian.

(2) Failure to comply with subsection (1) is an offence. 45

Storing of liquor

45. (1) A licensee must store his or her liquor on the licensed premises or in such other or additional place within the Province as the Board may on application approve.

- (2) A licensee may not sell liquor in or from such other or additional place of storage.
 (3) Failure to comply with subsections (1) or (2) is an offence.

Place of sale

- 46.** (1) A licensee may not sell liquor from any place other than the licensed premises.
 (2) Notwithstanding the provisions of this section, a licensee may advertise the sale of liquor and solicit and receive orders for the purchase of liquor elsewhere than upon the licensed premises. 5
 (3) Failure to comply with subsection (1) is an offence.

Trading hours

- 47.** (1) Subject to such conditions as the Board may impose when granting a licence or after a meeting in terms of section 7, a licensee may sell liquor on such days and during such trading hours as the Board may determine for licensed businesses: Provided that the trading hours imposed by the Board may not exceed the hours determined by the municipality by by-law. 10
 (2) A municipality may by by-law determine different trading hours for licensed businesses selling liquor for consumption on the licensed premises and for those selling liquor for consumption elsewhere than upon the licensed premises, but may not prescribe different trading days and hours for individual licensed businesses: Provided that the trading hours determined by the municipality may not exceed the trading hours set out in subsections (3)(a) and (b). 15
 (3) (a) Subject to conditions imposed by the Board in terms of subsection (1), if the municipality has not determined the trading days and hours as provided for in subsection (2), then a licensee of a premises upon which liquor may be sold for consumption off the licensed premises may sell liquor on any day between 08:00 and 20:00. 20
 (b) Subject to conditions imposed by the Board in terms of subsection (1), if the municipality has not determined the trading days and hours as provided for in subsection (2), then a licensee of a premises upon which liquor may be sold for consumption on the licensed premises may sell liquor on any day between 08:00 of any day and 04:00 of the next day. 25
 (c) In the instance where the licensee has a licence for consumption of liquor both on and off the licensed premises the provisions of paragraphs (a) and (b) would apply with the necessary changes. 30
 (4) The holder of a permit may sell liquor on the days and during the hours stipulated in the permit.
 (5) Subject to section 76(9), a licensee who sells, supplies or allows the consumption of liquor on the licensed premises at a time when the sale of liquor is not permitted by the licence is guilty of an offence. 35

Quantity of liquor sold and keeping of records

- 48.** (1) A licensee must keep in the prescribed manner a record of all liquor sold for consumption elsewhere than upon the licensed premises. 40
 (2) No person, other than the licensee, may purchase and a licensee may not sell to one person in a single day for consumption elsewhere than upon the licensed premises, more liquor than a quantity which the Minister may prescribe, without the prior written consent of the designated liquor officer appointed for the area in which the licensed premises are located. 45
 (3) A person who is not licensed or permitted to sell liquor may not at any time purchase or have in his or her possession or under his or her control more liquor than the quantity prescribed in terms of subsection (2) except with the consent provided for in that subsection.
 (4) Failure to comply with subsections (1), (2) or (3) is an offence. 50

CHAPTER 7 PERMITS

Special events permits

49. (1) The holder of a licence for the sale of liquor at special events for consumption at the special event or elsewhere may not sell liquor at such an event unless he, she or it has been issued with a permit to do so by the municipality in which the premises upon which liquor will be sold is located or, where a municipality has not been appointed in terms of section 18(2), by the Board, and upon payment of the prescribed fee. 5

(2) The holder of a licence to sell liquor for consumption at special events must make application to the municipality in the prescribed manner for a permit to sell liquor at a specific special event. 10

(3) Such application must be made not less than fourteen (14) days prior to the date of the special event.

(4) The municipality may, after consideration of the application and any other document or matter which it regards as being relevant, refuse the application or grant it subject to such conditions as the municipality deems appropriate. 15

(5) The conditions referred to in subsection (4) must be set out in the permit document.

(6) An applicant whose application for a permit in terms of subsection (2) has been refused or who is dissatisfied with a condition imposed by the municipality may, in the prescribed manner, appeal to the Board against such refusal or the imposition of a condition. 20

(7) Failure by a licensee, being the holder of a special events licence, to obtain a special events permit issued by the municipality for a special event at which he, she or it sells liquor is an offence. 25

Traditional African beer permits

50. (1) Only the following persons may sell traditional African beer—

(a) the holder of a licence to micro-manufacture;

(b) the holder of a liquor licence; or

(c) the holder of a traditional African beer permit. 30

(2) A person who is not disqualified from holding a liquor licence may make application in the prescribed manner for a traditional African beer permit to the municipality in which the premises where the traditional African beer will be sold is located.

(3) A municipality to whom application is made may grant the application subject to such conditions as the municipality may regard necessary to impose or refuse it. 35

(4) If the application is granted then the municipality must, upon payment of such fee as it may prescribe, issue a permit to the applicant in the prescribed form.

(5) A person who feels aggrieved by a decision of the municipality in terms of this section may appeal against it to the Board in the prescribed manner. 40

(6) The holder of a permit may apply to the municipality for the renewal thereof within thirty (30) days prior to the anniversary of the date upon which the permit was issued.

(7) The municipality must, upon payment of such renewal fee as it may impose, renew the permit for a further year, unless the holder has become disqualified from holding same or the Board has declared the holder to be unfit to hold the permit. 45

(8) A person who feels aggrieved by the manner in which the sale of traditional African beer is conducted may lodge a complaint with the Board who must consider it in the same manner as a complaint in respect of a licence, and the Board has the same powers in respect of such permit as it has in respect of a licence. 50

CHAPTER 8
VALIDITY AND RENEWAL OF LICENCES AND PERMITS

Validity of licences and permits

- 51.** (1) A licence is valid from the date upon which it is issued.
- (2) A licence lapses on a date, which is twelve (12) months from the date of issue or twelve (12) months from the date of the last renewal thereof, whichever is the later, unless the licence is renewed automatically in terms of section 52 or by the Board in terms of section 53. 5
- (3) A permit issued in terms of section 22(b) in respect of a special event is valid only for the date or dates in respect of which such permit was issued and may not be renewed. 10
- (4) A permit issued in terms of section 22(a) in respect of the sale of traditional African beer is valid from the date of issue and lapses twelve (12) months from the date of issue, unless renewed by the municipality in terms of section 50(7).
- (5) The Chairperson may, upon receipt of a report that the licensed premises has been abandoned by the licensee, suspend the licence with immediate effect. 15
- (6) The suspension of the licence in terms of subsection (5) lapses upon the receipt by the Chairperson of proof that the licensed premises has not been abandoned by the licensee or is again in use by the same licensee.

Automatic renewal of licences

- 52.** (1) Except as provided for in section 53, the Board must issue a licence renewal notice in the prescribed form not later than eight (8) months after the date of issue or last renewal of a licence, to each holder of a licence, requesting the licensee to pay a prescribed licence fee by the renewal date which must be twelve (12) months from the date issued or last renewal of the licence, whichever is the later. 20
- (2) Upon payment by the licensee of the prescribed licence fee before or on the renewal date, the licence is automatically renewed for a period of twelve (12) months from the renewal date. 25
- (3) The licensee may not be absolved from his or her obligation to pay the prescribed licence fee timeously if the notice was not sent to or received by him or her.
- (4) A licensee who has failed to pay the prescribed licence fee timeously may, within sixty (60) days of the renewal date, apply to the Board in writing for condonation of such failure and the Board may condone the failure and allow the late payment of the prescribed fee by a date to be determined subject to such additional fees and penalties as the Board may prescribe. 30
- (5) Where the Board has in terms of subsection (4) granted condonation and the prescribed fee and additional fees and penalties have been paid the licence is deemed to have been renewed from the renewal date: Provided that if the licensee fails to pay the fees and penalties imposed in terms of this subsection by the determined date the licence lapses upon that date. 35

Applications for renewal of licences 40

- 53.** (1) If upon the expiration of eight (8) months from the date of issue or last renewal of a licence, whichever is the later, a licensee—
- (a) is disqualified from holding a licence in terms of section 24;
- (b) has been declared unfit to hold a liquor licence by the Board; or
- (c) has, within the previous eight (8) months failed to comply with a compliance notice issued in terms of this Act, 45
- then the licence is not capable of automatic renewal in terms of section 52, but may be renewed by the Board upon application by the licensee in the prescribed manner and upon payment of the prescribed fee.
- (2) The Board must, within nine (9) months from the date of issue or last renewal of the licence, serve a notice upon a licensee as described in subsection (1) informing the licensee that—

- (a) the licence will not be automatically renewed; and
 - (b) calling upon the licensee to make application in the prescribed form for the renewal of the licence by a date set by the Board, which date is not later than twelve (12) months from the date of issue or last renewal of the licence.
- (3) If the licensee fails to comply with the notice in subsection (2), then the licence will lapse twelve (12) months from the date of issue or last renewal thereof. 5
- (4) If the licensee complies with the notice then the licence remains valid until the Board has completed its consideration of the application for renewal.
- (5) When considering an application for renewal, the Board has the same duties and powers which it has when considering an application for a new licence, including the right to refuse the application or to grant it, subject to such conditions as it may deem fit. 10
- (6) If the Board grants an application for the renewal of the licence then the licence is deemed to have been renewed in terms of section 52(2).
- (7) If the Board refuses an application for the renewal of a licence then the licence lapses immediately or upon such date as the Board determines. 15

CHAPTER 9 TRANSFER OF LICENCES

Transfer of licences

- 54.** (1) A licensee may make application for the transfer of the licence to another person by lodging an application, in the prescribed manner and form, and upon payment of the prescribed fee, with the Board. 20
- (2) The Board must, as prescribed, notify the designated liquor officer of the application, and request from him or her a report regarding the qualification and fitness of the proposed licensee to hold the licence.
- (3) The designated liquor officer must, within the prescribed period, lodge a report as required by subsection (2), and may include in such report any other matter which the designated liquor officer may deem relevant to the application. 25
- (4) The Board must, within the prescribed period, either refuse the application or grant it.
- (5) The Board may not grant an application for transfer unless it is satisfied that the person to whom the licence will be transferred— 30
- (a) is not disqualified from holding a licence in terms of section 24;
 - (b) is of good character; and
 - (c) is or will be suitably educated and trained, or will have in his or her employ one or more employees who are or will be suitably educated and trained to manage the licensed business. 35
- (6) The Board may, when granting a transfer application, direct that the person to whom the licence is transferred, or one or more employees of such person, must undergo such education and training as the Board may direct.
- (7) Upon granting an application for transfer in terms of this section the Board must issue, upon payment of the prescribed fee, a certificate of transfer as prescribed. 40
- (8) If the person to whom the licence is to be transferred dies, becomes insolvent or is declared incapable of handling his or her own affairs by a competent court, or being a company or close corporation, is liquidated before the date upon which the application for transfer is considered, the executor, trustee, liquidator or curator, as the case may be, is deemed to be the applicant and has all rights which such person, company or close corporation would have had save for such death, insolvency, liquidation or declaration. 45
- (9) The Board may in its discretion grant an application for transfer in favour of an executor, trustee, liquidator or curator or to such other person as the Board may deem fit.
- (10) A licensee who alienates the licensed business must, within thirty (30) days from the date of alienation, notify the Board in writing and in the prescribed manner of the date of alienation. 50
- (11) Failure to notify the Board of such alienation is an offence.

(12) A person who has purchased a licensed business may make application to the Chairperson for consent to operate and conduct the licensed business pending the transfer of the licence to such person.

(13) An application in terms of subsection (12) must be made by the lodgement thereof in the prescribed form with the Chairperson. 5

(14) The Chairperson may grant consent authorising the purchaser of the business to conduct the business for his or her own account for a specified period, which period may not be more than six (6) months from the commencement date.

(15) The Chairperson may at any time withdraw a consent granted in terms of subsection (14). 10

(16) A consent granted in terms of subsection (14) is not subject to an appeal or review in terms of this Act.

(17) A person to whom a consent in terms of subsection (14) has been granted, is entitled to operate and conduct the licensed business in terms of the licence, for his or her own account, and has the same rights and is subject to the same duties as the licensee. 15

(18) The granting of consent in terms of subsection (14) does not relieve the licensee from any of his or her duties and obligations in respect of the licence.

Abandonment of premises and death or incapacity of licensee

55. (1) If a licensee dies, becomes insolvent or is declared incapable of handling his or her own affairs by a competent court, or being a company or close corporation is liquidated— 20

(a) the licence vests in the executor, trustee, liquidator or curator, as the case may be, from the date of appointment;

(b) the executor, trustee, liquidator or curator may conduct the licensed business in the same manner and subject to the same conditions as the licensee would have save for his or her death, insolvency, its liquidation or declaration; and 25

(c) the executor, trustee, liquidator or curator may make application for the transfer of the licence in terms of section 54 and is for purposes of such application deemed to be the licensee. 30

(2) The Board may, if satisfied that—

(a) a licensed business has been abandoned; or

(b) the licensee, being a person described in subsection (1), and where an executor, trustee, liquidator or curator has not been appointed,

appoint a person to hold a licence and conduct the licensed business until the appointment of an executor, trustee, liquidator or curator, or in the case of an abandoned business, a manager. 35

(3) A person so appointed is deemed to be the licensee.

(4) If the only director of a company or a member of a close corporation which is a licensee dies, becomes insolvent or is declared incapable of handling his or her own affairs by a competent court, or being a company or close corporation is liquidated then subsections (2) and (3), with the necessary changes applies to that licence until the appointment of a new director or member. 40

CHAPTER 10 APPEALS

45

Appeals to the Tribunal

56. (1) The Appeal Tribunal must consider any appeal against, or an application for the review of, a decision of the Board in terms of section 7(3).

(2) The Appeal Tribunal may confirm, amend or set aside a decision or order that is the subject matter of an appeal or review and substitute such decision or order as the circumstances require. 50

(3) An applicant or interested party who is aggrieved by a decision of the Board may, within the prescribed period after receiving reasons for a decision of the Board, lodge with the Board a notice of appeal or review as prescribed.

(4) The appeal or review must be heard as if it were an appeal from the judgment of 55

a magistrates court in a civil matter and any rule applicable to such civil appeal applies with the necessary changes as provided for herein.

(5) Except where the applicant or interested party has been exempted from the payment of security in terms of subsection (6), a person who is aggrieved by a decision of the Board must simultaneously with the lodgement of the notice of appeal or review in terms of subsection (3), pay an amount prescribed by regulation or reduced by the Appeal Tribunal as security for the anticipated costs of the Board or an opposing party. 5

(6) The Appeal Tribunal, may upon application by the applicant or the interested party who is aggrieved by the decision of the Board, reduce the amount of security or exempt the applicant or interested party from the payment of security. 10

(7) Money paid as security in terms of this section must be paid to the Chief Executive Officer who must deposit same in a separate banking account pending the outcome of the appeal or review when he or she makes payment thereof in accordance with the order of the Appeal Tribunal.

(8) The Appeal Tribunal may make such order as to the payment of the costs of the parties to the proceedings or of the Board as it may deem appropriate in the circumstances. 15

(9) An applicant or interested party who is aggrieved by the decision of the Board may appear in person before an Appeal Tribunal or may be represented thereat by an advocate or an attorney. 20

(10) A decision of the Appeal Tribunal regarding the merits of a matter is final and not subject to further appeal.

CHAPTER 11 COMPLIANCE

Compliance notices 25

57. (1) An inspector may issue and serve upon a licensee or any person in control of licensed premises a compliance notice in the prescribed form calling upon such person to comply with the provisions of this Act or a condition of a licence.

(2) A compliance notice must stipulate—

- (a) the provisions of this Act or the conditions of the licence which must be complied with; 30
- (b) the nature and extent of the non-compliance;
- (c) the measures which must be taken to comply;
- (d) the date by which compliance must be completed; and
- (e) the possible consequences of non-compliance. 35

(3) A compliance notice remains in force until the date for compliance or any extension thereof, or the issue by the inspector of a certificate of compliance, whichever is the earlier.

(4) The inspector may, at the request of the person served with a compliance notice, extend the period for compliance, upon good cause shown, by issuing an amended compliance notice. 40

(5) If the person served with a compliance notice has complied therewith the inspector must issue a certificate of compliance.

(6) A person served with a compliance notice may lodge, in the prescribed manner, with the inspector a statement disputing the notice and stating the grounds upon which it is disputed. 45

(7) An inspector receiving a statement in terms of subsection (6) must, within the prescribed period submit the compliance notice, the statement in terms of subsection (6) and any other document which he or she deems relevant, to the Chief Executive Officer who must decide whether or not the complaint set out in the compliance notice is justified. 50

(8) The Chief Executive Officer may, if he or she decides that the compliance notice is unjustified, set it aside or if he or she finds it to be justified, order that the compliance notice be complied with by the compliance date or upon such later date as he or she may determine. 55

(9) The Chief Executive Officer may delegate the function referred to in subsection (8) to an official employed by the Board.

(10) Failure to comply with a compliance notice is an offence.

(11) Proof of non-compliance with a compliance notice, at a meeting of the Board, constitutes *prima facie* proof of the commission of the offences, or transgressions of the licence conditions stipulated in the compliance notice.

Interim orders

58. (1) The Board may, in exceptional circumstances, and upon application by an inspector or a designated liquor officer, and where there is an imminent threat to the health, well being or safety of the public, grant an interim order suspending a licence or permit. 5

(2) An application in terms of subsection (1) may not be granted unless—

(a) it is supported by affidavit setting out the facts pertaining to the matter; 10

(b) proof is submitted that the application and supporting affidavits have been served upon the licensee not less than forth-eight (48) hours prior to the lodgement of the application; and

(c) it appears from the application that the matter is one of urgency.

(3) An order granted in terms of subsection (1) must be served upon the licensee as directed by the Board and comes into effect upon the date and at the time of service thereof. 15

(4) An order granted in terms of subsection (1) must stipulate a date upon which the licensee must appear before the Board to show cause why the order should not be made final. 20

(5) The licensee may, prior to the date stipulated in subsection (4), lodge with the Board a notice of opposition and must thereafter lodge affidavits in which he or she sets out the grounds upon which the application is opposed and must simultaneously serve a copy of such notice and affidavits on the inspector or the designated liquor officer referred to in subsection (1). 25

(6) A licensee may at any time prior to the date stipulated in terms of subsection (4) apply to the Chairperson to set the matter down for hearing upon an earlier date, and must simultaneously serve a copy of such application on the inspector or designated liquor officer referred to in subsection (1).

(7) The Chairperson may order the return date to be brought forward to an earlier date. 30

(8) Upon the date of the hearing of the application the Board may discharge the interim order or confirm it, subject to such amendments as it deems fit.

Suspension, cancellation and lapsing of licences

59. (1) A licence which has been suspended in terms of any provision of this Act remains valid in all respects, except that the licensee may not sell liquor in terms thereof during the period of suspension. 35

(2) A licence which has been cancelled by the Board is null and void from the date of cancellation, or such other date as the Board may determine.

(3) A licence which has lapsed in terms of section 53 is null and void from the date upon which it lapses. 40

(4) The licensee of a licence which has been suspended, cancelled or has lapsed, may within thirty (30) days of such suspension, cancellation or lapsing, sell by public auction conducted by a licensed auctioneer any liquor which was upon the licensed premises on the date upon which the suspension, cancellation or lapsing came into effect.

(5) If a licensee requests the Board in writing to cancel his or her licence, then the licence lapses upon a date determined by the Board. 45

CHAPTER 12 LAW ENFORCEMENT

Designation and functions of designated liquor officers and inspectors

60. (1) The Western Cape Provincial Commissioner of the South African Police Service may, in respect of each police station, designate a police officer of or above the rank of Inspector to perform the functions of a designated liquor officer in terms of this Act. 50

(2) A police officer who has in terms of section 139 of the Liquor Act, 1989 (Act 27 of 1989) been appointed as a designated police officer becomes a designated liquor officer and is deemed to have been appointed in terms of subsection (1).

(3) The Western Cape Provincial Commissioner of the South African Police Service may at any time terminate an appointment made in terms of this section. 5

(4) The Minister may appoint a person in the employ of the Provincial Government to be an inspector for purposes of this Act.

(5) The Commissioner must, when designating a liquor officer in terms of subsection (1), and the Minister must, when appointing an inspector in terms of subsection (4), issue a certificate of appointment or designation signed by the Commissioner or the Minister, as the case may be. 10

(6) A designated liquor officer or inspector must, when exercising his or her functions in terms of this Act, upon demand of any person affected by the performance of that function, provide proof of appointment as designated liquor officer or inspector.

(7) A designated liquor officer or an inspector must— 15

- (a) in respect of every application made in terms of this Act, report to the Board on such matters as may be prescribed or which should, in the opinion of the officer or inspector, be taken into account when considering the application;
- (b) at the request of the Board, report on or furnish such information in connection with a matter as the Board may require; 20
- (c) as soon as the fact comes to his or her notice, report to the Chief Executive Officer the failure by a licensee to comply with the conditions of his or her licence, a compliance notice or the provisions of this Act;
- (d) report the fact that a licensee has become disqualified or unfit to hold a licence to the Chief Executive Officer; 25
- (e) if he or she is of the opinion that the licensed premises have been abandoned, become unfit to be used for the purpose of the licensed business, report this fact to the Chief Executive Officer; and
- (f) if the licensee has been convicted of a criminal offence, report the nature and circumstances of the offence and conviction to the Chief Executive Officer. 30

Powers of designated liquor officers and inspectors

61. (1) A designated liquor officer or an inspector may in the performance of his or her functions—

- (a) at all reasonable times enter— 35
 - (i) any licensed premises;
 - (ii) any premises in respect of which an application in terms of this Act has been made;
 - (iii) any premises upon which liquor is sold in terms of a permit;
 - (iv) any premises upon which liquor is manufactured or from which liquor is distributed in terms of a registration under the provisions of the Liquor Act; and 40
 - (v) any premises upon which he or she suspects that liquor is being stored or sold contrary to the provisions of this Act or the Liquor Act, and may, after informing the person who is at that time in charge of the premises of the purpose of his or her visit and may make such investigation, 45 enquiries or inspections as he or she may deem necessary,
- (b) at any time and place request from any person that he or she forthwith, or upon a date and time to be stipulated, produce to him or her any licence, permit, registration certificate, record or other document which is in the possession, custody or control of that person or any other person on his or her behalf; 50
- (c) inspect any document referred to in paragraph (1)(b), make copies thereof or extracts therefrom, and request from the person contemplated in the said paragraph an explanation of any part thereof;

- (d) seize such document if in his or her opinion it may constitute evidence of an offence in terms of this Act, or of a transgression of any condition of a licence;
 - (e) question the licensee or registered person or his or her employees, an applicant, or any person who is upon licensed or registered premises, if he or she suspects that the employee or person has in his or her possession or under his or her control any document which may be relevant to a matter which he or she is investigating; and
 - (f) request that any licensee or registered person or his or her employee appear before him or her at a time and place to be stated by him or her to answer questions regarding a matter which is under investigation.
- (2) Any person who is in charge of premises contemplated in subsection (1) must render such assistance as the designated liquor officer and inspector may reasonably request.

Powers of peace officers in general

- 62.** (1) A peace officer may enter and inspect any licensed premises or search any vehicle, vessel or person when authorised to do so by a warrant issued by a competent court, and a peace officer of or above the rank of inspector or its equivalent may, without a warrant, enter and inspect such premises or search such vehicle, vessel or person when invited to do so by the licensee or an employee in control of the premises, vessel or vehicle, when authorised to do so by any other law.
- (2) A peace officer may, when entering and inspecting licensed premises or searching any vessel, vehicle or person in terms of subsection (1) seize and remove anything—
- (a) which will be used as evidence of the contravention of the provisions of this Act or the conditions of a licence or permit; and
 - (b) which was or is being used in connection with the contravention of this Act or a condition of a licence or permit.
- (3) When entering premises in terms of this section the peace officer must—
- (a) identify himself or herself to the person in charge of the premises;
 - (b) exhibit to that person the warrant, if any;
 - (c) explain the authority in terms of which the inspection is being conducted; and
 - (d) conduct the inspection with the least possible inconvenience to the licensee or his or her customers and with the least possible disruption of the licensed business.
- (4) A peace officer must, when seizing anything in terms of this section, issue to the person from whom the article has been seized, a receipt describing the article or articles seized and explaining the reasons for the seizure.
- (5) Anything seized in terms of this section must be retained and preserved until the Board or a competent court has made an order regarding the disposal thereof.
- (6) Unless the licensee or a person in his or her employ for whom he or she is responsible in terms of this Act is charged with a criminal offence in a competent court or is summoned to appear at a meeting of the Board within thirty (30) days from the date of the seizure then the article seized must be returned to the person from whom it was seized.

General offences

- 63.** (1) A person who—
- (a) is not a licensee, the holder of a permit, an exempted person or a person registered in terms of the Liquor Act, and who sells or supplies liquor;
 - (b) fails to comply with a provision of this Act;
 - (c) is a registered manufacturer or distributor in terms of the Liquor Act and who is not also a licensee or permit holder in terms of this Act and sells or supplies liquor to a person who is neither a licensee nor permit holder in terms of this Act, nor a registered manufacturer or distributor in terms of the Liquor Act;
 - (d) is drunk in or on—

- (i) any premises on which liquor is sold; or
 - (ii) any place to which the public has access;
 - (e) sells or supplies liquor to a drunk person or being a licensee or a person in charge of licensed premises allows a drunk person to remain upon licensed premises; 5
 - (f) sells or supplies liquor in a container, which does not conform to the standards and specifications which the Minister has, by notice in the *Provincial Gazette*, prescribed;
 - (g) purchases liquor from any person knowing, or having reasonable grounds to suspect, that such person is not licensed or permitted to sell liquor in terms of this Act or in terms of the Liquor Act; 10
 - (h) sells liquor to a person, knowing or having reasonable grounds to suspect, that such person will resell the liquor otherwise than is permitted in terms of this Act or the Liquor Act;
 - (i) sells liquor from a vending machine or other device unless such device is at all times operated by and under the direct physical supervision of the licensee or an employee; 15
 - (j) being a licensee, permits the licensed premises to be used as a brothel or to be habitually frequented by prostitutes; or
 - (k) being a licensee, allows the sale, use or possession of drugs upon the premises in contravention of any law dealing with such sale, use or possession 20
- is guilty of an offence.

Offences regarding information

- 64.** (1) A person who regarding an application, objection or representations—
- (a) submits or provides information which he or she knows to be false or misleading, or which he or she does not know to be true or submits a forged document or one which purports to be but is not a true copy of the original; 25
 - (b) replies to any objection or representations or complaint in a way he or she knows to be false or misleading, or which he or she does not know to be true; or 30
 - (c) in response to a question by a designated liquor officer, an inspector, a police officer, a municipal official or the Board submits or provides information which he or she knows to be false or misleading, or which he or she does not know to be true or submits a forged document or one which purports to be but is not a true copy of the original 35
- is guilty of an offence.
- (2) A person who fails to comply with a request from a designated police officer or inspector in terms of section 61 is guilty of an offence.

Offences regarding meetings of the Board and the Appeal Tribunal

- 65.** (1) A person who— 40
- (a) having been duly notified to appear before the Board, fails to do so either in person or represented by an attorney or advocate;
 - (b) appears before the Board, but without the leave of the Chairperson absents himself or herself from the meeting before the conclusion thereof;
 - (c) having at a meeting been notified by the Chairperson to attend a meeting upon a date to which the meeting has been postponed, fails to be present thereat; 45
 - (d) having been called upon by the Chairperson to give evidence or to produce a document, refuses or fails to do so;
 - (e) has had the oath or affirmation administered to him or her and refuses or fails to take the oath or to affirm; 50
 - (f) having taken the oath or having affirmed, fails to reply to the best of his or her knowledge to questions put to him or her or gives false or misleading evidence knowing such evidence to be false or misleading;
 - (g) willfully disrupts the proceedings of the Board; or
 - (h) refuses to leave the meeting when ordered to do so by the Chairperson 55

is guilty of an offence.

(2) The provisions of subsections (1) of this section applies, with the necessary changes, to meetings of the Appeal Tribunal.

Offences regarding police officers and inspectors

- 66.** A person who— 5
- (a) misrepresents himself or herself as being a designated liquor officer or inspector;
 - (b) hinders a designated liquor officer or inspector in the execution of his or her duties;
 - (c) refuses or fails to obey a lawful instruction given by a designated liquor officer or inspector; or 10
 - (d) refuses, without lawful excuse, to reply to a question put to him or her by a designated liquor officer or inspector or knowingly gives a false or misleading answer 15
- is guilty of an offence.

Motor vehicles

- 67.** (1) A person who—
- (a) consumes liquor in a motor vehicle driven on a public road;
 - (b) allows the consumption of liquor in a motor vehicle of which he or she is the driver or which is under his or her control while it is being driven on a public 20 road; or
 - (c) allows liquor contained in an open container to be in a motor vehicle while it is being driven on a public road,
- is guilty of an offence.
- (2) Subsection (1) does not apply to the consumption of liquor in a motor vehicle 25 which is licensed for the sale and consumption of liquor.

Service stations

68. Except in respect of premises which have been licensed in terms of the Liquor Act, 1989 (Act 27 of 1989), or unless the competent authority determines otherwise in a particular case, no liquor may be sold, supplied or consumed on an erf upon which the 30 business of a service station selling petrol, diesel and other petroleum products to the public is conducted.

Failure to comply with order of Board

- 69.** (1) Failure to comply with an order of the Board is an offence.
- (2) If a person fails to comply with an order of the Board, the Board may, after proper 35 enquiry—
- (a) suspend the licence pending compliance with the order;
 - (b) impose a fine the payment of which may be suspended pending compliance with the order;
 - (c) refer the matter to the South African Police Service for the prosecution of the 40 offender; or
 - (e) cancel the licence.

Vicarious responsibility

- 70.** (1) If the manager, agent or employee of a licensee does or omits to do anything, which, if it were done or omitted by the licensee, would be an offence in terms of this Act 45 then the licensee is deemed to have done or omitted to do that act, except where the licensee—
- (a) neither connived at, permitted or allowed the act or omission;
 - (b) took such steps as he or she was reasonably able to take in order to prevent the 50 act or omission; and
 - (c) the act or omission did not fall within the scope of the employment or authority of the manager, agent or employee.
- (2) The fact that a licensee has issued instructions prohibiting an act or omission is

not in itself sufficient to prove that he or she took the steps required by subsection (1)(b).

(3) When a licensee is liable for the acts or omissions of another person in terms of subsection (1) such other person is also liable therefore as if he or she was the licensee.

(4) A manager, agent or employee is not released from any other liability which he or she may have incurred apart from the liability shared with the licensee in terms of subsection (1). 5

Exemptions

71. (1) This Act does not apply to—

- (a) an officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act 91 of 1964) when performing official duties; 10
- (b) a sheriff or his or her employee or any other officer acting in terms of an order of a competent court in the execution of his or her duties;
- (c) a person referred to in a notice under section 10 of the Liquor Products Act, 1989 (Act 60 of 1989) with regard to the sale of a sacramental beverage under such notice; 15
- (d) a person manufacturing or selling spirituous or distilled perfumery; and
- (e) a person manufacturing or selling medicine as defined in the Medicines and Related Substances Act, 1965 (Act 101 of 1965), as amended.

(2) The Board may, upon application by an interested person, declare that a person or place is exempted from the application of the provisions of section 20 of this Act. 20

(3) A declaration in terms of subsection (2) may be made subject to such conditions and restrictions as the Board may impose.

(4) The Board may at any time amend or withdraw the exemption in terms subsection (2).

(5) The Board must publish a notice, in the three (3) official languages of the Province, of the intended amendment or withdrawal of the exemption in a newspaper circulating in the area where the exempted premises is located, calling upon interested persons to provide reasons, within the time stipulated in the notice, why the exemption must not be amended or withdrawn. 25

(6) In addition to the measures taken in terms of subsection (5) the Board may take such additional measures as it deems appropriate to notify interested persons of its intention to amend or withdraw an exemption granted in terms of subsection (2). 30

Evidence

72. (1) If in any criminal proceedings or at a meeting of the Board evidence is adduced that a person who is not licensed or permitted to sell liquor in terms of this or any other Act— 35

- (a) had on or near his or her premises a sign or notice purporting that liquor is for sale there;
- (b) occupied premises fitted out with a bar counter in a manner to induce a reasonable conclusion that liquor is for sale there; 40
- (c) had on his or her premises or under his or her control more liquor than the maximum volume referred to in section 48 without the prior consent required by that section; or
- (d) bought or procured more liquor than the maximum volume referred to in section 48 without the prior consent required by that section, 45

it is *prima facie* proof of the sale of liquor.

(2) If in any criminal proceedings or at a meeting of the Board—

- (a) there is produced as evidence a sealed container containing a liquid, upon which container there is a label or other device indicating the alcohol content of the liquid, then it is proof, unless the contrary be proven, that the liquid contains the alcohol stated and, if the alcohol content stated is more than 1% of alcohol by volume, that the liquid is liquor; 50
- (b) is produced as evidence more than one container, each of which forms part of a stock or batch of liquor found at the same place at the same time and it is

- proven that one or more of such containers contains liquor then it is proof, unless the contrary be proven, that all the containers contain liquor;
- (c) there is produced as evidence a document which purports to be a copy of a licence or a permit it is on its mere production *prima facie* proof of the licence or permit and any condition or endorsement thereon or attached thereto is deemed to be a condition or endorsement imposed in terms of this Act; 5
- (d) there is produced as evidence a statement or certificate purporting to be signed by an analyst or chemist in the employ of the Government of the Republic, or in the employ of a University or of a medical research institute, who has made an analysis of a liquid or substance which is the object of the criminal proceedings or meeting, such statement or certificate is, unless the contrary be proven, proof of the contents of the statement or certificate; or 10
- (e) evidence is produced that a licensee who is accused of a contravention of section 42, failed to obtain from a person under the age of eighteen (18) years either— 15
- (i) his or her valid identity document;
- (ii) his or her valid drivers' licence bearing his or her photograph and a date of birth; or
- (iii) his or her valid passport bearing his or her photograph and a date of birth, such evidence is *prima facie* proof of the fact that the licensee had knowledge of the fact that such person was under the age of eighteen (18) years. 20

Health notices

73. (1) The Minister may, subject to section 41 of the Liquor Act, prescribe by notice in the *Provincial Gazette* the content of, and the manner in which public health notices must be displayed upon the licensed premises. 25
- (2) Failure to display a health notice in terms of this section is an offence.

Penalties

74. Any person who contravenes a provision of this Act is on conviction liable to—
- (a) a fine not exceeding R100 000;
- (b) imprisonment not exceeding five (5) years; or 30
- (c) both such fine and imprisonment.

CHAPTER 13

REGULATIONS, TRANSITIONAL PROVISIONS AND SHORT TITLE

Regulations

75. (1) The Minister may make regulations regarding— 35
- (a) the standards with which containers and packaging in which liquor is sold must comply;
- (b) the form and the manner in which applications in terms of this Act must be made and lodged;
- (c) the form and the manner in which objections and representations in support of applications must be made and lodged; 40
- (d) the amount of fees to be paid in respect of applications made in terms of this Act;
- (e) the amount of fees to be paid in respect of the issue of a licence or permit;
- (f) the amount of fees to be paid in respect of the transfer of a licence; 45
- (g) the amount of fees to be paid in respect of the renewal of a licence;

- (h) the amount of fees to be paid in respect of the perusal and copying of documents in the possession of the Board or a municipality;
 - (i) the procedure to be followed by the Board or a municipality in respect of applications made in terms of this Act;
 - (j) the form of licences, permits, notices, consents, appointments, determinations, approvals, authorities and other documents referred to in this Act; 5
 - (k) the procedure to be followed by the Appeal Tribunal;
 - (l) appeals and reviews in terms of this Act;
 - (m) any matter which must or may in terms of this Act be prescribed;
 - (n) the manner in which a licensee of premises upon which liquor may be sold for consumption off the licensed premises must keep a record of liquor sold; 10
 - (o) the maximum volume of liquor referred to in section 48;
 - (p) the form and manner of service of a compliance notice, a statement of dispute and a compliance certificate in terms of section 57;
 - (q) the form, content and manner of display of public health notices in terms of section 73; and 15
 - (r) in general, any matter in respect of which the Minister deems it necessary or expedient to make regulations in order to achieve the object of this Act, the generality of this paragraph not being limited by the preceding paragraphs.
- (2) A regulation made in terms of this section in respect of fees or money to be paid must be made in consultation with the Minister responsible for finance for the Province. 20

Transitional provisions

76. Upon the date of commencement of this Act—

- (1) Any licence of the kind listed hereunder which was in force immediately before such date of commencement is deemed to be a licence for the sale of liquor for consumption upon the licensed premises— 25
- (a) hotel liquor licence;
 - (b) restaurant liquor licence;
 - (c) wine-house licence;
 - (d) sorghum beer licence for on-consumption; 30
 - (e) theatre liquor licence;
 - (f) club liquor licence; and
 - (g) special liquor licence for on-consumption.
- (2) Any licence of the kind listed hereunder which was in force immediately before such date of commencement is deemed to be a licence for the sale of liquor for consumption elsewhere than upon the licensed premises— 35
- (a) liquor store licence;
 - (b) grocer's wine licence;
 - (c) sorghum beer licence for off consumption;
 - (d) wine farmer's licence; and 40
 - (e) special liquor licence for off-consumption.
- (3) Any licence listed hereunder which was in force immediately before such date of commencement is deemed to be a licence for the micro-manufacture and sale of liquor for consumption elsewhere than upon the licensed premises— 45
- (a) wholesale liquor licence;
 - (b) producer's licence;
 - (c) brewer's licence; and
 - (d) sorghum beer brewer's licence,
- in terms of which liquor was manufactured in the preceding twelve (12) months, but the volume of liquor so manufactured not exceeding the threshold limit prescribed in terms of section 4(10) of the Liquor Act. 50
- (4) Any licence listed hereunder, which gives the holder thereof the right to sell liquor for consumption elsewhere than upon the licensed premises and that has been converted in terms of the Liquor Act, which was in force immediately before such date of commencement is deemed to be a licence for the sale of liquor for consumption elsewhere than upon the licensed premises— 55

- (a) wholesale liquor licence;
- (b) producer's licence;
- (c) brewer's licence; and
- (d) sorghum beer brewer's licence.

(5) A notice issued in terms of section 33 of the Liquor Act, 1989 (Act 27 of 1989) and in force immediately prior to the commencement of this Act must be deemed to be conditions set out in writing in terms of section 34 of this Act. 5

(6) Notwithstanding the repeal of any law as a consequence of the commencement of this Act, any application made prior to such commencement must be considered and disposed of in accordance with the provisions of the law in terms of which it was lodged. 10

(7) Subsequent to the date of commencement of this Act, the provisions of subsections (1), (2) and (3) of this section apply to licences granted in terms of the provisions of the Liquor Act, 1989.

(8) Unless determined otherwise by the Board upon application, a licence which has been issued in respect of premises located upon an erf upon which a service station selling petrol, diesel and other petroleum products is being carried on at the date of commencement of this Act, lapses five (5) years from the date of commencement of this Act. 15

(9) Licences issued prior to the commencement of this Act for premises upon which liquor may be sold for consumption either on or off the licensed premises which trades beyond the trading hours stated in section 47(3) will after twelve (12) months from the date of commencement of this Act be subject to section 47. 20

(10) Any consent, approval or privilege granted to a licensee in terms of the Liquor Act or any Act repealed thereby, which is not inconsistent with the provisions of this Act, is deemed to be a consent, approval or privilege granted in terms of this Act. 25

(11) Any condition imposed upon a licence in terms of the provisions of the Liquor Act or any Act repealed thereby, which is not inconsistent with the provisions of this Act, is deemed to be a condition imposed in terms of this Act.

(12) (a) The date of lapsing in terms of section 51(2) of any licence that was valid in terms of the provisions of the Liquor Act, 1989 upon date of commencement of this Act, will be the last day of December of the year in which this Act becomes operational and 31 December will be deemed the date of issue of such licence for the purposes of section 51(2). 30

(b) The annual renewal notice issued in terms of section 52(1) for a licence referred to in subsection (1) will be issued not later than 31 October of the year in which this Act becomes operational. 35

Repeal provisions

77. The provisions contained in the Liquor Act, 1989 (Act 27 of 1989) are repealed in so far they apply in the Province.

Short title

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78. This Act is called the Western Cape Liquor Act, 2005 and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

EXPLANATORY MEMORANDUM

(i) Introduction and reasons for the Bill

Schedule 5 Part A of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), provides that liquor licensing is a functional area of exclusive provincial legislative competence. However, the Constitutional Court determined that circumstances in the liquor industry justify the promulgation of the national Liquor Act, 2003 (Act 59 of 2003) (“the national Liquor Act, 2003”). The national Liquor Act, 2003, imposes a three tier system on the liquor industry consisting of the manufacturing (including micro-manufacturing), distribution and retail of liquor and determines the regulation of the manufacturing (excluding micro-manufacturing) and distribution tiers of the industry, while the provincial legislatures retain exclusive competency to regulate the micro-manufacturing and retail tiers of the industry.

The national Liquor Act further repeals the Liquor Act, 1989 (Act 27 of 1989) (“the Liquor Act, 1989”) that had until its repeal regulated the industry. The national Liquor Act, 2003 has retained the functioning of the Liquor Act, 1989 as provincial liquor legislation, regulating the provincial tiers of the industry in the absence of provincial liquor legislation.

It has been generally accepted that it is necessary to regulate the liquor industry due to the potentially harmful nature of the product. Various regulatory measures have been imposed on the industry in the past in accordance with the social and political requirements of the government of the day. However, the retail liquor industry is largely unregulated due to historical reasons that resulted in the exclusion of historically disadvantaged persons from the formal liquor trade. This has led to a large number of unlicensed outlets that proliferate in residential areas that do not adhere to spatial planning and other regulatory requirements. Liquor is further associated with the occurrence of crime, both in the regulated and unregulated sector of the industry and measures provided in the past have met with diverse success.

It is necessary to provide regulatory measures within the provincial sphere of government in accordance with the provisions of the Constitution that reflect the requirements of a regulated liquor industry.

(ii) Social impact of the Bill

The Bill provides for the Western Cape Liquor Board as an independent statutory body in accordance with the provisions of the Public Finance Management Act, 1999 (Act 1 of 1999) with adequate resources to ensure the administration of a licensing system, the enforcement and monitoring of licensed establishments and mandatory training of sellers of liquor, as well as other educational measures to limit the negative impact of the liquor trade. The Bill further provides for increased public awareness and participation in the licensing process and measures to deal with complaints regarding licensed outlets. Provision is made for the participation of local government in the licensing process through the appointment of suitable municipalities as agents of the Liquor Board to assist with the licensing process. Municipalities may further be appointed as competent authorities in their own right to establish liquor forums that serve in advisory capacity and local dispute resolution bodies during the licensing process. Municipalities appointed as competent authorities determine trading days and hours within their jurisdiction, issue permits to traders in traditional African beer and for special events and may declare areas within their jurisdiction as being prohibited for the possession of liquor in public. Provision is further made for an Appeal Tribunal to consider reviews of and appeals against decisions of the Liquor Board. The enforcement and administration of the Liquor Bill is ensured by the continuance of the existing system of designated liquor officers appointed within the ranks of the South African Police Services in the Western Cape, with enhanced functions and powers.

Improved enforcement measures, offences and penalties have been included to better regulate the licensed industry and combat activities in contravention of the Bill.

The Bill also provides a reduced number of categories of licences. These include licences for consumption upon the premises, consumption elsewhere than on the premises, consumption on and off the premises, special events licences and permits and micro-manufacturers licences. The right of retail food stores to trade in table wine only is retained. Provision is made for standard licence conditions as well as the imposition of conditions to address specific requirements of each licensed entity. Assessment criteria for the consideration of applications by the Liquor Board are provided and include land use rights as requirement for the issuing of licenses.

Measures for the mandatory training of sellers of liquor will ensure that sellers act responsibly. Provision is made for the raising of public awareness of the dangers posed by the abuse of liquor by way of health notices and awareness campaigns. The Bill places an obligation on the officials of the Liquor Board to promote harm reduction measures.

(iii) **Financial implications of the Bill**

The Bill provides for the determination of application fees, annual licence fees and penalties by the Minister responsible for liquor licensing in the Western Cape. The current fees were last reviewed in 1992. The income generated through the licensing system will be due to the Provincial Revenue Fund. The public entity created by the Bill and its structures and functions will be funded by transfer funds made available annually by the responsible Minister after the entity has met the prescribed requirements of the Bill in accordance with the Public Finance Management Act, 1999. The future costs to be incurred will need to be provided for in provincial estimates of expenditure and in appropriation by the Provincial Legislature.

Provision will be made for funded mandates where other public entities are appointed in accordance with the requirements of the Constitution and applicable legislation after the necessary consultation has occurred. Mandatory training programmes will be accredited with the South African Qualifications Authority and the appropriate sectoral training authority.

(iv) **Clause-by-clause explanation**

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CHAPTER 1

INTERPRETATION

Clause 1. Definitions — This clause provides definitions of phrases and words contained in the text of the Bill.

CHAPTER 2

WESTERN CAPE LIQUOR BOARD AND APPEAL TRIBUNAL

Clause 2. Establishment of the Board — The continued existence of the Liquor Board established in the Liquor Act, No 27 of 1989 is provided for.

Clause 3. Composition of the Board — The number of members of the Board, their qualifications and positions within the Board are determined in this clause.

Clause 4. Criteria for appointment — This clause provides for disqualification criteria for appointment of Liquor Board members relating to conviction of criminal offences, legal status, age, interest in the liquor industry of the member or of a family member.

- Clause 5. Term of office — The term of office of Liquor Board members is five years with eligibility of appointment for a further five years.
- Clause 6. Termination of membership — Membership of the Board may be terminated by the Minister on certain grounds.
- Clause 7. Powers and functions of the Board — This clause provides that the Board may consider applications in terms of the Bill, representations regarding applications, reports by officials, complaints regarding licensed establishments, amendment of conditions of licences, appeals against municipal permit decisions, or any matter referred to the Board delegated by the Minister. It further provides for the granting, with conditions or the refusal of applications and powers of suspension, withdrawal, imposition of penalties and conditions regarding the reports and complaints and the adjudication of appeals. It allows the Board to suspend, withdraw or amend any licence condition.
- Clause 8. Meetings and decisions of the Board — This clause relates to the quorum of the Board and determination of procedures during meetings.
- Clause 9. Recusal of members with conflicting interest — The grounds on which a Board member is recused and the process relating therefore is determined in this clause.
- Clause 10. Funding of the Board — This clause provides for the funding of the Board and the processes required to obtain funding and ensure accountability.
- Clause 11. Audit and Annual reports — Annual auditing and reports are required from the Board in terms of this clause.
- Clause 12. Proceedings of the Board — This clause provides for the determination by the Chairperson of proceedings, the attendance at meetings and procedure of obtaining information.
- Clause 13. Committees of the Board — The appointment of Liquor Board committees, their procedure and functions are provided for.
- Clause 14. Appeal Tribunal — An Appeal Tribunal is established and its membership is determined.

CHAPTER 3

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- Clause 15. Remuneration of members of Liquor Board and Appeal Tribunal — Determination of remuneration by the responsible Minister is provided for.
- Clause 16. Administration of Board and Appeal Tribunal — The appointment of a Chief Executive Officer of the Liquor Board, the provision of human resources and the financial management of the Board, secondment of personnel from the responsible Department and administrative measures are provided for.
- Clause 17. Revenue accruing to the Provincial Revenue Fund, the Liquor Board or municipalities — The revenue generated by the licensing system is allocated by this clause.

CHAPTER 4

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- Clause 18. Municipalities as agents of the Board and as competent licensing authorities — This clause provides for the appointment of municipalities as agents of the Liquor Board and describes the functions as agents and of municipalities as competent authorities and the powers as competent authorities.
- Clause 19. Liquor forums — This clause provides for the establishment and composition of the liquor forums by duly appointed competent municipalities.

CHAPTER 5

LICENSING

- Clause 20. Licences and permits — The requirement of holding a liquor licence or permit to micro — manufacture or sell liquor and the creation of an offence for failing to obtain a licence or permit is provided for in this clause.
- Clause 21. Categories of licences — This clause provides for five categories of liquor licences.
- Clause 22. Kinds of permits — This clause provides for two kinds of permits.
- Clause 23. Criteria for the granting of licences — This clause provides for the criteria to be considered in the consideration of licences and permits.
- Clause 24. Disqualification of applicants — The disqualification grounds for applicants for licences and permits are provided for in this clause.
- Clause 25. Licensing procedure — This clause prescribes where liquor licence and permit applications are to be lodged.
- Clause 26. Notice of application — The required public notices and advertisements as well as the persons to whom notice of applications for licences are to be given by the applicants and by the municipalities or the Liquor Board are provided for.
- Clause 27. Applications lying for inspection — This clause regulates the inspection procedure for licence applications.
- Clause 28. Representations — Provision is made for the lodgement of representations regarding licence applications by interested persons and the required procedure relating thereto.
- Clause 29. Forwarding of documents — The forwarding of licence applications and related documents by the municipality to the Board is provided for.
- Clause 30. Consideration of applications — This clause provides for the consideration of applications by the Liquor Board and procedure relating thereto.
- Clause 31. Suitability of premises — This clause prevents the issuing of licences where the applicants do not have the right to use the premises for the authorised purpose.
- Clause 32. Incomplete premises — This clause prevents the issuing of licences until the premises has been completed.

- Clause 33. Education and training — This clause provides for the mandatory training of applicants or their employees by the Board.
- Clause 34. Conditional approval — This clause provides for the imposition of suspensive conditions by the Board for the issuing of licences.
- Clause 35. Issuing of licences and permits — This clause provides for the issuing of licences and permits upon approval of applications.
- Clause 36. Death or incapacity of applicant — This clause provides for the continuance of the application upon death or incapacity of the applicant prior to the final consideration of the application.

CHAPTER 6

CONDITIONS FOR LICENCES

- Clause 37. Standard licence conditions — This clause requires that liquor may only be sold for consumption on or off the licensed premises in accordance with the applicable licence category and provides for the right of retail food stores to sell table wine for consumption off the licensed premises.
- Clause 38. Deliveries — The requirements for the delivery of liquor is prescribed in this clause.
- Clause 39. Financial interest — This clause ensures that only the licensee may trade in liquor on the licensed premises in terms of the licence and changes in the financial interest in the licensed business require the approval of the Liquor Board.
- Clause 40. Management — This clause prescribes the procedure and requirements to ensure satisfactory management of licensed premises by natural persons that meet prescribed criteria.
- Clause 41. Alterations of licensed premises — Alterations to the licensed premises or the nature of the business require Liquor Board approval.
- Clause 42. Children — This clause regulates the sale or supply of liquor to persons under the age of eighteen years old.
- Clause 43. Employers and employees — The relationship between employer and employee regarding the supply of liquor to the employee is regulated in this clause.
- Clause 44. Access to licensed premises — This clause regulates the access of persons under the age of eighteen years to licensed premises.
- Clause 45. Storing of liquor — This clause regulates the storage of liquor by licensees.
- Clause 46. Place of sale — This clause prescribes the place of sale of liquor by licensees.
- Clause 47. Trading hours — This clause allows for the determination of liquor trading hours and days by by-law by duly appointed municipalities within minimum norms prescribed in the clause and for the limitation of trading hours and days of specific licensed premises by the Liquor Board.

- Clause 48. Quantity of liquor and keeping of records — This clause prescribes the records of sale of liquor to be kept by a licensee, allows for the determination of a maximum quantity of liquor that may be sold to a person by a licensee in a single day and prohibits the possession of more liquor than the prescribed quantity by an unlicensed person.

CHAPTER 7

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- Clause 49. Special events permits — The procedure regarding applications for special events permits is prescribed in this clause.
- Clause 50. Traditional African beer permits—The procedure regarding applications for traditional African beer permits is prescribed in this clause.

CHAPTER 8

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- Clause 51. Validity of licences and permits — The period of validity of licences and permits is provided for in this clause.
- Clause 52. Automatic renewal of licences — This clause provides for the automatic renewal of licences and the procedure relating thereto.
- Clause 53. Applications for renewal — This clause provides for instances where automatic renewal of licences does not occur and provides for an application procedure for renewal of the licences.

CHAPTER 9

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- Clause 54. Transfer of licences — Procedure for the transfer of licences to new licensees are provided for as well as interim appointment of the prospective holders as managers of the premises during the application process.
- Clause 55. Abandonment of premises and death or incapacity of licensee — This clause provides for measures to ensure control over licensed premises upon abandonment of premises by the licensees on the death or incapacity of licensees.

CHAPTER 10

APPEALS

- Clause 56. Appeals to the Tribunal — The procedure for appeals and reviews to the Appeal Tribunal are provided for.

CHAPTER 11

COMPLIANCE

- Clause 57. Compliance notices — This clause provides for the issuing of compliance notices to licensees by liquor licence inspectors and the process in regards thereto.
- Clause 58. Interim orders — This clause allows for procedure for the Liquor Board to provide interim orders to ensure regulatory compliance by licensees where justified complaints have been received pending consideration by the Board of final measures.
- Clause 59. Suspension, cancellation and lapsing of licences — This clause provides for the termination of licences.

CHAPTER 12

LAW ENFORCEMENT

- Clause 60. Designation and functions of designated liquor officers and inspectors — This clause provides for the appointment of designated liquor officers in the South African Police Services by the Provincial Police Commissioner and the appointment of liquor licence inspectors by the responsible Minister and their relationship with the Liquor Board.
- Clause 61. Powers of designated liquor officers and inspectors — This clause provides for the powers of the designated liquor officers and the inspectors regarding enforcement of legal provisions applicable to licensees.
- Clause 62. Powers of peace officers in general — The powers of peace officers regarding enforcement of legal provisions applicable to licensed premises are contained in this clause.
- Clause 63. Offences — This clause provides for general offences regarding the sale, supply or consumption of liquor not contained in other sections of the Bill.
- Clause 64. Offences regarding information — The offences created by this clause deal with the provision of information during applications in terms of the Bill and to law enforcement agents by licensees and their employees.
- Clause 65. Offences regarding meetings of the Board and Appeal Tribunal — The offences created by this clause relate to the orderly conduct of proceedings at the Liquor Board and at the Appeal Tribunal.
- Clause 66. Offences regarding police officers and inspectors — The offences created by this clause relate to obstruction of and interference in the execution of duties by law enforcement agents.
- Clause 67. Motor vehicles — This clause creates offences regarding the consumption of liquor in motor vehicles being driven on public roads.
- Clause 68. Service stations — This clause regulates the sale, supply or consumption of liquor on erven where service stations are located.
- Clause 69. Failure to comply with order of Board — This clause ensures the compliance with orders of the Liquor Board.

- Clause 70. Vicarious responsibility — This clause ensures that licensees remain responsible for the unlawful conduct of their employees on licensed premises.
- Clause 71. Exemptions — This clause provides for the list of categories of entities exempted from the Bill and allows for the determination of further exemptions by the Liquor Board and the procedure in connection herewith.
- Clause 72. Evidence — This clause establishes measures to simplify the submission of evidence before the Board and during legal proceedings.
- Clause 73. Health notices — This clause provides for the mandatory display of approved information regarding health aspects at points of sale or supply of liquor.
- Clause 74. Penalties — This clause determines appropriate penalties for offences created by the Bill.

CHAPTER 13

REGULATIONS, TRANSITIONAL PROVISIONS, REPEAL OF LAWS AND SHORT TITLE

- Clause 75. Regulations — This clause provides the responsible minister with the power to issue regulations relating to the Bill.
- Clause 76. Transitional provisions — This clause ensures continuity in the liquor industry from the provisions of the Liquor Act, 1989 (Act 27 of 1989).
- Clause 77. Repeal provisions — These provisions repeal the Liquor Act, 1989, (Act No 27 of 1989).
- Clause 78. Short title — This clause provides the short title of the Bill and for promulgation of the Bill.

WETSONTWERP

Om voorsiening te maak vir die lisensiëring van die kleinhandelverkope van drank; die mikrovervaardiging van drank en die vervaardiging van tradisionele Afrikabier in die provinsie Wes-Kaap; om die Wes-Kaapse Drankraad en sy komitees in te stel; om drankforums in te stel; om voorsiening te maak vir die aanstelling van aangewese drankbeamptes en inspekteurs; om voorsiening te maak vir die aanstelling van munisipaliteite as agente van die Drankraad en as bevoegde lisensieowerhede.

AANGESIEN die Wes-Kaapse Provinsiale Regering (“die Regering”) besef dat die drankhandel in die histories blanke dorpe, voorstede en sentrale sakegebiede en op plase gereguleer word deur middel van ’n aantal wetgewende stelsels wat oor die jare aangepas en hersien is om aan die politieke, maatskaplike en ekonomiese vereistes van die regering van die dag te voldoen;

EN AANGESIEN ’n raamwerk ontwerp sal word vir die voortgesette regulering van die gevestigde drankhandel, nou in ooreenstemming met die Grondwet van die Republiek van Suid-Afrika, 1996, en nasionale en provinsiale beleide, en daardeur gepoog sal word om ’n balans te handhaaf tussen die belange van die drankbedryf en gemeenskappe;

EN AANGESIEN die Regering die uiteenlopende aard van die drankbedryf in die Provinsie Wes-Kaap (“die Provinsie”) besef en die belangrikheid van sy uiteenlopende aspekte as ’n bydraer tot die ekonomie van die Provinsie en Suid-Afrika waardeer;

EN AANGESIEN die Regering poog om die maatskaplike koste van drankmisbruik vir die samelewing in die geheel te verminder;

EN AANGESIEN die Regering poog om die munisipaliteite in die Provinsie by die regulering van die drankbedryf te betrek;

WORD DAAR BEPAAL deur die Provinsiale Parlement van die Provinsie Wes-Kaap, soos volg:—

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Woordomskrywing

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
- “**aangewese drankbeampte**” ’n persoon ingevolge artikel 60(1) aangestel; 5
- “**Appèltribunaal**” ’n Appèltribunaal ingevolge artikel 14(1) ingestel;
- “**bestuurder**” ’n persoon ingevolge artikel 40(1) aangestel;
- “**bevoegde owerheid**” die Raad, of ’n munisipaliteit wat ingevolge artikel 18 as ’n bevoegde lisensieowerheid gemagtig is;
- “**datum van uitreiking**” die datum waarop ’n lisensie of permit die eerste keer 10 uitgereik is;
- “**drank**” enige vloeistof of stof wat meer as 1% alkohol per volume of massa bevat, wat tradisionele Afrikabier en tafelwyn insluit, maar uitgesonderd brandspiritus, medisyne wat onderhewig is aan registrasie ingevolge die Wet op Medisyne en Verwante Stowwe, 1965 (Wet 101 van 1965), en produkte wat nie vir 15 menslike verbruik bedoel is nie;
- “**drankforum**” ’n drankforum ingevolge artikel 18(2)(d) ingestel;
- “**Drankwet**” die nasionale Drankwet, 2003 (Wet 59 van 2003);
- “**dwelmmiddels**” ’n afhanklikheidsvormende stof, ’n gevaarlike afhanklikheidsvormende stof of ’n ongewenste afhanklikheidsvormende stof soos 20 omskryf in die Wet op Dwelmmiddels en Dwelmsmokkalary, 1992 (Wet 140 van 1992);
- “**familielid**” ’n persoon se gade, kind, ouer, broer of suster, ongeag of sodanige verhouding die gevolg is van geboorte, huwelik of aanneming;
- “**finansiële belang**” die eienaarskap van die aandele van ’n maatskappy, die lid se 25 belang in ’n beslote korporasie, ’n belang in ’n vennootskap en ten opsigte van ’n besigheid of onderneming enige belang wat die houer daarvan in staat stel om in die lotgevalle te deel, insluitende die omset van sodanige besigheid of onderneming;
- “**gelisensieerde besigheid**” die besigheid wat op die gelisensieerde perseel bedryf 30 kan word soos deur die Raad gemagtig;
- “**gelisensieerde perseel**” die perseel waarop drank ingevolge hierdie Wet mikrovervaardig, verkoop, verbruik of geberg mag word;
- “**gemeenskapspolisieringsforum**” ’n gemeenskapspolisieringsforum ingestel ingevolge artikel 19 van die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet 68 35 van 1995);
- “**geregistreerde persoon**” ’n persoon ingevolge die Drankwet as ’n vervaardiger of verspreider geregistreer;
- “**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;
- “**hierdie Wet**” die Wes-Kaapse Drankwet, 2005, en ook regulasies daarkragtens 40 uitgevaardig;
- “**Hoof Uitvoerende Beampte**” ’n persoon ingevolge artikel 16(1) aangestel;
- “**inspekteur**” ’n persoon ingevolge artikel 60(4) aangestel;
- “**kleinhandelvoedselwinkel**” die besigheid wat hoofsaaklik kruidentersware en 45 voedselware in die kleinhandel verkoop;
- “**lid**” ’n lid van die Raad;
- “**lisensie**” ’n lisensie in artikel 21 bedoel;
- “**lisensiehouer**” die persoon aan wie ’n lisensie ingevolge artikel 35 uitgereik of ingevolge artikel 54 oorgedra is;
- “**mikrovervaardig**” om drank te vervaardig op of onder die voorgeskrewe 50 drempelvolumen ingevolge artikel 4 van die Drankwet, en het mikrovervaardiger ’n ooreenstemmende betekenis;
- “**Minister**” die provinsiale Minister verantwoordelik vir ekonomiese sake in die Provinsie;
- “**motorvoertuig**” ’n voertuig wat ontwerp of aangepas is om op ’n pad aangedryf 55 of gesleep te word deur middel van brandstof, gas of elektrisiteit, insluitende ’n sleepwa of ’n landbou- of ander implement wat ontwerp of aangepas is om deur sodanige voertuig gesleep te word;
- “**munisipaliteit**” ’n munisipaliteit soos ingestel by die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet 117 van 1998), en ingevolge artikel 18 van 60 hierdie Wet aangestel is;
- “**Ondervoorsitter**” ’n persoon ingevolge artikel 3(1)(b) aangestel;

- “**permit**” die dokument deur ’n munisipaliteit uitgereik ten opsigte van ’n spesiale byeenkoms ingevolge artikel 49(1) of ten opsigte van die verkoop van tradisionele Afrikabier ingevolge artikel 50 van hierdie Wet;
- “**perseel**” ’n plek, grond, gebou, deel van ’n gebou, vaartuig, vliegtuig of voertuig;
- “**provinsiale regering**” die regering van die Wes-Kaap; 5
- “**Provinsie**” die Provinsie Wes-Kaap;
- “**Raad**” die Wes-Kaapse Drankraad ingevolge artikel 2 ingestel;
- “**spesiale byeenkoms**” ’n fondsinsamelingsbyeenkoms ten bate van ’n opvoedkundige of welsynsorganisasie, enige uitstalling, sportbyeenkoms, openbare funksie, kultuurbyeenkoms of artistieke uitvoering; 10
- “**tafelwyn**” wyn soos omskryf in artikel 1 van die Wet op Drankprodukte, 1989 (Wet 60 van 1989);
- “**tradisionele Afrikabier**” ’n gegiste vloeistof soos omskryf in item 8 van Bylae 1 van die Drankwet;
- “**uitreiking**”, met betrekking tot ’n lisensie, ook die lewering of versending van die lisensie aan die persoon aan wie dit verleen is of aan sy of haar agent; 15
- “**verkoop**” ook verskaf, verruil, te koop aanbied, vertoon met die doel om te verkoop of om ’n verkoop, verskaffing, uitruiling, aanbod of vertoning te magtig, te gelas of toe te laat;
- “**verskaf**”, met betrekking tot drank, om ’n persoon in besit of beheer daarvan te stel; 20
- “**vervaardig**” om drank te produseer wat te botteler met die bedoeling om dit te verkoop;
- “**vervaardiger**” ’n persoon wat sodanig geregistreer is in terme van die Drankwet;
- “**Voorsitter**” die voorsitter van die Raad ingevolge artikel 3(1)(a) aangestel of ’n persoon wat tydelik as Voorsitter waarneem in sy of haar afwesigheid; en 25
- “**voorskryf**” om by regulasie ingevolge hierdie Wet voor te skryf.

HOOFSTUK 2 WES-KAAPSE DRANKRAAD EN APPËLTRIBUNAAL

Instelling van Wes-Kaapse Drankraad 30

2. (1) Die Drankraad wat ingevolge artikel 5 van die Drankwet, 1989 (Wet 27 van 1989), soos gewysig, vir die Provinsie ingestel is, gaan voort om te bestaan en te funksioneer onder die naam Wes-Kaapse Drankraad in ooreenstemming met die bepalings van hierdie Wet, asof dit ingevolge hierdie Wet ingestel is.

(2) Die Raad is ’n onafhanklike regspersoon en is net aan die Grondwet en die Reg onderhewig. 35

(3) Die Raad moet sy funksies ooreenkomstig die bepalings van hierdie Wet uitoefen, onpartydig en sonder vrees, begunstiging of vooroordeel.

Samestelling van Drankraad

3. Die Raad moet deur die Minister aangestel word en bestaan uit— 40
- (a) een lid met regs kwalifikasies gelykwaardig aan dit wat vir toelating as ’n prokureur of advokaat van die Hooggeregshof van Suid-Afrika vereis word en met ondervinding van die regspleging, en wat deur die Minister as Voorsitter aangestel word;
- (b) hoogstens drie (3) lede met die kwalifikasies in (a) vermeld, wat deur die Minister as Ondervoorsitters aangestel word; 45
- (c) ’n Hoof Uitvoerende Beampte ingevolge artikel 16(1) aangestel;
- (d) een lid met kwalifikasies gelyk aan dit wat vir registrasie as ’n stads-en-streekbeplanner vereis word, deur die Minister aangestel na oorleg met die Minister verantwoordelik vir ontwikkelingsbeplanning in die Provinsie; 50
- (e) een lid wat ’n polisiebeampte met ’n rang van Superintendent of hoër is, deur die Minister aangestel na oorleg met die provinsiale Kommissaris van die Suid-Afrikaanse Polisie en die Minister verantwoordelik vir gemeenskapsveiligheid in die Provinsie;
- (f) twee lede wat burgers van die Provinsie is; en 55

- (g) hoogstens ses (6) bykomende lede met gespesialiseerde kennis of kwalifikasies deur die Minister aangestel na oorleg met die Voorsitter om as komiteelede te dien.

Kriteria vir aanstelling

4. Geen persoon mag aangestel word om as 'n lid van die Raad te dien nie wat— 5
- (a) in die voorafgaande tien (10) jaar skuldig bevind is aan 'n misdryf en gevonnissen is tot gevangenisstraf sonder die keuse van 'n boete, tensy die Minister van mening is dat die misdryf van so 'n aard was dat dit nie impliseer dat die persoon ongeskik is om die amp te beklee nie;
- (b) in die voorafgaande tien (10) jaar skuldig bevind is aan 'n misdryf ingevolge die Drankwet, 1989 (Wet 27 van 1989), tensy die Minister van mening is dat die misdryf van so 'n aard was dat dit nie impliseer dat die persoon ongeskik is om die amp te beklee nie; 10
- (c) 'n ongerehabiliteerde insolvent is;
- (d) jonger as een en twintig (21) jaar is; 15
- (e) 'n regstreekse belang in die drankhandel het; of
- (f) die familielid is van 'n persoon met 'n regstreekse belang in die drankhandel, tensy die Minister van mening is dat die belang van die familielid in die drankhandel nie impliseer dat die persoon ongeskik is om die amp te beklee nie. 20

Ampstermyn

5. (1) Met uitsondering van die Hoof Uitvoerende Beampte word lede aangestel vir 'n termyn van hoogstens vyf (5) jaar, en hulle kan by verstryking van hulle ampstermyn heraan gestel word vir hoogstens een (1) verdere termyn.
- (2) 'n Vakature in die Raad kan gevul word deur die aanstelling van nog 'n lid deur die Minister. 25

Beëindiging van lidmaatskap

6. Die Minister kan die lidmaatskap van 'n lid beëindig indien daardie lid— 30
- (a) van minstens drie (3) opeenvolgende vergaderings van die Raad afwesig was sonder opgaaf van goeie redes;
- (b) ingevolge artikel 24 gediskwalifiseer word;
- (c) sy of haar bedanking aan die Minister voorlê; of
- (d) nie meer in die Provinsie woon nie.

Bevoegdhede en funksies van die Raad

7. (1) Die Raad kan enige van die volgende aangeleenthede oorweeg: 35
- (a) aansoeke ingevolge hierdie Wet;
- (b) versoë ten gunste van of teen die verlening van aansoeke;
- (c) verslae aan hom voorgelê deur drankbeamptes, inspekteurs, drankforums of munisipale beamptes;
- (d) klagtes by die Raad ingedien oor die gedrag van 'n gelisensieerde besigheid; 40
- (e) versoë deur 'n lisensiehouer of ander belanghebbende persoon oor die herroeping van die opskorting van die lisensie of die verwydering of wysiging van enige voorwaardes wat vir 'n lisensie gestel is;
- (f) appëlle teen besluite deur munisipaliteite om permitte toe te staan of te weier; 45
- (g) enige ander aangeleentheid wat deur die Hoof Uitvoerende Beampte na die Raad verwys is of wat die Raad ingevolge hierdie Wet kan of moet oorweeg; of
- (h) enige ander aangeleentheid wat die Minister aan die Raad opdra.
- (2) Uitgesonderd ten opsigte van (a), (b), (e), (f) en (h) het die Voorsitter 'n diskresie om te weier om 'n vergadering van die Raad te belê as so 'n vergadering na sy of haar mening nie geregverdig word deur die inligting wat aan hom of haar voorgelê is nie.
- (3) Die Raad kan, na oorweging deur hom van enige aangeleentheid beoog in—

- (a) (1)(a) en (b), die aansoek weier of toestaan behoudens sodanige voorwaardes as wat hy geskik ag;
- (b) (1)(c), (d) of (g)—
- (i) die klag verwerp;
 - (ii) die lisensie intrek;
 - (iii) die lisensie opskort as 'n regstellende of strafmaatreël;
 - (iv) sodanige voorwaardes vir die lisensie stel as wat hy geskik ag;
 - (v) die lisensiehouer gelas om sodanige boete te betaal as wat hy geskik ag; of
 - (vi) sodanige ander stappe doen as wat hy geskik ag;
- (c) (1)(e), die verhoë van die hand wys of die opskorting of voorwaardes herroep; of
- (d) (1)(f), die appèl toestaan of verwerp.
- (4) Die Raad kan te eniger tyd op aansoek deur die lisensiehouer enige voorwaarde wat die Raad gestel het, opskort, intrek of wysig.
- (5) Die lede kan enige persoon wat hulle as geskik beskou om die Raad by te staan by die oorweging van die aangeleentheid onder oorweging, in die Raad koöpteer. 'n Persoon aldus gekoöpteer het nie stemreg nie.

Vergaderings en besluite van die Raad

8. (1) Die Voorsitter moet die tyd en plek vir die hou van vergaderings bepaal en kan vergaderings verdaag en herbelê op sodanige tye en plekke as wat hy of sy besluit.
- (2) Die kworum van die Raad is drie (3) lede, insluitende die Voorsitter of die Ondervoorsitter of albei.
- (3) 'n Ondervoorsitter moet voorsit op vergaderings wanneer die Voorsitter afwesig is of nie kan voorsit nie.
- (4) As die Voorsitter en die Ondervoorsitters afwesig is, moet die Minister 'n ander lid as waarnemende Voorsitter aanstel.
- (5) Die besluit van die meerderheid van die lede wat teenwoordig is en stem, maak 'n besluit van die Raad uit, en in die geval van 'n staking van stemme oor enige aangeleentheid het die Voorsitter 'n beslissende stem.

Onttrekking van lede met botsende belang

9. (1) 'n Lid van die Raad mag geen vergadering of verhoor van die Raad bywoon of daarop stem of op enige wyse aan die verrigtinge daarvan deelneem nie indien, met betrekking tot enige aangeleentheid voor die Raad—
- (a) hy of sy of sy of haar familielid, vennoot of besigheidsassosiaat 'n direkteur, lid of vennoot is van, of 'n finansiële belang of ander belange het in, die besigheid van die aansoeker vir 'n lisensie, sertifisering of enige ander reg of voorreg wat die Raad staan te verleen; of
 - (b) hy of sy enige belang het wat hom of haar verhinder om sy of haar funksies as 'n lid van die Raad op 'n billike, onbevooroordeelde en behoorlike wyse te verrig.
- (2) Indien dit in enige stadium in die loop van enige verrigtinge voor die Raad blyk dat 'n lid enige belang in subartikel (1) beoog, het of kan hê—
- (a) moet daardie lid die aard van sy of haar belang onverwyld en volledig openbaar en die vergadering of verhoor verlaat ten einde die oorblywende lede in staat te stel om die aangeleentheid te bespreek en te bepaal of daardie lid uitgesluit moet word van deelname aan die verrigtinge op sodanige vergadering of verhoor as gevolg van 'n botsing van belange; en
 - (b) moet sodanige openbaring en die besluit geneem deur die oorblywende lede rakende sodanige bepaling, in die notule van die onderhawige verrigtinge aangeteken word.

Befondsing en finansiële bestuur van die Raad

10. (1) Die fondse van die Raad bestaan uit—
- (a) geld wat deur die provinsiale regering bewillig word; en
 - (b) geld wat aan die Raad toeval uit enige ander bron wat deur die Minister goedgekeur is na oorleg met die Minister verantwoordelik vir finansies in die Provinsie, insluitende gelde wat ingevolge hierdie Wet toeval.

- (2) Die Hoof Uitvoerende Beampte moet volledige en behoorlike rekeningboeke en al die nodige rekords in verband daarmee laat hou.
- (3) Die Hoof Uitvoerende Beampte moet verseker dat die Raad se jaarlikse begrotings, korporatiewe planne, jaarverslae en geouditeerde finansiële state opgestel en voorgelê word ooreenkomstig die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999). 5
- (4) Die Raad moet in elke finansiële jaar op sodanige tyd as wat die Minister bepaal, die volgende vir goedkeuring voorlê—
- (a) 'n besigheidsplan vir die Raad, met meetbare doelwitte; en
- (b) 'n staat van die Raad se geprojekteerde inkomste en uitgawes ten opsigte van die volgende finansiële jaar. 10
- (5) In enige finansiële jaar kan die Raad aanvullende state van die Raad se geprojekteerde inkomste en uitgawes vir daardie finansiële jaar aan die Minister voorlê vir goedkeuring.
- (6) Die Raad mag geen finansiële verbintenis buite sy goedgekeurde begroting en sy opgelope reserwes aangaan nie. 15

Oudit en jaarverslae

11. (1) Die Ouditeur-generaal moet die finansiële state van die Raad oudit.
- (2) Die Raad moet 'n verslag oor sy aktiwiteite gedurende die vorige finansiële jaar aan die Minister voorlê vir tertafellegging in die Provinsiale Parlement binne drie maande na die einde van daardie finansiële jaar. 20
- (3) Die verslag moet—
- (a) 'n balansstaat en 'n staat van inkomste en uitgawes wat deur die Ouditeur-generaal gesertifiseer is, insluit;
- (b) die meetbare doelwitte vermeld, soos uiteengesit in sy besigheidsplan in artikel 10(4)(a) bedoel gedurende die betrokke finansiële jaar; en 25
- (c) tersaaklike prestasie-inligting bevat rakende die ekonomiese, doeltreffende en doelmatige aanwending van hulpbronne en spesifiek 'n vergelyking tussen beplande en werklike prestasieaanwysers soos in daardie besigheidsplan uiteengesit. 30

Verrigtinge van die Drankraad

12. (1) Die Voorsitter moet, behoudens die bepalings van hierdie Wet en die regulasies hierby, die prosedure bepaal wat op vergaderings gevolg moet word.
- (2) Die Voorsitter moet enige persoon wat geraak kan word deur of 'n belang het by die oorweging van 'n bepaalde aangeleentheid, op die voorgeskrewe wyse in kennis stel om op die vergadering teenwoordig te wees. 35
- (3) 'n Persoon wat in kennis gestel is, moet persoonlik verskyn op die plek en tyd in die kennisgewing bepaal of moet daar verteenwoordig word deur 'n prokureur of advokaat wat namens hom of haar verskyn.
- (4) Die Voorsitter kan enige persoon gelas om teenwoordig te wees op 'n vergadering van die Raad om getuienis te lewer of om 'n dokument of enigiets wat in sy of haar besit of bewaring of onder sy of haar beheer is, voor te lê. 40
- (5) Indien die Voorsitter oortuig is dat 'n persoon behoorlik in kennis gestel is om op 'n vergadering van die Raad teenwoordig te wees maar nie daar teenwoordig is nie, kan die Voorsitter gelas dat die vergadering in die afwesigheid van daardie persoon voortgaan. 45
- (6) Die Voorsitter kan enige persoon teenwoordig op 'n vergadering van die Raad gelas om getuienis te lewer of om 'n dokument of enigiets wat in sy of haar besit of bewaring of onder sy of haar beheer is, voor te lê en deur die Raad ondervra te word.
- (7) Die Raad kan enige dokument of artikel wat aan hom voorgelê is, inspekteer en behou vir sodanige tydperk as wat hy nodig ag. 50
- (8) 'n Persoon wat getuienis lewer op 'n vergadering van die Raad, moet dit onder eed of plegtige verklaring doen.
- (9) By die oorweging van 'n aangeleentheid kan die Raad, uit eie beweging, kennis neem van enige feit of omstandigheid wat na sy mening die besluit van die Raad kan beïnvloed. Indien enige party uitstel versoek om hom in staat te stel om beredenering met betrekking tot die aangeleentheid voor te berei, kan die Voorsitter die aangeleentheid vir dié doel uitstel. 55

(10) Alle vergaderings van die Raad is oop vir die publiek, behalwe dat die Voorsitter kan gelas dat enige persoon wie se teenwoordigheid op die vergadering nie wenslik is nie, nie teenwoordig mag wees nie of die vergadering moet verlaat.

(11) Die beraadslagings en stemming van die Raad is nie oop vir die publiek nie.

Komitees van die Raad

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13. (1) Die Voorsitter kan uit die bykomende lede in artikel 3(g) bedoel, een of meer komitees aanstel en aan die komitees sodanige funksies van die Raad opdra as wat hy of sy nodig ag.

(2) Elke komitee moet bestaan uit minstens drie (3) lede van die Raad, en een van hulle moet die Voorsitter of 'n Ondervoorsitter wees.

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(3) By die aanstelling van 'n komitee moet die Voorsitter behoorlik ag slaan op die kennis, kundigheid en ervaring wat vereis word deur die aangeleentheid wat oorweeg moet word.

(4) Die komitees van die Raad word beheer deur dieselfde prosedurereëls as wat op die Raad van toepassing is.

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(5) 'n Komitee kan 'n aangeleentheid na die Raad verwys vir 'n besluit.

(6) 'n Besluit wat deur 'n komitee geneem is, word geag 'n besluit van die Raad te wees.

Die Appèltribunaal

14. (1) Die Minister moet, vir sodanige termyn as wat die Minister kan bepaal, 'n afgetrede Regter van die Hooggeregshof van Suid-Afrika, 'n afgetrede senior landdros van 'n streekhof of 'n senior regspraktisyn aanstel as 'n Appèltribunaal om te beslis oor appèlle of aansoeke vir die hersiening van die besluite van die Raad ingevolge hierdie Wet.

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(2) Die Minister moet die prosedure voorskryf wat deur die Appèltribunaal gevolg moet word.

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(3) 'n Besluit van die Appèltribunaal is finaal en is nie aan verdere appèl onderhewig nie.

(4) Indien 'n persoon wat behoorlik in kennis gestel is om 'n vergadering by te woon, versuim om die vergadering by te woon of die vergadering verlaat sonder toestemming van die Voorsitter, kan die vergadering voortgesit word in afwesigheid van sodanige persoon, of kan die Voorsitter sodanige stappe doen as wat hy of sy in die omstandighede billik en regverdig ag.

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HOOFSTUK 3 BESOLDIGING EN ADMINISTRASIE VAN DRANKRAAD EN APPÈLTRIBUNAAL

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Besoldiging van lede, Appèltribunaal en administratiewe personeel

15. Lede van die Raad en die Appèltribunaal kan sodanige besoldiging ontvang as wat die Minister na oorleg met die Minister verantwoordelik vir finansies bepaal.

Administrasie van Raad en Appèltribunaal

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16. (1) Die Minister moet 'n Hoof Uitvoerende Beampte aanstel, wat verantwoordelik sal wees vir die funksionering van die administrasie van die Raad en die Appèltribunaal.

(2) Die Hoof Uitvoerende Beampte is verantwoordingspligtig teenoor die Raad.

(3) Die Hoof Uitvoerende Beampte moet, behoudens subartikel (4), personeellede van die Raad in diens neem om die administratiewe, sekretariële en ander werk verbonde aan die uitvoering van die funksies van die Raad en die Appèltribunaal te verrig.

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(4) Die Raad in oorleg met die Minister en die Minister verantwoordelik vir finansies in die Provinsie—

(a) moet 'n menslikehulpbronbeleid vir die Raad en sy personeel bepaal; en

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(b) moet die besoldiging en diensvoorwaardes van sy personeel bepaal.

- (5) Die Raad moet, na oorleg met die Hoof Uitvoerende Beampte, 'n gedragskode, van toepassing op alle personeellede van die Raad en regverdigbaar vir doeleindes van dissiplinêre verhore, bepaal om die volgende te verseker—
- (a) voldoening aan toepaslike wetgewing;
 - (b) die doeltreffende, doelmatige en ekonomiese gebruik van die Raad se fondse en hulpbronne; 5
 - (c) die bevordering en handhawing van 'n hoë etiese standaard;
 - (d) die voorkoming van belangebotsings;
 - (e) die beskerming van vertroulike inligting wat deur die Raad gehou word; en
 - (f) professionele, eerlike, onpartydige, regverdige, etiese en billike diens. 10
- (6) Die Raad kan gebruik maak van die dienste van persone wat uit die staatsdiens gesekondeer of oorgeplaas is in ooreenstemming met die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994).
- (7) Die Hoof Uitvoerende Beampte kan, na oorleg met die Minister, 'n fonds instel en administreer vir die doel van die bestryding van die negatiewe maatskaplike gevolge van die misbruik van drank en die opvoeding van persone betrokke by die verkoop en verskaffing van drank en die algemene publiek in die verantwoordelike verkoop, verskaffing en verbruik van drank. 15
- (8) Die Hoof Uitvoerende Beampte het die bevoegdheid om betrokke te raak by sodanige finansiële transaksies as wat nodig is vir die bedryf van 'n openbare entiteit, insluitende maar nie beperk nie tot die bevoegdheid om vennootskappe met ander staatsorgane te sluit en om die dienste van kontrakteurs en diensverskaffers te verkry. 20
- (9) Die Hoof Uitvoerende Beampte kan meubels en toerusting verkry vir gebruik deur die Raad en die administratiewe personeel.
- (10) Die Raad kan, met die instemming van die Minister— 25
- (a) huurooreenkomste aangaan;
 - (b) sy roerende bates beswaar; en
 - (c) ooreenkomste aangaan vir die verskaffing van dienste rakende menslike-hulpbronbestuur en finansiële bestuur.
- (11) Die Hoof Uitvoerende Beampte moet die verantwoordelike verkoop, verskaffing en verbruik van drank bevorder en die negatiewe maatskaplike gevolge van drankmisbruik bekamp en kan sodanige stappe doen as wat hy of sy goedvind. 30
- (12) Die Hoof Uitvoerende Beampte kan enige aangeleentheid wat ingevolge artikel 7 oorweeg moet word, na 'n vergadering van die Raad verwys.
- (13) Die Hoof Uitvoerende Beampte kan 'n sekretaris van die Raad aanstel, wat verantwoordelik sal wees vir— 35
- (a) die opstel van sakelyste;
 - (b) die opneem van verrigtinge;
 - (c) die hou van notule van die Raad en die Appèltribunaal; en
 - (d) sodanige ander pligte as wat die Hoof Uitvoerende Beampte bepaal. 40
- (14) Notules van verrigtinge van die Raad en die Appèltribunaal moet gehou word en moet by die kantore van die Raad bewaar word en is beskikbaar vir enige persoon vir die doel van insae of kopiëring, behoudens die betaling van die voorgeskrewe gelde en behoudens die bepalings van die Wet op Bevordering van Toegang tot Inligting, 2000 (Wet 2 van 2000). 45
- (15) Die Voorsitter kan, behoudens die bepalings van die Wet op Bevordering van Toegang tot Inligting, 2000, en by aanvoering van goeie redes, gelas dat 'n rekord van die verrigtinge van die Raad in geheel of 'n gedeelte daarvan nie vir die publiek beskikbaar mag wees nie, in welke geval sodanige rekord of gedeelte daarvan nie sonder die goedkeuring vooraf van die Voorsitter en by betaling van die voorgeskrewe gelde deur enige persoon ondersoek of gekopieer mag word nie. 50

Inkomste wat aan die Provinsiale Inkomstefonds, die Drankraad of munisipaliteite toeval

17. (1) Die gelde, strawwe en boetes in artikels 7(3)(b)(v), 35, 52(2) en (4), 53(1), 54(1) and (8), en 69(2)(b) bedoel, moet in die Provinsiale Inkomstefonds gestort word. 55
- (2) Die gelde in artikels 16(14) en (15), 27(1) en (2), 49, 50(4) en (7) bedoel moet aan die Drankraad of munisipaliteit, na gelang van die geval, betaal word.
- (3) Geen bedrag in hierdie artikel beoog, is terugbetaalbaar nie.

HOOFSTUK 4 ROL VAN MUNISIPALITEITE

Munisipaliteite as agente van die Raad en as bevoegde lisensieowerhede

18. (1) Die Minister kan, na oorleg met die Minister verantwoordelik vir plaaslike regering in die Provinsie, munisipaliteite in die Provinsie aanstel om as agente van die Raad op te tree vir die volgende doeleindes— 5

- (a) om die indiening van aansoeke wat ingevolge die bepalings van hierdie Wet gedoen word ten opsigte van persele geleë binne die munisipale gebied, te aanvaar;
- (b) om belanghebbende partye van die aansoeke in kennis te stel, soos voorgeskryf; 10
- (c) om sodanige aansoeke te hanteer soos in die regulasies hierby voorgeskryf;
- (d) om besware of verslae ingedien ten opsigte van aansoeke, verhoë ter stawing van aansoeke en enige ander dokumente wat by hom ingedien word, te ontvang; 15
- (e) om aansoeke tesame met alle dokumente wat in verband daarmee ontvang is, op die voorgeskrewe wyse aan die Raad te stuur; en
- (f) om klagtes wat van die publiek ontvang is ten opsigte van die gedrag van gelisensieerde persele wat oorweging verdien, te ontvang en aan die Raad te stuur, met of sonder kommentaar. 20

(2) Die Minister kan, na oorleg met die Minister verantwoordelik vir plaaslike regering in die Provinsie, munisipaliteite in die Provinsie aanstel om as bevoegde lisensieowerhede op te tree vir die volgende doeleindes—

- (a) om permitte vir die verkoop van drank op spesiale byeenkomste wat binne die munisipale gebied gaan plaasvind, te oorweeg en toe te staan of te weier; 25
- (b) om permitte vir die kleinhandelverkoop van tradisionele Afrikabier binne die munisipale gebied te oorweeg en toe te staan of te weier;
- (c) om by verordening die dae waarop en die ure waartydens drank in die munisipale gebied verkoop mag word ten opsigte van elke soort lisensie te bepaal; 30
- (d) om 'n drankforum in te stel; en
- (e) om sodanige openbare gebiede van die munisipaliteit by kennisgewing te proklameer waar geen persoon drank mag besit nie of waarin drank nie ingebring mag word nie behalwe vir lewering aan gelisensieerde persele.

(3) Die Minister kan om goeie redes te eniger tyd na oorleg met die Minister verantwoordelik vir plaaslike regering in die Provinsie 'n bevoegdheid wat ingevolge subartikels (1) en (2) aan 'n munisipaliteit verleen is, in geheel of gedeeltelik intrek. 35

Drankforums

19. (1) Waar 'n drankforum ingevolge artikel 18(2)(d) deur 'n munisipaliteit ingestel is, moet sodanige forum uit die volgende bestaan— 40

- (a) 'n geskikte beampte van die munisipaliteit om as voorsitter op te tree;
- (b) die aangewese drankbeampte van die Suid-Afrikaanse Polisie diens;
- (c) 'n verteenwoordiger van die plaaslike gemeenskapspolisieforum, indien so 'n forum ingestel is en funksioneer;
- (d) 'n verteenwoordiger van 'n organisasie(s) wat by 'n nasionale drankhandelaarsvereniging geaffilieer is of 'n streekvereniging wat by 'n nasionale vereniging geaffilieer is, insluitende maar nie beperk nie tot die plaaslike kamers van koophandel wat plaaslike gelisensieerde drankhandelaars verteenwoordig; en 45
- (e) verteenwoordigers van die plaaslike belastingbetalers- en inwonersverenigings binne die betrokke munisipale gebied en enige ander plaaslike gemeenskapsgebaseerde belangegroep wat deur die munisipaliteit bepaal word. 50

(2) Waar 'n drankforum ingestel is, kan sodanige forum op versoek van die munisipaliteit as bemiddelaar optree tussen die aansoeker en beswaarmakers teen die aansoek. 55

(3) Die drankforum kan, binne 'n voorgeskrewe tydperk na die laaste dag vir die indiening van besware of binne sodanige verlengde tydperk as wat die Voorsitter op aansoek toelaat, 'n verslag indien waarin die resultate uiteengesit word wat deur

sodanige bemiddeling behaal is en sy of haar aanbevelings vir die toestaan of weiering van die aansoek.

(4) Waar daar as gevolg van die bemiddeling van die drankforum 'n ooreenkoms bereik is tussen die aansoeker en een of meer beswaarmakers, moet die drankforum die oorspronklike van sodanige ooreenkoms by die Raad indien binne die tydperk in subartikel (3) bedoel. 5

(5) Die Raad moet by die oorweging van 'n aansoek ag slaan op sodanige verslag, aanbeveling of ooreenkoms, maar is nie gebind om uitvoering daaraan te gee nie.

HOOFSTUK 5 LISENSIËRING 10

Lisensies en permitte

20. (1) 'n Persoon mag nie drank mikrovervaardig of verkoop nie tensy hy of sy gemagtig is om dit te doen ingevolge 'n lisensie of permit wat ingevolge hierdie Wet uitgereik is.

(2) 'n Persoon wat gemagtig is om drank te mikrovervaardig of te verkoop, moet dit in ooreenstemming met die voorwaardes van sodanige lisensie of permit doen. 15

(3) 'n Persoon wat, sonder vrystelling ingevolge artikel 71(2), drank mikrovervaardig of verkoop in stryd met subartikels (1) en (2), begaan 'n misdryf.

Kategorieë lisensies

21. Die Raad kan die volgende lisensies verleen— 20

- (a) 'n Lisensie vir die mikrovervaardiging en verkoop van drank vir verbruik sowel op as buite die perseel waar die drank verkoop word;
- (b) 'n lisensie vir die verkoop en verbruik van drank op die perseel waar die drank verkoop word;
- (c) 'n lisensie vir die verkoop van drank vir verbruik elders as op die perseel waar die drank verkoop word; 25
- (d) 'n lisensie vir die verkoop van drank vir verbruik sowel op as buite die perseel waar die drank verkoop word; en
- (e) 'n lisensie vir die verkoop van drank vir verbruik op die perseel waar die drank verkoop word op spesiale byeenkomste. 30

Soorte permitte

22. 'n Munisipaliteit wat ingevolge artikel 18 aangestel is, kan die volgende permitte verleen—

- (a) 'n Permit vir die verkoop van tradisionele Afrikabier vir verbruik sowel op as buite die perseel waar die drank verkoop word; en 35
- (b) 'n permit vir die verkoop van drank vir verbruik op die perseel waar die drank verkoop word op 'n spesiale byeenkoms.

Kriteria vir die verlening van lisensies

23. (1) Die Raad mag nie 'n lisensie verleen nie en 'n munisipaliteit mag nie 'n permit vir die verkoop van tradisionele Afrikabier verleen nie tensy hy volgens oorwig van waarskynlikheid oortuig is dat— 40

- (a) die verlening daarvan in die openbare belang sal wees;
- (b) die aansoeker van goeie karakter is en nie ingevolge artikel 24 gediskwalifiseer is om 'n lisensie of permit te hou nie;
- (c) die perseel waarop die verkoop of verbruik van drank sal plaasvind, geskik is of by voltooiing geskik sal wees vir gebruik deur die aansoeker vir die doel van die lisensie; 45
- (d) die verlening van die aansoek nie die inwoners van 'n woongebied, die leerders van 'n skool of die gemeentede van 'n godsdiensinstelling geleë in die nabyheid van die voorgestelde perseel sal benadeel nie. 50

(2) Die munisipaliteit mag nie 'n lisensie vir spesiale byeenkomste verleen nie tensy hy volgens oorwig van waarskynlikheid oortuig is dat—

- (a) die verlening daarvan in die openbare belang sal wees;

- (b) die perseel waarop die verkoop of verbruik van drank sal plaasvind, geskik is of by voltooiing geskik sal wees vir gebruik deur die aansoeker vir die doel van die lisensie; en
- (c) die toestaan van die aansoek nie die inwoners van 'n woongebied, die leerders van 'n skool of die gemeentelike van 'n godsdienstinstelling geleë in die nabyheid van die voorgestelde perseel sal benadeel nie. 5

Kwalifikasies van aansoekers

24. (1) 'n Dranklisensie of permit vir die verkoop van tradisionele Afrikabier mag nie verleen of oorgedra word nie aan 'n aansoeker wat gediskwalifiseer is om 'n lisensie of permit te hou, en 'n lisensie of permit wat gehou word deur 'n persoon wat gediskwalifiseer geword het, mag nie hernu word nie. 10

(2) Die volgende persone is gediskwalifiseer om dranklisensies te hou—

- (a) 'n persoon wat binne sestig (60) maande voor die indiening van die aansoek gevonnissen is tot gevangenisstraf sonder die keuse van 'n boete;
- (b) 'n persoon wat binne sestig (60) maande voor die indiening van die aansoek ongeskik verklaar is vir die hou van 'n registrasie deur die Nasionale Drankowerheid of 'n lisensie deur enige provinsiale drankraad; 15
- (c) 'n persoon wat 'n ongerehabiliteerde insolvent is;
- (d) 'n persoon wat 'n minderjarige is op die datum waarop die aansoek oorweeg word; 20
- (e) 'n persoon wat die houer was van 'n lisensie wat binne 'n tydperk van twaalf (12) maande voor die indiening van die aansoek ingetrek is ingevolge die bepalings van hierdie Wet of 'n wet wat dranklisensies reguleer in enige ander provinsie; en
- (f) 'n persoon wat die gade is van 'n persoon in (a), (b) en (e) beskryf. 25

(3) Indien 'n persoon ingevolge subartikel (2)(a) tot (e) gediskwalifiseer is, is enige maatskappy of beslote korporasie waarin hy of sy aandeel of 'n ledebelang het, enige trust waarvan hy of sy 'n trustee of bevoordeelde is en enige vennootskap waarvan hy of sy 'n vennoot is, insgelyks gediskwalifiseer.

(4) Die Raad kan by aanvoering van gegronde redes bepaal dat 'n persoon wat ingevolge subartikel (2)(a) en (b) gediskwalifiseer is, geag word gekwalifiseer te wees vir die doel van 'n bepaalde aansoek of lisensie. 30

Lisensieringsprosedure

25. (1) 'n Persoon kan aansoek doen vir 'n lisensie in artikel 21 bedoel of vir 'n permit ingevolge artikel 22. 35

(2) 'n Aansoek vir 'n lisensie moet in die voorgeskrewe vorm gedoen word en 'n aansoek vir 'n permit moet gedoen word in ooreenstemming met die verordeninge van die munisipaliteit of, by gebrek aan sodanige verordeninge, die bepalings van hierdie Wet en die regulasies hierby.

(3) 'n Aansoek ingevolge subartikel (2) moet ingedien word by die munisipaliteit waarin die perseel waar drank verkoop gaan word, geleë is. 40

(4) Indien die munisipaliteit waarin sodanige perseel geleë is, nie ingevolge artikel 18(1) as 'n agent van die Raad aangestel is nie, moet die aansoek ingevolge subartikel (2) by die kantore van die Raad ingedien word.

(5) Indien die munisipaliteit waarin sodanige perseel geleë gaan wees, nie ingevolge artikel 18(2) as 'n bevoegde owerheid aangestel is nie, moet 'n aansoek vir 'n permit ingevolge subartikel (2) en versoë ingevolge artikel 28 by die kantore van die Raad ingedien word. 45

(6) Bewys van betaling van die voorgeskrewe aansoekgelde moet 'n aansoek ingevolge subartikel (2) ten tyde van die indiening daarvan vergesel. 50

Kennis van aansoek

26. (1) 'n Aansoeker vir 'n lisensie moet, in die voorgeskrewe vorm en op die datum van indiening, kennisgewings in die drie (3) amptelike tale van die Provinsie publiseer in die *Provinsiale Koerant* en ten minste een (1) koerant wat sirkuleer in die munisipale gebied waar die gelisensieerde perseel geleë sal wees. 55

(2) Die aansoeker moet 'n kennisgewing, in die voorgeskrewe vorm en grootte en in die drie (3) amptelike tale van die Provinsie, op 'n opvallende plek op die voorgestelde

perseel vertoon sodat dit sigbaar is vir verbygangers: Met dien verstande dat die Raad die nievoldoening aan hierdie bepaling kan kondoneer by aanvoering van gegronde redes.

(3) 'n Kennisgewing ingevolge subartikel (2) moet vir die voorgeskrewe tydperk vanaf die datum van indiening van die aansoek vertoon word. 5

(4) Indien die perseel in 'n woongebied geleë is, moet die aansoeker binne die voorgeskrewe tyd na die datum van indiening van die aansoek 'n kennisgewing van die aansoek in die voorgeskrewe vorm beteken aan 'n lid van die huishouding bo die ouderdom van sestien (16) jaar van elk van die huishoudings wat wonings op aangrensende eiendomme beset. 10

(5) Die aansoeker moet binne die voorgeskrewe tydperk aan die munisipaliteit of die Raad bewys verskaf dat die bepalings van subartikels (1), (2) en (4) nagekom is.

(6) Die munisipaliteit of die Raad, na gelang van die geval, moet binne die voorgeskrewe tyd vanaf die datum van indiening van 'n aansoek, kennis van die aansoek in die voorgeskrewe vorm aan elk van die volgende beteken— 15

- (a) die aangewese drankbeampte in wie se regsgebied die gelisensieerde perseel geleë sal wees;
- (b) die gemeenskapspolisieringsforum, as daar een is, van die gebied waarin die perseel geleë sal wees;
- (c) die drankforum, as daar een is, ingestel deur die munisipaliteit in die gebied 20 waarin die gelisensieerde perseel geleë sal wees;
- (d) enige ander persoon of instelling wat na sy oordeel geraak kan word deur of 'n belang het by die toestaan of weiering van die aansoek.

Aansoeke ter insae

27. (1) 'n Aansoek en enige dokument wat in verband daarmee ingedien is, moet by 25 die munisipale kantore ter insae lê vanaf die datum waarop sodanige aansoek of dokument ingedien is totdat dit na die Raad deurgestuurd word, en enige persoon moet toegelaat word om insae daarin te hê en dit te kopieer teen betaling van die voorgeskrewe gelde.

(2) Waar 'n aansoek by die Raad ingedien is, moet die aansoek en enige dokumente 30 wat in verband daarmee ingedien is, insgelyks beskikbaar wees vir insae en kopiëring teen betaling van die voorgeskrewe gelde by die kantore van die Raad vanaf die datum van indiening tot die datum waarop die aansoek deur die Raad oorweeg word.

Vertoë

28. (1) 'n Persoon wat 'n belang het by die toestaan of weiering van 'n aansoek, kan 35 binne die voorgeskrewe tydperk versoë rig vir of teen sodanige toestaan of weiering van daardie aansoek.

(2) 'n Afskrif van die versoë moet by die munisipaliteit ingedien word en moet deur die persoon wat 'n belang by die toestaan of weiering van die aansoek het, beteken word aan die aansoeker of sy of haar verteenwoordiger en die aangewese drankbeampte. 40

(3) Bewys van sodanige betekening moet saam met die versoë ingedien word.

(4) 'n Persoon wat versoë rig, moet die volgende uiteensit—

- (a) sy of haar volle naam en adres;
- (b) sy of haar identiteitsnommer of, in die geval van 'n maatskappy of beslote korporasie, sy registrasienommer; 45
- (c) indien van toepassing, die naam en adres van sy of haar verteenwoordiger;
- (d) die aard van sy of haar belang by die toestaan of weiering van die aansoek; en
- (e) omvattende redes vir die beswaar of ondersteuning.

(5) Die aansoeker kan binne die voorgeskrewe tyd 'n reaksie op versoë teen die aansoek by die munisipaliteit indien. 50

Aanstuur van dokumente

29. Die munisipaliteit moet binne die voorgeskrewe tydperk die volgende aan die Raad stuur—

- (a) die oorspronklike aansoek en alle dokumente wat daarmee saam ingedien is;

- (b) bewys van nakoming van artikel 26(1) en (2) rakende kennisgewing en publikasie van die aansoek;
- (c) die verslag van die aangewese drankbeampte;
- (d) die oorspronklike vertoë wat in verband met die aansoek gerig is, as daar is;
- (e) verslae en ooreenkomste wat by die drankforum ingedien is, as daar is; 5
- (f) bewys van betaling van die voorgeskrewe aansoekgelde; en
- (g) enige ander dokument of artikel wat daarmee saam in verband met die aansoek ingedien is.

Oorweging van aansoeke

30. (1) Die Raad of enige komitee of personeellid moet binne 'n redelike tyd na die datum van ontvangs van die aansoek, die aansoek ondersoek ten einde vas te stel of dit tegnies korrek is en voldoen aan die bepalings van hierdie Wet en die regulasies hierby.

(2) Indien die Raad, komitee of personeellid in subartikel (1) bedoel, bepaal dat die aansoek onvolledig of gebrekkig is, moet hy of sy binne 'n redelike tyd na ontvangs van die aansoek 'n kennisgewing van onvolledige of gebrekkige indiening uitreik soos voorgeskryf en die aansoeker versoek om die gebrek in die aansoek binne veertien (14) dae vanaf datum van versoek aan te vul of reg te stel. 15

(3) Indien 'n aansoeker versuim om binne die vasgestelde tyd na behore aan voormelde kennisgewing te voldoen, kan die Raad—

- (a) weier om die aansoek te oorweeg; 20
- (b) die oorweging van die aansoek uitstel hangende voldoening aan die kennisgewing; of
- (c) die aansoek weier.

(4) Die Raad kan by die oorweging van 'n aansoek kennis neem van die volgende—

- (a) die aansoek en verslae wat in reaksie daarop ingedien is; 25
- (b) vertoë vir of teen die aansoek, reaksies op vertoë teen aansoeke en enige ander dokument of artikel wat in verband met die aansoek ingedien is; en
- (c) behoudens artikel 12(9), enige aangeleentheid wat na die Raad se mening in aanmerking geneem moet word.

(5) Indien 'n aansoek, 'n gepaardgaande dokument, vertoë of 'n verslag in enige opsig gebrekkig is of indien enige persoon versuim om enige dokument in te dien of om by 'n redelike tydperk of tydsbeperking te hou, kan die Raad die gebrek of versuim kondoneer indien daar wesenlike voldoening aan hierdie Wet of die regulasies was en indien dit onwaarskynlik is dat sodanige kondonering enige persoon sal benadeel. 30

Geskiktheid van perseel 35

31. 'n Lisensie of permit mag nie uitgereik word nie tensy die Raad of munisipaliteit oortuig is dat die aansoeker die reg het om die betrokke perseel te gebruik vir die doel wat deur die lisensie of permit gemagtig staan te word.

Onvolledige perseel

32. Die Raad kan by die toestaan van 'n aansoek vir 'n lisensie ten opsigte van 'n onvolledige perseel gelas dat die lisensie nie uitgereik mag word nie totdat die aansoeker binne 'n bepaalde tydperk voldoen aan sodanige voorwaardes rakende die voltooiing van die perseel as wat die Raad goedvind om te stel. 40

Onderwys en opleiding

33. Die Raad kan by die verlening van 'n lisensie gelas dat die lisensie nie uitgereik mag word nie totdat die aansoeker of 'n werknemer of werknemers van die aansoeker sodanige opleiding en onderwys ondergaan het as wat die Raad voorskryf. 45

Voorwaardelike goedkeuring

34. (1) Die Raad kan by die verlening van 'n lisensie ten opsigte van artikels 31, 32 en 33 skriftelik gelas dat die lisensie nie uitgereik mag word nie totdat die aansoeker voldoen aan sodanige voorwaardes as wat die Raad goedvind om te stel. 50

(2) Die Raad kan te eniger tyd op aansoek van die aansoeker—

- (a) die voorwaardes wysig of intrek;

- (b) die bepaalde tydperk verleng; of
- (c) 'n wysiging van die plan van die perseel goedkeur.

(3) Indien die aansoeker versuim om aan voormelde voorwaardes te voldoen binne sodanige tydperk na die datum van die verlening van die lisensie as wat die Raad bepaal, verval die verlening van die lisensie en word die lisensie geag nie verleen te gewees het nie. 5

(4) Wanneer die aansoeker voldoen aan die voorwaardes deur die Raad gestel en by betaling van die voorgeskrewe gelde, moet die Raad die lisensie uitreik soos voorgeskryf.

Uitreiking van lisensies en permitte 10

35. Die Raad of munisipaliteit, na gelang van die geval, moet na verlening van 'n aansoek, behoudens artikels 31, 32, 33 en 34 'n lisensie of permittdokument in die voorgeskrewe vorm uitreik, waarin die voorwaardes van die lisensie uiteengesit word, behoudens betaling van die voorgeskrewe gelde.

Dood of onbevoegdheid van aansoeker 15

36. Indien 'n aansoeker vir 'n lisensie of permit—

- (a) sterf;
- (b) se boedel gesekwestreer word;
- (c) deur 'n bevoegde hof onbevoeg verklaar word om sy of haar eie sake te hanteer; of 20
- (d) synde 'n maatskappy of beslote korporasie, gelikwieder word,

voor die datum waarop die aansoek oorweeg word, het die aangestelde eksekuteur, trustee, kurator of likwidateur al die bevoegdhede en regte, en kan hy of sy dit uitoefen, wat die aansoeker sou gehad het as dit nie vir sodanige dood, sekwestrasie, verklaring of likwidasie was nie. 25

HOOFSTUK 6 VOORWAARDES VIR LISENSIES

Standaardlisensievoorwaardes

37. (1) Dit moet 'n voorwaarde van elke lisensie vir die verbruik van drank op die perseel waar die drank verkoop word, wees dat drank slegs op die gelisensieerde perseel verbruik mag word en dat geen drank wat verkoop is, van die gelisensieerde perseel verwyder mag word nie. 30

(2) Dit moet 'n voorwaarde van elke lisensie vir die verbruik van drank buite die gelisensieerde perseel wees dat geen houer wat drank bevat, oopgemaak mag word en geen drank op die gelisensieerde perseel verbruik mag word nie, behalwe vir proedoeleindes soos deur die Raad goedgekeur. 35

(3) Indien 'n perseel gelisensieer is vir die verbruik van drank sowel op as buite die gelisensieerde perseel, is subartikels (1) en (2) nie op daardie perseel van toepassing nie.

(4) Die lisensiehouer van 'n perseel waarop die besigheid van 'n kleinhandelvoedselwinkel bedryf word, mag geen ander drank as tafelwyn verkoop nie. 40

(5) Versuim om te voldoen aan die voorwaardes in subartikels (1), (2) en (4) uiteengesit, is 'n misdryf.

Aflewering

38. (1) Dit moet 'n voorwaarde van elke lisensie vir die verbruik van drank buite die gelisensieerde perseel wees dat— 45

- (a) drank van geen voertuig af afgelewer mag word nie tensy die drank van die gelisensieerde perseel bestel is voor die versending van die drank en 'n faktuur uitgereik is, waarvan die oorspronklike op die gelisensieerde perseel gehou is;
- (b) drank slegs by die adres getoon op die faktuur in paragraaf (a) beskryf, 50 afgelewer mag word; en

(c) 'n afskrif van die faktuur in paragraaf (a) beskryf, in die afleweringvoertuig gehou moet word van die tyd van versending tot die tyd van aflewering van die drank.

(2) Die aanvaarding van aflewering van drank gekoop van 'n verskaffer wat nie vergesel gaan nie van 'n faktuur wat die naam, adres en lisensienommer van die verskaffer asook die aard, hoeveelheid en koopprijs van die drank wat verskaf word vermeld nie, is 'n misdryf. 5

Finansiële belange

39. (1) 'n Lisensiehouer mag nie sonder die toestemming vooraf van die Raad 'n finansiële belang in die gelisensieerde besigheid aan enige ander persoon oordra nie. 10

(2) Die Raad mag nie toestemming ingevolge subartikel (1) verleen nie indien die persoon aan wie daar beoog word om die finansiële belang oor te dra, ingevolge artikel 24 gediskwalifiseer is om 'n lisensie te hou of nie van goeie karakter is nie.

(3) 'n Lisensie moet uitgereik word op naam van die persoon wat die gelisensieerde besigheid bedryf, bestuur en voordeel uit die bedryf daarvan trek en mag nie op naam van 'n benoemde of agent uitgereik word nie. 15

(4) 'n Lisensiehouer mag nie die lisensie aan enige ander persoon verhuur of enige ander persoon toelaat om ingevolge die lisensie sake te doen nie.

(5) Versuim om aan subartikels (1) en (4) te voldoen, is 'n misdryf.

Bestuur

20

40. (1) Die Raad moet, tensy die aansoeker 'n natuurlike persoon is, by die verlening van 'n lisensie, 'n natuurlike persoon wie deur die aansoeker benoem is en wat 'n inwoner van die Provinsie is, aanstel as bestuurder van die gelisensieerde besigheid.

(2) Die lisensiehouer kan te enige tyd op die voorgeskrewe wyse 'n natuurlike persoon woonagtig in die Provinsie benoem om die bestuurder van die gelisensieerde besigheid te wees, in welke geval die Raad sodanige persoon as bestuurder kan aanstel. 25

(3) Die Raad kan die aangewese drankbeampte versoek om 'n verslag oor die geskiktheid van die benoemde persoon op te stel.

(4) Die Raad mag nie 'n persoon wat ingevolge artikel 24 gediskwalifiseer is om 'n dranklisensie te hou of nie van goeie karakter is nie, as bestuurder aanstel nie. 30

(5) Die Raad kan as 'n voorwaarde vir sodanige aanstelling gelas dat die voorgestelde bestuurder sodanige opleiding en opvoeding ondergaan as wat die Raad bepaal.

(6) 'n Bestuurder wat ingevolge hierdie artikel aangestel is, is verantwoordelik vir die bestuur van die besigheid en is onderhewig aan dieselfde pligte, verpligtinge en aanspreeklikhede as die lisensiehouer. 35

(7) Die aanstelling van 'n bestuurder ingevolge hierdie artikel onthef die lisensiehouer nie van enige pligte, verpligtinge of aanspreeklikhede wat by hierdie Wet of die voorwaardes van die lisensie aan hom opgelê is nie.

(8) Die aanstelling van 'n bestuurder ingevolge hierdie artikel bly geldig tot die aanstelling van 'n nuwe bestuurder. 40

(9) Indien 'n persoon wat ingevolge hierdie artikel as 'n bestuurder aangestel is, ophou om die gelisensieerde besigheid te bestuur of gediskwalifiseer word om dit te doen, moet die lisensiehouer binne dertig (30) dae na sodanige gebeurtenis, ingevolge subartikel (2) aansoek doen vir die aanstelling van 'n bestuurder in sy of haar plek.

(10) Indien 'n lisensiehouer versuim om aan subartikel (9) te voldoen, kan sy lisensie ingevolge artikel 59 opgeskort word. 45

Veranderings aan gelisensieerde perseel of aard van besigheid

41. (1) Uitgesonderd met die toestemming vooraf van die Raad, wat op aansoek op die voorgeskrewe wyse verleen is, mag 'n lisensiehouer nie—

(a) die aard van die besigheid ten opsigte waarvan 'n lisensie verleen is, wesenslik verander van dit wat beskryf is in die aansoek wat deur die Raad oorweeg is toe die lisensie verleen is nie; of 50

(b) enige strukturele verandering, aanbouing, verbouing of uitbreiding van of aan die gelisensieerde perseel uitvoer nie.

(2) Versuim om aan subartikel (1) te voldoen, is 'n misdryf. 55

Kinders

42. (1) Geen persoon mag drank aan 'n persoon onder die ouderdom van agttien (18) jaar verkoop nie.
- (2) Geen persoon mag drank aan 'n persoon onder die ouderdom van agttien (18) jaar gee of verskaf nie of so 'n persoon in sy of haar sorg of onder sy of haar toesig toelaat om drank te verbruik nie, behalwe waar dit *bona fide* in geringe maat gegee of verskaf word in die uitvoering van 'n godsdienstige seremonie of diens. 5
- (3) 'n Lisensiehouer mag nie 'n persoon onder die ouderdom van agttien (18) jaar toelaat om drank te verbruik op 'n perseel waarvan hy of sy die lisensiehouer is of wat onder sy of haar beheer is nie. 10
- (4) 'n Lisensiehouer mag nie 'n persoon onder die ouderdom van agttien (18) jaar toelaat om in 'n deel van 'n gelisensieerde perseel te wees waarop so 'n persoon ingevolge hierdie Wet of ingevolge 'n lisensievoorwaarde nie mag wees nie.
- (5) 'n Persoon onder die ouderdom van agttien (18) jaar mag nie drank strydig met hierdie Wet verkry of verbruik nie of enige persoon mislei met betrekking tot sy of haar ouderdom ten einde drank te verkry of te verbruik of om toegang te verkry tot 'n deel van 'n gelisensieerde perseel wat sodanige persoon nie mag binnegaan nie. 15
- (6) Versuim om aan subartikels (1), (2), (3), (4) en (5) te voldoen, is 'n misdryf.

Werkgewers en werknemers

43. (1) 'n Persoon mag nie 'n persoon onder die ouderdom van agttien (18) jaar in verband met die verkoop of verskaffing van drank in diens neem nie tensy sodanige persoon— 20
- (a) van of oor die ouderdom van sestien (16) jaar is;
- (b) opleiding in spysenieringsdienste ondergaan; en
- (c) 'n vakleerling by die lisensiehouer is. 25
- (2) 'n Werkgever mag nie—
- (a) drank aan 'n persoon verskaf as lokmiddel om sy diens te verkry nie;
- (b) drank pleks van lone aan 'n werknemer verskaf nie;
- (c) die koste van drank wat namens hom of haar aan 'n werknemer of enige ander persoon verskaf is, van die werknemer se loon aftrek nie; of 30
- (d) die betaling van die loon van 'n werknemer hangende die terugbetaling van 'n skuld ten opsigte van die verkoop van drank terughou nie.
- (3) 'n Lisensiehouer of 'n persoon namens hom of haar mag nie enige dokument of roerende eiendom as sekuriteit of in pand vir die betaling van 'n skuld in verband met die verkoop van drank ontvang of hou nie. 35
- (4) Versuim om aan subartikels (1), (2) en (3) te voldoen, is 'n misdryf.

Toegang tot gelisensieerde perseel

44. (1) 'n Lisensiehouer mag nie 'n persoon onder die ouderdom van agttien (18) jaar toelaat om—
- (a) in 'n kamer of enige plek op 'n gelisensieerde perseel te wees waar drank oor 'n toonbank verkoop word nie, uitgesonderd wanneer maaltye bedien word aan eters wat by tafels in sodanige kamer of plek sit; 40
- (b) in 'n kamer of plek wees wat die Raad afgebaken het as 'n gebied waarin persone onder die ouderdom van agttien (18) jaar nie mag wees nie; of
- (c) op 'n perseel wees wat nie 'n kleinhandelvoedselwinkel is nie wat slegs vir die verkoop van drank vir verbruik buite die gelisensieerde perseel gelisensieer is, tensy sodanige persoon vergesel word óf deur 'n ouer of 'n voog óf deur 'n volwassene met die toestemming van 'n ouer of 'n voog. 45
- (2) Versuim om aan subartikel (1) te voldoen, is 'n misdryf.

Berging van drank

45. (1) 'n Lisensiehouer moet sy of haar drank op die gelisensieerde perseel of op sodanige ander of bykomende plek in die Provinsie berg as wat die Raad op aansoek goedkeur. 50

(2) 'n Lisensiehouer mag nie drank in of uit sodanige ander of bykomende bergingsplek verkoop nie.

(3) Versuim om aan subartikels (1) en (2) te voldoen, is 'n misdryf.

Plek van verkoop

46. (1) 'n Lisensiehouer mag nie drank uit enige ander plek as die gelisensieerde perseel verkoop nie. 5

(2) Ondanks die bepalings van hierdie artikel mag 'n lisensiehouer die verkoop van drank adverteer en bestellings vir die koop van drank werf en ontvang elders as op die gelisensieerde perseel.

(3) Versuim om aan subartikel (1) te voldoen, is 'n misdryf. 10

Handelsure

47. (1) Behoudens sodanige voorwaardes as wat die Raad by die verlening van 'n lisensie of na 'n vergadering ingevolge artikel 7 stel, mag 'n lisensiehouer drank verkoop op sodanige dae en tydens sodanige handelsure as wat die Raad vir gelisensieerde besighede bepaal: Met dien verstande dat die handelsure wat die Raad instel, nie meer mag wees nie as die ure wat die munisipaliteit by verordening bepaal. 15

(2) 'n Munisipaliteit kan by verordening verskillende handelsure bepaal vir gelisensieerde besighede wat drank verkoop vir verbruik op die gelisensieerde perseel en vir dié wat drank verkoop vir verbruik elders as op die gelisensieerde perseel, maar mag nie verskillende handelsdae en -ure vir individuele gelisensieerde besighede voorskryf nie: Met dien verstande dat die handelsure wat die munisipaliteit bepaal, nie meer mag wees nie as die handelsure in subartikel (3)(a) en (b) uiteengesit. 20

(3) (a) Behoudens voorwaardes wat die Raad ingevolge subartikel (1) stel, indien die munisipaliteit nie die handelsdae en -ure bepaal het soos in subartikel (2) bepaal nie, kan 'n lisensiehouer van 'n perseel waar drank verkoop kan word vir verbruik buite die gelisensieerde perseel, drank op enige dag tussen 08:00 en 20:00 verkoop. 25

(b) Behoudens voorwaardes wat die Raad ingevolge subartikel (1) stel, indien die munisipaliteit nie die handelsdae en -ure bepaal het soos in subartikel (2) bepaal nie, kan 'n lisensiehouer van 'n perseel waar drank verkoop kan word vir verbruik op die gelisensieerde perseel, drank op enige dag verkoop tussen 08:00 op enige dag en 04:00 die volgende dag. 30

(c) In 'n geval waar die lisensiehouer 'n lisensie het vir die verbruik van drank sowel op as buite die gelisensieerde perseel, is die bepalings van paragrawe (a) en (b) van toepassing met die nodige veranderings.

(4) Die houer van 'n permit kan drank verkoop op die dae en tydens die ure in die permit vermeld. 35

(5) Behoudens artikel 76(9) begaan 'n lisensiehouer wat drank op die gelisensieerde perseel verkoop of verskaf of die verbruik daarvan toelaat op 'n tyd wanneer die verkoop van drank nie deur die lisensie toegelaat word nie, 'n misdryf.

Hoeveelheid drank verkoop en hou van rekords 40

48. (1) 'n Lisensiehouer moet op die voorgeskrewe wyse 'n rekord hou van alle drank wat verkoop is vir verbruik elders as op die gelisensieerde perseel.

(2) Geen persoon, uitgesonderd die lisensiehouer, mag meer drank as 'n hoeveelheid wat die Minister voorskryf, koop en 'n lisensiehouer mag nie aan een persoon op een dag meer drank as sodanige hoeveelheid verkoop vir verbruik elders as op die gelisensieerde perseel nie, sonder die skriftelike toestemming vooraf van die aangewese drankbeampte wat vir die gebied waar die gelisensieerde perseel geleë is, aangestel is. 45

(3) 'n Persoon wat nie 'n lisensie of permit het om drank te verkoop nie, mag op geen tydstip meer drank as die hoeveelheid ingevolge subartikel (2) voorgeskrif, koop of in sy of haar besit of onder sy of haar beheer hê nie, uitgesonderd met die toestemming waarvoor daardie subartikel voorsiening maak. 50

(4) Versuim om aan subartikels (1), (2) en (3) te voldoen, is 'n misdryf.

HOOFSTUK 7 PERMITTE

Permitte vir spesiale byeenkomste

49. (1) Die houer van 'n lisensie vir die verkoop van drank by spesiale byeenkomste vir verbruik op die perseel by die spesiale byeenkoms of elders mag nie drank by so 'n byeenkoms verkoop nie tensy 'n permit om dit te doen, aan hom of haar uitgereik is deur die munisipaliteit waar die perseel waar drank verkoop gaan word, geleë is of, waar 'n munisipaliteit nie ingevolge artikel 18(2) aangestel is nie, deur die Raad en by betaling van die voorgeskrewe gelde. 5

(2) Die houer van 'n lisensie om drank te verkoop vir verbruik op spesiale byeenkomste, moet op die voorgeskrewe wyse by die munisipaliteit aansoek doen vir 'n permit om drank op 'n spesifieke spesiale byeenkoms te verkoop. 10

(3) So 'n aansoek moet minstens veertien (14) dae voor die datum van die spesiale byeenkoms gedoen word.

(4) Die munisipaliteit kan na oorweging van die aansoek en enige ander dokument of aangeleentheid wat hy as tersaaklik beskou, die aansoek weier of toestaan behoudens sodanige voorwaardes as wat die munisipaliteit goedvind. 15

(5) Die permitte in subartikel (4) bedoel, moet in die permitdokument uiteengesit word.

(6) 'n Aansoeker wie se aansoek vir 'n permit ingevolge subartikel (2) geweier is of wat ontevrede is met 'n voorwaarde wat die munisipaliteit gestel het, kan op die voorgeskrewe wyse by die Raad appèl aanteken teen sodanige weiering of die stel van 'n voorwaarde. 20

(7) Versuim deur 'n lisensiehouer, synde die houer van 'n lisensie vir spesiale gebeurtenisse, om 'n permit vir spesiale byeenkomste te verkry wat deur die munisipaliteit uitgereik word vir 'n spesiale byeenkoms waar hy of sy drank verkoop, is 'n misdryf. 25

Permit vir tradisionele Afrikabier

50. (1) Net die volgende persone mag tradisionele Afrikabier verkoop— 30
(a) die houer van 'n lisensie vir mikrovervaardiging;
(b) die houer van 'n dranklisensie; of
(c) die houer van 'n permit vir tradisionele Afrikabier.

(2) 'n Persoon wat nie gediskwalifiseer is om 'n dranklisensie te hou nie, kan op die voorgeskrewe wyse vir 'n permit vir tradisionele Afrikabier aansoek doen by die munisipaliteit waarin die perseel waar die tradisionele Afrikabier verkoop gaan word, geleë is. 35

(3) 'n Munisipaliteit by wie aansoek gedoen word, kan die aansoek toestaan behoudens sodanige voorwaardes as wat die munisipaliteit nodig ag om te stel, of kan dit weier.

(4) Indien die aansoek toegestaan word, moet die munisipaliteit, by betaling van sodanige gelde as wat hy voorskryf, 'n permit in die voorgeskrewe vorm aan die aansoeker uitreik. 40

(5) 'n Persoon wat gegrief voel deur 'n besluit van die munisipaliteit ingevolge hierdie artikel, kan op die voorgeskrewe wyse by die Raad appèl daarteen aanteken.

(6) Die houer van 'n permit kan by die munisipaliteit aansoek doen vir die hernuwing daarvan binne dertig (30) dae voor die jaardag van die datum waarop die permit uitgereik is. 45

(7) Die munisipaliteit moet by betaling van sodanige hernuwingsgelde as wat hy hef, die permit vir nog 'n jaar hernu, tensy die houer gediskwalifiseer geraak het om die permit te hou of die Raad die houer ongeskik verklaar het om die permit te hou. 50

(8) 'n Persoon wat gegrief voel deur die wyse waarop tradisionele Afrikabier verkoop word, kan 'n klag by die Raad indien, wat dit moet oorweeg op dieselfde wyse as 'n klag ten opsigte van 'n lisensie, en die Raad het dieselfde bevoegdhede ten opsigte van sodanige permit as ten opsigte van 'n lisensie.

HOOFSTUK 8 GELDIGHEID EN HERNUWING VAN LISENSIES EN PERMITTE

Geldigheid van lisensies en permitte

- 51.** (1) 'n Lisensie is geldig vanaf die datum waarop dit uitgereik is.
- (2) 'n Lisensie verval op 'n datum wat twaalf (12) maande na die datum van uitreiking of twaalf (12) maande na die datum van die laaste hernuwing daarvan is, wat ook al die laaste is, tensy die lisensie outomaties hernu word ingevolge artikel 52 of deur die Raad ingevolge artikel 53. 5
- (3) 'n Permit wat ingevolge artikel 22(b) uitgereik is ten opsigte van 'n spesiale byeenkoms, is geldig net vir die datum of datums ten opsigte waarvan sodanige permit uitgereik is en mag nie hernu word nie. 10
- (4) 'n Permit wat ingevolge artikel 22(a) uitgereik is ten opsigte van die verkoop van tradisionele Afrikabier, is geldig vanaf die datum van uitreiking en verval twaalf (12) maande na die datum van uitreiking, tensy dit ingevolge artikel 50(7) deur die munisipaliteit hernu word. 15
- (5) Die Voorsitter kan by ontvangs van 'n verslag dat die gelisensieerde perseel deur die lisensiehouer verlaat is, die lisensie met onmiddellike effek opskort.
- (6) Die opskorting van die lisensie ingevolge subartikel (5) verval by ontvangs deur die Voorsitter van bewys dat die gelisensieerde perseel nie deur die lisensiehouer verlaat is nie of weer in gebruik is deur dieselfde lisensiehouer. 20

Outomatiese hernuwing van lisensies

- 52.** (1) Uitgesonderd soos in artikel 53 bepaal, moet die Raad nie later nie as agt (8) maande na die datum van uitreiking of jongste hernuwing van 'n lisensie 'n lisensiehernuwingskennisgewing in die voorgeskrewe vorm aan elke houër van 'n lisensie uitreik, waarin die lisensiehouer versoek word om voorgeskrewe lisensiegelde te betaal teen die hernuwingsdatum, wat twaalf (12) maande na die datum van uitreiking of jongste hernuwing van die lisensie moet wees, wat ook al later is. 25
- (2) By betaling deur die lisensiehouer van die voorgeskrewe lisensiegelde voor of op die hernuwingsdatum word die lisensie outomaties hernu vir 'n tydperk van twaalf (12) maande vanaf die hernuwingsdatum. 30
- (3) Die lisensiehouer mag nie van sy of haar verpligting om die voorgeskrewe lisensiegelde betyds te betaal, kwytgeskeld word nie as die kennisgewing nie aan hom of haar gestuur is nie of nie deur hom of haar ontvang is nie.
- (4) 'n Lisensiehouer wat versuim om die voorgeskrewe lisensiegelde betyds te betaal, kan binne sestig (60) dae na die hernuwingsdatum by die Raad skriftelik aansoek doen vir kondonering van sodanige versuim en die Raad kan die versuim kondoneer en die laat betaling van die voorgeskrewe gelde toelaat teen 'n datum wat bepaal moet word, behoudens sodanige bykomende gelde en boetes as wat die Raad voorskryf. 35
- (5) Waar die Raad ingevolge subartikel (4) kondonering toegestaan het en die voorgeskrewe gelde en bykomende gelde en boetes betaal is, word die lisensie geag hernu te wees vanaf die hernuwingsdatum: Met dien verstande dat indien die lisensiehouer versuim om die gelde en boetes wat ingevolge hierdie subartikel gehef is teen die vasgestelde datum te betaal, die lisensie op daardie datum verval. 40

Aansoeke vir hernuwing van lisensies

- 53.** (1) Indien, by verstryking van agt (8) maande na die datum van uitreiking of jongste hernuwing van 'n lisensie, wat ook al die later is, 'n lisensiehouer— 45
- (a) ingevolge artikel 24 gediskwalifiseer is om 'n lisensie te hou;
- (b) deur die Raad ongeskik verklaar is om 'n dranklisensie te hou; of
- (c) binne die vorige agt (8) maande versuim het om te voldoen aan 'n voldoeningskennisgewing wat ingevolge hierdie Wet uitgereik is, 50
- kan die lisensie nie ingevolge artikel 52 outomaties hernu word nie maar kan dit deur die Raad hernu word op aansoek deur die lisensiehouer op die voorgeskrewe wyse, en by betaling van die voorgeskrewe gelde.
- (2) Die Raad moet binne nege (9) maande na die datum van uitreiking of jongste hernuwing van die lisensie 'n kennisgewing aan 'n lisensiehouer beteken soos in subartikel (1) beskryf, waarin— 55

- (a) die lisensiehouer verwittig word dat die lisensie nie outomaties hernu sal word nie; en
- (b) 'n beroep op die lisensiehouer gedoen word om op die voorgeskrewe wyse aansoek te doen vir die hernuwing van die lisensie teen 'n datum deur die Raad bepaal, welke datum hoogstens twaalf (12) maande na die datum van uitreiking of jongste hernuwing van die lisensie is. 5
- (3) Indien die lisensiehouer versuim om te voldoen aan die kennisgewing in subartikel (2) bedoel, vervel die lisensie twaalf (12) maande na die datum van uitreiking of jongste hernuwing daarvan.
- (4) Indien die lisensiehouer aan die kennisgewing voldoen, bly die lisensie geldig totdat die Raad sy oorweging van die aansoek vir hernuwing afgehandel het. 10
- (5) By die oorweging van 'n aansoek vir hernuwing het die Raad dieselfde pligte en bevoegdhede as by die oorweging van 'n aansoek vir 'n nuwe lisensie, insluitende die reg om die aansoek te weier of toe te staan, behoudens sodanige voorwaardes as wat hy goedvind. 15
- (6) Indien die Raad 'n aansoek vir die hernuwing van die lisensie toestaan, word die lisensie geag hernu te wees ingevolge artikel 52(2).
- (7) Indien die Raad 'n aansoek vir die hernuwing van 'n lisensie weier, vervel die lisensie onmiddellik of op sodanige datum as wat die Raad bepaal.

HOOFSTUK 9 20 OORDRAG VAN LISENSIES

Oordrag van lisensies

- 54.** (1) 'n Lisensiehouer kan aansoek doen vir die oordrag van die lisensie aan 'n ander persoon deur 'n aansoek op die voorgeskrewe wyse en vorm in te dien by die Raad en by betaling van die voorgeskrewe gelde. 25
- (2) Die Raad moet, soos voorgeskryf, die aangewese drankbeampte van die aansoek verwittig en van hom of haar 'n verslag aanvra oor die kwalifikasie en geskiktheid van die voorgestelde lisensiehouer om die lisensie te hou.
- (3) Die aangewese drankbeampte moet binne die voorgeskrewe tydperk 'n verslag soos by subartikel (2) vereis, indien en kan in sodanige verslag enige ander aangeleentheid insluit wat die aangewese drankbeampte tersaaklik ag vir die aansoek. 30
- (4) Die Raad moet binne die voorgeskrewe tydperk die aansoek óf weier óf toestaan.
- (5) Die Raad mag nie 'n aansoek vir oordrag toestaan nie tensy hy oortuig is dat die persoon aan wie die lisensie oorgedra staan te word—
- (a) nie ingevolge artikel 24 gediskwalifiseer is om 'n lisensie te hou nie; 35
- (b) van goeie karakter is; en
- (c) gepas opgevoed en opgelei is of sal word, of in sy of haar diens een of meer werknemers sal hê wat gepas opgevoed en opgelei is of sal word om die gelisensieerde besigheid te bestuur.
- (6) Die Raad kan by die verlening van 'n aansoek vir oordrag gelas dat die persoon aan wie die lisensie oorgedra word, of een of meer werknemers van sodanige persoon, sodanige onderwys en opleiding ondergaan as wat die Raad gelas. 40
- (7) By die verlening van 'n aansoek vir oordrag ingevolge hierdie artikel moet die Raad by betaling van die voorgestelde gelde 'n oordragsertifikaat uitreik soos voorgeskryf. 45
- (8) Indien die persoon aan wie die lisensie oorgedra staan te word te sterwe kom, insolvent raak of deur 'n bevoegde hof onbevoeg verklaar word om sy of haar eie sake te hanteer of, synde 'n maatskappy of beslote korporasie, gelikwieder word voor die datum waarop die aansoek vir oordrag oorweeg word, word die eksekuteur, trustee, likwidateur of kurator, na gelang van die geval, geag die aansoeker te wees en het hy of sy alle regte wat sodanige persoon, maatskappy of beslote korporasie sou gehad het as dit nie vir sodanige sterfte, insolvensie, likwidasie of verklaring was nie. 50
- (9) Die Raad kan na goëddunke 'n aansoek vir oordrag toestaan ten gunste van 'n eksekuteur, trustee, likwidateur of kurator of aan sodanige ander persoon as wat die Raad goedvind. 55
- (10) 'n Lisensiehouer wat die gelisensieerde besigheid vervreem, moet die Raad binne dertig (30) dae na die datum van vervreemding skriftelik en op die voorgeskrewe wyse in kennis stel van die datum van vervreemding.
- (11) Versuim om die Raad van sodanige vervreemding in kennis te stel, is 'n misdryf.

(12) 'n Persoon wat 'n gelisensieerde besigheid gekoop het, kan by die Voorsitter aansoek doen vir toestemming om die gelisensieerde besigheid te bedryf hangende die oordrag van die lisensie aan sodanige persoon.

(13) 'n Aansoek ingevolge subartikel (12) moet gedoen word deur die indiening daarvan in die voorgeskrewe vorm by die Voorsitter. 5

(14) Die Voorsitter kan toestemming verleen om die koper van die besigheid te magtig om die besigheid vir sy of haar eie rekening te bedryf vir 'n bepaalde tydperk, welke tydperk hoogstens ses (6) maande na die aanvangsdatum is.

(15) Die Voorsitter kan 'n toestemming wat ingevolge subartikel (14) verleen is, te eniger tyd intrek. 10

(16) 'n Toestemming wat ingevolge subartikel (14) verleen is, is nie aan appèl of hersiening ingevolge hierdie Wet onderhewig nie.

(17) 'n Persoon aan wie 'n toestemming ingevolge subartikel (14) verleen is, is geregtig om die gelisensieerde besigheid ingevolge die lisensie vir sy of haar eie rekening te bedryf en te bestuur, en het dieselfde regte en is onderhewig aan dieselfde pligte as die lisensiehouer. 15

(18) Die verlening van toestemming ingevolge subartikel (14) onthef die lisensiehouer nie van enige van sy of haar pligte en verpligtinge ten opsigte van die lisensie nie.

Abandonering van perseel en dood of onbevoegdheid van lisensiehouer 20

55. (1) Indien 'n lisensiehouer sterf, insolvent raak of deur 'n bevoegde hof onbevoeg verklaar word om sy of haar eie sake te hanteer of, synde 'n maatskappy of beslote korporasie, gelikwieder word—

(a) gaan die lisensie op die datum van aanstelling oor op die eksekuteur, trustee, likwidateur of kurator, na gelang van die geval; 25

(b) kan die eksekuteur, trustee, likwidateur of kurator die gelisensieerde besigheid bedryf op dieselfde wyse en behoudens dieselfde voorwaardes as wat die lisensiehouer sou doen as dit nie was vir sy of haar dood, insolvensie, likwidasie of verklaring nie; en

(c) kan die eksekuteur, trustee, likwidateur of kurator aansoek doen vir die oordrag van die lisensie ingevolge artikel 54, en word hy of sy vir doeleindes van sodanige aansoek geag die lisensiehouer te wees. 30

(2) Die Raad kan, indien hy oortuig is dat—

(a) 'n gelisensieerde besigheid verlaat is; of

(b) die lisensiehouer, synde 'n persoon in subartikel (1) beskryf, en 'n eksekuteur, trustee, likwidateur of kurator nog nie aangestel is nie, 35

'n persoon aanstel om die lisensie te hou en die gelisensieerde besigheid te bedryf tot die aanstelling van 'n eksekuteur, trustee, likwidateur of kurator, of totdat 'n bestuurder aangestel is in die geval van 'n verlate besigheid.

(3) 'n Persoon aldus aangestel, word geag die lisensiehouer te wees. 40

(4) Indien die enigste direkteur van 'n maatskappy of 'n lid van 'n beslote korporasie wat 'n lisensiehouer is, sterf, insolvent raak of deur 'n bevoegde hof onbevoeg verklaar word om sy of haar eie sake te hanteer of, synde 'n maatskappy of beslote korporasie, gelikwieder word, is subartikels (2) en (3), met die nodige veranderings, op daardie lisensie van toepassing tot die aanstelling van 'n nuwe direkteur of lid. 45

HOOFSTUK 10 APPELLE

Appèlle na die Tribunaal

56. (1) Die Appèltribunaal moet enige appèl teen, of aansoek vir die hersiening van, 'n besluit van die Raad ingevolge artikel 7(3) oorweeg. 50

(2) Die Appèltribunaal kan 'n besluit of bevel wat die onderwerp van 'n appèl of hersiening is, bevestig, wysig of ter syde stel en sodanige besluit of bevel vervang, na gelang van die omstandighede.

(3) 'n Aansoeker of belanghebbende party wat gegrief is deur 'n besluit van die Raad, kan binne die voorgeskrewe tydperk na ontvangs van redes vir 'n besluit van die Raad, 'n kennisgewing van appèl of hersiening by die Raad indien soos voorgeskryf. 55

(4) Die appèl of hersiening moet aangehoor word asof dit 'n appèl teen die uitspraak van 'n landdroshof in 'n siviele geding is, en enige reël van toepassing op sodanige

siviele appèl is van toepassing met die nodige veranderinge soos hierin voorsiening gemaak.

(5) Uitgesonderd waar die aansoeker of belanghebbende party ingevolge subartikel (6) van die betaling van sekuriteit vrygestel is, moet 'n persoon wat gegrief is deur 'n besluit van die Raad, saam met die indiening van die kennisgewing van appèl of hersiening ingevolge subartikel (3) 'n bedrag betaal wat by regulasie bepaal word of deur die Appèltribunaal verminder word as sekuriteit vir die verwagte koste van die Raad of 'n opponerende party. 5

(6) Die Appèltribunaal kan op aansoek deur die aansoeker of die belanghebbende party wat deur die besluit van die Raad gegrief is, die bedrag van sekuriteit verminder of die aansoeker of belanghebbende party vrystel van die betaling van sekuriteit. 10

(7) Geld wat ingevolge hierdie artikel as sekuriteit betaal word, moet aan die Hoof Uitvoerende Beampte betaal word, wat dit in 'n afsonderlike bankrekening moet stort hangende die uitkoms van die appèl of hersiening, wanneer hy of sy dit betaal in ooreenstemming met die bevel van die Appèltribunaal. 15

(8) Die Appèltribunaal kan sodanige bevel oor die betaling van die koste van die partye by die verrigtinge of van die Raad maak as wat hy in die omstandighede goedvind.

(9) 'n Aansoeker of belanghebbende party wat gegrief is deur die besluit van die Raad, kan persoonlik voor die Appèltribunaal verskyn of kan daar verteenwoordig word deur 'n advokaat of prokureur. 20

(10) 'n Besluit van die Appèltribunaal oor die meriete van 'n aangeleentheid is finaal en is nie aan verdere appèl onderhewig nie.

HOOFSTUK 11 VOLDOENING

25

Voldoeningskennisgewings

57. (1) 'n Inspekteur kan 'n voldoeningskennisgewing in die voorgeskrewe vorm aan 'n lisensiehouer of enige persoon in beheer van 'n gelisensieerde perseel uitreik en beteken, waarin sodanige persoon versoek word om aan die bepalings van hierdie Wet of 'n voorwaarde van 'n lisensie te voldoen. 30

(2) 'n Voldoeningskennisgewing moet die volgende uiteensit—

(a) die bepalings van hierdie Wet of die voorwaardes van die lisensie waaraan voldoen moet word;

(b) die aard en omvang van die nievoldoening;

(c) die maatreëls wat getref moet word om te voldoen; 35

(d) die datum waarteen voldoening afgehandel moet word; en

(e) die moontlike gevolge van nievoldoening.

(3) 'n Voldoeningskennisgewing bly van krag tot die datum vir voldoening of enige verlenging daarvan, of die uitreiking deur die inspekteur van 'n sertifikaat van voldoening, wat ook al die vroegste is. 40

(4) Die inspekteur kan op versoek van die persoon aan wie 'n voldoeningskennisgewing beteken is, die tydperk vir voldoening verleng by aanvoering van goeie redes, deur 'n gewysigde voldoeningskennisgewing uit te reik.

(5) Indien die persoon aan wie 'n voldoeningskennisgewing uitgereik is, daaraan voldoen het, moet die inspekteur 'n sertifikaat van voldoening uitreik. 45

(6) 'n Persoon aan wie 'n voldoeningskennisgewing uitgereik is, kan op die voorgeskrewe wyse 'n verklaring by die inspekteur indien waarin die kennisgewing betwis word en die gronde vermeld word waarop dit betwis word.

(7) 'n Inspekteur wat 'n verklaring ingevolge subartikel (6) ontvang, moet binne die voorgeskrewe tydperk die voldoeningskennisgewing, die verklaring ingevolge subartikel (6) en enige ander dokument wat hy of sy tersaaklik ag, aan die Hoof Uitvoerende Beampte voorlê, wat moet besluit of die klag in die voldoeningskennisgewing uiteengesit, geregverdig is. 50

(8) Die Hoof Uitvoerende Beampte kan, as hy of sy besluit dat die voldoeningskennisgewing nie geregverdig is nie, dit ter syde stel, of as hy of sy bevind dat dit geregverdig is, gelas dat daar aan die voldoeningskennisgewing voldoen word teen die voldoeningsdatum of sodanige later datum as wat hy of sy bepaal. 55

(9) Die Hoof Uitvoerende Beampte kan die funksie in subartikel (8) bedoel, aan 'n beampte in diens van die Raad delegeer.

(10) Versuim om aan 'n voldoeningskennisgewing te voldoen, is 'n misdryf. 60

(11) Bewys van nievoldoening aan 'n voldoeningskennisgewing, op 'n vergadering van die Raad, maak *prima facie*-bewys uit van die pleging van die misdrywe of oortredings van die lisensievoorwaardes in die voldoeningskennisgewing vermeld.

Tussentydse bevele

58. (1) Die Raad kan in uitsonderlike omstandighede en op aansoek deur 'n inspekteur of 'n aangewese drankbeampte, en waar daar 'n dreigende bedreiging vir die gesondheid, welsyn of veiligheid van die publiek is, 'n tussentydse bevel uitreik om 'n lisensie of permit op te skort.

(2) 'n Aansoek ingevolge subartikel (1) mag nie toegestaan word nie tensy—

(a) dit gestaaf word deur 'n beëdigde verklaring waarin die feite rakende die aangeleentheid uiteengesit word;

(b) bewys gelewer word dat die aansoek en stawende beëdigde verklarings minstens agt-en-veertig (48) uur voor die indiening van die aansoek aan die lisensiehouer beteken is; en

(c) dit uit die aansoek blyk dat dit 'n dringende aangeleentheid is.

(3) 'n Bevel wat ingevolge subartikel (1) verleen is, moet aan die lisensiehouer beteken word soos deur die Raad gelas en word van krag op die datum en die tyd van betekening daarvan.

(4) 'n Bevel wat ingevolge subartikel (1) verleen is, moet 'n datum bepaal waarop die lisensiehouer voor die Raad moet verskyn om redes aan te voer waarom die bevel nie finaal gemaak moet word nie.

(5) Die lisensiehouer kan voor die datum in subartikel (4) bepaal, by die Raad 'n kennisgewing van opposisie indien en moet daarna beëdigde verklarings indien waarin hy of sy die gronde uiteensit waarop die aansoek teengestaan word, en moet terselfdertyd 'n afskrif van sodanige kennisgewing en beëdigde verklarings beteken aan die inspekteur of die aangewese drankbeampte in subartikel (1) bedoel.

(6) 'n Lisensiehouer kan te eniger tyd voor die datum ingevolge subartikel (4) bepaal, by die Voorsitter aansoek doen om die aangeleentheid ter rolle te plaas vir verhoor op 'n vroeër datum, en moet terselfdertyd 'n afskrif van sodanige aansoek beteken aan die inspekteur of die aangewese drankbeampte in subartikel (1) bedoel.

(7) Die Voorsitter kan gelas dat die keerdatum tot 'n vroeër datum vervroeg word.

(8) Op die datum van die verhoor kan die Raad die tussentydse bevel ophef of bevestig, behoudens sodanige wysigings as wat hy goedvind.

Opskorting, intrekking en verval van lisensies

59. (1) 'n Lisensie wat ingevolge enige bepaling van hierdie Wet opgeskort is, bly in alle opsigte geldig behalwe dat die lisensiehouer nie gedurende die tydperk van opskorting drank ingevolge daarvan mag verkoop nie.

(2) 'n Lisensie wat deur die Raad ingetrek is, is van nul en gener waarde vanaf die datum van intrekking of sodanige ander datum as wat die Raad bepaal.

(3) 'n Lisensie wat ingevolge artikel 53 verval het, is van nul en gener waarde vanaf die datum waarop dit verval.

(4) Die lisensiehouer van 'n lisensie wat opgeskort of ingetrek is of verval het, kan binne dertig (30) dae na sodanige opskorting, intrekking of verval enige drank wat op die gelisensieerde perseel was op die datum waarop die opskorting, intrekking of verval van krag geword het, verkoop per openbare veiling wat deur 'n gelisensieerde afslaer gehou word.

(5) Indien 'n lisensiehouer die Raad skriftelik versoek om sy of haar lisensie in te trek, verval die lisensie op 'n datum deur die Raad bepaal.

HOOFSTUK 12 WETSTOEPASSING

50

Aanwysing en funksies van aangewese drankbeamptes en inspekteurs

60. (1) Die Wes-Kaapse Provinsiale Kommissaris van die Suid-Afrikaanse Polisie kan ten opsigte van elke polisie-stasie 'n polisiebeampte met of bo die rang van Inspekteur aanwys om die funksies van 'n aangewese drankbeampte ingevolge hierdie Wet te verrig.

55

- (2) 'n Polisiebeampte wat ingevolge artikel 139 van die Drankwet, 1989 (Wet 27 van 1989), as 'n aangewese polisiebeampte aangestel is, word 'n aangewese drankbeampte en word geag ingevolge subartikel (1) aangestel te wees.
- (3) Die Wes-Kaapse Provinsiale Kommissaris van die Suid-Afrikaanse Polisie kan 'n aanstelling ingevolge hierdie artikel te eniger tyd beëindig. 5
- (4) Die Minister kan 'n persoon in diens van die Provinsiale Regering as 'n inspekteur vir doeleindes van hierdie Wet aanstel.
- (5) Die Kommissaris moet by die aanwysing van 'n drankbeampte ingevolge subartikel (1), en die Minister moet by die aanstelling van 'n inspekteur ingevolge subartikel (4), 'n sertifikaat van aanwysing of aanstelling uitreik, onderteken deur die Kommissaris of die Minister, na gelang van die geval. 10
- (6) 'n Aangewese drankbeampte of 'n inspekteur moet by die uitoefening van sy of haar funksies ingevolge hierdie Wet, op versoek van enige persoon wat deur die verrigting van daardie funksie geraak word, bewys verskaf van aanstelling as aangewese drankbeampte of inspekteur. 15
- (7) 'n Aangewese drankbeampte of 'n inspekteur moet—
- (a) ten opsigte van elke aansoek gedoen ingevolge hierdie Wet, aan die Raad verslag doen oor sodanige aangeleenthede as wat voorgeskryf word of wat na die mening van die beampte of inspekteur in aanmerking geneem moet word wanneer die aansoek oorweeg word; 20
- (b) op versoek van die Raad verslag doen oor, of sodanige inligting verstrek in verband met, 'n aangeleentheid as wat die Raad verlang;
- (c) sodra die feit onder sy of haar aandag kom, die versuim deur 'n lisensiehouer om aan die voorwaardes van sy of haar lisensie, 'n voldoeningskennisgewing of die bepalings van hierdie Wet te voldoen, by die Hoof Uitvoerende Beampte aanmeld; 25
- (d) die feit dat 'n lisensiehouer gediskwalifiseer of ongeskik geraak het om 'n lisensie te hou, by die Hoof Uitvoerende Beampte aanmeld;
- (e) indien hy of sy van mening is dat die gelisensieerde perseel verlaat is of ongeskik vir gebruik vir die doel van 'n gelisensieerde besigheid geraak het, hierdie feit by die Hoof Uitvoerende Beampte aanmeld; en 30
- (f) indien die lisensiehouer skuldig bevind is aan 'n strafregtelike misdryf, die aard en omstandighede van die misdryf en skuldigbevinding by die Hoof Uitvoerende Beampte aanmeld.

Bevoegdheid van aangewese drankbeamptes en inspekteurs 35

- 61.** (1) 'n Aangewese drankbeampte of 'n inspekteur kan by die verrigting van sy of haar funksies—
- (a) te alle redelike tye—
- (i) enige gelisensieerde perseel;
- (ii) enige perseel ten opsigte waarvan 'n aansoek ingevolge hierdie Wet 40
gedoen is;
- (iii) enige perseel waar drank ingevolge 'n permit verkoop word;
- (iv) enige perseel waar drank vervaardig word of van waar drank versprei word ingevolge 'n registrasie kragtens die bepalings van die Drankwet; en
- (v) enige perseel waar hy of sy vermoed dat drank geberg of verkoop word 45
strydig met die bepalings van hierdie Wet of die Drankwet,
betree en kan sodanige ondersoek instel en navrae of inspeksies doen as wat hy of sy nodig ag, nadat hy of sy die persoon wat op daardie tydstip in beheer van die perseel is, ingelig het van die doel van sy of haar besoek,
- (b) op enige tyd en plek enige persoon versoek om onmiddellik of op 'n datum en 50
tyd wat bepaal moet word, enige lisensie, permit, registrasiesertifikaat, rekord of ander dokument wat in die besit, bewaring of beheer van daardie persoon of enige ander persoon namens hom of haar is, aan hom of haar voor te lê;
- (c) insae hê in enige dokument in paragraaf (1)(b) bedoel, kopieë daarvan of uittreksels daaruit maak, van die persoon in bedoelde paragraaf beoog 'n 55
verklaring vereis van enige deel daarvan en op sodanige dokument beslag lê indien dit na sy of haar mening getuienis kan uitmaak van 'n misdryf ingevolge hierdie Wet, of van 'n oortreding van enige voorwaarde van 'n lisensie;
- (d) beslag lê op sodanige dokument indien dit volgens sy of haar mening, 60
getuienis van 'n misdryf uitmaak, in terme van hierdie Wet of 'n oortreding van enige voorwaarde van 'n lisensie.

- (e) die lisensiehouer of geregistreerde persoon of sy of haar werknemers, 'n aansoeker of enige persoon wat op 'n gelisensieerde of geregistreerde perseel is, ondervra indien hy of sy vermoed dat die werknemer of persoon enige dokument in sy of haar besit of onder sy of haar beheer het wat tersaaklik kan wees vir 'n aangeleentheid wat hy of sy ondersoek; en 5
- (f) versoek dat enige lisensiehouer of geregistreerde persoon of sy of haar werknemer voor hom of haar verskyn op 'n tyd en plek wat deur hom of haar vermeld moet word, om te antwoord op vrae oor 'n aangeleentheid wat ondersoek word.
- (2) Enige persoon wat in beheer is van 'n perseel in subartikel (1) beoog, moet sodanige bystand verleen as wat die aangewese drankbeampte en inspekteur redelikerwys versoek. 10

Bevoegdheid van vredesbeamptes in die algemeen

62. (1) 'n Vredesbeampte kan enige gelisensieerde perseel betree en inspekteer of enige voertuig, vaartuig of persoon deursoek wanneer hy of sy daartoe gemagtig is deur 'n lasbrief uitgereik deur 'n bevoegde hof, en 'n vredesbeampte met of bo die rang van inspekteur of die ekwivalent daarvan kan sonder 'n lasbrief sodanige perseel betree en inspekteer of sodanige voertuig, vaartuig of persoon deursoek op versoek van die lisensiehouer of 'n werknemer in beheer van die perseel, voertuig of vaartuig, wanneer hy of sy deur enige ander wet gemagtig word om dit te doen. 15 20
- (2) 'n Vredesbeampte kan by die betreding en inspektering van 'n gelisensieerde perseel of die deursoeking van enige voertuig, vaartuig of persoon ingevolge subartikel (1) op die volgende beslag lê en dit verwyder—
- (a) enigiets wat gebruik sal word as getuie van die oortreding van die bepalings van hierdie Wet of die voorwaardes van 'n lisensie of permit; en 25
- (b) enigiets wat gebruik is of word in verband met die oortreding van hierdie Wet of 'n voorwaarde van 'n lisensie of permit.
- (3) By die betreding van 'n perseel ingevolge hierdie artikel moet die vredesbeampte—
- (a) hom of haar identifiseer aan die persoon in beheer van die perseel; 30
- (b) die lasbrief, as daar is, aan daardie persoon toon;
- (c) die gesag ingevolge waarvan die inspeksie gedoen word, verklaar; en
- (d) die inspeksie doen met die mins moontlike ongerief vir die lisensiehouer of sy of haar kliënte en met die mins moontlike ontwrigting van die gelisensieerde besigheid. 35
- (4) 'n Vredesbeampte moet by die beslaglegging op enigiets ingevolge hierdie artikel 'n kwitansie aan die persoon van wie daar op die artikel beslag gelê is, uitreik waarin die artikel of artikels waarop beslag gelê is, beskryf word en die redes vir die beslaglegging verduidelik word.
- (5) Enigiets waarop ingevolge hierdie artikel beslag gelê is, moet behou en bewaar word totdat die Raad of 'n bevoegde hof 'n bevel uitgereik het oor hoe daarvoor beskik moet word. 40
- (6) Tensy die lisensiehouer of 'n persoon in sy of haar diens vir wie hy of sy ingevolge hierdie Wet verantwoordelik is, in 'n bevoegde hof van 'n strafregtelike misdryf aangekla word of gedagvaar word om op 'n vergadering van die Raad te verskyn binne dertig (30) dae na die datum van die beslaglegging, moet die artikel waarop beslag gelê is, terugbesorg word aan die persoon van wie daar op die artikel beslag gelê is. 45

Algemene misdrywe

63. (1) 'n Persoon wat—
- (a) nie 'n lisensiehouer, die houer van 'n permit, 'n vrygestelde persoon of 'n persoon is wat ingevolge die Drankwet geregistreer is nie en wat drank verskaf of verkoop; 50
- (b) versuim om aan 'n bepaling van hierdie Wet te voldoen;
- (c) 'n geregistreerde vervaardiger of verspreider ingevolge die Drankwet is en wat nie ook 'n lisensiehouer of permithouer ingevolge hierdie Wet is nie en wat drank verkoop of verskaf aan 'n persoon wat nóg 'n lisensiehouer of 'n permithouer ingevolge hierdie Wet is, nóg 'n geregistreerde vervaardiger of verspreider ingevolge die Drankwet is; 55
- (d) dronk is in of op—

- (i) enige perseel waar drank verkoop word; of
 - (ii) enige plek waartoe die publiek toegang het;
 - (e) drank verkoop of verskaf aan 'n dronk persoon of, synde 'n lisensiehouer of 'n persoon in beheer van 'n gelisensieerde perseel, toelaat dat 'n dronk persoon op 'n gelisensieerde perseel bly; 5
 - (f) drank in 'n houer verkoop of verskaf wat nie voldoen nie aan die standarde en spesifikasies wat die Minister by kennisgewing in die *Provinsiale Koerant* voorgeskryf het;
 - (g) drank koop van enige persoon, wetende of met redelike gronde om te vermoed dat sodanige persoon nie gelisensieer is of toegelaat word om drank ingevolge hierdie Wet of ingevolge die Drankwet te verkoop nie; 10
 - (h) drank verkoop aan 'n persoon, wetende of met redelike gronde om te vermoed dat sodanige persoon die drank sal herverkoop anders as wat ingevolge hierdie Wet of die Drankwet toegelaat word;
 - (i) drank uit 'n muntoutomaat of ander toestel verkoop, tensy sodanige toestel te alle tye bedryf word deur en onder die regstreekse fisiese toesig van die lisensiehouer of 'n werknemer; 15
 - (j) synde 'n lisensiehouer, toelaat dat die gelisensieerde perseel as 'n bordeel gebruik word of gewoonlik deur prostitute besoek word, of
 - (k) synde 'n lisensiehouer, die verkoop, gebruik of besit van dwelmmiddels op die perseel toelaat strydig met enige wet wat oor sodanige verkoop, gebruik of besit handel, 20
- begaan 'n misdryf.

Misdrywe betreffende inligting

64. (1) 'n Persoon wat met betrekking tot 'n aansoek, beswaar of verhoë— 25
- (a) inligting voorlê of verstrek wat hy of sy weet vals of misleidend is of wat hy of sy nie weet dat dit waar is nie of 'n vervalste dokument voorlê of een wat voorgee 'n ware afskrif van die oorspronklike te wees maar dit nie is nie; of
 - (b) op enige beswaar of verhoë of klag antwoord op 'n wyse wat hy of sy weet vals of misleidend is of wat hy of sy nie weet dat dit waar is nie; of 30
 - (c) na aanleiding van 'n vraag deur 'n aangewese drankbeampte, 'n inspekteur, 'n polisiebeampte, 'n munisipale beampte of die Raad inligting voorlê of verskaf wat hy of sy weet vals of misleidend is of wat hy of sy nie weet dat dit waar is nie of 'n vervalste dokument voorlê of een wat voorgee om 'n juiste afskrif van die oorspronklike te wees maar dit nie is nie, 35
- begaan 'n misdryf.
- (2) 'n Persoon wat versuim om te voldoen aan 'n versoek van 'n aangewese polisiebeampte of inspekteur ingevolge artikel 61, begaan 'n misdryf.

Misdrywe betreffende vergaderings van die Raad en die Appèltribunaal

65. (1) 'n Persoon wat— 40
- (a) nadat hy of sy behoorlik in kennis gestel is om voor die Raad te verskyn, versuim om dit te doen, hetsy persoonlik of verteenwoordig deur 'n prokureur of advokaat;
 - (b) voor die Raad verskyn maar sonder toestemming van die Voorsitter die vergadering verlaat voor die afsluiting daarvan; 45
 - (c) nadat hy of sy op 'n vergadering deur die Voorsitter in kennis gestel is om 'n vergadering by te woon op 'n datum tot wanneer die vergadering uitgestel is, versuim om daar teenwoordig te wees;
 - (d) nadat hy of sy deur die Voorsitter gelas is om getuienis te lewer of 'n dokument voor te lê, weier of versuim om dit te doen; 50
 - (e) wanneer die eed of plegtige verklaring van hom of haar afgeneem word, weier of versuim om die eed of verklaring af te lê;
 - (f) nadat hy of sy die eed of plegtige verklaring afgelê het, versuim om na sy of haar beste wete te antwoord op vrae wat aan hom of haar gestel word of vals of misleidende getuienis lewer wetende dat sodanige getuienis vals of misleidend is; 55
 - (g) die verrigtinge van die Raad opsetlik ontwrig; of
 - (h) weier om die vergadering te verlaat wanneer hy of sy deur die Voorsitter gelas word om dit te doen,

begaan 'n misdryf.

(2) Die bepalings van subartikel (1) is met die nodige veranderings van toepassing op vergaderings van die Appèltribunaal.

Misdrywe betreffende polisiebeamptes en inspekteurs

- 66.** 'n Persoon wat— 5
- (a) hom of haar valslik as 'n aangewese drankbeampte of inspekteur voordoen;
 - (b) 'n aangewese drankbeampte of inspekteur by die uitvoering van sy of haar pligte hinder;
 - (c) weier of versuim om 'n wettige opdrag van 'n aangewese drankbeampte of inspekteur te gehoorsaam; of 10
 - (d) sonder wettige verskoning weier om te antwoord op 'n vraag aan hom of haar gestel deur 'n aangewese drankbeampte of inspekteur of wetend 'n vals of misleidende antwoord gee,

begaan 'n misdryf.

Motorvoertuie 15

- 67.** (1) 'n Persoon wat—
- (a) drank verbruik in 'n motorvoertuig wat op 'n openbare pad bestuur word;
 - (b) die verbruik van drank toelaat in 'n motorvoertuig waarvan hy of sy die bestuurder is of wat onder sy of haar beheer is terwyl dit op 'n openbare pad bestuur word; of 20
 - (c) toelaat dat drank in 'n oop houer is in 'n motorvoertuig terwyl dit op 'n openbare pad bestuur word,

begaan 'n misdryf.

(2) Subartikel (1) is nie van toepassing nie op die verbruik van drank in 'n motorvoertuig wat vir die verkoop en verbruik van drank gelisensieer is. 25

Diensstasies

68. Uitgesonderd ten opsigte van persele wat ingevolge die Drankwet, 1989 (Wet 27 van 1989), gelisensieer is, of tensy die bevoegde owerheid anders bepaal in 'n bepaalde geval, mag geen drank verkoop, verskaf of verbruik word nie op 'n erf waarop die besigheid van 'n diensstasie wat petrol, diesel en ander petroleumprodukte aan die publiek verkoop word, bedryf word. 30

Versuim om aan bevel van Raad te voldoen

- 69.** (1) Versuim om aan 'n bevel van die Raad te voldoen, is 'n misdryf.
- (2) Indien 'n persoon versuim om aan 'n bevel van die Raad te voldoen, kan die Raad na behoorlike ondersoek— 35
- (a) die lisensie opskort hangende voldoening aan die bevel;
 - (b) 'n boete oplê, waarvan die betaling opgeskort kan word hangende voldoening aan die bevel;
 - (c) die aangeleentheid na die Suid-Afrikaanse Polisie diens verwys vir die vervolging van die oortreder; of 40
 - (d) die lisensie intrek.

Middellike verantwoordelikheid

70. (1) Indien die bestuurder, agent of werknemer van 'n lisensiehouer iets doen of versuim om iets te doen wat, as dit deur die lisensiehouer gedoen of versuim is, 'n misdryf ingevolge hierdie Wet sou wees, word die lisensiehouer geag daardie handeling te verrig het of versuim het om dit te verrig, behalwe waar die lisensiehouer— 45

- (a) die handeling of versuim nie oogluikend toegelaat, veroorloof of toegelaat het nie;
- (b) sodanige stappe gedoen het as wat hy of sy redelikerwys kon doen ten einde die handeling of versuim te voorkom; en 50
- (c) die handeling of versuim nie binne die bestek van die diens of gesag van die bestuurder, agent of werknemer geval het nie.

(2) Die feit dat 'n lisensiehouer opdragte uitgereik het wat 'n handeling of versuim

verbied, is nie op sigself voldoende om te bewys dat hy of sy die stappe gedoen het wat by subartikel (1)(b) vereis word nie.

(3) Wanneer 'n lisensiehouer aanspreeklik is vir die handelinge of versuim van 'n ander persoon ingevolge subartikel (1), is sodanige ander persoon ook daarvoor aanspreeklik asof hy of sy die lisensiehouer is. 5

(4) 'n Bestuurder, agent of werknemer word nie van enige ander aanspreeklikheid onthef nie wat hy of sy opgeloop het afgesien van die aanspreeklikheid wat ingevolge subartikel (1) met die lisensiehouer gedeel word.

Vrystellings

71. (1) Hierdie Wet is nie van toepassing nie op— 10

(a) 'n beampte soos omskryf in artikel 1(1) van die Doeane- en Aksynswet, 1964 (Wet 91 van 1964), by die verrigting van amptelike pligte;

(b) 'n balju of sy of haar werknemer of enige ander beampte wat ingevolge 'n bevel van 'n bevoegde hof optree by die uitvoering van sy of haar pligte;

(c) 'n persoon bedoel in 'n kennisgewing ingevolge artikel 10 van die Wet op Drankprodukte, 1989 (Wet 60 van 1989), met betrekking tot die verkoop van 'n sakramentele drank ingevolge sodanige kennisgewing; 15

(d) 'n persoon wat alkoholiese of gedistilleerde reukwerk vervaardig of verkoop; en

(e) 'n persoon wat medisyne soos omskryf in die Wet op Medisyne en Verwante Stowwe, 1965 (Wet 101 van 1965), soos gewysig, vervaardig of verkoop. 20

(2) Die Raad kan op aansoek deur 'n belanghebbende persoon verklaar dat 'n persoon of plek vrygestel is van die toepassing van die bepalings van artikel 20 van hierdie Wet.

(3) 'n Verklaring ingevolge subartikel (2) kan gedoen word behoudens sodanige voorwaardes en beperkings as wat die Raad stel. 25

(4) Die Raad kan te eniger tyd die vrystelling ingevolge subartikel (2) wysig of intrek.

(5) Die Raad moet 'n kennisgewing van die voorgenome wysiging of intrekking van die vrystelling in die drie (3) amptelike tale van die Provinsie publiseer in 'n koerant wat sirkuleer in die gebied waar die vrygestelde perseel geleë is, en belanghebbende persone versoek om binne die tyd in die kennisgewing bepaal, redes te verstrek waarom die vrystelling nie gewysig of ingetrek moet word nie. 30

(6) Benewens die maatreëls ingevolge subartikel (5) getref, kan die Raad sodanige bykomende maatreëls tref as wat hy geskik ag om belanghebbende persone in kennis te stel van sy voorneme om 'n vrystelling wat ingevolge subartikel (2) verleen is, te wysig of in te trek. 35

Bewyse

72. (1) Indien daar in enige strafverrigtinge of op 'n vergadering van die Raad getuienis voorgelê word dat 'n persoon wat nie gelisensieer of toegelaat is om drank ingevolge hierdie Wet of enige ander wet te verkoop nie—

(a) op of naby sy of haar perseel 'n teken of kennisgewing gehad het wat te kenne gee dat drank daar te koop is; 40

(b) 'n perseel beset wat toegerus is met 'n kroegtoonbank op 'n wyse wat tot die redelike afleiding lei dat drank daar te koop is;

(c) meer drank as die maksimum volume in artikel 48 bedoel, op sy of haar perseel of onder sy of haar beheer gehad het sonder die toestemming vooraf wat by daardie artikel vereis word; of 45

(d) meer drank as die maksimum volume in artikel 48 bedoel, gekoop of verkry het sonder die toestemming vooraf wat by daardie artikel vereis word,

is dit *prima facie*-bewys van die verkoop van drank.

(2) Indien in enige strafverrigtinge of op 'n vergadering van die Raad— 50

(a) 'n verseelde houer as bewys gelewer word wat 'n vloeistof bevat, op welke houer daar 'n etiket of ander toestel is wat die alkoholinhoud van die vloeistof aandui, dan is dit bewys, tensy die teendeel bewys word, dat die vloeistof die verklaarde alkohol bevat, en as die verklaarde alkoholinhoud meer as 1% alkohol per volume is, dat die vloeistof drank is; 55

(b) meer as een houer as bewys gelewer word wat elkeen deel uitmaak van 'n voorraad of lot drank wat op dieselfde tyd op dieselfde plek aangetref is en

- daar bewys word dat een of meer sulke houers drank bevat, dan is dit bewys, tensy die teendeel bewys word, dat al die houers drank bevat;
- (c) 'n dokument as bewys gelewer word wat voorgee 'n afskrif van 'n lisensie of permit te wees, is dit by die blote voorlegging daarvan *prima facie*-bewys van die lisensie of permit en word enige voorwaarde of endossement daarop daaraan geheg geag 'n voorwaarde of endossement te wees wat ingevolge hierdie Wet gestel is; 5
- (d) 'n verklaring of sertifikaat as bewys gelewer word wat voorgee deur 'n ontleder of chemikus in diens van die Regering van die Republiek of in diens van 'n universiteit of van 'n mediese navorsingsinstituut onderteken te wees, wat 'n ontleding gemaak het van 'n vloeistof of stof wat die onderwerp van die strafverrigtinge of vergadering is, is sodanige verklaring of sertifikaat, tensy die teendeel bewys word, bewys van die inhoud van die verklaring of sertifikaat; of 10
- (e) bewys gelewer word dat 'n lisensiehouer wat beskuldig word van 'n oortreding van artikel 42, versuim het om van 'n persoon onder die ouderdom van agttien (18) jaar óf— 15
- (i) sy of haar geldige identiteitsdokument;
- (ii) sy of haar geldige bestuurslisensie met sy of haar foto en 'n geboortedatum; of 20
- (iii) sy of haar geldige paspoort met sy of haar foto en 'n geboortedatum, te verkry, is sodanige bewys *prima facie*-bewys van die feit dat die lisensiehouer kennis gedra het van die feit dat sodanige persoon onder die ouderdom van agttien (18) jaar was.

Gesondheidskennisgewings 25

- 73.** (1) Die Minister kan, behoudens artikel 41 van die Drankwet, by kennisgewing in die *Provinsiale Koerant* die inhoud van openbare gesondheidskennisgewings en die wyse waarop sulke kennisgewings op die gelisensieerde perseel vertoon moet word, voorskryf.
- (2) Versuim om 'n gesondheidskennisgewing ingevolge hierdie artikel te vertoon, is 'n misdryf. 30

Strawwe

- 74.** Enige persoon wat 'n bepaling van hierdie Wet oortree, is by skuldigbevinding strafbaar met—
- (a) 'n boete van hoogstens R100 000; 35
- (b) gevangenisstraf van hoogstens vyf (5) jaar; of
- (c) sowel sodanige boete as sodanige gevangenisstraf.

HOOFSTUK 13 REGULASIES, OORGANGSBEPALINGS EN KORT TITEL

Regulasies 40

- 75.** (1) Die Minister kan regulasies uitvaardig betreffende—
- (a) die standaard waaraan houers en verpakking waarin drank verkoop word, moet voldoen;
- (b) die vorm en wyse waarop aansoeke ingevolge hierdie Wet gedoen en ingedien moet word; 45
- (c) die vorm en die wyse waarop besware en verhoë ter staving van aansoeke gedoen en ingedien moet word;
- (d) die bedrag van gelde wat betaal moet word ten opsigte van aansoeke ingevolge hierdie Wet;
- (e) die bedrag van gelde wat betaal moet word ten opsigte van die uitreiking van 'n lisensie of 'n permit; 50
- (f) die bedrag van gelde wat betaal moet word ten opsigte van die oordrag van 'n lisensie;
- (g) die bedrag van gelde wat betaal moet word ten opsigte van die hernuwing van 'n lisensie; 55

- (h) die bedrag van gelde wat betaal moet word ten opsigte van die insae in en kopiëring van dokumente in die besit van die Raad of 'n munisipaliteit;
- (i) die prosedure wat deur die Raad of 'n munisipaliteit gevolg moet word ten opsigte van aansoeke ingevolge hierdie Wet;
- (j) die vorm van lisensies, permitte, kennisgewings, toestemmings, aanstellings, 5
bepalings, goedkeurings, magtigings en ander dokumente in hierdie Wet
bedoel;
- (k) die prosedure wat deur die Appèltribunaal gevolg moet word
- (l) appèlle en hersienings ingevolge hierdie Wet;
- (m) enige aangeleentheid wat ingevolge hierdie Wet voorgeskryf kan of moet 10
word;
- (n) die wyse waarop 'n lisensiehouer van 'n perseel waarop drank verkoop mag
word vir verbruik buite die gelisensieerde perseel, 'n rekord van drank
verkoop moet hou;
- (o) die maksimum volume drank in artikel 48 bedoel; 15
- (p) die vorm en wyse van betekening van 'n voldoeningskennisgewing, 'n
verklaring van geskil en 'n voldoeningstifikaat ingevolge artikel 57;
- (q) die vorm, inhoud en wyse van vertoning van openbare
gesondheidskennisgewings ingevolge artikel 73; en
- (r) in die algemeen, enige aangeleentheid ten opsigte waarvan die Minister dit 20
nodig of dienstig ag om regulasies uit te vaardig ten einde die oogmerke van
hierdie Wet te bereik, sonder dat die wye omvang van hierdie paragraaf deur
die voorgaande paragrawe ingekort word.
- (2) 'n Regulasie wat kragtens hierdie artikel uitgevaardig is ten opsigte van gelde of
geld wat betaal moet word, moet uitgevaardig word in oorleg met die Minister 25
verantwoordelik vir finansies vir die Provinsie.

Oorgangsbepalings

76. Op die datum van inwerkingtreding van hierdie Wet—

- (1) Enige lisensie van die tipe hieronder gelys wat van krag was onmiddellik voor
sodanige datum van inwerkingtreding, word geag 'n lisensie vir die verkoop van drank 30
vir verbruik op die gelisensieerde perseel te wees—
- (a) hotel dranklisensie;
- (b) restourant dranklisensie;
- (c) wynhuislisensie;
- (d) sorghumbierlisensie vir binneverbruik; 35
- (e) teater dranklisensie;
- (f) klub dranklisensie; en
- (g) spesiale dranklisensie vir binneverbruik.
- (2) Enige lisensie van die tipe hieronder gelys wat van krag was onmiddellik voor
sodanige datum van inwerkingtreding, word geag 'n lisensie vir die verkoop van drank 40
vir verbruik elders as op die gelisensieerde perseel te wees—
- (a) drank winkellisensie;
- (b) kruidenierswynlisensie;
- (c) sorghumbierlisensie vir buiteverbruik;
- (d) wynboerlisensie; en 45
- (e) spesiale dranklisensie vir buiteverbruik.
- (3) Enige lisensie van die tipe hieronder gelys wat van krag was onmiddellik voor
sodanige datum van inwerkingtreding, word geag 'n lisensie vir die mikrovervaardiging
en verkoop van drank vir verbruik elders as op die gelisensieerde perseel te wees— 50
- (a) groothandel dranklisensie;
- (b) produsentlisensie;
- (c) brouerslisensie; en
- (d) sorghumbierbrouerslisensie,
- ingevolge waarvan drank in die voorafgaande twaalf (12) maande vervaardig is, maar
die volume drank aldus vervaardig nie meer was nie as die drempellimiet voorgeskryf 55
ingevolge artikel 4(10) van die Drankwet.
- (4) Enige lisensie wat hieronder gelys word, wat aan die houer daarvan die reg verleen
om drank te verkoop vir verbruik elders as op die gelisensieerde perseel en wat
ingevolge die Drankwet omgeskakel is, wat van krag was onmiddellik voor sodanige
datum van inwerkingtreding, word geag 'n lisensie vir die verkoop van drank vir 60
verbruik elders as op die gelisensieerde perseel te wees—

- (a) groothandeldranklisensie;
- (b) produsentlisensie;
- (c) brouerslisensie; en
- (d) sorghumbierbrouerslisensie,

(5) 'n Kennisgewing uitgereik ingevolge artikel 33 van die Drankwet, 1989 (Wet 27 van 1989), en van krag onmiddellik voor die inwerkingtreding van hierdie Wet, moet geag word voorwaardes te wees wat ingevolge artikel 34 van hierdie Wet skriftelik uiteengesit is. 5

(6) Ondanks die herroeping van enige wet as gevolg van die inwerkingtreding van hierdie Wet moet enige aansoek wat voor sodanige inwerkingtreding gedoen is, beskou en afgehandel word as in ooreenstemming met die bepalings van die wet ingevolge waarvan dit ingedien is. 10

(7) Die bepalings van subartikels (1), (2) en (3) van hierdie artikel is van toepassing op lisensies wat ná die datum van inwerkingtreding van hierdie Wet ingevolge die bepalings van die Drankwet, 1989 verleen is. 15

(8) Tensy die Raad op aansoek anders bepaal, verval 'n lisensie wat uitgereik is ten opsigte van 'n perseel geleë op 'n erf waarop daar op die datum van inwerkingtreding van hierdie Wet 'n diensstasie bedryf word wat petrol, diesel en ander petroleumprodukte verkoop, vyf (5) jaar na die datum van inwerkingtreding van hierdie Wet. 20

(9) Lisensies uitgereik voor die inwerkingtreding van hierdie Wet vir 'n perseel waarop drank verkoop mag word vir verbruik op of buite die gelisensieerde perseel wat sake doen buite die handelsure in artikel 47(3) vermeld, is na twaalf (12) maande na die datum van inwerkingtreding van hierdie Wet aan artikel 47 onderhewig.

(10) Enige toestemming, goedkeuring of voorreg verleen aan 'n lisensiehouer ingevolge die Drankwet of enige wet wat hierby herroep word, wat nie strydig met die bepalings van hierdie Wet is nie, word geag 'n toestemming, goedkeuring of voorreg te wees wat ingevolge hierdie Wet verleen is. 25

(11) Enige voorwaarde gestel vir 'n lisensie ingevolge die bepalings van die Drankwet of enige wet wat hierby herroep word, wat nie strydig met die bepalings van hierdie Wet is nie, word geag 'n voorwaarde te wees wat ingevolge hierdie Wet gestel is. 30

(12) (a) Die vervaldatum ingevolge artikel 51(2) van enige lisensie wat op die datum van inwerkingtreding van hierdie Wet geldig was ingevolge die bepalings van die Drankwet, 1989, is die laaste dag van Desember van die jaar waarin hierdie Wet in werking tree, en 31 Desember word vir doeleindes van artikel 51(2) beskou as die uitreikingsdatum van sodanige lisensie. 35

(b) Die jaarlikse hernuwingskennisgewing uitgereik ingevolge artikel 52(1) vir 'n lisensie in subartikel (1) bedoel, moet nie later nie as 31 Oktober van die jaar waarin hierdie Wet in werking tree, uitgereik word.

Herroeping van bepalings 40

77. Die bepalings van die Drankwet, 1989 (Wet 27 van 1989) word herroep vir soverre dit op die Provinsie betrekking het.

Kort titel

78. Hierdie Wet heet die Wes-Kaapse Drankwet, 2005, en tree in werking op 'n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal. 45

VERDUIDELIKENDE MEMORANDUM

(i) Inleiding en redes vir die Wetsontwerp

Skedule 5 deel A van die Grondwet van die Republiek van Suid Afrika, 1996 (Wet 108 van 1996), bepaal dat dranklisensiering 'n funksionele area van eksklusiewe provinsiale wetgewende bevoegdheid is. Die Grondwetlike Hof het egter bevind dat toestande in die drankbedryf die promulgasie van die nasionale Drankwet, 2003 (Wet 59 van 2003) ("die nasionale Drankwet, 2003") regverdig. Die nasionale Drankwet, 2003 skep 'n drievlakstelsel in die drankbedryf bestaande uit vervaardiging (insluitend mikro-vervaardiging), verspreiding en kleinhandel van drank en bepaal die regulering van die vervaardiging (uitgesluit mikro-vervaardiging) en verspreidingsvlakke van die bedryf, terwyl die provinsiale wetgewers die uitsluitlike bevoegdheid behou om die mikro-vervaardiging- en kleinhandelsvlakke van die bedryf te reguleer.

Verder herroep die nasionale Drankwet, 2003 die Drankwet, 1989 (Wet 27 van 1989) ("die Drankwet, 1989"), wat tot die herroeping daarvan die bedryf gereguleer het. Die nasionale Drankwet, 2003 behou die werking van die Drankwet, 1989 as provinsiale wetgewing, ten einde die provinsiale vlakke van die bedryf in die afwesigheid van provinsiale drankwetgewing te reguleer.

Daar word algemeen aanvaar dat dit nodig is om die drankbedryf te reguleer weens die potensiële skadelike aard van die produk. Verskeie beheermaatreëls is in die verlede op die bedryf toegepas in ooreenstemming met die sosiale en politieke oogmerke van die regering van die dag. Weens geskiedkundige redes, wat aanleiding gegee het tot die uitsluiting van histories-agtergeblewe persone uit die formele drankbedryf, bly die bedryf grootliks ongereguleerd. Die gevolg is die aanwas van 'n groot aantal ongelisensieerde afsetpunte in woonbuurte en wat nie voldoen aan ruimtelike ordening- en ander beheermaatreëls nie. Drank word verder vereenselwig met die voorkoms van misdaad in beide die gereguleerde en ongereguleerde sektore van die bedryf en maatreëls wat in die verlede voorsien is, is met gemengde welslae begroet.

Dit is nodig om op die provinsiale sfeer van die regering beheermaatreëls daar te stel, in ooreenstemming met die bepalings van die Grondwet, wat die vereistes van 'n gereguleerde drankbedryf weerspieël.

(ii) Maatskaplike impak van die Wetsontwerp

Die wetsontwerp maak voorsiening vir die Wes-Kaapse Drankraad as 'n onafhanklike statutêre liggaam in ooreenstemming met die bepalings van die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999) met voldoende hulpbronne om die administrasie van 'n lisensieringstelsel, die afdwing van beheermaatreëls op en monitering van gelisensieerde persele, die verpligte opleiding van verkopers van drank asook ander opvoedingsinsette ten einde die skadelike impak van die drankbedryf te verminder, te verseker. Die Wetsontwerp maak verder voorsiening vir verbeterde openbare bewustheid van en deelname in die lisensieringsproses, asook maatreëls om om te sien na klagtes oor gelisensieerde persele. Voorsiening word gemaak vir die deelname deur plaaslike owerhede in die lisensieringsproses deur die aanstelling van geskikte munisipaliteite as agente van die Drankraad om te help met die lisensieringsproses. Munisipaliteite mag verder as bevoegde owerhede in eie reg aangestel word ten einde drankforums te stig wat in raadgevende hoedanigheid en as plaaslike dispuutresolusieliggame tydens die lisensieringsproses dien. Munisipaliteite wat as bevoegde owerhede aangestel word, bepaal die drankhandelsure en —dae in hulle gebiede, reik permitte uit aan handelaars in tradisionele Afrikabier en vir spesiale geleenthede en mag areas binne hulle regsgebied as verbode vir die besit van drank in die openbaar verklaar. Voorsiening word verder gemaak vir 'n Appéltribunaal ten einde hersienings van en app lle teen beslissings van die Drankraad te oorweeg. Die afdwinging en administrasie van die Drankwetsontwerp word verseker deur die voortsetting van die bestaande stelsel van aangewese drankbeamptes binne die rangstruktuur van die Suid Afrikaanse Polisie diens in die Wes-Kaap, met verbeterde funksies en magte. Verbeterde beheermaatreëls, misdrywe en strawwe word ingesluit ten

einde die gelisensieërde bedryf beter te reguleer en bedrywighede in stryd met Wetsontwerp indruis te bekamp.

Die Wetsontwerp maak ook voorsiening vir minder kategorieë van lisensies. Dit sluit in lisensies vir verbruik op die perseel, verbruik elders as op die perseel, verbruik binne of buite die perseel, spesiale geleentheidslisensies en -permitte en mikrovervaardigerslisensies. Die reg van kleinhandelskoswinkels om slegs in tafelvyn handel te dryf word behou. Voorsiening word gemaak vir die oplegging van standaardlisensievoorwaardes asook spesifieke lisensievoorwaardes vir elke lisensie. Die gronde van oorweging van lisensies deur die Drankraad word uiteengesit en sluit grondgebruiksregte as voorvereiste vir die uitreiking van lisensies in.

Maatreëls vir die verpligte opleiding van die verkopers van drank sal verseker dat handelaars verantwoordelik optree. Voorsiening word gemaak vir die verhoging van openbare bewustheid van die gevare verbonde aan die misbruik van drank by wyse van gesondheidskenningsgewings en bewustheidsveldtogte. Die Wetsontwerp verplig beamptes van die Drankraad om maatreëls ter bekamping van drankmisbruik te bevorder.

(iii) **Finansiële implikasies van die Wetsontwerp**

Die Wetsontwerp maak voorsiening vir die vasstelling van aansoekfooie, jaargelde en boetes deur die verantwoordelike provinsiale Minister. Die bestaande fooie is laas in 1992 hersien. Die inkomste wat uit die lisensiestelsel voortspruit word aan die Provinsiale Inkomstefonds oorbetaal. Die openbare liggaam en sy strukture en funksies wat deur die wetsontwerp geskep word, sal befonds word deur middel van oordragbetalings wat deur die verantwoordelike Minister beskikbaar gestel word nadat die entiteit voldoen het aan die die voorgeskrewe vereistes van die Wetsontwerp in ooreenstemming met die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999). Daar moet vir toekomstige kostes voorsiening gemaak word in provinsiale bestedingskattings, asook in die toewysings deur die Provinsiale Wetgewer.

Voorsiening sal gemaak word vir befondste mandate waar ander openbare liggame aangestel word in ooreenstemming met die vereistes van die Grondwet en toepaslike wetgewing nadat die nodige samesprekings plaasgevind het. Verpligte opleidingsprogramme sal by die Suid Afrikaanse Kwalifikasieowerheid en toepaslike bedryfsopleidingsowerheid geakkrediteer word.

(iv) **Paragraaf per paragraaf verduideliking**

INHOUD

HOOFSTUK 1

INTERPRETASIE

- Klousule 1. Woordomsrywings — Hierdie klousule verskaf die woordomsrywings van sinsnedes en woorde vervat in die Wetsontwerp.

HOOFSTUK 2

WES-KAAPSE DRANKRAAD EN APPELTRIBUNAAL

- Klousule 2. Instelling van die Raad — Voorsiening word gemaak vir die voortbestaan van die Drankraad geskep deur die Drankwet, No 27 van 1989.
- Klousule 3. Samestelling van die Raad — Die aantal lede van die Drankraad, hulle kwalifikasies en ampte in die Raad word deur hierdie klousule bepaal.
- Klousule 4. Kriteria vir aanstelling — Hierdie klousule bevat die diskwalifikasiegronde vir aanstelling van Drankraadslede met betrekking tot strafregtelike oortredings, regtelike status, ouderdom en belange van lede of hulle familie in die drankbedryf.

- Klousule 5. Ampstermyn — Die ampstermyn van Drankraadlede is vyf jaar en hulle is herkiesbaar tot 'n verdere termyn van vyf jaar.
- Klousule 6. Beëindiging van lidmaatskap — Die Minister mag op sekere gronde lidmaatskap van die Drankraad beëindig.
- Klousule 7. Bevoegdhede en funksies van die Raad — Hierdie klousule maak voorsiening dat die Raad aansoeke in terme van die Wetsontwerp, vertoë rakende aansoeke, verslae deur beamptes, klagtes rakende gelisensieërde persele, wysiging van lisensievoorwaardes, appëlle teen permitbeslissings van munisipaliteite, of enige aangeleentheid wat na die Raad verwys is, of deur die Minister gedelegeer is, oorweeg. Dit maak verder voorsiening vir die goedkeuring, onderhewig aan voorwaardes, of die weiering van aansoeke, opskorting, terugtrekking of oplê van boetes en voorwaardes na aanleiding van verslae en klagtes en die beregting van appëlle. Dit laat die Raad toe om enige lisensievoorwaarde op te skort, terug te trek of te wysig.
- Klousule 8. Vergaderings en besluite van die Raad — Hierdie klousule het betrekking op die kworum van die Raad en die vasstelling van prosedures tydens vergaderings van die Raad.
- Klousule 9. Onttrekking van lede met botsende belang — Die gronde waarop 'n Raadslid onttrek word en die prosedure wat daarop betrekking het, word in hierdie klousule bepaal.
- Klousule 10. Befondsing van die Raad — Hierdie klousule maak voorsiening vir die befondsing van die Raad en die prosedure wat vereis word om befondsing te verkry en aanspreeklikheid daarvoor te verseker.
- Klousule 11. Oudit- en Jaarverslae — Oudit- en jaarverslae word ingevolge hierdie klousule van die Raad vereis.
- Klousule 12. Verrigtinge van die Raad — Hierdie klousule maak voorsiening vir die bepaling deur die Voorsitter van die Raad van prosedures tydens vergaderings, die bywoning van vergaderings en die prosedure om inligting te bekom.
- Klousule 13. Komitees van die Raad — In hierdie klousule word voorsiening gemaak vir die aanstelling van Drankraadkomitees, hulle prosedure en funksies.
- Klousule 14. Appèltribunaal — 'n Appèltribunaal word geskep en die lidmaatskap daarvan bepaal.

HOOFSTUK 3

BESOLDIGING EN ADMINISTRASIE VAN DRANKRAAD EN APPELTRIBUNAAL

- Klousule 15. Besoldiging van lede van Drankraad en Appèltribunaal — Voorsiening word gemaak vir die vasstelling van besoldiging deur die verantwoordelike Minister.
- Klousule 16. Administrasie van Raad en Appèltribunaal — Voorsiening word gemaak vir die aanstelling van 'n Hoof Uitvoerende Beampte, die voorsiening van menslike hulpbronne en finansiële bestuur van die Raad, die sekondering van personeel vanaf die verantwoordelike Department en administratiewe maatreëls.
- Klousule 17. Inkomste wat aan die Provinsiale Inkomstefonds, die Drankraad of munisipaliteite toeval — Die inkomste wat uit die lisensiestelsel voortspuit, word deur hierdie klousule toegewys.

HOOFSTUK 4

ROL VAN MUNISIPALITEITE

- Klousule 18. Munisipaliteite as agente van die Raad en as bevoegde lisensieowerhede — Hierdie klousule maak voorsiening vir die aanstelling van munisipaliteite as agente van die Drankraad en as bevoegde lisensieowerhede en omskryf hulle funksies as agente en magte as bevoegde owerhede.
- Klousule 19. Drankforums — Hierdie klousule maak voorsiening vir die daarstelling en samestelling van drankforums deur behoorlik aangestelde en bevoegde munisipaliteite.

HOOFSTUK 5

LISENSIERING

- Klousule 20. Lisensies en permitte — Voorsiening word in hierdie klousule gemaak vir die vereiste om die houer van 'n dranklisensie of permit te wees om drank te vervaardig of te verkoop, asook die skepping van 'n geaardgaande misdryf.
- Klousule 21. Kategorieë van lisensies — Hierdie klousule maak voorsiening vir vyf kategorieë van lisensies.
- Klousule 22. Kategorieë van permitte — Hierdie klousule maak voorsiening vir twee kategorieë van permitte.
- Klousule 23. Kriteria vir die toestaan van lisensies — Hierdie klousule bepaal die gronde waarop aansoeke vir lisensies en permitte oorweeg moet word.
- Klousule 24. Diskwalifisering van aansoekers — Voorsiening word in hierdie klousule gemaak vir die gronde vir diskwalifikasie van aansoekers vir lisensies en permitte.
- Klousule 25. Lisensiëringsprosedure — Hierdie klousule bepaal waar aansoeke vir lisensies en permitte ingedien moet word.
- Klousule 26. Kennis van aansoek — Die vereiste openbare kennisgewings en advertensies sowel as die persone aan wie kennis gegee moet word deur aansoekers en die munisipaliteite of die Drankraad word bepaal.
- Klousule 27. Aansoeke ter insae — Hierdie klousule bepaal die openbare insaeprosedures vir lisensie-aansoeke.
- Klousule 28. Vertoë — Voorsiening word gemaak vir die indiening van versoë betreffende lisensie-aansoeke deur belanghebbendes en die vereiste proses met betrekking daartoe.
- Klousule 29. Aanstuur van dokumente — Voorsiening word gemaak vir die versending van lisensieaansoeke en verwante dokumente deur die munisipaliteit aan die Raad.
- Klousule 30. Oorweging van aansoeke — Hierdie klousule maak voorsiening vir die oorweging van aansoeke deur die Drankraad en die geaardgaande prosedure.
- Klousule 31. Geskiktheid van persele — Hierdie klousule verhoed die uitreiking van lisensies waar die aansoekers nie oor die reg beskik om die perseel vir die gemagtigde doel te benut nie.
- Klousule 32. Onvolledige persele — Hierdie klousule verhoed die uitreiking van lisensies totdat die perseel voltooi is.

- Klousule 33. Onderwys en opleiding — Hierdie klousule maak voorsiening vir verpligte opleiding van aansoekers of hulle werknemers deur die Raad.
- Klousule 34. Voorwaardelike goedkeuring — Hierdie klousule maak voorsiening vir die oplegging van opskortende voorwaardes vir die uitreiking van lisensies deur die Raad.
- Klousule 35. Uitreiking van lisensies en permitte — Hierdie klousule maak voorsiening vir die uitreiking van lisensies en permitte na goedkeuring van aansoeke
- Klousule 36. Dood of onbevoegdheid van aansoeker — Hierdie klousule maak voorsiening vir die voortsetting van aansoeke na die afsterwe of onbevoegdheid van die aansoeker voor finale oorweging van die aansoek.

HOOFSTUK 6

VOORWAARDES VIR LISENSIES

- Klousule 37. Standaardlisensievoorwaardes — Hierdie klousule stel die vereiste dat drank slegs vir binne of buite verbruik in ooreenstemming met die toepaslike lisensiekategorie verkoop word en maak voorsiening vir die reg van kleinhandelsvoedselwinkels om tafelwyn vir buiteverbruik-doeleindes te verkoop.
- Klousule 38. Aflewering — Die vereistes vir die aflewering van drank word in hierdie klousule voorgeskryf.
- Klousule 39. Finansiële belang — Hierdie klousule verseker dat slegs die lisensiehouer op die gelisensieërde perseel in drank mag handel in terme van die lisensie en veranderinge in die finansiële belang van die gelisensieërde besigheid mag slegs met die goedkeuring van die Drankraad plaasvind.
- Klousule 40. Bestuur — Hierdie klousule skryf die prosedure en vereistes voor ten einde bevredigende bestuur van gelisensieërde persele deur natuurlike persone wat aan vasgestelde standarde voldoen, te verseker.
- Klousule 41. Veranderinge aan gelisensieërde persele — Veranderinge aan die gelisensieërde perseel of die aard van die besigheid benodig die Drankraad se goedkeuring.
- Klousule 42. Kinders — Hierdie klousule reguleer die verkoop en verskaffing van drank aan persone onder die ouderdom van agttien.
- Klousule 43. Werkgewers en werknemers — Die verhouding tussen werkgever en werknemer aangaande die verskaffing van drank aan die werknemer word deur hierdie klousule gereël.
- Klousule 44. Toegang tot gelisensieërde persele — Hierdie klousule reël die toegang tot gelisensieërde persele deur persone onder die ouderdom van agttien jaar.
- Klousule 45. Berging van drank — Die klousule reguleer berging van drank deur lisensiehouers.
- Klousule 46. Plek van verkope — Hierdie klousule bepaal die plek van verkope van drank deur lisensiehouers.
- Klousule 47. Handelsure — Hierdie klousule maak voorsiening vir die vasstelling van drankhandelsure en -dae deur aangestelde munisipaliteite by wyse van verordening binne die voorgeskrewe minimum norme vasgestel in die

klousule as ook vir die beperking van handelsure en -dae in spesifieke gevalle deur die Drankraad.

- Klousule 48. Hoeveelheid drank en hou van rekords — Hierdie klousule bepaal die rekords van verkope van drank wat deur 'n lisensiehouer bygehou moet word, maak voorsiening vir die vasstelling van 'n maksimum hoeveelheid drank wat deur 'n lisensiehouer op 'n enkele dag aan 'n persoon verkoop mag word en verbied die besit van meer as 'n voorgeskrewe hoeveelheid drank deur 'n ongelisensieerde persoon.

HOOFSTUK 7

PERMITTE

- Klousule 49. Permit vir spesiale byeenkoms — Die prosedure vir aansoeke vir spesiale geleentheidspermitte word in hierdie klousule voorgeskryf.
- Klousule 50. Permit vir tradisionele Afrikabier—Die prosedure vir aansoeke om tradisionele Afrikabierpermitte word in die paragraaf voorgeskryf.

HOOFSTUK 8

GELDIGHEID EN HERNUWING VAN LISENSIES EN PERMITTE

- Klousule 51. Geldigheid van lisensies en permitte — Die tydperk van geldigheid van lisensies en permitte word in hierdie klousule bepaal.
- Klousule 52. Outomatiese hernuwing van lisensies — Hierdie klousule maak voorsiening vir die outomatiese hernuwing van lisensies en die gepaardgaande prosedure.
- Klousule 53. Aansoeke om hernuwing — Hierdie klousule maak voorsiening vir die gevalle waar outomatiese hernuwing nie plaasvind nie en maak voorsiening vir aansoeke om hernuwing van lisensies.

HOOFSTUK 9

OORDRAGTE VAN LISENSIES

- Klousule 54. Oordrag van lisensies — Daar word voorsiening gemaak vir die prosedure vir die oordrag van lisensies aan nuwe lisensiehouers as ook vir die tussentydse aanstelling van die voornemende houers as bestuurders tydens die aansoekproses.
- Klousule 55. Verlating van perseel en dood of onbevoegdheid van lisensiehouer— Hierdie klousule voorsien maatreëls om beheer oor gelisensieerde persele te verseker waar die persele verlaat word of by die afsterwe of onbevoegdheid van die lisensiehouers.

HOOFSTUK 10

APPÈLLE

- Klousule 56. Appèlle na die Tribunaal— Daar word voorsien vir die prosedure vir appèlle en hersienings na die Tribunaal.

HOOFSTUK 11

VOLDOENING

- Klousule 57. Voldoeningskennisgewings — Hierdie klousule maak voorsiening vir die uitreiking van voldoeningskennisgewings deur dranklisensie-inspekteurs en die gepaardgaande prosedure.
- Klousule 58. Tussentydse bevele — Hierdie klousule maak voorsiening vir die uitreiking van tussentydse bevele deur die Drankraad, in gevalle waar geregverdigde klagtes ontvang is, in afwagting van finale beslissing deur die Drankraad ten einde nakoming van vereistes deur lisensiehouers te verseker.
- Klousule 59. Opskorting, intrekking en verval van lisensies — Hierdie klousule maak voorsiening vir die beëindiging van lisensies.

HOOFSTUK 12

WETSTOEPASSING

- Klousule 60. Aanwysing en funksies van aangewese drankbeamptes en inspekteurs — Hierdie klousule maak voorsiening vir die aanstelling van aangewese drankbeamptes in die Suid Afrikaanse Polisediens deur die Provinsiale Kommissaris en die aanstelling van dranklisensie-inspekteurs deur die verantwoordelike Minister en hulle verhouding met die Drankraad.
- Klousule 61. Bevoegdhede van aangewese drankbeamptes en inspekteurs — Hierdie klousule maak voorsiening vir die magte van aangewese drankbeamptes en inspekteurs rakende die toepassing van geregtelike voorskrifte toepaslik op lisensiehouers.
- Klousule 62. Bevoegdhede van vredesbeamptes in die algemeen — Die magte van vredesbeamptes ten opsigte van die afdwing van geregtelike voorskrifte van toepassing op gelisensieëerde persele word in die klousule vervat.
- Klousule 63. Misdrywe — Hierdie klousule maak voorsiening vir algemene misdrywe met betrekking tot die verkoop, verskaffing of verbruik van drank wat nie reeds in ander klousules van die Wetsontwerp omskryf is nie.
- Klousule 64. Misdrywe betreffende inligting — Die oortredings wat in die klousule geskep word handel oor die verskaffing van inligting tydens aansoeke in terme van die Wetsontwerp en aan wetstoepassingsagente deur lisensiehouers en hulle werknemers.
- Klousule 65. Misdrywe betreffende vergaderings van die Raad en die Appèltribunaal — Die oortredings wat in hierdie klousule geskep word handel oor die ordelike verloop van verrigtinge van die Raad en Appèltribunaal.
- Klousule 66. Misdrywe betreffende polisiebeamptes en inspekteurs — Die oortredings wat in hierdie klousule geskep word handel oor die dwarsboming van of inmenging in die uitvoering van die pligte van wetstoepassingsagente.
- Klousule 67. Motorvoertuie — Hierdie klousule omskryf oortredings rakende die verbruik van drank in motorvoertuie wat op openbare paaie bestuur word.
- Klousule 68. Diensstasies — Hierdie klousule reguleer die verkoop, verskaffing en verbruik van drank op erwe waar diensstasies geleë is.
- Klousule 69. Versuim om aan bevel van Raad te voldoen — Hierdie klousule verseker die nakoming van bevele van die Drankraad.

- Klousule 70. Middellike aanspreeklikheid — Hierdie klousule verseker dat lisensiehouers aanspreeklik bly vir die onregmatige optrede van hulle werknemers op gelisensieerde persele.
- Klousule 71. Vrystellings — Hierdie klousule verskaf die lys van kategorieë van entiteite wat vrygestel is van die bepalings van die Wetsontwerp en maak voorsiening vir die bepaling van verdere vrystellings deur die Drankraad en die gepaardgaande prosedure.
- Klousule 72. Getuienis — Hierdie klousule skep maatreëls om die voorlegging van getuienis aan die Raad en tydens hofprosedure te vergemaklik.
- Klousule 73. Gesondheidskennisgewings — Hierdie klousule maak voorsiening vir die verpligte vertoon van goedgekeurde inligting aangaande gesondheidsaspekte by afsetpunte vir die verkoop of verskaffing van drank.
- Klousule 74. Boetes — Hierdie klousule bepaal gepaste boetes vir misdrywe wat deur die Wetsontwerp geskep word.

HOOFSTUK 13

REGULASIES, OORGANGSBEPALINGS, HERROEPING VAN WETGEWING EN KORT TITEL

- Klousule 75. Regulasies — Hierdie klousule verleen aan die verantwoordelike Minister die mag om regulasies uit te vaardig in ooreenstemming met die wetsontwerp.
- Klousule 76. Oorgangsbepalings — Hierdie klousule verseker die deurlopendheid in die drankbedryf vanaf die bepalings van die Drankwet, 1989 (Wet 27 van 1989).
- Klousule 77. Herroeping van bepalings — Hierdie paragraaf herroep die Drankwet, 1989 (Wet 27 van 1989).
- Klousule 78 Kort titel — Hierdie klousule verskaf die kort titel van die Wetsontwerp en maak voorsiening vir die promulgasie van die Wetsontwerp.

UMTHETHO OSAYILWAYO

Olungiselelwe ukukhutshwa kweelayisenisi zokuthengisa utywala, ukwenziwa kotywala nokwenziwa kotywala besiNtu apha eNtshona Koloni; ukusekwa kweBhodi yoTywala yeNtshona Koloni kunye neekomiti zayo, ukuseka izigqeba zezotywala; ukulungiselela ukuqeshwa kwamagosa kunye nabahloli bokujongana kuphela nemicimbi yotywala; ukulungiselela ukubekwa koomasipala njengabagunyaziswa beBhodi yoTywala nanjengeziphathamandla ezinikwe amagunya.

NJENGOKO uRhulumente wePhondo leNtshona Koloni (“uRhulumente”) ekuqonda ukuba ushishino lotywala kwiidolophu, iziphaluka nakumashishini asemibindini yeedolophu ezazifudula zizezabantu abaNtshona nasezifama belusoloko lulawulwa ngemithetho ngemithetho ebimana ukulungi-lungiswa, ize imana ukuvandlakanywa apha ekuhambeni kweminyaka ngeenjongo zokuba ihambelane neemfuno zikarhulumente olawulayo ngelo xesha ngakwicala lezopolitiko, kwicala lezentlalo nakwicala lezoqoqosho;

NANJENGOKO kuza kuqulunqwa isikhokelo sokulawulwa koshishino lotywala olukhoyo, ngoku phantsi kwemiqathango yoMgaqo-siseko weRiphabliki yoMzantsi Afrika ka-1996 nangeyemigaqo-nkqubo yesizwe kunye neyamaphondo, kwaye ekwenzeni njalo ziya kuthathelwa ingqalelo iimfuno zorhwebo lotywala kwakunye nezabahlali;

NANJENGOKO uRhulumente ekuqonda ukwahlukana kweentlobo zoshishino lotywala apha kweli Phondo leNtshona Koloni (“iPhondo”), ekuxabisile kwanjalo nokubaluleka kwezi ntlobo zalo zahlukeneyo ngegalelo lazo kuqoqosho lwePhondo eli nakoloMzantsi Afrika ngokubanzi;

NANJENGOKO uRhulumente efuna ukuba afumane iindlela zokunciphisa ubuchithi obenziwa entlalweni yoluntu ngokubanzi kukusetyenziswa kotywala ngokugqithisileyo;

NANJENGOKO uRhulumente efuna ukuba afumane iindlela zokubandakanya oomasipala beli Phondo kulawulo loshishino lotywala;

NGOKO KE APHA KUWISWA UMTHETHO yiPalamente yePhondo leNtshona Koloni gokolu hlobo lulandela ngezantsi apha:—

IZIQLATHO**ISAPHLUKO 1
UKUTOLIKWA**

1. Inkcazo yamagama

ISAPHLUKO 2**IBHODI YOTYWALA YENTSHONA KOLONI NESIQEBA SEZIBHENO**

5

2. Ukusekwa kweBhodi
3. Amalungu eBhodi
4. Imiqathango yokunyulwa
5. Ubude bexesha lobulungu
6. Ukuyekiswa ebulungwini
7. Amagunya nomsebenzi weBhodi
8. Iintlanganiso nezigqibo zeBhodi
9. Ukuzikhwebula kwamalungu aneenjongo ezingqzulanyayo
10. Inkxaso-mali yeBhodi
11. Uhlolo-zincwadi neeNgxelo zoNyaka
12. Iingxoxo zeBhodi
13. Iikomiti zeBhodi
14. Isigqeba sezibheno

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ISAPHLUKO 3**IMIVUZO NOLAWULO LWEBHODI YOTYWALA NESIQEBA SEZIBHENO**

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15. Imivuzo yamalungu nomchopheli weSigqeba seZibheno
16. Ulawulo lweBhodi neSigqeba seZibheno
17. Ingeniso ekhulayo kwiMali eyiLiyenza ngokwalo iPhondo, iBhodi yoTywala okanye koomasipala

25

ISAPHLUKO 4**INXAXHEBA YOOMASIPALA**

18. Oomasipala njengabagunyaziswa beBhodi neziphathamandla ezinegunya lokukhupha iilayisenisi
19. Izigqeba zotywala

30

ISAPHLUKO 5**UKUKHUTSHWA KWEELAYISENISI**

20. Iilayisenisi neepemethi
21. Iindidi zeelayisenisi
22. Iintlobo
23. Imiqathango yokukhutshwa kweelayisenisi
24. Iimfuneko zokufaneleka kwabafaki-zicelo
25. Inkqubo yokukhutshwa kweelayisenisi
26. Isaziso sokufaka isicelo
27. Izicelo ezilindele ukuhlolwa
28. Umelo
29. Ukudluliselwa kweempepha
30. Uqwalaselo lwezicelo
31. Ukufaneleka kweendawo
32. Iindawo ezingaqibekanga
33. Imfundo noqeqesho
34. Ulwamkelo olunemiqathango
35. Ukukhutshwa kweelayisenisi neepemethi
36. Ukusweleka okanye ukulimala komntu obefake isicelo

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40

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**ISAPHLUKO 6
IMIQATHANGO YEELAYISENISI**

- | | | |
|-----|--|----|
| 37. | standard licence conditions Imiqathango yo | |
| 38. | Ukuhanjiswa | |
| 39. | Uchaphazeleko ngokwasezimalini | 5 |
| 40. | Ulawulo | |
| 41. | Iinguqulelo kwiindawo ezinikwe iilayisenisi | |
| 42. | Abantwana | |
| 43. | Abaqeshi nabasebenzi | |
| 44. | Ukungena kumasango eendawo ezinikwe iilayisenisi | 10 |
| 45. | Ukugcinwa kotywala | |
| 46. | Indawo yokuthengisela | |
| 47. | Amaxesha okuvula | |
| 48. | Umthamo wotywala nokugcinwa kwamarekhodi | |

**ISAPHLUKO 7 15
IPEMETHI**

- | | | |
|-----|-------------------------------|--|
| 49. | Ipemethi yeziyunguma ezizodwa | |
| 50. | Ipemethi zotywala besiNtu | |

**ISAPHLUKO 8 20
IXESHA LOKUSEBENZA KWEELAYISENISI
NEPEMETHI NOKUHLAZIYWA KWAZO**

- | | | |
|-----|---|--|
| 51. | Ixesha lokusebenza kweelayisenisi nepemethi | |
| 52. | Ukuhlaziywa kweelayisenisi okuzenzekelayo | |
| 53. | Izicelo zohlaziyo | |

**ISAPHLUKO 9 25
UDLULISELO LWEELAYISENISI**

- | | | |
|-----|---|--|
| 54. | Udluliselo lweelayisenisi | |
| 55. | Ukushiywa kweendawo nokusweleka okanye ukulimala komnini-layisenisi | |

**ISAPHLUKO 10 30
IZIBHENO**

- | | | |
|-----|-------------------------------------|--|
| 56. | Izibheno eziya kwiSigqeba seZibheno | |
|-----|-------------------------------------|--|

**ISAPHLUKO 11
UTHOTYELO**

- | | | |
|-----|---|----|
| 57. | Izaziso zothotyelo | |
| 58. | Imiyalelo yexeshana | 35 |
| 59. | Ukurhoxiswa okwexeshana, ukutshitshiswa nokuphelelwa kweelayisenisi | |

**ISAPHLUKO 12
UQINISEKISO LOKUTHOTYELWA KOMTHETHO**

- | | | |
|-----|--|----|
| 60. | Ukubekwa kwamagosa okujongana nezotywala nabahloli nemisebenzi yabo | |
| 61. | Amagunya amagosa ajongene nezotywala nabahloli | 40 |
| 62. | Amagunya amagosa oxolo ngokubanzi | |
| 63. | Utyeshelo lomthetho | |
| 64. | Utyeshelo lomthetho malunga neenkukacha | |
| 65. | Utyeshelo lomthetho malunga neentlanganiso zeBhodi nezeSigqeba seZibheno | 45 |
| 66. | Utyeshelo lomthetho malunga namapolisa nabahloli | |
| 67. | Izithuthi | |
| 68. | Igaraji | |
| 69. | Ukusilela ekuthobeleni umyalelo weBhodi | |
| 70. | Uxanduva olugunyazisiweyo | 50 |

- 71. Izaphulelo
- 72. Ubungqina
- 73. Izaziso ngezempilo
- 74. Izohlwayo

ISIAHLUKO 13
IMIGAQO, IZILUNGISELELO ZEXESHANA
NESIHLOKWANA ESIFUTSHANE

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- 75. Imigaqo
- 76. Izilungiselelo zexeshana
- 77. Izibonelelo zoguzulo-mthetho
- 78. Isihlokwana esifutshane

10

ISIAHLUKO 1
UKUTOLIKWA

Iinkcazelo

- 1. Kulo Mthetho, ngaphandle ke kwalapho indlela elisetyenziswe ngayo nendawo** 15
elisetyenziswe kuyo igama ilinika enye intsingiselo, xa kusithiwa—
- “**iSigqeba seZibheno**” kubhekiselwe kwisigqeba seZibheno esimiselwe phantsi
kwemiqathango yecandelo 13(1);
- “**iBhodi**” kubhekiselwe kwiBhodi yoTywala yeNtshona Koloni emiselwe phantsi
kwemiqathango yecandelo 2; 20
- “**uSihlalo**” kubhekiselwe kusihlalo weBhodi obekwe phantsi kwemiqathango
yecandelo 3(1)(a) okanye kulowo mntu ubambeke njengoSihlalo xa sukuba
engekho lowo unguSihlalo;
- “**iGosa eliLawulayo eliyiNtloko**” kubhekiselwe kuloo mntu umiselwe phantsi
kwemiqathango yecandelo 16(1); 25
- “**iforam yasekuhlaleni yezobupolisa**” kubhekiselwe kwiforam yasekuhlaleni
esekwe phantsi kwemiqathango yecandelo 19 loMthetho oyi*South African Police
Services Act, 1995* (uMthetho 68 ka-1995);
- “**isiphathamandla esinegunya**” kubhekiselwe kwiBhodi, okanye umasipala,
othe wanikwa amagunya phantsi kwemiqathango yecandelo 18; 30
- “**uMgaqo-siseko**” kubhekiselwe kuMgaqo-siseko weRiphabliki yoMzantsi
Afrika, 1996;
- “**umhla wokukhutshwa**” kubhekiselwe kulowo mhla ithe yakhutshwa ngawo
ilayisenisi okanye ipemethi;
- “**uSekela-Sihlalo**” kubhekiselwe kulowo mntu uthe wabekwa phantsi 35
kwemiqathango yecandelo 3(1)(b);
- “**igosa elijongene nezotywala elikhetheyo**” kubhekiselwe kulowo mntu uthe
wabekelwa zona phantsi kwemiqathango yecandelo 60(1);
- “**iziyobisi**” kubhekiselwe kuyo nayiphi na into ekhobokisayo, nayiphi na into
enobungozi bokukhobokisa okanye kuyo nayiphi na into engamkelekanga 40
ekhobokisayo njengoko kuchazwa kuMthetho oyi*Drug and Drug Trafficking Act,
1992* (uMthetho 140 ka-1992);
- “**ilungu lefemeli**” kubhekiselwe kumlingane womntu, okanye kumntwana wakhe,
okanye kumzali wakhe, kumntakwabo okanye udade wabo, nokuba oko kuzalana
kuvele ngenxa yokuzalwa okanye ngenxa yomtshato okanye lolobuzali 45
obumiselwe ngomthetho (*adoption*).
- “**uchaphazeleko ngokwasezimalini**” kubhekiselwe ekubeni ngumnini wezabelo
eNkampanini, uchaphazeleko kwiNkampanana encinane eyi*Close Corporation*,
uchaphazeleko kubuhlakani nochaphazeleko kwishishini okanye kwilinge
lorhwebo olwenza ukuba lowo uchaphazelekayo akwazi ukuba axhamle kwiinzuzo 50
zelo shishini okanye zelo linge, iinzuzo ezo ezibandakanya nengenelo yelo shishini
okanye yelo linge;
- “**umhloli**” kubhekiselwe kulowo mntu uthe wabekwa ukuba abe ngumhloli
phantsi kwemiqathango yecandelo 60 (4);
- “**ukukhutshwa**”, ngokuphathelele kwilayisenisi, kubandakanya ukuhanjiswa 55
okanye ukunikezelwa kwelayisenisi kulowo mntu ithe yanikwa yena okanye
kulowo mntu ungumgunyaziswa wakhe;
- “**ilayisenisi**” kubhekiselwe kwilayisenisi leya ikhankanyiwe kwicandelo 21;

- “**umntu onikwe ilayisenisi**” kubhekiselwe kulowo mntu uye wakhutshelwa ilayisenisi phantsi kwemiqathango yecandelo 33 okanye lowo ithe yadluliselwa kuye phantsi kwemiqathango yecandelo 54;
- “**ishishini elinelayisenisi**” kubhekiselwe kwishishini elinokuthi liqhutywe kuloo ndawo ikhutshelwe ilayisenisi njengoko kugunyazisiwe yiBhodi; 5
- “**indawo ekhutshelwe ilayisenisi**” kubhekiselwe kwindawo apho kunokwenziwa utywala, buthengiswe, buselwe okanye bugcinwe phantsi kwemiqathango yalo Mthetho;
- “**utywala**” kubhekiselwe kuyo nayiphi na into elulwelo okanye nenye into nje equlathe ngaphezu kwe-1% ye-alkhoholi (*yegrangqa*) ngokomthamo okanye ngobunzima, into leyo ebandakanya utywala besiNtu, iwayini yasetafileni, kodwa ke kungabandakanywa nesipirithi, neyeza elifanele kuya kubhaliswa phantsi kwemiqathango yoMthetho *oyiMedicines and Related Substances Control Act*, 1965 (uMthetho 101 ka-1965) kunye nezinye iimveliso ezingenzelwanga ukuba zityiwe ngabantu; 10
- “**uMthetho woTywala**” kubhekiselwe kumthetho wesizwe *oyiLiquor Act*, 2003 (uMthetho 59 ka-2003);
- “**isigqeba sezotywala**” kubhekiselwe kwisigqeba sezotywala esimiselwe phantsi kwemiqathango yecandelo 18(2)(d);
- “**imanejala**” kubhekiselwe kulowo mntu ubekwe phantsi kwemiqathango yecandelo 40 (1); 20
- “**ukuvelisa**” kubhekiselwe ekuvelisweni okanye ekufakweni kotywala ezibhotileni ngeenjongo zokubuthengisa;
- “**umvelisi**” kubhekiselwe kulowo mntu ubhaliswe njengomvelisi phantsi kwemiqathango yoMthetho *oyiLiquor Act*; 25
- “**ilungu**” kubhekiselwe kulowo mntu ulilungu leBhodi;
- “**uveliso oluncinane**” kubhekiselwe kuveliso lotywala ngokomthamo omiselweyo okanye ngaphantsi komthamo omiselweyo phantsi kwemiqathango yecandelo 4 loMthetho *oyiLiquor Act*, kwaye nomvelisi walo ukwanale ntsingiselo;
- “**uMphathiswa**” kubhekiselwe kuMphathiswa wephondo osingathe imicimbi yezoqoqosho kwiPhondo eli; 30
- “**isithuthi**” kubhekiselwe kwisithuthi esenzelwe okanye esilungiselelwe ukuba siqhutywe sihanjise endleleni ngamafutha, ngegesi okanye ngombane, kwaye ke kubandakanywa itreyila okanye nayo nayiphi na into yokusebenza kwezolimo etsalwa seso sithuthi; 35
- “**umasipala**” kubhekiselwe kumasipala osekwe phantsi koMthetho *oyiLocal Government: Municipal Structures Act*, 1998 (uMthetho 117 ka-1998) waza wamiselwa phantsi kwemiqathango yecandelo 16;
- “**ipemethi**” kubhekiselwe kwiphepha elikhutshwa ngumasipala elikhuphela isiyunguma esithile esisodwa phantsi kwemiqathango yecandelo 48(1) okanye elikhuphela intengiso yotywala besintu phantsi kwemiqathango yecandelo 49 lalo Mthetho; 40
- “**indawo**” kubhekiselwe kwindawo okanye umhlaba okanye isakhiwo okanye inxenye yesakhiwo okanye inqanawe/isikhephe okanye inqwelomoya okanye isithuthi; 45
- “**ukumisela**” kubhekiselwe ekumiseleni ngokomgaqo phantsi kwemiqathango yalo Mthetho;
- “**iPhondo eli**” kubhekiselwe kwiPhondo leNtshona Koloni;
- “**urhulumente wephondo**” kubhekiselwe kurhulumente wePhondo leNtshona Koloni; 50
- “**umntu obhalisiweyo**” kubhekiselwe kumntu obhaliswe njengomvelisi okanye umhambisi phantsi kwemiqathango yoMthetho *oyiLiquor Act*;
- “**ivenkile yokutya**” kubhekiselwe kwishishini elithengisa isikakhulu igrosari nezinto ezityiwayo;
- “**ukuthengisa**” kubandakanya ukuthengisela, ukwananiselana, ukuthengisa, ukubeka izinto emboniselweni ngeenjongo zokuzithengisa okanye zokugunyazisa okanye zokuvumela okanye zokubonisa izikhokelo zentengiso, zentengiselwano, zolwananiselwano, zokuzibonisa; 55
- “**isiyunguma esisodwa**” kubhekiselwe kwisiyunguma sokunyusa ingxowa yemali okujoliswe kumbutho wemfundo okanye wentlalontle, nakuwo nawuphi na umboniso, indibano yemidlalo, isiyunguma sikawonke-wonke, indibano yezenkcubeko, okanye indibano yezobugcisa; 60

- “**ukunika**” kubhekiselwe, ngokubhekisele etywaleni, ekunikeni umntu okanye ekumnikeni ulawulo lwabo;
- “**iwayini yetafle**” kubhekiselwe kwiwayini njengoko kuchazwa kwicandelo 1 loMthetho oyiLiquor Products Act, 1989 (uMthetho 60 ka-1989);
- “**utywala besiNtu**” kubhekiselwe kulwelo olufakiweyo lwabiliswa njengoko kuchazwa kumhlathana 8 weShedyuli 1 yoMthetho oyiLiquor Act; 5
- “**lo Mthetho**” kubhekiselwe kuMthetho oyiWestern Cape Liquor Act, 2005 kwaye kubandakanywa nemigaqo ewiswe ngokwemiqathango yawo.

ISAHLUKO 2

IBHODI YOTYWALA YENTSHONA KOLONI NESIGQEBA SEZIBHENO 10

Ukusekwa kweBhodi yoTywala yeNtshona Koloni

2. (1) IBhodi yoTywala ethe yamiselwa apha kweli Phondo phantsi kwemiqathango yicandelo 5 loMthetho oyiLiquor Act, 1989 (uMthetho 27 ka- 1989), njengoko wenziwe izilungiso, neqhubayo ukubakho kunjalo nje isebenze phantsi kwegama leBhodi yoTywala yeNtshona Koloni, ihamba ngokwemiqathango yalo Mthetho, oku kanye ngathi yaye yasekwa phantsi kwemiqathango yalo Mthetho. 15
- (2) IBhodi le sisigqeba esizimeleyo esinokuthatha nesinokuthathelwa amanyathelo omthetho, esihamba kuphela ngokoMgaqo-siseko nemiqathango yomthetho.
- (3) IBhodi le kufuneka ukuba imisebenzi yayo iyenze ngokwemiqathango nemimiselo yalo Mthetho, ingakhetshi cala, ingabi naloyiko, ingabi nalwaphulelo okanye xanasi. 20

Amalungu eBhodi yoTywala

3. (1) IBhodi le kufuneka ukuba inyulwe nguMphathiswa, kunjalo nje ibe nala amalungu alandelayo:
- (a) ilungu elinye elinoqeqesho kwizifundo zomthetho ezikwinqanaba elinye nelo libekwa njengomqathango wokwamkelwa njengegqwetha okanye igqwetha leNkundla ePhakamileyo yoMzantsi Afrika (igqwetha lejaji) libe namava kumsebenzi wezobulungisa, nelinyulwa nguMphathiswa njengoSihlalo; kunye 25
- (b) namalungu angadlulanga kwamathathu (3) aphumele uqeqesho kwezi zifundo zixelwe kumhlathana (a) ngentla apha nayulwe nguMphathiswa njengoSekela-sihlalo/njengooSekela-sihlalo; kunye 30
- (c) neGosa eliLawulayo eliyiNtloko elinyulwe phantsi kwemiqathango yecandelo 16(1); kunye
- (d) nelungu elinye eliphumelele uqeqesho kwizifundo ezikwinqanaba elinye neziya zifuneka njengomqathango wokubhaliswa njengomcwangcisi weedolophu okanye wezithili, elinyulwe nguMphathiswa emva kokuba edlene iindlebe noMphathiswa osingathe ucwangciso lophuhliso apha kwiPhondo eli; kunye 35
- (e) nelungu elinye eliligosa elilipolisa elikwinqanaba lobuNtsumpa okanye ngentla apha, nelinyulwe nguMphathiswa emva kokudlalna iindlebe noMkhomishinala weeNkonzo zaMapolisa oMzantsi Afrika weli Phondo kunye noMphathiswa osingathe ukhuseleko loluntu wePhondo eli; kunye
- (f) namalungu amabini angabemi beli Phondo; kunye
- (g) namalungu ongezelelweyo angadlulanga kwisithandathu (6) anolwazi olulodwa okanye anoqeqesho lobungcali olulodwa anyulwe nguMphathiswa emva kokuba edlene iindlebe noSihlalo, ukuze asebenze njengamalungu ekomiti. 45

Imiqathango yokunyulwa

4. Akukho mntu unokunyulelwa ukuba asebenze njengelungu lale Bhodi ukuba ngaba: 50
- (a) kwesi sithuba sale minyaka ilishumi (10) idlulileyo waye wabanjwa wagwetyelwa ukuya kuvalelwa entolongweni ngaphandle kokunikwa ifayini ngenxa yesenzo solwaphulo-mthetho esithile, ngaphandle kokuba

- uMphathiswa unoluvo lokuba eso senzo solwaphulo-mthetho asithethi ukuba umntu lowo akanakulunga ekubeni anikwe isikhundla esithile; okanye
- (b) kwesi sithuba sale minyaka ilishumi (10) idlulileyo waye wabanjwa wagwetywa ngenxa yesenzo solwaphulo-mthetho phantsi kwemiqathango yoMthetho oyi*Liquor Act*, 1989 (uMthetho 27 ka1989), ngaphandle kokuba uMphathiswa unoluvo lokuba lokuba eso senzo solwaphulo-mthetho asithethi ukuba umntu lowo akanakulunga ekubeni anikwe isikhundla esithile; okanye
- (c) utshone ematyaleni akavela nangonwele; okanye
- (d) ungaphantsi kwamashumi amabini ananye (21) ngobudala; okanye
- (e) unochaphazeleko analo kushishino lotywala olunokubangela unqululwano lweenjongo; okanye
- (f) ulilungu lefemeli yomntu onochaphazeleko oluthe ngqo kushishino lotywala, ngaphandle kokuba uMphathiswa unoluvo lokuba uchaphazeleko lowakwakhe okanye lomlingane wakhe ongundofanaye kushishino lotywala aluthethi ukuba umntu lowo akanakulunga ekubeni anikwe isikhundla esithile.

Ubude bexesha lobulungu

5. (1) Ngaphandle kwaloo mntu unyulwe njengeGosa eliLawulayo eliyiNtloko, amalungu anyulelwa ixesha elingadlulanga kwiminyaka emihlanu (5), kwaye ke anakho ukuba angaphinda anyulwe esinye isithuba esingadlulanga kwesinye (1), ekupheleni kwexesha lobulungu bawo.
- (2) Isithuba esithe savuleka kule Bhodi sinokuvalwa ngokuthi uMphathiswa anyule elinye ilungu.

Ukuyekiswa ebulungwini

6. UMphathiswa usenokuliyekisa ilungu ebulungwini xa ngaba elo lungu lithe:
- (a) alabikho ezintlanganisweni zeBhodi le zada zantathu (3) ubuncinane zilandelelana ngaphandle kwesizathu esivakalayo elithe lasixela; okanye
- (b) laphelelwa kukufaneleka phantsi kwemiqathango yecandelo 24; okanye
- (c) langenisa isicelo kuMphathiswa sokuba liyeke ebulungwini; okanye
- (d) layeka ukuba ngumhlali weli Phondo.

Amagunya nemisebenzi yeBhodi yoTywala

7. (1) IBhodi le ingayiqwalasela nayiphi na le micimbi ilandelayo:
- (a) izicelo ezenziwe phantsi kwemiqathango yalo Mthetho; okanye
- (b) izimvo ezithe zavakaliswa zixhasa okanye zichasa ukwamkelwa kwezo zicelo; okanye
- (c) iingxelo ezithe zangeniswa kuyo ngamagosa otywala, ngabahloli, zizigqeba zezotywala okanye ngamagosa oomasipala; okanye
- (d) izikhalazo ezithe zangeniswa kwiBhodi le ngokuphathelele kwindlela eliqhutywa ngayo ishishini lotywala elithile elinelayisenisi; okanye
- (e) izimvo ezithe zavakaliswa ngulowo mntu unelayisenisi okanye omnye umntu nje ochaphazelekayo ngokuphathelele ekupheleni kotshitshiso lwelayisenisi okwexeshana okanye ekususweni okanye ekwenziweni izilungiso kwayo nayiphi na imiqathango ebibekelwe ilayisenisi; okanye
- (f) izibheni ezifakelwa izigqibo zoomasipala zokukhupha okanye zokwala ukukhupha iipemethi; okanye
- (g) nawo nawuphi na omnye umcimbi oziswe kwiBhodi le liGosa eliLawulayo eliyiNtloko okanye lowo iBhodi ibona ukubaingwuqwalasela okanye kufuneka ukuba iwuqwalasele phantsi kwemiqathango yalo Mthetho;
- (h) nawo nawuphi na omnye umcimbi anokuthi uMphathiswa ayinike igunya lokuba iwenze iBhodi le.
- (2) Ngaphandle kwakwimihlathana (a), (b), (e), (f) kunye nowe-(h) ngentla apha, uSihlalo unalo igunya lokuba ale ukubiza intlanganiso yeBhodi le, xa ngaba ngokuluvu lwakhe loo ntlanganiso akukho mfuneko yayo ngokwezi nkcukacha zibekwe phambi kwakhe.
- (3) IBhodi isenokuthi, emva kokuba iwuqwalasele nawuphi kule micimbi ichazwe ku:

- (a) (1)(a) kunye naku-(b), isikhabe okanye isamkele isicelo phantsi kwayo nayiphi na imiqathango ebona ukuba yimiqathango efanelekileyo;
- (b) (1)(c), (d) okanye (g):
- (i) isichithe isikhalazo eso; okanye
 - (ii) iyirhoxise ilayisenisi leyo; okanye 5
 - (iii) iyimise okwexeshana ilayisenisi leyo njengenyathelo lokohlwaya okanye lokululeka; okanye
 - (iv) iwisele loo layisenisi nayo nayiphi na loo miqathango inokuthi iyibone ifanelekile; okanye
 - (v) imyalele lowo mntu unaloo layisenisi ukuba ahlawule leyo fayini inokuthi iyibone ifanelekile; okanye 10
 - (vi) ithathe nalo naliphi na inyathelo enokuthi ilibona lifanelekile.
- (c) (1)(e), izichithe ezo zimvo okanye ikurhoxise ukumiswa okwexeshana okanye loo miqathango ibiye yawiswa; okanye
- (d) (1)(f), isamkele okanye isikhabe eso sibheni. 15
- (4) IBhodi isenokuthi nangaliphi na ixesha lokufaka kwesicelo ngumntu onelayisenisi orhoxisiweyo, ukuxuthwa okanye ilungise nawuphi na umqathango omiselwe yiBhodi.
- (5) Amalungu eBhodi anokuthi, kuwo nawuphi na umcimbi, acele naye nawuphi na umntu ambona enokukwazi ukuyincedisa iBhodi le ekuqwalaselweni kwalowo mcimbi uphethweyo. Lowo mntu ke uye wacelwa ngolo hlobo lokuba aze kuncedisa iBhodi le akasayi kuba nalo yena ilungelo lokuvota. 20

Iintlanganiso nezigqibo zeBhodi

8. (1) USihlalo kufuneka ukuba abeke amaxesha neendawo ekuya kuqhutyelwa iintlanganiso, kwaye ke usenokuzimisa okwexeshana iintlanganiso aphinde azibize ngaloo maxesha nakwezo ndawo anokugqiba ukuzibiza ngawo/ukuzibizela. 25
- (2) Inani elinokuqhuba iintlanganiso (ikhoram) yeBhodi le ngamalungu amathathu (3), abandakanya uSihlalo okanye uSekela-sihlalo okanye bobabini.
- (3) USekela-sihlalo/ooSekela-sihlalo kufuneka ukuba a/bachophele iintlanganiso xa uSihlalo engekho okanye engakwazi ukuba sesihlalweni. 30
- (4) Ukuba ngaba uSihlalo kunye noSekela-sihlalo/nooSekela-sihlalo abakho entlanganisweni, uMphathiswa kufuneka ukuba anyule elinye ilungu eliya kubamba njengoSihlalo.
- (5) Isigqibo sesininzi samalungu akhoyo entlanganisweni anelungelo lokuvota, siso esiya kuba sisigqibo seBhodi, kwaye ke xa kunokwenzeka ukuba amanani eevoti alingane kuwo nawuphi na umcimbi, uSihlalo uya kuba nelungelo levoti yoqhawulo-lingano. 35

Ukuzikhwebula kwelungu elineenjongo ezingquzulanyo

9. (1) Ilungu leBhodi le alinakho ukuvota, ukuya okanye ukuthatha nayiphi na inxaxheba kwiingxoxo zayo nayiphi na iintlanganiso okanye indibano yeBhodi le ukuba ngaba, ngokuphathelele kuwo nawuphi na umcimbi ophethwe yiBhodi le: 40
- (a) lona okanye umntu wefemeli yalo, okanye ihlakani lalo, okanye idlelane lalo kwezoshishino, lingumlawuli, okanye lililungu okanye lilihlakani lalo mntu ufaka isicelo selayisenisi, okanye soqinisekiso okanye salo naliphi ilungelo elinokunikwa yile Bhodi okanye liyachaphazeleka ngokwasezimalini kwishishini lakhe; okanye 45
- (b) linochaphazeleko olulwenza lingakwazi ukuwenza umsebenzi walo njengelungu lale Bhodi ngendlela enobulali, nengenamkhethe nefanelekileyo.
- (2) Ukuba ngaba kuye kwathi, nanini na ngexesha leengxoxo ezibanjwe yiBhodi le, kwafumaniseka ukuba ngathi ilungu elithile linalo okanye lingaba nalo uchaphazeleko elunalo olufana nolu luchazwe kwicandelwana (1): 50
- (a) elo lungu kufuneka ukuba likhawuleze liluchaze ngokupheleleyo uhlobo lolo chaphazeleko, lize ke liphume kwintlanganiso okanye kwindibano leyo, ukwenzela ukuba la aseleyo amalungu akwazi akwazi ukuwuxoxa umcimbi lowo, abone nokuba ngaba ilungu elo likufanele na ukuba lizikhwebule ekuthatheni inxaxheba kwiingxoxo zalo ntlanganiso okanye zaloo ndibano ngenxa yokuba iinjongo zalo zinokungquzulana; kwaye ke 55
- (b) oko kudiza kunye neso sigqibo sithe sathathwa ngala malungu aseleyo malunga nalo mba kufuneka zifakwe kwimizuzu yezo ngxoxo.

Inkxaso-mali nolawulo lwemali lwale Bhodi

10. (1) Imali zeBhodi le zibandakanya ezi zilandelayo:
- imali eyabelwe ngurhulumente wephondo eli; kunye
 - kunye neemali ezifumanayo iBhodi izifumana naphi na apho avumayo uMphathiswa ukuba ingazifuna okanye ingazamkela, emva kokuba ethe wadlana iindlebe noMphathiswa osingathe ezemali kwiPhondo eli, zibandakanya nezo mali zeentlawulo ezifunyanwa phantsi kwemiqathango yalo Mthetho. 5
- (2) IGosa eliLawulayo eliyiNtloko kufuneka ukuba liqinisekise ukuba iincwadi zemali zigcinwa ngokupheleleyo nangokufanelekileyo, lize liqinisekise nokuba ayagcinwa onke amarekhodi ayimfuneko aphaethelele kuzo. 10
- (3) IGosa eliLawulayo eliyiNtloko kufuneka ukuba liqinisekise ukuba uhlahlo-mali lonyaka lweBhodi le, izicwangciso zayo, iingxelo zayo zonyaka kunye neenkcazo zemali ezenziwe uhlolo-zincwadi ziyalungiswa zize zingeniswe ngokwemiqathango yoMthetho oyi*Public Finance Management Act*, 1999 (uMthetho Nomb. 1 ka-1999). 15
- (4) IBhodi le kufuneka ukuba, kunyaka-mali ngamnye, ngelo xesha lithe labekwa nguMphathiswa, ingenise ezi zinto zilandelayo ukwenzela ukuba zize kwamkelwa—
- isicwangciso soshishino seBhodi, esiqulathe iinjongo ezingqinisekayo; kunye
 - nenkcazo yemali eqikelela ukuba iza kuyingenisa iBhodi neyaleyo iqikelela ukuba iza kuba yinkcitho yayo kunyaka-mali olandelayo. 20
- (5) Kuwo nawuphi na unyaka-mali iBhodi le ingangenisela uMphathiswa inkcazo eyongezelelweyo yemali eqikelela ukuba iza kuyingenisa iBhodi neyaleyo iqikelela ukuba iza kuba yinkcitho yayo kuloo nyaka-mali, ukuba uMphathiswa ayamkele. 25
- (6) IBhodi le ayinakho ukuba ingene kwiimbophelelo zemali ezingaphaya kolo hlahlo-mali lwayo lwamkelweyo nakwezo mali ziyimfihlo yayo.

Uhlolo-zincwadi neeNgxelo zoNyaka

11. (1) UMhlozilincwadi-Jikelele kufuneka ukuba azihlole iinkcazo zemali zeBhodi le.
- (2) IBhodi le kufuneka ukuba ingenisele uMphathiswa ingxelo ngezinto ezenzileyo kunyaka-mali odlulileyo ukwenzela ukuba uMphathiswa aye kuyandlala kwiPalamente yephondo zingadlulanga iinyanga ezintathu emva kokuba uphelile loo nyaka-mali. 30
- (3) Le ngxelo kufuneka ukuba—
- ibandakanye iphepha lomncono (*ibalance sheet*) nenkcazo yemali engenileyo neyenkcitho, ziqinisekiswa nguMhlozilincwadi-Jikelele; 35
 - ichaze iinjongo ezingqinisekayo ngokoluya hlobo zichazwe ngalo phaya kwisicwangciso seshishini sayo esikhankanywe kwicandelo 10(4)(a) ngalo nyaka-mali wenzelwa ingxelo; kanaanjalo
 - ibandakanye nengcaciso yendlela ohambe ngayo umsebenzi ngokuphathelele kwindlela yokusetyenziswa kwezinto enoqoqosho nocikizeko nempumelelo, ngakumbi uthelekiso phakathi kweziphumo ebekujoliswe kuzo phaya kwisicwangciso seshishini esiya nezo zithe zafezekiseka. 40

Iingxoxo zeBhodi yoTywala

12. (1) USihlalo kufuneka ukuba, kambe ke eyithathela ingqalelo imiqathango ebekwa ngulo Mthetho nemigaqo yawo, abeke inkqubo efanele kulandelwa ezintlanganisweni. 45
- (2) USihlalo kufuneka ukuba amazise nawuphi na umntu ochaphazelekayo okanye onomdla kuqwalaselo lwawo nawuphi na umcimbi othile ukuba makeze entlanganisweni, akwenze oko esebenzisa indlela etyetyeshiweyo.
- (3) Umntu othe waziswa kufuneka eze ngokwakhe kuloo ndawo nangelo xesha lichaziweyo kwisaziso eso okanye ke amelwe kuyo ligqwetha okanye ligqwetha lejaji elingummeli wakhe. 50
- (4) USihlalo usenokuyalela nawuphi na umntu okhoyo entlanganisweni yeBhodi le ukuba anike ubungqina okanye angenise iimphepha ezithile okanye nayo nayiphi na enye into anayo kuye okanye eselugcinweni lwakhe okanye ephantsi kolawulo lwakhe. 55
- (5) Ukuba ngaba uSihlalo wanelisekile ukuba umntu ebeye wasinikwa ngokufanelekileyo isazi sokuba eze entlanganisweni yeBhodi le, kodwa akeza, unakho ke uSihlalo ukuba ayalele ukuba mayiqhutywe intlanganiso ngoku angekhoyo loo mntu.

(6) USihlalo angayalela nawuphi na umntu okhoyo entlanganisweni yeBhodi le ukuba anike ubungqina okanye angenise iimpepha ezithile okanye nayo nayiphi na enye into anayo kuye okanye eselugcinweni lwakhe okanye ephantsi kolawulo lwakhe aze ke abuzwe imibuzo yiBhodi le.

(7) IBhodi le ingaphendla naziphi na iimpepha okanye into ethe yangeniswa kuyo, 5 kunjalo nje ekwenzeni oko izigcine nalo naliphi na ixesha ebona lifanelekile.

(8) Umntu onika ubungqina entlanganisweni yeBhodi le kufuneka akwenze oko ekufungele okanye enze uqinisekiso.

(9) Xa iqwalasela umcimbi, iBhodi le isenokuthi ngokuzibonela ngokwayo, iyithathele ingqalelo nayiphi na incaciso okanye imeko ebona ukuba 10 inganempembelelo kwisigqibo esithathwa yiBhodi le. Ukuba ngaba kukho umntu ocela ukuba intlanganiso mayimiselwe olunye usuku ukwenzela ukuba akwazi ukufumana ithuba lokulungisa ingxoxo yakhe kumba lowo, uSihlalo angayimisela olunye usuku intlanganiso leyo ngesi sizathu.

(10) Zonke iintlanganiso zeBhodi le ziyafikelelwa ngumntu wonke, ngaphandle nje 15 ke kokuba uSihlalo angayalela nawuphi na umntu obungafunekiyo ubukho bakhe entlanganisweni, ukuba aze angezi yena entlanganisweni okanye ukuba makaphume kuloo ntlanganiso.

(11) Ayithathwa ngumntu wonke inxaxheba kwiingxoxo zeBhodi le nakuvoto lwayo.

IiKomiti zale Bhodi

20

13. (1) USihlalo usenokuthi kula malungu ongezlelweyo akhankanywe phaya kwicandelo 3(g) ngentla apha, anyule ikomiti enye okanye nangaphezulu, aze ke azigunyazise ezo komiti ukuba zenze nayiphi na imisebenzi yale Bhodi abona kufanelekile, kuyimfuneko ukuba iyenze.

(2) Ikomiti nganye kufuneka ukuba ingabi namalungu eBhodi angaphantsi 25 kwesithathu (3), elinye lawo libe nguSihlalo okanye uSekela-Sihlalo.

(3) Xa enyula ikomiti uSihlalo kufuneka ukuba aluthathele ingqalelo ulwazi, ubungcali namava afunekayo kulo mcimbi uza kuqwalaselwa.

(4) Iikomiti zale Bhodi zilawulwa yimithetho yenkqubo efanayo naleyo ilawula 30 iBhodi le.

(5) Iikomiti inakho ukuba umcimbi iwudlulisele eBhodini le ukuba ithathe isigqibo ngawo.

(6) Isigqibo esithe sathathwa yikomiti sithathwa ngokuba sisigqibo seBhodi le.

ISigqeba seZibheno

14. (1) UMphathiswa kufuneka ukuba abeke iJaji yeNkundla ePhakamileyo 35 yoMzantsi Afrika edla umhlalaphantsi, iMantyi ephezulu yeNkundla yeSithili edla umhlalaphantsi okanye igwetha lejaji eliphezulu njengomchopheli weSigqeba seZibheno oya kuthi, kwisithuba asibekileyo uMphathiswa ngokubona kwakhe, achophele izibheno ezifakiweyo ngezigqibo zeBhodi le okanye izicelo zovandlakanyo lwezigqibo ezithathiweyo yiBhodi le phantsi kwemiqathango yalo Mthetho. 40

(2) UMphathiswa kufuneka ukuba abeke inkqubo efanele kulandelwa siSigqeba seZibheno.

(3) Isigqibo esikhutshwe siSigqeba seZibheno asinakujikwa, kwaye singenakwenzelwa esinye isibheno kwakhona.

ISIAHLUKO 3

45

IMIVUZO NOLAWULO LWEBHODI YOTYWALA NESIGQEBA SEZIBHENO

Imivuzo yamalungu, eyomchopheli weSigqeba seZibheno neyabasebenzi basezi- ofisini

15. Amalungu eBhodi le kunye nomchopheli weSigqeba seZibheno bangafumana lowo mvuzo athe waubeka uMphathiswa emva kokuba edlene iindlebe noMphathiswa 50 osingathe ezemali.

Ulawulo lweBhodi yoTywala neSigqeba seZibheno

16. (1) UMphathiswa kufuneka ukuba abeke iGosa eliLawulayo eliyiNtloko eliya kusingatha uxanduva lolawulo lweBhodi le nelweSigqeba seZibheno.
- (2) IGosa eliLawulayo eliyiNtloko linoxanduva lokuphendula kwiBhodi le. 5
- (3) IGosa eliLawulayo eliyiNtloko kufuneka ukuba lithi, lilithathele ingqalelo icandelwana (3), liqeshe abasebenzi beBhodi le abaza kwenza umsebenzi we-ofisi, owobunobhala neminye ke imisetyenzana ephathelele ekuqhutyweni komsebenzi weBhodi noweSigqeba seZibheno.
- (4) IBhodi le, ngokudlana iindlebe noMphathiswa kunye noMphathiswa osingathe ezemali kweli Phondo— 10
- (a) kufuneka ukuba iqulunqe umgaqo-nkqubo olawula ezabasebenzi weBhodi le nabasebenzi bayo; kwaye
- (b) kufuneka nokuba ibeke nemivuzo yabasebenzi kunye nemiqathango yengqesho yabo.
- (5) IBhodi le kufuneka ukuba, emvakokuba idlene iindle neGosa eliLawulayo eliyiNtloko, iqulunqe imigaqo yokuziphatha, eya kulandelwa ngabo bonke abasebenzi beBhodi le, kwaye ubengokufaneleyo ukusetyenziswa kwiingxoxo zolwaphulo-mgaqo, ngeenjongo zokuqinisekisa— 15
- (a) ukuba iyalandelwa imithetho echaphazelekayo;
- (b) ukuba iimali nezinto zeBhodi le zisetyenziswa ngendlela enempumelelo, ucikizeko noqoqosho; 20
- (c) ukukhuthazwa nokugcinwa komgangatho wentsulungeko ophezulu;
- (d) ukuthintelwa kongqzulwano lweenjongo;
- (e) ukukhuseleka kweenkcukacha ezilihlebo ezigcinwe yiBhodi le;
- (f) nokuba inkonzo enikwayo yinkonzo yobungcali, ithembekile, ayikhethi cala, inobulali, inentsulungeko kwaye inolingano. 25
- (6) IBhodi le isenokuthi isebenzise iinkonzo zabantu ebabolekwe kwinkonzo yakwarhulumente okanye abatshintshelwe kuyo bevela kwinkonzo yakwarhulumente phantsi kwemiqathango yoMthetho oyi*Public Service Act*, 1994 (uMpoposho Nomb. 103 ka-1994). 30
- (7) IGosa eliLawulayo eliyiNtloko lisenokuthi, emva kokuba lidlene iindlebe noMphathiswa, liseke lilawule ingxowa-mali ejoliswe ekunciphiseni iziphumo ezibi entlalweni ngenxa yokusetyenziswa kakubi kotywala, nokufundisa abantu abanenxaxheba ekuthengisweni nasekuhanjiseni kotywala, noluntu ngokubanzi, ngeendlela ezifanelekileyo zokuthengiswa, ukuhanjiswa nokuselwa kotywala. 35
- (8) IGosa eliLawulayo eliyiNtloko linalo igunya lokuba lingene kuloo micimbi kufanelekile ukungena kuyo ekuqhutyweni komsebenzi weziko elisisigqeba sikarhulumente, abandakanya, phofu kungaphelelanga apho, negunya lokungena kubuhlakani nezinye izigqeba zikarhulumente nelokungena kwizivumelwano zeekhontrakthi nabo basebenza ngeekhontrakthi nabo bangabaniki beenkonzo. 40
- (9) IGosa eliLawulayo eliyiNtloko linakho ukuba lithenge ifenitshala nezinto zokusebenza eziza kusetyenziswa yiBhodi le kunye nabasebenzi base-ofisini bayo.
- (10) IBhodi le isenokuthi ngemvume yoMphathiswa:
- (a) ingene kwizivumelwano soqeshiselwano;
- (b) imise ngazo iimpahla zayo eziphathekayo; kwaye 45
- (c) isenokungena kwizivumelwano ngokunikwa kweenkonzo eziphathelele kulawulo lwezabasebenzi nakulawulo lwezemali.
- (11) IGosa eliLawulayo eliyiNtloko kufuneka ukuba likhuthaze ukuthengiswa nokuhanjiswa kunye nokuselwa kotywala ngendlela efanelekileyo, lizithintele iziphumo ezibi entlalweni ngenxa yokusetyenziswa kakubi kotywala, kwaye lingathatha nawaphi na amanyathelo eliwabona efanelekile. 50
- (12) IGosa eliLawulayo eliyiNtloko lisenokuthi liwudlulisele kwintlanganiso yeBhodi nawo nawuphi na umcimbi ofanele kuqwalaselwa phantsi kwemiqathango yecandelo 7.
- (13) IGosa eliLawulayo eliyiNtloko lisenokuthi libeke unobhala weBhodi oya kuthi asingathe uxanduva lwale misebenzi ilandelayo: 55
- (a) ukulungisa uluhlu lwemicimbi ekuza kuxoxwa ngayo ezintlanganisweni (iajenda);
- (b) ukugcina amarekhodi eengxoxo;
- (c) ukugcina imizuzu yeentlanganiso zeBhodi le kunye neyezeSigqeba seZibheno; kunye 60

(d) nayo nayiphi na eminye imisebenzi anokuthi ayinikwe liGosa eliLawulayo eliyiNtloko.

(14) Imizuzu yeentlanganiso zeBhodi le kunye neyezeSigqeba seZibheno kufuneka ukuba ithathwe igcinwe ezi-ofisini zeBhodi le, aze ke nawuphi na umntu onqwenela ukuyifunda okanye ukuyikopa akwazi ukuyifumana, kodwa kuqondakale ukuba kuya kufuneka ukuba ahlawule loo ntlawulo ibekiweyo, nokuba iya kuthathelwa ingqalelo imiqathango ebekwa nguMthetho oyi*Promotion of Access to Information Act*, 2000 (uMthetho 2 ka-2000). 5

(15) USihlalo usenokuthi, ehamba ngokwemiqathango yoMthetho oyi*Promotion of Access to Information Act*, 2000 nangenxa yesizathu esiphathekayo asinikileyo, ayalele ukuba inxenye yerekhodi okanye lilonke nje irekhodi leengxoxo zeBhodi abanakuzinikwa abantu, kuze ke apho aye wakwenza oko elo rekhodi okanye loo nxenye yelo rekhodi kungavumeleki ukuba ifundwe okanye ikotshwe nguye nawuphi na umntu ngaphandle kwemvume kaSihlalo. 10

Ingeniso ezivela kwiiMali elizenze ngokwalo iPhondo, iBhodi yoTywala okanye oomasipala 15

17. (1) Imirhumo, imidliwo/ nezohlwayo ekubhekiselelwa kuzo kumacandelo 7(3)(b)(v), 34, 35, 52, 53 nelama-54 kufuneka zihlawulwe kwiNgeniso yePhondo.

(2) Imirhumo ekubhekiswa kuyo kumacandelo 27, 49 nelama-50 kufuneka ihlawulwe kwiBhodi yoTywala okanye kumasipala. 20

(3) Le mali kuthethwe ngayo kweli candelo ayibuyi.

ISAHLUKO 4 INXAXHEBA YOOMASIPALA

Oomasipala njengabagunyaziswa beBhodi neziphathamandla ezinegunya lokukhupha iilayisenisi 25

18. (1) UMphathiswa usenokuthi, emva kokuba edlene iindlebe noMphathiswa osingathe ulawulo lweedolophu kweli Phondo, abeke oomasipala abathile kweli Phondo ukuba basebenze njengabagunyaziswa beBhodi le ngezi njongo zilandelayo:

(a) ukwamkela izicelo ezifakiweyo phantsi kwemiqathango yalo Mthetho ngokuphathelele kwiindawo zokushishinela ezikwiingingqi zaba masipala; 30

(b) ukwazisa bonke abo banokuchaphazeleka kwezo zicelo, njengoko kutyetyeshiwe;

(c) ukuziqwalasela ezo zicelo ngokwezikhokelo ezibekwa yimigaqo ephathelele kwezo zicelo;

(d) ukwamkela izichaso ezingenisweyo, iingxelo ezingenisweyo ngokuphathelele kwizicelo, izimvo ezingenisweyo ezixhasa izicelo ezo kunye nazo naziphi na ezinye iimpepha ezinokungeniswa kubo; 35

(e) ukudlulisela eBhodini le, ngokwaloo ndlela ibekiweyo, izicelo ezingenisweyo kunye nazo zonke iimpepha ezingenisweyo kunye nazo; kwakunye 40

(f) nokwamkela izikhalazo ezingeniswe ngabantu ezimalunga nendlela ekuqhutywa ngayo yiloo ndawo inikwe ilayisenisi nezifanele ukuqwalaselwa, bazidlulisele eBhodini le bezivakalisile okanye bengazivakalisanga ezabo izimvo ngezo zikhalazo.

(2) UMphathiswa usenokuthi, emva kokuba edlene iindlebe noMphathiswa osingathe ulawulo lweedolophu kweli phondo, abeke oomasipala njengeziphathamandla ezinegunya lokukhupha iilayisenisi ngokusemthethweni ngezi njongo zilandelayo: 45

(a) ukuqwalasela nokukhupha okanye nokwala ukukhupha iipemethi zokuthengiswa kotywala kwiziyunguma ezizodwa eziza kuqhubeka kwiingingqi zaba masipala; 50

(b) ukuqwalasela nokukhupha okanye nokwala ukukhupha iipemethi zokuthengiswa kotywala besintu kwiingingqi zaba masipala;

(c) ukubeka ngomthetho kamasipala, iintsuku kunye neeyure ebunokuthengiswa ngazo utywala kuhlobo ngalunye lweilayisenisi ekhutshiweyo kwiingingqi zaba masipala; 55

(d) ukuseka isigqeba sezotywala; kwakunye

- (e) nokutyumba iindawo zikawonke-wonke apho kwaba masipala ekungekho mntu uvumelekileyo ukuba athengise utywala kuzo okanye ukuba eze notywala kuzo, ngaphandle kobo busiwa kwiindawo ezinelayisenisi, baze ke bakhuphe izaziso ezichaza oku.

(3) UMphathiswa usenokuthi, xa kukho isizathu esiphathekayo, emva kokuba edlene iindlebe noMphathiswa osingathe ulawulo lweedolophu kweli Phondo, nanini na, alirhoxise lonke okanye arhoxise inxenye yalo igunya ebelinike umasipala othile phantsi kwemiqathango yamacandelwana (1) no- (2) ngentla apha. 5

Izigqeba zezotywala

19. (1) Apho umasipala aye waseka khona isigqeba sezotywala phantsi kwemiqathango yecandelo 18(2)(d), eso sigqeba siya kuthi sibe naba bameli balandelayo: 10

- (a) igosa elifanelekileyo elivela kumasipala eliya kuba nguSihlalo; 15
 (b) igosa elikhethelwe ezotywala elivela kwiiNkonzo zaMapolisa aseMzantsi Afrika; 15
 (c) ovela kwiforum yezobupolisa yalapho, ukuba sele ikhona kwaye seyisebenza iforum eyasekwayo elolo hlobo; 15
 (d) owombutho okanye imibutho enobulungu kumbutho wesizwe okanye wesithili wabakwishishini, ebandakanya, kodwa ungapheleli kuyo, nemibutho yoosomashishini baloo ndawo emele oosomashishini abashishina ngotywala; kwakunye 20
 (e) nemibutho yabahlawuleli-zinkonzo neyabahlali bezo ngingqi zaba masipala kunye nalo naliphi na iqela lasekuhlaleni eliye lakhethwa ngumasipala. 20

(2) Apho kukho isigqeba sezotywala esiye sasekwa, eso sigqeba sisenokuthi xa sithe sacelwa ngumasipala, sisebenze njengomlamli phakathi kwalowo ufake isicelo nabo basichasayo isicelo sakhe. 25

(3) Isigqeba sezotywala sisenokuthi, singaphelanga esi sithuba simiselweyo ukusuka kumhla wokugqibela wokungeniswa kwezichaso okanye elo xesha ebethe uSihlalo wavuma ukusolula ngalo isithuba esi, kwakuba kufakwe isicelo soko, singenise ingxelo echaza iziphumo ekufikelelwe kuzo kolo lamlo kunye nezindululo zaso zokuba samkelwe na okanye sikhatywe na eso sicelo. 30

(4) Apho kuthe ngenxa yolamlo lwesigqeba sezotywala kwafikelelwa kwisivumelwano phakathi kwalowo ebefake isicelo nalowo okanye nabo bebengabachasi besi sicelo, isigqeba sezotywala kufuneka ukuba singenisele iBhodi le iimpepha zeso sivumelwano, singaphelanga esi sithuba sikhankanywe phaya kwicandelwana (3) ngentla apha. 35

(5) IBhodi le kufuneka ukuba, xa iqwalasela isicelo, iyithathele ingqalelo le ngxelo nezi zindululo kwakunye nesi sivumelwano, kodwa ke oko kungathethi ukuba ibophelelekile ukuba ihambe ngazo. 40

ISAHLUKO 5

UKUKHUTSHWA KWEELAYISENISI

Ilayisenisi neepemethi

20. (1) Umntu akanakho ukuba angavelisa utywala okanye athengise utywala, ngaphandle kokuba ugunyazisiwe ukuba angakwenza oko phantsi kwemiqathango yelayisenisi okanye yepemethi ekhutshwe phantsi kwemiqathango yalo Mthetho. 45

(2) Umntu oye wagunyaziswa ukuba angenza okanye athengise utywala, kufuneka ukuba oko akwenze ngokwemiqathango yaloo layisenisi okanye pemethi ayinikiweyo.

(3) Umntu othe engakhange wakhululelwa phantsi kwemiqathango yecandelo 70(2), wenza okanye wathengisa utywala etyeshela amacandelwana (1) no-(2) ngentla apha, uya kuba unetyala lolwaphulo-mthetho. 50

Iindidi zeelayisenisi

21. IBhodi le inokukhupha ezi layisenisi zilandelayo:

- (a) ilayisenisi yokwenza utywala nokuthengisa utywala bokuselwa emasangweni nangaphandle kwamasango aloo ndawo buthengiswa kuyo; 55
 (b) ilayisenisi yokuthengiswa nokuselwa kotywala ngaphakathi emasangweni aloo ndawo buthengiswa kuyo; 55
 (c) ilayisenisi yokuthengiswa kotywala bokuselelwa kwenye indawo engekho apha emasangweni aloo ndawo buthengiswa kuyo;

- (d) ilayisenisi yokuthengiswa kotywala bokuselwa emasangweni nangaphandle kwamasango aloo ndawo buthengiswa kuyo; kunye
- (e) nelayisenisi yokuthengiswa nokuselwa kotywala ngaphakathi emasangweni aloo ndawo buthengiswa kuyo inesityunguma esisodwa.

Iindidi zepemethi

5

22. Umasipala oye wabekwa phantsi kwemiqathango yecandelo 16 unakho ukuba akhuphe ezi pemethi zilandelayo:

- (a) ipemethi yokuthengisa utywala besintu bokuselwa emasangweni nangaphandle kwamasango aloo ndawo buthengiswa kuyo ikhutshelwe ipemethi; kunye 10
- (b) nepemethi yokuthengisa utywala besintu bokuselwa emasangweni nangaphandle kwamasango aloo ndawo buthengiswa kuyo inesityunguma esisodwa.

Imiqathango yokukhutshwa kweelayisenisi

23. (1) IBhodi le ayinakho ukuba ikhupha ilayisenisi kwaye nomasipala akanakho ukuba akhuphe ipemethi yokuthengisa utywala besintu, ngaphandle kokuba wanelisekile, ngokobungqina obunikiweyo baphicothwa, ukuba: 15

- (a) oko kukhutshwa kwale layisenisi okanye kwale pemethi kuya kuba lulutho eluntwini;
- (b) lowo mntu ufake isicelo ngumntu onesimo esihle, kwaye akanako ukungafaneleki ukuba angaba nelayisenisi okanye pemethi phantsi kwemiqathango yecandelo 23; 20
- (c) indawo ebuza kuthengiselwa kuyo okanye ebuza kuselelwa kuyo obu tywala yindawo efanelekileyo okanye eya kuthi ifaneleke yakugqitywa ukuba lowo ufake isicelo angayisebenzisela le nto ikhutshelwe yona ilayisenisi leyo; 25
- (d) ukwamkelwa kwesi sicelo akusayi kubaphazamisa abahlali bendawo ethile, abafundi besikolo okanye ibandla leziko lenkonzo elime kule ngingqi ikuyo le ndawo icetywayo.

(2) Umasipala akanakho ukuba akhuphe ilayisenisi yeziyunguma ezizodwa, ngaphandle kokuba wanelisekile, ngokobungqina obuye banikwa baphicothwa, ukuba: 30

- (a) oko kukhutshwa kwale layisenisi okanye kwale pemethi kuya kuba lulutho eluntwini;
- (b) indawo ebuza kuthengiselwa kuyo okanye ebuza kuselelwa kuyo obu tywala yindawo efanelekileyo okanye eya kuthi ifaneleke yakugqitywa ukuba lowo ufake isicelo angayisebenzisela le nto ikhutshelwe yona ilayisenisi leyo; 35
- (c) ukwamkelwa kwesi sicelo akusayi kubaphazamisa abahlali bendawo ethile, abafundi besikolo okanye ibandla leziko lenkonzo elime kule ngingqi ikuyo le ndawo icetywayo.

Imfuneko zokufaneleka kwabafaki-zicelo

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24. (1) Ilayisenisi okanye ipemethi yokuthengisa utywala besintu ayinakho ukuba inganikwa umntu okanye idluliselwe kumntu ongakufanelanga ukuba nelayisenisi okanye nepemethi, kwaye ke ilayisenisi okanye ipemethi yomntu oye akafaneleka ukuba angaba nelayisenisi ayinakho ukuba ingahlaziywa.

(2) Aba bantu balandelayo abakufanelanga ukuba bangaba neelayisenisi zotywala: 45

- (a) umntu othe kwisithuba seenyanga ezingamashumi amathandathu (60) phambi kokuba afake isicelo sakhe, wabanjwa wagwetyelwa ukuya kuvalelwa entolongweni kwangabikho nafayini;
- (b) umntu othe kwisithuba seenyanga ezingamashumi amathandathu (60) phambi kokuba afake isicelo sakhe wafunyaniswa engakufanelanga ukuba angabhaliswa yi *National Liquor Authority* okanye ukuba anganikwa ilayisenisi yiyo nayiphi na ibhodi yotywala yephondo; 50
- (c) umntu otshone ematyaleni akavela nangunwele;
- (d) umntu oya kuba esengaphantsi kweminyaka yobuntu obudala ngalo mhla wokuqwalaselwa kwesicelo sakhe; 55
- (e) umntu owayesele enayo ilayisenisi yaza yarhoxiswa phantsi kwemiqathango yalo Mthetho okanye yoMthetho olawula ukukhutshwa kweelayisenisi

zotywala kulo naliphi na elinye iphondo, kwisithuba seenyanga ezilishumi elinesibini (12) esiphambi kokufakwa kwesi sicelo sakhe; kwakunye

(f) nomntu ongumlingane walo mntu uchazwe ku-(a), (b) no-(e) ngentla apha.

(3) Ukuba ngaba ufunyaniswe engafanelekanga phantsi kwemiqathango yecandelwana (2)(a) ukuya kutsho ku-(e) ngentla apha, ke ifunyaniswa ingafanelekanga nayo nayiphi inkampani okanye inkampanana encinane anezabelo kuyo okanye achaphazelekayo kuyo njengelungu, nayo nayiphi itrasti angutrasti wayo okanye angumxhamli wabo nabuphi na ubuhlakani alihlakani kubo. 5

(4) IBhodi isenokuthi, ngesizathu esiphathekayo esinikileyo, ithathe isigqibo sokuba umntu ofunyaniswe engafanelekanga phantsi kwemiqathango yecandelwana (2)(a) no-(b) ngentla apha, ufanelekile ukuba angasenza isicelo esithile okanye ilayisenisi eluhlobo oluthile. 10

Inkqubo yokukhutshwa kweelayisenisi

25. (1) Umntu angafaka isicelo sale layisenisi ichazwe kwicandelo 21 okanye esale pemethi ichazwe phantsi kwemiqathango yecandelo 22. 15

(2) Isicelo selayisenisi kufuneka senziwe ngefomu elungiselelwe oko, kwaye ke sona isicelo sepemethi kufuneka ukuba senziwe ngokwemithetho yoomasipala okanye ke singenziwanga ngokwemithetho yoomasipala, kufuneka ukuba senziwe ngokwemiqathango yalo Mthetho nemigaqo yawo.

(3) Isicelo esenziwe ngokweli candelwana (2) kufuneka ukuba singeniswe kumasipala waloo ngingqi ikuyo loo ndawo kuza kuthengiselwa kuyo utywala. 20

(4) Ukuba ngaba umasipala waloo ngingqi iza kuba kuyo loo ndawo kuza kuthengiselwa kuyo utywala akazange abekwe njengomgunyaziswa weBhodi phantsi kwemiqathango yecandelo 18(1), kufuneka ke ukuba eso sicelo siye kungeniswa ezi-ofisini zeBhodi le. 25

(5) Ukuba ngaba umasipala waloo ngingqi iza kuba kuyo loo ndawo kuza kuthengiselwa kuyo utywala akazange abekwe njengomgunyaziswa weBhodi phantsi kwemiqathango yecandelo 18(2), kufuneka ke ukuba isicelo sepemethi esenziwe phantsi kwemiqathango yecandelwana (2) kunye novakaliso lwezimvo phantsi kwemiqathango yecandelo 28 ngezantsi apha, ziye kungeniswa ezi-ofisini zeBhodi le. 30

(6) Ubungqina bokuba yenziwe intlawulo ebekiweyo yokwenza isicelo kufuneka ukuba buhambe nesicelo esi senziwe phantsi kwemiqathango yecandelwana (2) ngentla apha ngexesha lokungeniswa kwaso.

Isaziso sokufaka isicelo

26. (1) Lowo mntu ufaka isicelo selayisenisi kufuneka ukuba athi, ngaloo fomu ilungiselelwe oko nangalaa mhla wokungenisa kwakhe isicelo, apapashe izaziso ngazo zontathu iilwimi zaseburhulumenteni beli Phondo, kwiGazethi yePhondo (*Provincial Gazette*) nakwelinye okanye nakwamanye amaphephandaba aphumayo kwingingqi yaloo masipala iza kuba kuye le ndawo icelelwa ilayisenisi. 35

(2) Lowo mntu ufaka isicelo kufuneka ukuba axhome isaziso, ngefomu elungiselelwe oko enobo bukhulu bubekiweyo, sibhalwe ngazo zontathu iilwimi zaseburhulumenteni beli Phondo, kwindawo esemboniselweni apha kuloo ndawo icelelwa ilayisenisi, khona ukuze abantu abadlulayo bayibone lula, kodwa ke kuqondakale ukuba iBhodi le ingakuxolela noko ukungathotyelwa kwalo umqathango xa ngaba kukho isizathu esiphathekayo esithe sanikwa. 45

(3) Esi saziso sikhankanywe kwicandelwana (2) kufuneka sihlale kule ndawo sixhonywe kuyo elo xesha libekiweyo ukusukela kuloo mhla sifakwe ngawo isicelo.

(4) Ukuba ngaba indawo leyo ikwindawo ekuhlaliwa kuyo, umfaki-sicelo kufuneka athi kwisithuba esimiselweyo ukusuka kumhla wokuthunyelwa kwesicelo, enze isaziso sesicelo kwifomu emiselweyo malunga nelungu ngalinye losapho lwakhe olungaphezulu kweminyaka elishumi elinesithandathu (16) oluhlala kwindawo leyo yokuhlala nakwizindlu ezixokonyezelwe kuyo. 50

(5) Lowo mntu ufake isicelo kufuneka ukuba athi, lingadlulanga elo xesha lithe labekwa, angenise ubungqina kumasipala okanye kwiBhodi le bokuba iye yathotyelwa imiqathango yecandelwana (1), (2) nele- (4). 55

(6) Umasipala okanye iBhodi, nokuba ngowuphi na ofanelekileyo kubo, kufuneka ukuba athi, lingadlulanga elo xesha lithe labekwa ukusuka kuloo mhla wokungeniswa kwesicelo, akhuphe isaziso sesi sicelo ngefomu elungiselelwe oko, esiya kungeniswa kuye ngamnye kwaba balandelayo:

- (a) igosa elijongene nezotywala ephantsi kolawulo lwalo le ngingqi ikuyo le ndawo ifunelwa ilayisenisi;
- (b) isigqeba sezobupolisa sasekuhlaleni, ukuba sikhona, sale ngingqi zikuyo le ndawo ifunelwa ilayisenisi;
- (c) isigqeba sezotywala, ukuba sikhona, sale ngingqi ikuyo le ndawo ifunelwa kwesi sicelo ilayisenisi; 5
- (d) naye nawuphi na omnye umntu okanye nalo naliphi na iziko, oqonda okanye eliqonda ukuba lingachaphazeleka kukwamkelwa okanye kukukhatywa.

Izicelo ezilindele ukuhlolwa

27. (1) Isicelo esingenisiweyo kwakunye neempepha ezithe zangeniswa kunye naso kufuneka ukuba kukwazeke ukuzifikelela ngeenjongo zokuzihlola phaya ezi-ofisini zikamasipala, ukusukela kulaa mhla sangeniswa ngawo eso sicelo kunye nezo mpepha singeniswe nazo, side sibe sidluliselwe eBhodini, kwaye ke naye nawuphi na umntu kufuneka ukuba avumeleke ukuba azibone nokuba enze iikopi zazo ezo mpepha akuba ezihlawule ezo ntlawulo zibekiweyo. 15

(2) Xa sithe isicelo sangeniswa eBhodini, eso sicelo kunye nazo naziphi na iimpepha ezingeniswe naso, kufuneka ukuba naphaya kwii-ofisi zeBhodi le kukwazeke ukuzifikelela ngeenjongo zokuzihlola nokuzikopa, isakuba ihlawulwe intlawulo ebekiweyo, ukusukela kulaa mhla wokungeniswa kwazo ukuya kutsho kuloo mhla wokuqwalaselwa kwazo yiBhodi le. 20

Ulwandlalo

28. (1) Umntu onendlela achaphazeleka ngayo ekwamkelweni okanye ekukhatyweni kwesicelo angathi, lingadlulanga elo xesha libekiweyo, angenise izimvo zokuchasa okanye zokuchasa ukwamkelwa okanye ukukhatywa kweso sicelo.

(2) Ikopi yezo zimvo zivakalisiweyo kufuneka ukuba ingeniswe kumasipala, 25 kananjalo sngeniswe ngulowo mntu unendlela achaphazeleka ngayo ekwamkelweni okanye ekukhatyweni kweso sicelo kulowo mntu ufake isicelo okanye kulowo ungummeli womfaki-sicelo, nakwigosa elikhethelwe ukujongana nezotywala.

(3) Ubungqina boko kungeniswa kufuneka bungeniswe novakaliso lwezimvo.

(4) Umntu owenza uvakaliso lwezimvo kufuneka ukuba afake ezi nkukacha 30 zilandelayo:

- (a) igama lakhe elipheleleyo kunye neadresi yakhe;
- (b) inombolo yesazisi sakhe okanye ke ukuba ngaba yinkampani okanye yinkampanana encinane, ibe yinombolo yayo yokubhaliswa;
- (c) ukuba ngaba kufanelekile, igama lommeli wakhe kunye neadresi yakhe; 35
- (d) uhlobo achaphazeleka ngalo yena ekukhutshweni okanye ekukhatyweni kwesi sicelo; kunye
- (e) nemihlaba ecacileyo nepheleleyo yokuba asichase okanye asixhase eso sicelo.

(5) Loo mntu ufaka isicelo unakho ukuba angangenisela umasipala impendulo yezo zimvo zingenisiweyo zokuchasa isicelo sakhe, lingadlulanga elo xesha elithe labekelwa 40 ukwenza oko.

Ukudluliselwa kweempepha

29. Umasipala kufuneka ukuba athi singadlulanga isithuba esithe sabekiwa, adlulisele eBhodini ezi mpepha zilandelayo:

- (a) isicelo njengoko besingenisiwe kunye nazo zonke iimpepha ebeziye 45 zangeniswa naso;
- (b) ubungqina bokuthotyelwa kwecandelo 26(1) no-(2) obuphathelele ekukhutshweni kwesaziso ngesicelo esi nobokupapashwa kwaso;
- (c) ingxelo yegosa elikhethelwe ukujongana nezotywala;
- (d) izimvo ezithe zivakaliswa njengoko zinjalo, ngokuphathelele kwisicelo esi, 50 ukuba ngaba zikhona;
- (e) iingxelo nezivumelwano ebeziye zangeniswa sisigqeba sezotywala, ukuba ngaba bezikhona;
- (f) ubungqina bokuba zenziwe iintlawulo zokwenza isicelo ezibekiweyo; kwakunye 55
- (g) nalo naluphi na olunye uxwebhu okanye into ebitha yangeniswa kuye ngokuphathelele kwesi sicelo.

Ukuqwalaselwa kwezicelo

30. (1) IBhodi le okanye nayiphi na ikomiti okanye naye nawuphi na umsebenzi, kufuneka ukuba, kungadlulanga xesha lide ukusuka kulaa mhla wokufunyanwa kwesicelo, basiqwalasele isicelo eso ngeenjongo zokukhangela ukuba ngaba senziwe ngendlela echanekileyo na nokuba ngaba siyayithobela na imiqathango ebekwa nguMthetho lo nayimigaqo yawo. 5

(2) Ukuba ngaba iBhodi okanye ikomiti okanye umsebenzi, aba bakhankanywe kwicandelwana (1) ngentla apha bafumanisa ukuba esi sicelo asiphelelanga okanye sineziphene esinazo, kufuneka ukuba, kungadlulanga xesha lide kakhulu ukusuka kwixesha lokufunyanwa kweso sicelo, bakhuphe isaziso sokungeniswa kwesicelo esingaphelelanga okanye esineziphene, njengoko kutyetyeshiwe, bacele loo mntu ebefake eso sicelo ukuba makongeze ezo zinto zingekhoyo okanye makenze izilungiso kwezo ndawo zineziphene, zingaphelanga iintsuku ezilishumi elinesine (14). 10

(3) Ukuba ngaba lowo mntu ufake isicelo uyasilela ekuhambeni ngokupheleleyo ngesi saziso sikhankanywe ngentla apha ngeli xesha lisikiweyo, iBhodi inakho ukuba: 15

(a) yale ukusiqwalasela eso sicelo;

(b) ikumisele olunye usuku ukuqwalaselwa kweso sicelo kude kube kuhanjiwe ngesaziso eso; okanye

(c) isikhabe isicelo eso.

(4) IBhodi le inakho ukuba ithi xa iqwalasela isicelo izithathele ingqalelo ezi zinto zilandelayo: 20

(a) isicelo neengxelo ezingeniswiweyo ziphendula isicelo eso;

(b) izimvo ezingeniswiweyo zixhasa okanye zichasa isicelo eso, iimpendulo eziphendula ezo zimvo zichasayo zithe zavakaliswa kwakunye nalo naluphi na olunye uxwebhu okanye into ebitha yangeniswa kuyo ngokuphathelele kwesi sicelo; 25

(c) nawo nawuphi na omnye umcimbi ebona kufanelekile iBhodi ukuba mawuthathelwe ingqalelo, kodwa ke ekwenzeni oko ilithathele ingqalelo icandelo 12(9).

(5) Ukuba ngaba isicelo okanye iimpepha ezihamba naso okanye izimvo ezingeniswiweyo okanye ingxelo engeniswiweyo, zineziphene ezinazo zalo naluphi na uhlobo okanye ukuba ngaba nawuphi na umntu uyasilela ukungenisa nalo naluphi na uxwebhu okanye ukugcina esi sithuba sexesha okanye eli xesha lisikelweyo, iBhodi inakho ukuba izixolele ezo ziphene okanye oko kusilela, ukuba ngaba ubukhulu becala ithotyelwe imiqathango yalo Mthetho okanye yemigaqo yawo, naxa oko kuxolela kungasayi kuba namntu kumbeka engxakini. 30 35

Ukufaneleka kweendawo

31. Ilayisenisi okanye ipemethi ayinakho ukukhutshwa ngaphandle kokuba iBhodi okanye umasipala wanelisekile ukuba lowo mntu ufaka isicelo unalo ilungelo lokuyisebenzisa loo ndawo ayifakela isicelo eyisebenzisela oku kuza kugunyaziswa yilayisenisi okanye yipemethi leyo. 40

Iindawo ezingaqibekanga

32. IBhodi le isenokuthi xa isamkela isicelo selayisenisi yendawo engekagqitywa ukwakhiwa, ikhuphe umyalelo wokuba ilayisenisi leyo ayisayi kukhutshwa ade abe lowo mntu ufake isicelo uyayifezekisa imiqathango ethe iBhodi yabona kufanelekile ukuba iyibeke malunga nokugqitywa kokwakhiwa kwale ndawo, lingadlulanga elo xesha athe walisikelwa. 45

Imfundo noqeqesho

33. IBhodi le isenokuthi xa isamkela isicelo selayisenisi, iyalele ukuba ilayisenisi leyo ayisayi kukhutshwa ade abe lowo mntu ufake isicelo okanye umsebenzi wakhe okanye abasebenzi bakhe, baye banikwa uqeqesho nemfundo ngokolo hlobo inokuthi imisele ngalo iBhodi le. 50

Ulwamkelo olunemiqathango

- 34.** (1) IBhodi le isenokuthi xa isamkela isicelo selayisenisi phantsi kwemiqathango yamacandelo 30, 31 nele-32 iyalele ngento ebhaliweyo ukuba ilayisenisi leyo ayisayi kukhutshwa ade abe lowo mntu ufake isicelo uyifezekisile loo miqathango inokuthi iBhodi ibone kufanelekile ukuba iyibeke. 5
- (2) IBhodi le isenokuthi nanini na, xa umfaki-sicelo esifakile isicelo sakhe:
- (a) iyilungise okanye iyirhoxise loo miqathango;
 - (b) ilandise elo xesha ibiye yamsikela lona; okanye
 - (c) yamkele isilungiso esenziweyo kwiplani yendawo leyo.
- (3) Ukuba ngaba lowo mntu ufaka isicelo uyasilela ukuyifezekisa le miqathango ikhankanywe ngentla apha ngelo xesha ithe iBhodi le yamsikela ukusukela kulaa mhla wokwamkelwa kwesicelo sakhe selayisenisi, oko kwamkelwa kwesicelo sakhe selayisenisi kuya kuphelelwa, kuze ke kuthathwe ukuba eso sicelo sakhe selayisenisi asikhange samkelwe. 10
- (4) Xa lowo mntu ufake isicelo ethe wayifezekisa imiqathango ethe yabekwa yiBhodi le naxa athe wayihlawula intlawulo ebekiweyo, kufuneka ukuba iBhodi le iyikhuphe ilayisenisi leyo ngokohlobo olubekiweyo. 15

Ukukhutshwa kweelayisenisi neepemethi

- 35.** IBhodi okanye umasipala, nawuphi na ofanelekileyo kubo, kufuneka ukuba, emva kokuba ithe yasamkela isicelo, izikhuphe iimpempha zelayisenisi okanye zepemethi leyo ngefomu elungiselelwe oko apho kuchazwa khona imiqathango yaloo layisenisi, xa ngaba ikhutshiwe intlawulo ebekiweyo, oku kwenziwe ethathelwe ingqalelo amacandelo 31, 32 nele-33. 20

Ukusweleka okanye ukulimala komntu obefake isicelo

- 36.** Ukuba ngaba umntu ofake isicelo selayisenisi okanye sepemethi: 25
- (a) uye wabhubha;
 - (b) izinto ezililifa lakhe ziyabhanga;
 - (c) ufunyaniswe yinkundla efanelekileyo ukuba akakwazi ukuyiqhuba imicimbi yakhe; okanye
 - (d) xa ngaba yinkampani okanye inkampanana encinane, iye yathinjwa ngenxa yamatyala; 30
- phambi kwalo mhla bekuza kuqwalaselwa ngawo isicelo, ke lowo mntu uthe wakhethwa njengomabi-lifa, okanye utrasti, okanye umgcini okanye umthengisi weempahla ezithinjiweyo, unawo onke loo magunya nalawo malungelo ebeya kuba nawo lowo mntu ebefake eso sicelo ukuba ebengathanga wasweleka, wathinjwa okanye wafunyaniswa engenakukwazi ukuqhuba imicimbi yakhe, kwaye angawasebenzisa onke. 35

ISIAHLUKO 6
IMIQATHANGO YEELAYISENISI

Imiqathango yesiqhelo yeelayisenisi 40

- 37.** (1) Kufuneka ukuba ibe ngumqathango welayisenisi nganye yokuselelwa kotywala kwindawo ethile ebuthengiswa kuyo utywala ukuba utywala obo mabuselelwe kuphela kule ndawo ikhutshelwe loo layisenisi, nokuba akukho tywala buya kuthathwa kumkiwe nabo kule ndawo ikhutshelwe ilayisenisi.
- (2) Kufuneka ukuba ibe ngumqathango welayisenisi nganye yokuselelwa kotywala ngaphandle kwale ndawo ikhutshelwe ilayisenisi ukuba akusayi kubakho nto inotywala iya kuvulwa, kwaye kungasayi kubakho tywala buselelwa apha kule ndawo ikhutshelwe ilayisenisi, ngaphandle kokuba buselelwa ukungcamlisa okuvunyelwe yiBhodi le. 45
- (3) Ukuba ngaba indawo leyo ikhutshelwe ilayisenisi yokuba kuselelwe kuyo, kuselelwe nangaphandle kuyo, ke la macandelwana angentla apha u-(1) no-(2) akayichaphazeli yona. 50
- (4) Umntu onikwe ilayisenisi kwindawo apho olona shishino luqhutywayo ilolokutya akanakho ukuba athengise nabuphi na obunye utywala ngaphandle kweyayini eyitable wine.

(5) Ukusilela ekufezekiseni le miqathango ichazwe kumacandelwana (1),(2) nele-(4) ngentla apha kululwaphulo-mthetho.

Ukuhanjiswa

- 38.** (1) Kufuneka ukuba ibe ngumqathango welayisenisi nganye yokuselelwa kotywala ngaphandle kwale ndawo ikhutshelwe ilayisenisi ukuba: 5
- (a) utywala akufuneki ukuba buhanjise busuka kuso nasiphi isithuthi ngaphandle kokuba obo tywala bebuya ba-odolwa kule ndawo ikhutshelwe ilayisenisi kwangaphambi kokuba bube buyahanjiswa kwaye ne-invoyisi ibiye yakhutshwa, yaza nekopi yayo engaphezulu yagcinwa apha kule ndawo ikhutshelwe ilayisenisi; 10
- (b) utywala obuhanjiswa kufuneka ukuba busiwe kuphela kule adresi ibonisiweyo apha kule invoyisi ikhankanywe kumhlathi (a) ngentla apha; nokuba
- (c) ikopi yale invoyisi ikhankanywe kumhlathi (a) ngentla apha kufuneka ukuba igcinwe apha kwesi sithuthi sihambisa obu tywala ukusukela ngeli xesha sibuhambisayo ukuya kutsho kwelo xesha ibuthula ngalo. 15
- (2) Kululwaphulo-mthetho ukwamkela umthwalo wotywala obuthengiweyo kumthengisi wabo ingekho i-invoyisi exela igama lomthengisi lowo, i-adresi yakhe kunye nenombolo yelayisenisi yakhe, uhlobo lotywala obuthengiweyo, umthamo wabo kwakunye nexabiso obuthengwe ngalo. 20

Uchaphazeleko ngokwasezimalini

- 39.** (1) Umntu onikwe ilayisenisi akanakho ukuba angadlulisela ilungelo langokwasezimalini komnye umntu ngaphandle kokuqala afumane imvume kwiBhodi le.
- (2) IBhodi ayinakho ukuba ingayinika le mvume ikhankanywe kwicandelwana (1) ngentla apha ukuba ngaba lo mntu udluliselwa ilungelo langokwasezimalini akafanelekanga ngokwalaa miqathango ikwicandelo 24 ukuba angaba nelayisenisi okanye ukuba ngaba unesimo esingalunganga. 25
- (3) Ilayisenisi kufuneka ukuba ikhutshwe ngegama lalowo mntu uqhuba elo shishini likhutshelwe ilayisenisi aze axhamle isivuno salo, kwaye ayinakho ukuba ingakhutshwa ngegama lomtyunjwa okanye lomgunyaziswa. 30
- (4) Lowo mntu unikwe ilayisenisi akanakho ukuba angaqeshisa ngaloo layisenisi kuye nawuphi na mnye umntu okanye avumelene nawuphi na umntu ukuba makaqhube ishishini phantsi kwemiqathango yaloo layisenisi.
- (5) Ukusilela ekufezekiseni le miqathango ichazwe kumacandelwana (1), nele-(4) ngentla apha kululwaphulo-mthetho. 35

Ulawulo

- 40.** (1) Xa ngaba umfaki-sicelo akangomntu, koko sisigqeba okanye inkampani, kufuneka ukuba iBhodi ukuba inyule umntu oza kuba yimanejala yeli shishini likhutshelwe ilayiseni, otyunjwe ngumfaki-sicelo nongumhlali apha kweli Phondo. 40
- (2) Lowo unikwe ilayisenisi unakho ukuba athi nanini na, ngendlela ebekiweyo, atyumbe umntu ohlala apha kweli Phondo ukuba abe yimanejala yeli shishini likhutshelwe ilayisenisi, apho ke iBhodi iya kuthi iyibeke loo manejala.
- (3) IBhodi le isenokuthi icele igosa elijongene nezotywala ukuba lingenise ingxelo malunga nokufaneleka kwalowo mntu uthe watyunjwa. 45
- (4) IBhodi le ayinakho ukuba ibeke njengemanejala umntu ongafanelekanga ukuba angaba nelayisenisi ngokwemiqathango yecandelo 23 okanye umntu onesimo esingekho sihle.
- (5) IBhodi le isenokuthi ibeke umqathango wokubekwa kwaloo mntu othi lowo mntu utyunjelwe ukuba abekwe njengemanejala makaqale aye kufumana uqeqesho nemfundo ezinokuthi zikhethwe yiBhodi le. 50
- (6) Imanejala ethe yabekwa phantsi kwemiqathango yeli candelo inoxanduva lokuba ilawule eli shishini, kwaye nayo ibopheleleke kule misebenzi nakwezi mbopheleleko ngokuluya hlobo abopheleleke ngalo mntu unikwe le layisenisi.
- (7) Ukubekwa komntu njengemanejala phantsi kwemiqathango yeli candelo akumkhululi lowo mntu unikwe ilayisenisi kuwo nawuphi na kule misebenzi nakwezi

mbopheleleko zibekwa ngulo Mthetho okanye kwimiqathango ekhutshwe phantsi kwayo le layisenisi.

(8) Ukubekwa komntu njengemanejala phantsi kwemiqathango yeli candelo kuhlala kuqhuba ngokusesikweni kude kube kubekwe imanejala entsha.

(9) Ukuba ngaba umntu obekwe njengemanejala phantsi kwemiqathango yeli candelo uyayeka ukulawula elo shishini likhutshelwe ilayisenisi okanye kwenzeka ukuba angafaneleki ukuba angakwenza oko, esi sigqeba besinikwe ilayisenisi kufuneka ukuba sithi, zingaphelanga iintsuku ezingamashumi amathathu (30) ukusukela ngoko, sifake isicelo phantsi kwemiqathango yecandelwana (2) ngentla apha sokuba kubekwe enye imanejala entsha yokuthatha indawo yale iyekayo. 5 10

(10) Ukuba ngaba esi sigqeba sinikwe ilayisenisi siyasilela ukuthobela amacandelwana (5) nele-(9) ngentla apha, ilayisenisi yaso isenokumiswa okwexeshana phantsi kwemiqathango yecandelo 59 ngezantsi apha.

Iinguqulelo kwiindawo ezinikwe ilayisenisi okanye kuhlobo lweshishini

41. (1) Ngaphandle kokuba kufunyenwe imvume yeBhodi kwangaphambili ethe yanikwa kusakuba kufakwe isicelo ngendlela ebekiweyo, lowo unikwe ilayisenisi akanakho ukuba: 15

(a) angenza iinguqulelo kuhlobo lweshishini ebikhutshelwe lona ilayisenisi yakhe ezilwenza lahluke ishishini elo kweliya belichaziwe kwesiya sicelo sasiqwalaselwe yiBhodi le ngexesha ikhupha ilayisenisi; okanye 20

(b) angenza utshintsho okanye ulongezo kwisakhiwo, okanye asakhe ngokutsha okanye asitsale isakhiwo sale ndawo ibikhutshelwe yona ilayisenisi.

(2) Ukusilela ekufezekiseni imiqathango yecandelwana (1) kululwaphulo-mthetho.

Abantwana

42. (1) Akukho mntu uvumelekileyo ukuba athengisele umntwana ongaphantsi kweminyaka elishumi elinesibhozo (18) utywala. 25

(2) Akukho mntu uvumelekileyo ukuba anike okanye apha thele umntu ongaphantsi kweminyaka elishumi elinesibhozo (18) utywala okanye amvumele loo mntu ephantsi kolawulo lwakhe okanye kolondolozo lwakhe, ukuba asele utywala.

(3) Lowo unikwe ilayisenisi akanakho ukuba angavumela umntu ongaphantsi kweminyaka elishumi elinesibhozo (18) ukuba asele utywala kuloo ndawo ikhutshelwe yena ilayisenisi yayo okanye iphantsi kolawulo lwakhe. 30

(4) Lowo unikwe ilayisenisi akanakho ukuba angavumela umntu ongaphantsi kweminyaka elishumi elinesibhozo (18) ukuba abe lapho angavumelekanga ngokwemiqathango yalo Mthetho okanye ngokwemiqathango yale layisenisi, ukuba angakhona apha kule ndawo ikhutshelwe ilayisenisi. 35

(5) Umntu ongaphantsi kweminyaka elishumi elinesibhozo (18) ubudala akavumelekanga ukuba afumana okanye anganikwa utywala ngendlela ewaphulayo lo Mthetho okanye ukuba axoke ngeminyaka yakhe yobudala ngeenjongo zokuba afumane okanye asele utywala okanye angene kwiindawo angafanelanga ukuba angangena kuzo apha kule ndawo ikhutshelwe ilayisenisi. 40

(6) Ukusilela ekufezekiseni imiqathango yamacandelwana (1) (2), (3), (4) nele-(5) kululwaphulo-mthetho.

Abaqeshi nabasebenzi

43. (1) Umntu akavumelekanga ukuba angaqesha umntu ongaphantsi kweminyaka elishumi elinesibhozo (18) ubudala ekuthengisweni nasekuhanjisweni kotywala ngaphandle kokuba loo mntu: 45

(a) uneminyaka elishumi elinesithandathu (16) okanye ngaphezulu;

(b) uqeqeshwa kwizifundo zeenkonzolo zolungiselo lokutyabele; nokuba

(c) wenza umsebenzi woqeqesho phantsi kwalo ikhutshelwe yena ilayisenisi. 50

(2) Umqeshi akanakho ukuba:

(a) anganika umntu utywala njengendlela yokumthundezela ukuba amsebenzele;

(b) anganika umsebenzi utywala endaweni yokumnika umvuzo;

(c) angatsala imali emvuzweni womsebenzi etsalela iindleko zotywala ebebunikwe loo msebenzi okanye omnye umntu ebunikwa egameni lomsebenzi lowo; 55

(d) angawubamba umvuzo womsebenzi ade abe uhlawule ityala lotywala ebebuthathe ngetyala.

(3) Lowo unikwe ilayisenisi okanye omnye umntu owenza egameni lakhe, akanakho ukuba angamkela okanye abambe naliphi na iphepha okanye nayiphi na into ehambisekayo, eyibambela ukuba kumiswe ngayo kwityala lotywala obuthengiswe ngetyala. 5

(4) Ukusilela ekufezekiseni imiqathango yamacandelwana (1) (2), nele-(3) kululwaphulo-mthetho.

Ukungena kumasango cendawo ezinikwe iilayisenisi

44. (1) Lowo unikwe ilayisenisi akanakho ukuba angavumela umntu ongaphantsi kweminyaka elishumi elinesibhozo (18) ukuba: 10

(a) abe kwigumbi okanye kuyo nayiphi na indawo apha kule ndawo ikhutshelwe ilayisenisi yokuthengisa utywala ekhawuntaleni, ngaphandle kwaxa kwelo gumbi okanye kuloo kuthengiselwa abantu ukutya behleli ezitafileni;

(b) abe kwigumbi okanye kuyo nayiphi na indawo ethe iBhodi le yayityumba njengendawo abangavunyelwanga ukuba kuyo abantu abangaphantsi kweminyaka elishumi elinesibhozo (18); okanye 15

(c) abe kwindawo, engeyondawo ithengisa ukutya, ekhutshelwe kuphela ilayisenisi yokuthengisa utywala bokuba buye kuselelwa ngaphandle kwayo le ndawo ikhutshelwe ilayisenisi, ngaphandle kokuba loo mntu uhamba nomzali okanye nomntu aphantsi kolondolozo lwakhe okanye nomnye umntu omdala ngemvume yomzali wakhe okanye yomntu aphantsi kolondolozo lwakhe. 20

(2) Ukusilela ekufezekiseni imiqathango yecandelwana (1) kululwaphulo-mthetho.

Ukugcinwa kotywala

25

45. (1) Lowo mntu unikwe ilayisenisi kufuneka ukuba utywala bakhe abugcine apha kule ndawo ikhutshelwe ilayisenisi okanye ke kwenye indawo ekwalapha kwiPhondo eli ethe yamkelwa yiBhodi le emva kokuba kuthe kwenziwa isicelo sokwenza njalo.

(2) Lowo mntu unikwe ilayisenisi akanakho ukuba angathengisa utywala kuloo ndawo iyenye ayisebenzisela ukugcina utywala bakhe. 30

(3) Ukusilela ekufezekiseni imiqathango yamacandelwana (1) nele-(2) ngentla apha kululwaphulo-mthetho.

Indawo yokuthengisela

46. (1) Lowo unikwe ilayisenisi akanakho ukuba angabuthengisela kuyo nayiphi na enye indawo ngaphandle kwakule ikhutshelwe utywala. 35

(2) Nakubeni kukho le miqathango yeli candelo, lowo mntu unikwe ilayisenisi unakho ukuba angakubhengeza ukuthengisa kwakhe utywala, agaye nabathengi, athathe nee-odolo zabathenga utywala bengekho apha kule ndawo ikhutshelwe ilayisenisi.

(3) Ukusilela ekufezekiseni imiqathango yecandelwana (1) kululwaphulo-mthetho.

Amaxesha okuvula

40

47. (1) Ehamba ngaleyo miqathango inokuthi iBhodi le iyibeke xa ikhupha ilayisenisi okanye emva kwentlanganiso ebibanjwe ngokwecandelo 7, lowo mntu unikwe ilayisenisi angabuthengisa utywala ngezo ntsuku nangaloo maxesha okuvula ithe iBhodi le yawabekela amashishini akhutshelwe iilayisenisi, kodwa ke kuqondakale ukuba lawo maxesha okuvula abekwe yiBhodi le akasayi kungquzulana nalawo abekwe ngumthetho kamasipala. 45

(2) Umthetho kamasipala usenokuthi ubeke amaxesha okuvula angafaniyo nala abekelwe amashishini akhutshelwe iilayisenisi zokuthengisa utywala obuselelwa kwalapho buthengiswa khona nalawo athengisa utywala obungaselelwa apho buthengiswa khona, koko buselelwa kwenye indawo engeyiyo le ikhutshelwe ilayisenisi, kodwa ke awunakho ukuba ungabeka amaxesha okuvula neentsuku zokuvula ezingafaniyo kumashishini ngamashishini akhutshelwe iilayisenisi, kodwa ke kuqondakale ukuba amaxesha okuvula abekwe ngumasipala akanakudlula kula maxesha okuvula abekwe kumacandelwana (3)(a) no-(b) ngezantsi apha. 50

(3) (a) Ehamba ngaleyo miqathango ibekwe yiBhodi le ngokweli candelwana (1) ngentla apha, xa ngaba umasipala akanazintsuku namaxesha okuvula awabekileyo ngokwakweli candelwana (2) ngentla apha, ke lowo unikwe ilayisenisi yendawo yokuthengisa utywala obuza kuya kuselelwa ngaphandle kwale ndawo ikhutshelwe ilayisenisi angabuthengisa nangeyiphi na imini utywala nanini na ukusukela kwintsimbi yesibhozo kusasa ukuya kutsho kweyesibhozo ngorhatya (8:00 neye-20:00). 5

(b) Ehamba ngaleyo miqathango ibekwe yiBhodi le ngokweli candelwana (1) ngentla apha, xa ngaba umasipala akanazintsuku namaxesha okuvula awabekileyo ngokwakweli candelwana (2) ngentla apha, ke lowo unikwe ilayisenisi yendawo yokuthengisa utywala obuza kuselelwa kwalapha kule ndawo ikhutshelwe ilayisenisi angabuthengisa nangeyiphi na imini utywala nanini na ukusukela kwintsimbi yesibhozo kusasa ukuya kutsho kweyesine (04:00) kwintsasa yosuku olulandelayo. 10

(c) Kwimeko apho lowo unikwe ilayisenisi enelayisenisi evmela ukuba kuselelwe kwalapha kule ndawo ikhutshelwe ilayisenisi nangaphandle kwayo, uya kuhamba ngale miqathango yamacandelwana (a) no-(b) ngentla apha, enezo nguqulelwana ziyimfuneko. 15

(4) Lowo mntu unikwe ipemethi utywala angabuthengisa ngezo ntsuku nangaloo maxesha axeliweyo kwipemethi yakhe.

(5) Kuthathelwe ingqalelo icandelo 75(9), ukusilela ekuthengiseni ngala maxesha okuvula nangezi ntsuku zokuvula zibekwe yiBhodi le ngokwemiqathango yecandelwana (1), ngezo zibekwe ngumthetho kamasipala ngokwemiqathango yecandelwana (2) okanye ngezo zibekwe ngulo Mthetho kwicandelwana (3), kululwaphulo-mthetho. 20

Umthamo wotywala obuthengisiweyo nokugcinwa kwamarekhodi

48. (1) Lowo unikwe ilayisenisi kufuneka ukuba agcine, ngaloo ndlela ibekiweyo, amarekhodi abo bonke utywala obuthengiselwe ukuya kuselelwa kwenye indawo engeyiyo le ikhutshelwe ilayisenisi. 25

(2) Akukho mntu mnye, ngaphandle kwalowo mntu unikwe ilayisenisi unokuthi ngemini enye athenge utywala bokuya kuselelwa kwenye indawo engeyiyo le ikhutshelwe ilayisenisi obudlulileyo kulowo mthamo anokuthi awubeke uMphathiswa, kwaye ke nalowo mntu unikwe ilayisenisi engavumelekanga ukuba angamthengisela loo mntu mnye ufuna ukwenza njalo ngaphandle kokuba uqale wafumana imvume yegosa elijongene nezotywala laloo ngingqi ikuyo le ndawo ikhutshelwe ilayisenisi. 30

(3) Umntu ongenayo ilayisenisi okanye ipemethi yokuthengisa utywala kanakho, nanini na, ukuba angathenga utywala, okanye abe notywala apha kuye okanye abe notywala obuphantsi kolawulo lwakhe, obudlulileyo kulo mthamo ubekwe phantsi kwecandelwana (2) ngaphandle kokuba uqale ngokufumana le mvume ikhankanywe kweli candelwana. 35

(4) Ukusilela ekufezekiseni imiqathango yamacandelwana (1) (2) nele-3 ngentla apha kululwaphulo-mthetho. 40

ISAHLUKO 7 IPEMETHI

Iipemethi zeziyunguma ezizodwa

49. (1) Lowo mntu unelayisenisi yokuthengiswa nokuselwa kotywala kwiziyunguma ezizodwa akanakho ukuba angathengisa utywala esiyungumeni ngaphandle kokuba unikwe ipemethi yokwenza njalo ngumasipala waloo ngingqi ikuyo loo ndawo buza kuthengiswa kuyo utywala obo, okanye ke yiBhodi le, ukuba ngaba umasipala waloo ngingqi akazange anyulwe njengomgunyaziswa phantsi kwemiqathango yecandelo 17(2). 45

(2) Lowo mntu unelayisenisi yokuthengisa utywala bokuselwa kwiziyunguma ezizodwa kufuneka ukuba afake kumasipala ngaloo ndlela ibekiweyo, isicelo sepemethi yokuthengisa utywala kwiziyunguma esisodwa esithile. 50

(3) Eso sicelo ke kufuneka ukuba sifakwe kungasalanga ngaphantsi kweentsuku ezilishumi elinesine (14) phambi kwalo mhla wesiyunguma esisodwa eso.

(4) Umasipala angathi ke, emva kokuba ethe wasiqwalasela isicelo eso kwakunye nezo mpepha okanye naloo miba abona zifanelekile, asikhabe isicelo eso okanye asamkele phantsi kwayo nayiphi na imiqathango abona kufanelekile ukuyibeka.

(5) Le miqathango ikhankanywe kwicandelwana (4) ngentla apha kufuneka ukuba ichazwe apha kule pemethi ikhutshweyo. 5

(6) Umntu esikhatyweyo isicelo sakhe ngokwecandelwana (2), okanye onganeliswayo ngumqathango othile obekwe ngumasipala angathi, ngaloo ndlela ibekiweyo, afake isibheni eBhodini le, ebhenela oko kukhatywa kwesicelo sakhe okanye loo mqathango anganeliswayo nguwo.

(7) Kululwaphulo-mthetho ukusilela komntu onikwe ilayisenisi, engumntu onelayisenisi yeziyunguma ezizodwa, ekufuneni ipemethi ekhutshwa ngumasipala yesiyunguma esisodwa aza kuthengisa kuso utywala. 10

Ipemethi zotywala besintu

50. (1) Abantu abanokubuthengisa utywala besintu ngaba balandelayo kuphela:

- (a) untu onikwe ilayisenisi yokubenza; 15
- (b) umntu onikwe ilayisenisi yotywala; okanye
- (c) umntu onikwe ipemethi yotywala besintu.

(2) Umntu ongathintelwanga kukungafaneleki ukuba angaba nelayisenisi yotywala angathi asifake, ngaloo ndlela ibekiweyo isicelo sokufumana ipemethi yokuthengisa utywala besintu, kumasipala waloo ngingqi ikuyo le ndawo kuza kuthengiselwa kuyo obo tywala besintu. 20

(3) Loo masipala senziwe kuye isicelo unakho ukuba angasamkela eso sicelo phantsi kwaloo miqathango abona kufanelekile umasipala ukuba ayibeke, okanye ke asikhabe.

(4) Ukuba ngaba isicelo sithe samkelwa, kufuneka ukuba umasipala athi, isakuba yenziwe loo ntlawulo ifanele ukuba mayenziwe, amnike ipemethi leyo loo mntu ubefake isicelo, ngaloo ndlela ibekiweyo. 25

(5) Umntu oziva enganelisekanga sisigqibo sikamasipala ngokwalapha kweli candelo, angathi afake isibheni eBhodini, ngendlela ebekiweyo, ngesi sigqibo sithathiweyo ngumasipala.

(6) Lowo mntu unikwe ipemethi angenza isicelo kumasipala sokuba ihlaziye, kungasalanga ngaphantsi kweentsuku ezingamashumi amathathu (30) phambi kokuba ufike laa mhla yayikhutshwe ngawo. 30

(7) Umasipala kufuneka ukuba, emva kokuba yenziwe intlawulo yohlaziyo athe wayibeka, ayihlaziye ipemethi leyo esinye isithuba sonyaka omnye, ngaphandle kokuba kuye kwenzeka ukuba lowo mntu afumaniseke engakufanelanga ukunikwa ipemethi okanye iBhodi le iye yathi akangomntu ukufaneleyo ukuba anikwe ipemethi. 35

(8) Umntu oziva enganelisekanga yindlela eqhutywa ngayo intengiso yotywala besintu angangenisa isikhalazo eBhodini eya kuthi ke yona kufuneka ukuba isiqwalasele eso sikhalazo ngoluya hlobo isiqwalasela ngalo isikhalazo ngelayisenisi, kwaye ke amagunya enawo iBhodi ngale pemethi ayafana nalawo inawo malunga nelayisenisi. 40

ISAPHLUKO 8

IXESHA LOKUSEBENZA KWEELAYISENISI NEEPEMETHI NOKUHLAZIYWA KWAZO

Ixesha lokusebenza kweelayisenisi neepemethi 45

51. (1) Ixesha lokusebenza kweelayisenisi liqala kulaa mhla ikhutshwe ngawo.

(2) Ilayisenisi iphelelwa lixesha ngalaa mhla igqiba iinyanga ezilishumi elinesibini (12) ukusuka kulowa mhla yayikhutshwe ngawo okanye ekupheleni kweenyanga ezilishumi elinesibini (12) ukusukela kulaa mhla yayihlaziye ngawo, lowo mhla ufike mva, ngaphandle kokuba ke uhlaziyo lwaloo layisenisi loluzenzekelayo ngokwemiqathango yecandelo 52 okanye ihlaziywa yiBhodi ngokwemiqathango yecandelo 53. 50

(3) Ipemethi ekhutshwe phantsi kwemiqathango yecandelo 22(2) ikhutshelwa isiyunguma esisodwa isebenza kuphela ngoluya suku okanye ngeziya ntsuku zesiyunguma esisodwa eso ebikhutshelwe sona, kwaye ke ayihlaziywa yona. 55

(4) Ipemethi ekhutshwe phantsi kwemiqathango yecandelo 22(1) ikhutshelwa ukuthengiswa kotywala besintu isebenza ukuqalela ngalaa mhla wokukhutshwa kwayo,

ize iphelelwe lixesha ekupheleni kweenyanga ezilishumi elinesibini (12) emva kwalaa mhla wokukhutshwa kwayo, ngaphandle kokuba iye yahlaziywa ngumasipala phantsi kwemiqathango yecandelo 50(7).

(5) USihlalo angathi, emva kokuba efumene ingxelo yokuba indawo ebikhutshelwe ilayisenisi ishiyiwe nguloo mntu ubenikwe ilayisenisi, ayirhoxise okwexeshana loo layisenisi ngoko nangoko. 5

(6) Ukurhoxiswa kwelayisenisi okwexeshana phantsi kwemiqathango yecandelwana (5) kuyajikwa emva kokuba uSihlalo efumene ingxelo yokuba indawo leyo yakhutshelwa ilayisenisi ayishiywanga ngulowo wayenikwe ilayisenisi okanye eyokuba iyasebenza kwakhona. 10

Ukuhlaziywa kweelayisenisi okuzenzekelayo

52. (1) Ngaphandle kwalapho kusetyenzwa ngecandelo 53, kufuneka ukuba iBhodi le ikhuphe isaziso sohlaziyo lwelayisenisi, ngendlela ebekiweyo, zingadlulanga iinyanga ezisibhozo (8) emva kwalaa mhla wokukhutshwa kwayo okanye wokuhlaziywa kwayo, asithumele kumntu ngamnye onelayisenisi, acele ukuba umntu lowo unikwe ilayisenisi makahlawule intlawulo yohlaziyo lwelayisenisi, ekufuneka ukuba ube kukuphela kweenyanga ezilishumi elinesibini (12) ukusukela kulaa mhla wokukhutshwa kwayo okanye wokuhlaziywa kwayo, nokuba ngowuphi na ofike mva. 15

(2) Emva kokuba ethe loo mntu unelayisenisi wayihlawula intlawulo ebekiweyo phambi komhla wohlaziyo okanye ngomhla wohlaziyo, iyaphinda ke ihlaziye ilayisenisi yakhe isithuba seenyanga ezilishumi elinesibini (12) ukusukela kulowo mhla ihlaziya ngawo. 20

(3) Lowo unikwe ilayisenisi akasayi kwaphulelwa kuxanduva lwakhe lokuyihlawula ngexesha le ntlawulo ibekiweyo ukuba ngaba isaziso asikhange sithunyelwe okanye akakhange asifumane. 25

(4) Umntu onikwe ilayisenisi oye wasilela ukuyihlawula ngexesha intlawulo unakho ukuba angathi, zingaphelanga iintsuku ezingamashumi amathandathu (60) emva kokuba udlulile laa mhla wohlaziyo, angenise isicelo eBhodini ngento ebhaliweyo ecela ukuxolelwa ngokokusilela, kwaye ke iBhodi inakho ukuba imxolele, ivume ukuyamkela loo ntlawulo ibekiweyo ishiywe lixesha ngaloo mhla uthe wabekwa yiBhodi le, ihamba ke nezo ntlawulo zongezelelweyo nezizohlwayo ezinokuthi zibekwe yiBhodi. 30

(5) Kwiimeko apho iBhodi le iye yasamkela isicelo sokuxolelwa ngokwale miqathango ikwicandelwana (4) ngentla apha, yazibeka neentlawulo ezifanele ukuhlawulwa nezo zongezelelweyo kwakunye nezo zezohlwayo, zaza zahlawulwa, umhla wokuhlaziywa kwaloo layisenisi kuya kuthathwa ukuba ngulowa ibifanele ukuba ihlaziye ngawo kakade; kodwa ke kuqondakale ukuba, xa lowo unaloo enokuthi asilele ekuhlawuleni iintlawulo neentlawulo zezohlwayo azibekelweyo ngokwemiqathango yeli candelwana ude udlule laa mhla wokuhlawula awubekelweyo, ilayisenisi yakhe iyaphelelwa ngawo loo mhla. 40

Izicelo zohlaziyo lweelayisenisi

53. (1) Ukuba ngaba ekupheleni kweenyanga ezisibhozo (8) ukusukela kulaa mhla wokukhutshwa kwelayisenisi okanye wokuhlaziywa kwayo, nokuba ngowuphi na ofike mva, lowo mntu unikwe ilayisenisi:

(a) uye wafunyaniswa engakufanelanga ukuba angaba nelayisenisi phantsi kwemiqathango yecandelo 24; okanye 45

(b) iBhodi iye yamfumana engakufanelanga ukuba angaba nelayisenisi yotywala; okanye

(c) iye wathi kwesi sithuba seenyanga ezisibhozo zidlulileyo wasilela ekuthobeleni isaziso sothotyelo esiye sakhutshwa phantsi kwemiqathango yalo Mthetho; 50

ke loo layisenisi ayikwazi ukuba ingavela ihlaziye ngokwaphantsi kwemiqathango yecandelo 52, kodwa ke inakho ukuba ingahlaziywa yiBhodi le emva kokuba lowo ungumnini welayisenisi enze isicelo ngaloo ndlela ibekiweyo.

(2) IBhodi le kufuneka ukuba zithi zingadlulanga iinyanga ezilithoba (9) ukusukela kulaa mhla wokukhutshwa okanye wokuhlaziywa kwelayisenisi, zikhupele umntu ongumnini welayisenisi isaziso, njengoko kuchaziwe kumhlathana (1) esimxelelayo lowo ungumnini welayisenisi ukuba: 55

(a) ilayisenisi yakhe ayizi kuhlaziywa; nokuba

- (b) kufuneka ukuba lowo ungumnini welayisenisi enze isicelo, ngendlela ebekiweyo, ngaloo mhla uthe wabekwa yiBhodi le, sokuba ihlaziye ilayisenisi yakhe, umhla lowo ongenakuba semva kweenyanga ezilishumi elinesibini (12) ukusukela kulaa mhla wokukhutshwa okanye wokuhlaziya kwaloo layisenisi yakhe. 5
- (3) Ukuba ngaba lo mntu unikwe ilayisenisi uyasilela ekuthobeleni esi saziso sikhankanywe kumhlathana (2), ke ilayisenisi leyo yakhe iya kuphelelwa ukusukela kwiinyanga ezilishumi elinesibini ukusukela kulaa mhla wokukhutshwa okanye wokuhlaziya kwayo. 10
- (4) Ukuba ngaba lowo unikwe ilayisenisi uthe wasithobela esi saziso, ke ilayisenisi yakhe iya kuhlala isebenza de ibe iBhodi le igqibile ukuqwalasela isicelo sakhe sohlaziyo. 10
- (5) Xa iBhodi le iqwalasela isicelo sohlaziyo umsebenzi wayo kunye namagunya ayo ayafana nalawo inawo xa iqwalasela isicelo selayisenisi entsha, amagunya lawo abandakanya igunya lokusikhaba isicelo okanye lokusamkela, phantsi kwaleyo miqathango inokuthi ibone kufanelekile ukuba iyibeke. 15
- (6) Ukuba ngaba iBhodi le iyasamkela isicelo sokuhlaziya kwelayisenisi, ilayisenisi leyo kuthathwa ukuba iye yahlaziya phantsi kwemiqathango yecandelo 51(2).
- (7) Ukuba ngaba iBhodi le iyasikhaba isicelo sokuhlaziya kwelayisenisi, ilayisenisi leyo iphelelwa ngoko nangoko okanye ke ngaloo mhla unokuthi ubekwe yiBhodi le. 20

ISAHLUKO 9 UDLULISELO LWEELAYISENISI

Udluliselo lweelayisenisi

- 54.** (1) Lowo mntu unikwe ilayisenisi unakho ukuba angenza isicelo sokuba ilayisenisi yakhe idluliselwe komnye umntu ngokuthi angenise isicelo, ngaloo ndlela ibekiweyo nangaloo fomu isetyenziswayo, kumasipala wale ngingqi ikuyo le ndawo ikhutshelwe ilayisenisi. 25
- (2) Umasipala lowo ke kufuneka ukuba, ngaleyo ndlela ibekiweyo, alazise igosa elijongene nezotywala ngesi sicelo, aze ke alicele limngenisese ingxelo ngokuphathelele ekufanelekeni kwaloo mntu kucetywa ukudluliselwa kuye ilayisenisi ukuba angaba nelayisenisi. 30
- (3) Igosa elijongene nezotywala kufuneka ukuba, lingadlulanga elo xesha libekiweyo, liyingenise loo ngxelo ngokolo hlobo ifunwa ngalo kumhlathana (2), kwaye ke kuloo ngxelo lingabandakanya nawuphi na umba elibona lona gosa lijongene nezotywala ukuba kufanelekile ukuwavelisa kwesi sicelo. 35
- (4) Umasipala kufuneka ukuba, lingadlulanga elo xesha libekiweyo, athumelele iBhodi esi sicelo kwakunye naziphi na iimpepha abeye wazifumana zingeniswe kunye neso sicelo.
- (5) IBhodi le kufuneka ukuba, lingadlulanga elo xesha libekiweyo, isikhabe okanye isamkele esi sicelo. 40
- (6) IBhodi ayinakho ukuba ingamkela isicelo sodluliselo, ngaphandle kokuba yanelisekile ukuba umntu lowo kuza kudluliselwa kuye ilayisenisi:
- (a) akafunyaniswanga engakufanelanga ukuba angaba nelayisenisi phantsi kwemiqathango yecandelo 23;
- (b) ungumntu onesimo esihle; kwaye 45
- (c) ufundile ngokufanelekileyo okanye uya kuba efunde ngokwaneleyo, okanye kubantu abamsebenzelayo uya kuba naye umsebenzi omnye, nangaphezulu, ofunde okanye abafunde ngokufanelekileyo okanye oya/abaya kuba efunde/befunde ngokufanelekileyo benalo noqeqesho kulawulo lweshishini elinelayisenisi. 50
- (7) Xa iBhodi le isamkela isicelo sodluliselo inakho ukuba ingayalela ukuba loo mntu idluliselwa kuye ilayisenisi, okanye omnye okanye abanye babasebenzi baloo mntu, kufuneka baye kufumana uqeqesho nemfundo enokuthi iBhodi igqibe kuyo.
- (8) IBhodi eyamkela isicelo sodluliselo phantsi kwemiqathango yeli candelo kufuneka ukuba ikhuphe isiqinisekiso sodluliselo ngokolo hlobo kubekwe ngalo. 55
- (9) Ukuba ngaba lo mntu kudluliselwa kuye ilayisenisi uyasweleka, okanye uyatshona ematyaleni okanye ufunyaniswa yinkundla efanelekileyo engenakukwazi ukuba angayiqhuba imicimbi yakhe, okanye, ukuba ngaba uyinkampani okanye inkampanana encinane, uyathinjwa phambi kwalo mhla wokuqwalasela kwesicelo sodluliselo, umabi-lifa, itrasti, umthengisi okanye umlondolazi, lowo ufanelekileyo, 60

uthathwa ukuba nguye umfaki wesicelo, kwaye unawo onke amalungelo abeya kuba nawo lowo mntu okanye leyo nkampani okanye loo nkampani okanye loo nkampanana incinane, ibiya kuba nawo ukuba ebengathanga abhubhe okanye atshone okanye athinjwe okanye afunyaniswe engafanelekanga.

(10) IBhodi inokuthi ngokubona kwayo isamkele isicelo sokudluliselwa komabi-lifa, 5
kotrasti okanye komthengisi okanye komondolozisi okanye nawuphi na omnye umntu embona efanelekileyo yona Bhodi.

(11) Umntu onikwe ilayisenisi olinikezelayo ishishini elo, kufuneka ukuba, zithi zingadlulanga iintsuku ezingamashumi amathathu (30) ukusukela kuloo mhla anikezela ngawo, ayazise iBhodi le ngento ebhaliweyo ngolo nikezelo. Kululwaphulo-mthetho 10
ukusilela ekuyaziseni iBhodi le ngolo nikezelo.

(12) Umntu othenge ishishini elinelayisenisi angafaka isicelo kuSihlalo sokunikwa imvume yokuqhuba elo shishini linelayisenisi, ngoku kusalindwe ukuba ilayisenisi yalo idluliselwe kuye.

(13) Esi sicelo senziwe phantsi kweli candelwana (12) ngentla apha kufuneka ukuba 15
senziwe ngokusingenisa kuSihlalo ngefomu ebekiweyo.

(14) USihlalo angayinika imvume egunyazisa umthengi lowo weshishini elo ukuba angaziqhubela elo shishini ixesha elithile elisikiweyo, ixesha elo ke elingenakuba ngaphezulu kweenyanga ezintandathu (6) ukusukela kuloo mhla aqalise ngawo.

(15) USihlalo angathi nanini na ayirhoxise loo mvume inikwe phantsi 20
kwemiqathango yecandelwana (14) ngentla apha.

(16) Le mvume inikwe phantsi kwemiqathango yecandelwana (14) ngentla apha ayinakho ukuba ingenzelwa isibhenno okanye uvandlakanyo phantsi kwalo Mthetho.

(17) Lowo mntu uthe wanikwa le mvume inikwe phantsi kwemiqathango yecandelwana (14), unelungelo lokuba aliqhuba eli shishini likhutshelwe ilayisenisi 25
ngokwakhe, kwaye unamalungelo afanayo nalawo ebenawo laa mntu ube engumnini welayisenisi, kwaye naye ubopheleleke kuxanduva olufanayo noluya ubopheleleke kulo lowa ube engumnini wale layisenisi.

(18) Ukunikwa kwale mvume inikwe phantsi kwemiqathango yecandelwana (14) ngentla apha akumkhululi loo mntu ungumnini welayisenisi kumsebenzi noxanduva 30
abopheleleke kulo ngokuba ngumnini welayisenisi.

Ukushiya kweendawo nokusweleka okanye ukulimala komnini-layisenisi

55. (1) Ukuba ngaba lowo mntu unikwe ilayisenisi uyasweleka, okanye uyatshona okanye ufunyaniswe yinkundla efanelekileyo ukuba akakwazi ukuqhuba imicimbi yakhe, okanye ukuba ngaba yinkampani okanye inkampanana encinane, ithinjwe: 35

(a) loo layisenisi iwela ku lowo mntu uthe wakhethwa njengomabi-lifa, okanye utrasti, okanye umgcini okanye umthengisi weempahla ezithinjweyo, lowo ufanelekileyo, ukusukela kuloo mhla abekwe ngawo; kwaye ke

(b) lowo mntu uthe wakhethwa njengomabi-lifa, okanye utrasti, okanye umgcini okanye umthengisi weempahla ezithinjweyo angaliqhuba elo shishini 40
linelayisenisi ngokolo hlobo ebeya kuliqhuba ngayo lowo ungumnini welayisenisi, ukuba ngaba ebengathanga wasweleka okanye watshona okanye wathinjwa okanye wafunyaniswa engakwazi, kwaye naye ubopheleleke kulaa miqathango ebebopheleleke kuyo loo mnini welayisenisi; kwaye ke

(c) lowo mntu uthe wakhethwa njengomabi-lifa, okanye utrasti, okanye umgcini 45
okanye umthengisi weempahla ezithinjweyo angasifaka isicelo sokuba le layisenisi mayidluliselwe, phantsi kwemiqathango yecandelo, kwaye ke ngokwakweswo sicelo uthathwa ukuba nguye umnini wale layisenisi.

(2) IBhodi le ingathi, ukuba iyaneliseka ukuba ishishini elikhutshelwe ilayisenisi liye lashiya, okanye umnini welayisenisi ngulo mntu uchazwe kwicandelwana (1) ngentla 50
apha, abe engekabikho nomntu uthe wakhethwa njengomabi-lifa, okanye utrasti, okanye umgcini okanye umthengisi weempahla ezithinjweyo, inyule umntu wokuba ngumnini wale layisenisi aqhuba eli shishini de kube kukhethwe lowo mntu uza kuba ngumabi-lifa, okanye utrasti, okanye umgcini okanye umthengisi weempahla ezithinjweyo, okanye, ukuba ngaba ishishini elo lishiyiwe, kude kubekwe imanejala. 55

(3) Lowo mntu ke uthe wabekwa ngolo hlobo uthathwa ukuba nguye umnini welayisenisi le.

(4) Ukuba ngaba uyasweleka umntu onikwe ilayisenisi enguye kuphela umlawuli wenkampani okanye ilungu lenkampanana encinane, okanye uyatshona okanye ufunyaniswa yinkundla efanelekileyo engakwazi ukuqhuba imicimbi yakhe okanye 60

ukuba yinkampani okanye inkampanana encinane, uyathinjwa, ke kuya kuthi kule layisenisi kuhanjwe ngale miqathango yamacandelwana (2) nele-(3) ngentla apha, kunezo nguqulelwana zenziweyo apha naphaya, de abe ubekiwe umlawuli omtsha okanye ilungu elitsha.

ISAHLUKO 10 IZIBHENO

5

Izibheno eziya kwiSigqeba seZibheno

56. (1) ISigqeba seZibheno esibekwe phantsi kwemiqathango yecandelo 14 kufuneka ukuba siqwalasele isibheno okanye isicelo sovandlakanyo esifakiweyo ngesigqibo esithathiweyo yiBhodi le phantsi kwemiqathango yecandelo 7(3). 10

(2) ISigqeba seZibheno singasiqinisekisa eso sigqibo okanye loo myalelo kufakwe isibheno ngawo, okanye senze izilungiso okanye sisikhabe, size ke sibeke esinye endaweni yaso eso okanye endaweni yawo loo myalelo, ngokokufuna kweemeko.

(3) Lowo mntu ufake isicelo okanye lowo mntu unochaphazeleko unganelisekanga sisigqibo seBhodi le angathi, lingadlulanga ixesha elibekiweyo, emva kokuba ezifumene izizathu zesigqibo seBhodi le, angenisele iBhodi le isaziso sokubhena okanye sovandlakanyo ngokwaloo ndlela ibekiweyo. 15

(4) Isibheno okanye uvandlakanyo kufuneka sixoxwe ngokungathi sisibheno ngesigwebo esikhutshwe yinkundla kamantyi kwityala lembambano, kwaye ke nawuphi na umgaqo olandelwayo kwityala lembambano uya kulandelwa nalapha, wenziwe ezo nguqulelwana ziyimfuneko apha naphaya, njengoko zivunyelwa ngokwalapha. 20

(5) Ngaphandle kwalapho lowo mntu ufake isicelo okanye lowo mntu unochaphazeleko, ethe waphulelwa kumqathango wentlawulo eyenziwayo ngokwemiqathango yecandelwana (6), umntu onganelisekanga sisigqibo seBhodi le kufuneka ukuba kwangeli xesha angenisa isaziso sesibheno okanye sovandlakanyo ngokwemiqathango yecandelo (3), ahlawule naloo mali ibekiweyo yimigaqo okanye ithotyweyo siSigqeba seZibheno, njengemali yokukhawulelana neendleko enokuthi ingene kuzo iBhodi le okanye elo cala liphikisayo. 25

(6) ISigqeba seZibheno singathi sakuba sifumene isicelo salowo mntu ufaka isicelo okanye salowo mntu unochaphazeleko, unganelisekanga sisigqibo seBhodi le, siyithobe intlawulo yokukhawulelana neendleko ezingekenzeki okanye simaphulele singayibizi. 30

(7) Imali ehlawulelwe ukukhawulelana neendleko ezingekenzeki ngokwemiqathango yecandelwana (5) ngentla apha kufuneka ihlawulwe kwiGosa eliLawulayo eliyiNtloko, lize ke lona liye kuyifaka ebhankini kwi-akhawunti eyodwa, apho iya kulinda isiphumo sesibheno okanye sovandlakanyo, apho ke liya kuthi lihlawule ngayo ngokwaloo myalelo uthe wanikwa ngumchopheli weSigqeba seZibheno. 35

(8) ISigqeba seZibheno singawukhupha loo myalelo wentlawulo yeendleko zamaqela kwezi ngxoxo okanye zeBhodi le, ngokolo hlobo sibona lufanelekile phantsi kweemeko ezo. 40

(9) Lowo mntu ufake isicelo okanye lowo mntu unochaphazeleko unganelisekanga sisigqibo seBhodi le angaya kuvela ngokwakhe phambi kweSigqeba seZibheno okanye angamelwa apho ligqwetha lejaji okanye ligqwetha.

(10) Isigqibo seSigqeba seZibheno kumcimbi othile asinakuphikiswa, kwaye singenakho nokuba singafakelwa esinye isibheno. 45

ISAHLUKO 11 UTHOTYELO

Izaziso zothotyelo

57. (1) Umhloli angakhuphela lowo mntu ungumnini welayisenisi okanye lowo mntu iphantsi kolawulo lwakhe indawo ekhutshelwe ilayisenisi, isaziso sothotyelo ngefomu ebekiweyo, emazisa ngaso loo mntu ukuba makathobele imiqathango etyetyeshwa ngulo Mthetho okanye imiqathango yelayisenisi yakhe. 50

(2) Isaziso sothotyelo kufuneka ukuba sicacise:

(a) imiqathango ebekwa ngulo Mthetho okanye imiqathango yelayisenisi efanele ukuthotyelwa; 55

- (b) uhlobo lothotyelo nemihlaba yalo;
- (c) amanyathelo ekufuneka ukuba makathathwe ukuze kuthotyelwe;
- (d) umhla ekufanele ukuba lube lufezekiswe ngawo olo thotyelo; kunye
- (e) nezo ziphumo kuya kuthi kube nazo ukungathobeli.

(3) Isaziso sothotyelo sihlala sisebenza kude kuye kufika kulaa mhla lubekelwe wona 5
uthotyelo olo okanye lowo liphela ngawo ixesha elithe longezwa, okanye
owokukhutshwa kwesiqinisekiso sothotyelo ngumhloli, nokuba loluphi na olo lufike
kuqala.

(4) Umhloli angathi, xa ethe wacelwa ngulowo mntu ukhutshelwe isaziso sothotyelo,
alandise elo xesha lofezekiso lothotyelo, xa kunikwe isizathu esivakalayo, aze ke 10
aphinde amkhuphele esinye isaziso sothotyelo esenziwe iinguqulelo.

(5) Ukuba ngaba lowo mntu ukhutshelwe isaziso sothotyelo uye walufezekisa olo
thotyelo, umhloli uya kukhupha isiqinisekiso sothotyelo.

(6) Lowo mntu ukhutshelwe isaziso sothotyelo angathi, ngendlela ebekiweyo,
angenisele umhloli lowo inkcazo ekuphikayo oku kukwesi saziyo, achaze futhi nokuba 15
ukuphika ngamihlaba mini na oko kuqulathwe sisaziso sothotyelo eso.

(7) Umhloli othe wafumana le nkcazo inikwe phantsi kwemiqathango yecandelwana
(6) kufuneka ukuba athi, lingadlulanga ixesha elibekiweyo angenisele iGosa
eliLawulayo eliyiNtloko eso saziyo sothotyelo nale nkcazo ikhankanywe
kwicandelwana (6) kunye nazo naziphi na ezinye iimpepha abona kufanelekile ukuba 20
makazingenise, lize ke lona iGosa eliLawulayo eliyiNtloko lithathe isigqibo malunga
nokuba ngaba esi sikhaziso siqulathwe sisaziso sothotyelo sifanelekile na.

(8) IGosa eliLawulayo eliyiNtloko lingathi, ukuba ligqiba kwelokuba eso sikhaziso
siqulathwe kwisaziso sothotyelo asifanelekanga, lisichithe, okanye ukuba ngaba 25
lisifumanisa sifanelekile, liyalele ukuba isaziso sothotyelo eso masifezekiswe ngalowo
mhla linokuthi liwubeke.

(9) IGosa eliLawulayo eliyiNtloko lingathi ligunyazise omnye umntu ongumsebenzi
weBhodi le ukuba makenze lo msebenzi uchazwe kwicandelwana (8) ngentla apha.

(10) Ukusilela ekufezekiseni isaziso sothotyelo kululwaphulo-mthetho.

(11) Ubungqina bokungasifezekisi isaziso sothotyelo, entlanganisweni yeBhodi le, 30
bubungqina bokuba kukho ulwaphulo-mthetho oluthe lwenziwa, okanye utyeshelo
lwale miqathango yelayisenisi ikhankanywe kwisaziso sothotyelo.

Imiyalelo yexeshana

58. (1) IBhodi le isenokuthi kwiimeko ezizodwa, asakuba efake isicelo umhloli
okanye igosa elijongene nezotywala, nalapho impilo nentlalontle yoluntu okanye 35
ukhuseleko loluntu zibekeke emngciphekweni, ikhuphe umyalelo wexeshana
oyirhoxisayo ilayisenisi leyo okanye ipemethi leyo okwexeshana.

(2) Esi sicelo sikhankanywe phantsi kwecandelwana (1) asinakwamkelwa
ngaphandle kokuba:

- (a) sixhaswa yinkcazo efungelweyo ecacisa iinkcukacha eziphathelele kumcimbi 40
lowo;
- (b) kukho ubungqina bokuba isicelo eso neenkcazo ezifungelweyo wazinikwa
lowo mntu ungumnini welayisenisi kungasalanga ngaphantsi kweeyure
ezingamashumi amane anesibhozo (48) phambi kokungeniswa kwesicelo eso; 45
nokokuba
- (c) kuyabonakala ngokwalapha kwisicelo eso ukuba loo mcimbi ngumcimbi
ongxamisekileyo.

(3) Umyalelo okhutshwe phantsi kwemiqathango yecandelwana (1) kufuneka ukuba
awunikwe lowo mntu ungumnini welayisenisi ngokwesikhokelo esinikwe yiBhodi,
kwaye uqalisa ukusebenza ngaloo mhla awunikwa ngawo nangelo xesha awunikwa 50
ngalo.

(4) Umyalelo okhutshwe phantsi kwemiqathango yecandelwana (1) kufuneka ukuba
uxelele umhla ekufuneka aye kuvela ngawo phambi kweBhodi le lowo mntu ungumnini
welayisenisi, aye kunika izizathu ezichaza ukuba kutheni na ungenakuphunyezwa nje 55
loo myalelo.

(5) Lowo mntu ungumnini welayisenisi angathi, phambi kwalo mhla uxelwe
kwicandelwana (4), angenisele iBhodi le isaziso sokuba uza kuwuphikisa loo myalelo,
kwaye ke kufuneka ukuba angenise neenkcazo ezifungelweyo apho achaza imihlaba
awuphikisa phantsi kwayo loo myalelo, aze kwangelo xesha linye anike lo mhloli
okanye eli gosa lijongene nezotywala likhankanywe kwicandelwana (1) ikopi yeso 60
saziso neyezo nkcazo zifungelweyo.

(6) Lowo mntu ungumnini welayisenisi angathi, phambi kwalo mhla uxelwe kwicandelwana (4), enze isicelo kuSihlalo weBhodi le sokuba umhla wokuxoxwa kwalo mcimbi makawubeke kusuku olungaphambili, aze ke kwangelo xesha linye anike lo mhloli okanye eli gosa lijongene nezotywala likhankanywe kwicandelwana (1) ikopi yeso sicelo. 5

(7) USihlalo weBhodi le usengayalela ukuba umhla lowo mawubekwe kusuku olungaphambili.

(8) Ngalo mhla wokuxoxwa kwesi sicelo iBhodi le ingawurhoxisa lo myalelo wexesha okanye iwuqinisekise, kuqondakale ke kambe ukuba ingawenza nezo nguqulelo izibona kufanelekile ukuba mayizenze. 10

Ukurhoxiswa okwexeshana, ukutshitshiswa nokuphelelwa kweelayisenisi

59. (1) Ilayisenisi ethe yarhoxiswa okwexeshana phantsi kwawo nawuphi na umqathango walo Mthetho ihlala isebenza, ingaphelelwanga, ngaphandle nje kokuba ngelo xeshana isarhiswe ngalo umntu ongumnini wayo akanakho ukuba angabuthengisa utywala. 15

(2) Ilayisenisi ethe yatshitshiswa yiBhodi le iyaphelelwa ukusukela kuloo mhla iitshitshiswa ngawo, okanye ke ngalo mhla ungomnye inokuthi igqibe kuwo iBhodi le.

(3) Ilayisenisi ethe yaphelelwa phantsi kwemiqathango yecandelo 52 iyayeka ukusebenza ukusukela kuloo mhla iphelelwe ngawo.

(4) Lowo mntu ungumnini welayisenisi ethe yarhoxiswa okwexeshana okanye yatshitshiswa okanye yaphelelwa usenokuthi zingaphelanga iintsuku ezingamashumi amathathu (30) emva kolo rhoxiso okanye kolo tshitshiso okanye koko kuphelelwa, abuthengise ngefantesi nabuphi na utywala obukhoyo kuloo ndawo ibinale layisenisi, ngaloo mhla luqala ngawo ukusebenza olo rhoxiso okanye olo tshitshiso okanye oko kuphelelwa, ethengiselwa ngunofandesini onelayisenisi. 20 25

(5) Ukuba ngaba umntu ongumnini welayisenisi wenza isicelo eBhodini ngento ebhaliweyo sokuba mayiyitshitshise ilayisenisi yakhe, loo layisenisi iya kuthi ke iphelelwe ngaloo mhla ithe yawubeka iBhodi.

IS AHLUKO 12

UQINISEKISO LOKUTHOTYELWA KOMTHETHO 30

Ukubekwa kwamagosa okujongana nezotywala nabahloli nemisebenzi yabo

60. (1) UMkhomishinala weNkonzo yaMapolisa oMzantsi Afrika eNtshona Koloni, kwisikhululo samapolisa ngasinye, angabeka ipolisa elikwinqanaba lobuhloli okanye kwelingentla kunalo ukuba lenze umsebenzi wegosa elikhethiweyo elijongene nezotywala phantsi kwemiqathango yalo Mthetho. 35

(2) Ipolisa elithe labekwa njengepolisa elikhethiweyo phantsi kwemiqathango yecandelo 139 loMthetho oyi*Liquor Act*, 1989 (uMthetho 27 ka-1989) liba ligosa elikhethelwe ukuba lijongane nezotywala kwaye ke lithathwa ukuba libekwe ngokwemiqathango yecandelwana (1).

(3) UMkhomishinala weNkonzo yaMapolisa oMzantsi Afrika eNtshona Koloni angathi nanini na akutshitshise oku kubekwa kwenziwe phantsi kwemiqathango yeli candelo.

(4) UMphathiswa unokubeka umntu oqeshwe nguRhulumente weNtshona Koloni ukuba abe ngulo mhloli kuthethwa ngaye apha kulo Mthetho.

(5) UMkhomishinala kufuneka ukuba, xa ebeka igosa elijongene nezotywala ngokolu hlobo luchazwa kwicandelwana (1), akhuphe isiqinisekiso sokubekwa okanye sokukhethwa esisayinwe nguye yena Mkhomishinala, ngokunjalo noMphathiswa xa ebeka umhloli phantsi kwemiqathango yecandelwana (4), ngokwalowo kwenziwe nguye ukubeka okanye ukukhetha oko. 45

(6) Igosa elijongene nezotywala elikhethiweyo okanye umhloli kufuneka ukuba, xa besenza umsebenzi wabo ngokwemiqathango yalo Mthetho, xa bethe bacelwa nguye nawuphi na umntu ochatshazelwayo kukwenziwa kwaloo msebenzi, bakhuphe ubungqina bokubekwa kwabo, njengosa elijongene nezotywala okanye njengomhloli.

(7) Igosa elijongene nezotywala elikhethiweyo okanye umhloli kufuneka ukuba:

- (a) kwisicelo ngasinye esenziweyo phantsi kwemiqathango yalo Mthetho, benzele iBhodi ingxelo ngaleyo miba inokuthi ibekwe njengefanele ukwenzelwa ingxelo okanye leyo libonayo igosa elijongene nezotywala ukuba ifanele ukuba ithathelwe ingqalelo xa kuqwalaselwa eso sicelo; nokuba
- (b) xa bethe bachelwa yiBhodi, banike ingxelo okanye bangenise naziphi na iinkcukacha ngomcimbi ethe iBhodi yacela ukuba kwenziwe njalo kuwo; nokuba 5
- (c) bathi ngokukhawuleza bakuba beqaphele usilelo, banike iGosa eliLawulayo eliyiNtloko iNgxelo ngoko kusilela komntu ongumnini welayisenisi ekuthobeleni imiqathango yelayisenisi yakhe, okanye isaziso sothotyelo okanye imiqathango yalo Mthetho; nokuba 10
- (d) lingenise ingxelo iGosa eliLawulayo eliyiNtloko xa athe lowo mntu ungumnini welayisenisi wafunyaniswa engakufanelanga ukuba nelayisenisi; nokuba
- (e) ukuba ngaba banoluvo lokuba loo ndawo ibikhutshelwe ilayisenisi ishiyiwe, okanye ayikufanelanga ukuba kungaqhutyelwa kuyo eli shishini likhutshelwe ilayisenisi, balingenisele ingxelo iGosa eliLawulayo eliyiNtloko; nokuba 15
- (f) ukuba ngaba lowo mntu ungumnini welayisenisi uye wabanjwa wagwetywa kwityala lolwaphulo-mthetho, balingenisele ingxelo iGosa eliLawulayo eliyiNtloko malunga nohlobo lolo lwaphulo-mthetho kwakunye neemeko elwenzeke phantsi kwazo. 20

Amagunya amagosa akhethiweyo ajongene nezotywala nabahloli

61. (1) Igosa elijongene nezotywala elikhethiweyo okanye umhloli angathi, xa esenza umsebenzi wakhe:

- (a) ngawo onke amaxesha afanelekileyo angene: 25
- (i) nakweyiphi na indawo ekhutshelwe ilayisenisi;
- (ii) nakweyiphi na indawo ekwenziwe isicelo ngayo phantsi kwemiqathango yalo Mthetho;
- (iii) nakweyiphi na indawo apho kuthengiswa utywala phantsi kwemiqathango yepemethi; 30
- (iv) nakweyiphi na indawo apho kwenziwa utywala okanye ehambisa utywala phantsi kwemiqathango yobhaliso ngokwalo Mthetho uyi*Liquor Act*;
- (v) nakweyiphi na indawo apho akrokrela ukuba kugcinwe utywala kuyo okanye kuthengiswa utywala kuyo ngendlela enxamnye nemiqathango yalo Mthetho okanye yoMthetho oyi*Liquor Act* 35
- kwaye ke angathi emva kokuba ethe wamxelela umntu ophetheyo apho kuloo ndawo ngelo xesha lokufika kwakhe ukuba utyelele ngazinjongo zini na apho, enze naluphi na uphando, abuze nayiphi na imibuzo okanye enze naluphi na uhlobo abona kufanelekile ukulwenza: 40
- (b) nanini na, kunjalo nje nakweyiphi phi na indawo, ayalele nawuphi na umntu ukuba makathi ngoko nangoko, okanye ngaloo mhla nangelo xesha linokuthi libekwe, amnike nayiphi na ilayisenisi okanye ipemethi okanye isiqinisekiso sobhaliso, okanye irekhodi okanye nazo naziphi na iimpepha anazo okanye eziselugcinweni lwakhe okanye eziphantsi kolawulo lwakhe okanye lwakhe nawuphi na omnye umntu ozigcine egameni lakhe; 45
- (c) ahlole naziphi na ezo mpepha athe wazinikwa ngokomhlathi (1)(b), enze iikopi zazo okanye zeendawo azicaphule kuzo, afune nengcaciso kulo mntu uchazwe kulo mhlathi sele ukhankanyiwe yayo nayiphi na indawo yezo mpepha kwaye azithathele kuye ezo mpepha, ukuba ngaba uyabona ukuba ezo ndawo zingaba bubungqina bokuba lukhona ulwaphulo-mthetho phantsi kwemiqathango yalo Mthetho, okanye obukutyeshelwa kwawo nawuphi na umqathango obekelwe ilayisenisi leyo; 50
- (d) amfake imibuzo lowo mntu ungumnini welayisenisi okanye ubhalisiweyo okanye abasebenzi bakhe, okanye umfaki wesicelo okanye nawuphi na omnye umntu olapha kule ndawo ikhutshelwe ilayisenisi okanye ibhalisiweyo, xa ngaba uyakrokra ukuba lowo msebenzi okanye lowo mntu uanzo kuye okanye phantsi kolawulo lwakhe nazo naziphi na iimpepha ezinokuthi zifaneleke kulo mcimbi enza uphando ngawo; kananjalo 55
- (e) acele nawuphi na umntu ongumnini welayisenisi okanye obhalisiweyo okanye umsebenzi wakhe ukuba aye kuvela phambi kwakhe ngelo xesha athe 60

walibeka nakuloo ndawo aya kumxelela yona, aye kuphendula imibuzo emalunga nalowo mcimbi kwenziwa uphando ngawo.

(2) Nawuphi na umntu owongamele ezi ndawo zikhankanywe kwicandelwana (1) kufuneka ukuba anike olo ncedo anokuthi acelwe ukuba makalunike ligosa elijongene nezotywala elikhethiweyo. 5

Amagunya amagosa oxolo ngokubanzi

62. (1) Igosa loxolo linakho ukuba lingene lenze uhlolo kuyo nayiphi na indawo ekhutshelwe ilayisenisi okanye ligqogqe kuso nasiphi na isithuthi, isikhephe okanye umntu, xa lithe lagunyaziswa ukuba malenze njalo ngeempepha zogunyaziso ezikhutshwe yinkundla efanelekileyo, kwaye igosa loxolo elikwinqanaba lobuhloli okanye kwelilingana nalo, lingathi lingenazo iimpepha zogunyaziso, lingene lihlole loo ndawo okanye eso sithuthi, okanye sikhephe okanye mntu, xa lithe lagunyaziswa ukub alenze njalo nguwo nawuphi na omnye umthetho. 10

(2) Igosa loxolo linakho ukuba, xa lingena lihlola indawo ekhutshelwe ilayisenisi okanye xa ligqogqa nasiphi na isikhephe, isithuthi okanye umntu phantsi kwemiqathango yecandelwana (1) libambe okanye lithathe nayiphi na into: 15

(a) eya kuthi isetyenziswe njengobungqina botyeshelo lwemiqathango yalo Mthetho okanye imiqathango yelayisenisi okanye yepemethi; kunye

(b) nayo nayiphi na ebisetyenziswa okanye esetyenziswa kulwaphulo lwalo Mthetho okanye lomqathango welayisenisi okanye wepemethi. 20

(3) Xa igosa loxolo lingena endaweni phantsi kwemiqathango yeli candelo, kufuneka ukuba:

(a) lizazise ukuba lingubani na kulowo mntu uphethe loo ndawo;

(b) limbonise lowo mntu iimpepha zogunyaziso, ukuba ngaba zikhona;

(c) licacise nokuba uhlolo olo lwenziwa phantsi kwaluphi na ugunyaziso; lize ke 25

(d) liluqhube uhlolo olo ngaphandle kokwenza uphazamiso olukhulu kulowo mntu ungumnini welayisenisi okanye kubaxhasi bakhe, nasekuqhubeni kweshishini elo likhutshelwe ilayisenisi.

(4) Igosa loxolo kufuneka ukuba xa lithatha nantoni na ngokwemiqathango yeli candelo, linike loo mntu liyithathe kuye loo nto irisithi echaza ukuba yintoni na leyo liyithathileyo okanye ziintoni na ezo lizithathileyo, ichaze nokuba kungasizathu sini na zithathwa nje ezo zinto zithathiweyo okanye loo nto ithathiweyo. 30

(5) Nayiphi na into ethe yathathwa phantsi kwemiqathango yeli candelo kufuneka ukuba igcinwe, ilondolozwe de ibe iBhodi le okanye inkundla efanelekileyo iye yakhupha umyalelo malunga nendlela emayikhululwe ngayo. 35

(6) Ngaphandle kokuba lowo mntu ungumnini welayisenisi okanye umsebenzi wakhe ophantsi kolawulo lwakhe ngokwemiqathango yalo Mthetho uye wabekwa ityala lokwaphula umthetho kwinkundla efanelekileyo okanye ubizelwe ukuba makaye kuvela phambi kweBhodi le zingadlulanga iintsuku ezingamashumi amathathu (30) ukusukela kuloo mhla zithathwe izinto ezo okanye into leyo, loo nto ibithathiwe kufuneka ibuyiselwe kuloo mntu ibithathwe kuye. 40

Utyeshelo lomthetho

63. (1) Umntu:

(a) ongenguye lowo mntu ungumnini welayisenisi, okanye wepemethi okanye umntu owenzelwe ulwaphulelo okanye umntu obhaliswe ngokwemiqathango yoMthetho oyi*Liquor Act*, othengisa okanye ohambisa utywala; 45

(b) osilelayo ekuthobeleni imiqathango yalo Mthetho;

(c) ongumvelisi okanye umhambisi obhalisiweyo phantsi kwemiqathango yalo Mthetho uyi*Liquor Act* okwangenguye umntu ungumnini welayisenisi okanye wepemethi phantsi kwemiqathango yalo Mthetho othengise ahambise utywala kumntu ongengomnini welayisenisi okanye wepemethi ngokwemiqathango yalo Mthetho okanye obhaliswe njengomenzi okanye umhambisi ngokwemiqathango yalo Mthetho; 50

(d) oye wanxila—

(i) kuyo nayiphi na indawo ekuthengiswa utywala kuyo; okanye 55

(ii) nayiphi na indawo efikelelwa luluntu ngokubanzi;

- (e) othengisa okanye ohambisa utywala kumntu onxilileyo okanye athi engumntu ongumnini welayisenisi okanye umntu ophethe indawo enkhutshelwe ilayisenisi, avumele umntu onxilileyo ukuba ahlale kule ndawo ikhutshelwe ilayisenisi;
- (f) othengisa okanye ahambise utywala ngento yokuphatha engahambelaniyo nemigangatho neengcaciso ebekiweyo nguMphathiswa ngesaziso esiphume kwiGazethi yePhondo; 5
- (g) othenga utywala kumntu amaziyo okanye anemihlaba ephathekayo yokumkrokrela lowo mntu ukuba akanayo ilayisenisi okanye ipemethi yokuthengisa utywala phantsi kwemiqathango yalo Mthetho okanye phantsi kwemiqathango yoMthetho oyi*Liquor Act*; 10
- (h) othengisela utywala umntu amaziyo okanye anemihlaba ephathekayo yokumkrokrela lowo mntu ukuba uya kuphinda abuthengise obo tywala ngendlela engeyiyo le ivumelekileyo phantsi kwemiqathango yalo Mthetho okanye yoMthetho oyi*Liquor Act*; 15
- (i) othengisa utywala kumatshini wokuthengisa okanye kwenye nje into yokuthengisa, ngaphandle kokuba loo matshini wokuthengisa okanye loo nto yokuthengisa ngawo onke amaxesha isetyenziswa phantsi kweliso lalowo mntu ungumnini welayisenisi okanye ungumsebenzi wakhe;
- (j) uthi engumnini welayisenisi, avumele ukuba le ndawo ikhutshelwe ilayisenisi isetyenziswe njengendawo yentengiso yamahenyukazi okanye isoloko isiziwa ngamahenyukazi; okanye 20
- (k) uthi engumnini welayisenisi, avumele ukuthengiswa okanye ukusetyenziswa okanye ukuphathwa kweziyobisi kuloo ndawo ikhutshelwe ilayisenisi, kusaphulwa nawuphi na umthetho ophathelele kuloo ntengiso, okanye oko kusetyenziswa okanye oko kuphathwa unetyala lokwaphula umthetho. 25

Utyeshelo lomthetho malunga neenkukacha

64. (1) Umntu othi ngokuphatelele kwisicelo, isichaso okanye kuvakaliso lwezimvo:

- (a) anike iingcombolo azaziyo ukuba azinabunyani kungenjalo ziyalahlekisa, okanye athethe ngento angenabunyani bayo okanye angenise ikopi yoxwebhu olwenziwe ngobuqhetseba okanye leyo ibonkala ngathi yiyo kanti asiyo ekhutshelwe kweyokwenene; 30
- (b) aphenjule nasiphi na isichaso okanye isikhalazo; esazi kodwa ukuba loo nto ayithethayo ayiyonyani okanye iyalahlekisa, okanye engenalwazi ngobunyani bayo 35
- (c) xa ephendula umbuzo obuzwa ligosa elijongene nezotywala elikhethiweyo okanye ngumhloli okanye lipolisa okanye ngumsebenzi wakwamasipala okanye yiBhodi, angenise okanye anike iinkukacha azaziyo ukuba aziyonyaniso okanye ukuba ziyalahlekisa, okanye angazaziyo ukuba ziyinyaniso kangakanani na, okanye ongenisa iimpepha zobuqhetseba okanye ezenziwe zangathi ziziikopi zezo zakuqala kodwa zingezizo 40

unetyala lokwaphula umthetho.

(2) Umntu othi asilele ekuthobeleni isicelo esivela kwipolisa okanye kumhloli ngokwemiqathango yecandelo 59 unetyala lokwaphula umthetho. 45

Utyeshelo lomthetho malunga neentlanganiso zeBhodi kunye nezeSigqeba seZibheni

65. (1) Umntu othi:

- (a) akuba esinikwe ngokufanelekileyo isaziso sokuba kufuneka ukuba aye kuvela phambi kweBhodi le, aze asilele ekuyeni ngokwakhe okanye ekuthumeleni igqwetha okanye igqwetha lejaji lokuba liye kummela; 50
- (b) eze kuvela phambi kweBhodi le, kodwa athi engakhange waba ufumene invume kuSihlalo asuke emke kuloo ntlanganiso ingekade ifikelele esiphelweni sayo;
- (c) ngoku sele ethe waziswa phaya entlanganisweni nguSihlalo ukuba kufuneka ukuba eze entlanganisweni ngomhla othile ethe yamiselwa wona intlanganiso leyo, asilele ekuzeni kuloo ntlanganiso; 55

- (d) ngoku sele exelelwe nguSihlalo ukuba makanike ubungqina okanye makangenise uxwebhu oluthile okanye iphepha elithile, aze yena ale ukukwenza oko okanye asilele ekukwenzeni oko;
- (e) ngoku athe wafungiswa okanye wenziswa uqinisekiso ale ukufunga okanye ukwenza uqinisekiso okanye asilele ekufungeni okanye kwenzeni uqinisekiso; 5
- (f) ngoku athe wasithatha isifungo okanye walwenza uqinisekiso asilele ekuyiphenduleni kangangoko esazi imibuzo athe wayibuzwa okanye anike ubungqina bobuxoki okanye ubungqina obulahlekisayo ebazi futhi ukuba obo bungqina abunikayo ukuba bubungqina bobuxoki okanye bubungqina obulahlekisayo; 10
- (f) ngolunya aziphazamise iingxoxo zeBhodi le; okanye
- (g) ale ukuphuma entlanganisweni ngeli xesha ayalelwe nguSihlalo ukuba makenze njalo unetyala lokwaphula umthetho.
- (2) Ukuba ngaba umntu uthe ngoku esinikwe ngokufanelekileyo isaziso sokuba kufuneka ukuba aye entlanganisweni, aze asilele ekuyeni okanye athi ngoku sele eyile, athi engakhange waba ufumene invume kuSihlalo asuke emke kuloo ntlanganiso ingekade ifikelele esiphelweni sayo, intlanganiso leyo inokuthi iqhutywe ngoku loo mntu angekhoyo okanye ke uSihlalo unokuthi athathe lawo manyathelo abona kufanelekile, kwaye kulungile ukuwathatha phantsi kwezo meko. 20
- (3) Le miqathango yamacandelwana (1) nele-(2) eli candelo iyasebenza naphaya kwiintlanganiso zeSigqeba seZibheno, ineenguqulelwana ezithe zenziwa phaya napha, ngokwemfuneko yazo.

Utyeshelo lomthetho malunga namapolisa nabahloli

66. (1) Umntu othi: 25
- (a) azenze igosa elijongene nezotywala elikhethiweyo okanye azenze umhloli;
- (b) athintele igosa elijongene nezotywala elikhethiweyo okanye umhloli ekwenzeni umsebenzi walo okanye wakhe;
- (c) ale ukuthobela okanye asilele ekuthobeleni umyalelo onikwe ngokusesikweni ligosa elijongene nezotywala elikhethiweyo okanye ngumhloli; okanye 30
- (d) othi ale, kungekho sizathu siphathekayo, ukuphendula umbuzo abuzwa wona ligosa elijongene nezotywala elikhethiweyo okanye ngumhloli okanye othi anike impendulo ebubuxoki okanye elahlekisayo, esazi futhi ukuba yimpendulo ebubuxoki okanye iyalahlekisa unetyala lokwaphula umthetho. 35

Izithuthi

67. (1) Umntu:
- (a) othi asele utywala kwisithuthi esiqhutywa kwindlela kawonke-wonke;
- (b) othi avumele ukuba kuselwe utywala kwisithuthi esiqhutywa nguye kwindlela kawonke-wonke; 40
- (c) othi avumele ukuba kubekho utywala obukwinto yokufaka utywala evulekileyo esithuthini ngexesha siqhutywa kwindlela kawonke-wonke unetyala lokwaphula umthetho.
- (2) Icandelwana 1 alibhekiselanga ekuselweni kotywala kwisithuthi esikhutshelwe ilayisenisi yokuthengisela nokuselela kuso utywala. 45

Iigaraji

68. Ngaphandle kwakwindawo ekhutshelwe ilayisenisi phantsi kwemiqathango yoMthetho oyi*Liquor Act*, 1989 (uMthetho 27 ka-1989), okanye ngaphandle kokuba eso siphathamandla sinegunya lokwenza njalo sigqiba ngenye indlela kwimeko ethile, utywala abunakuthengiswa, kwaye bungenakukhutshwa okanye buselwe kwisiza apho kuqhutywa ishishini legaraji ethengisela uluntu ipetroli okanye idizili okanye iimveliso zepetroliyam. 50

Ukusilela ekuthobeleni umyalelo weBhodi

69. (1) Kululwaphulo-mthetho ukusilela ekuthobeleni umyalelo weBhodi.

(2) Ukuba ngaba umntu uyasilela ekuthobeleni umyalelo weBhodi le, iBhodi ingathi, emva kokuba yenze uphando ngokufanelekileyo:

- (a) iyirhoxise okwexeshana ilayisenisi yakhe de abe uwuthobele umyalelo lowo; 5
- (b) imgwebe ifayini ekunokuthi ukuhlawulwa kwayo kumiswe okwexeshana de abe uwuthobele umyalelo lowo;
- (c) iwudlulisele kwiNkonzo yaMapolisa aseMzantsi Afrika loo mcimbi, khona ukuze abanjwe umaphuli-mthetho lowo; okanye
- (d) iyitshitshise ilayisenisi leyo. 10

Uxanduva olugunyazisiweyo

70. (1) Ukuba ngaba imanejala okanye umgunyaziswa okanye umsebenzi walowo mntu ungumnini welayisenisi uthi enze okanye akutyeshela ukwenza into ebekuya kuba lulwaphulo-mthetho phantsi kwemiqathango yalo Mthetho, ukuba ngaba ibiyenziwe okanye ityeshelwe ngulowo mntu ungumnini welayisenisi, lowo mntu ungumnini welayisenisi kuthathwa ukuba nguye lo wenze okanye utyeshela ukwenza loo nto, ngaphandle kwaxa umntu lowo ungumnini welayisenisi: 15

- (a) akakhange abe nanxaxheba ekucetyweni kwaloo nto yenziweyo okanye ityeshelweyo ukwenziwa okanye ayikhange ivunyelwe nguye; waza
- (b) wawathatha kangangoko anakho amanyathelo okuthintela ukwenziwa okanye ukutyeshelwa kokwenziwa kwento leyo; naxa 20
- (c) into leyo yenziweyo okanye kutyeshelweyo ukuyenza ibingeyonto ibandakanyekayo kumsebenzi okanye kumagunya emanejala leyo okanye omgunyaziswa lowo okanye omqeshwa lowo.

(2) Into yokuba abe umntu ongumnini welayisenisi ukhuphe umyalelo onqanda ukwenziwa kwento okanye ukutyeshelwa kokuyenza asibobungqina baneleyo bokubonisa ukuba uye wawathatha la manyathelo akhankanywe kwicandelwana (1)(b). 25

(3) Xa umntu ongumnini welayisenisi enobutyala ngento eyenziwe okanye etyeshelwe ngomnye umntu ngokolu hlobo luchazwe kwicandelwana (1), loo mntu usenobutyala naye oku ngathi ungumnini welayisenisi. 30

(4) Imanejala okanye umgunyaziswa okanye umsebenzi walowo mntu ungumnini welayisenisi akakhutshwa kubo nabuphi na obunye ubutyala athe wangena kubo obungebubo obu abudibanele nomnini welayisenisi ngokolu hlobo luchazwe kwicandelwana (1).

Izaphulelo

35

71. (1) Lo Mthetho awumchaphazeli:

- (a) umntu oligosa ngokoluya hlobo luchazwe kwicandelo 1(1) loMthetho oyi*Customs and Excise Act, 1964* (uMthetho 91 ka-1964) xa esenza umsebenzi wakhe osesikweni;
- (b) umntu ongunothimba okanye umsebenzi wakhe okanye naliphi na igosa elenza umsebenzi phantsi kwemiqathango yomyalelo okhutshwe yinkundla efanelekileyo, xa esenza umsebenzi wakhe osesikweni;
- (c) umntu okhankanywe kwisaziso esikhutshwe ngokwecandelo 10 loMthetho oyi*Liquor Products Act, 1989* (uMthetho 60 ka-1989) ngokuphathelele kwintengiso yotywala bomthendeleko phantsi kweso saziso; 45
- (d) umntu owenza okanye othengisa iziqholo ezinegrangqa kwezinye zezithako zazo; kunye
- (e) nomntu owenza okanye othengisa amayeza achazwa ngokoluya hlobo achazwa ngalo kuMthetho oyi*Medicines and Related Substances Control Act, 1965* (uMthetho 101 ka-1965), njengoko wenziwe izilungiso. 50

(2) IBhodi inakho ukuba, xa kuthe kwangeniswa isicelo ngumntu onochaphazeleko analo, ivakalise ukuba umntu othile okanye indawo ethile yenzelwe ulwaphulelo kwimiqathango ekhankanywe kwicandelo 20 lalo Mthetho.

(3) Olu vakaliso lwesaphulelo lukhankanywe kwicandelwana (2) lusenokuhamba nemiqathango ethile enokuthi igqibe ukuyibeka iBhodi le. 55

(4) IBhodi le inokuthi nanini na yenze iinguqulelo ezithile kolu lwaphulelo lukhankanywe kwicandelwana (2) okanye ilurhoxise.

(5) IBhodi le inokuthi ikhuphe isaziso, ngazo zontathu iilwimi zaseburhulumenteni beli Phondo, echaza kuso ezo nguqulelo iceba ukuzenza okanye olo rhoxiso lwesaphulelo iceba ukulwenza kwiphephandaba eliphuma kuloo ngingqi ikuyo loo ndawo inikwe ulwaphulelo, icela ngaso abo bantu banochaphazeleko abanalo ukuba mabathi, lingekadluli elo xesha lithe labekwa, banike izizathu zokuba kutheni na kufuneka ulwaphulelo olo lungenziwa zinguqulelo nje okanye lurhoxiswe. 5

(6) Phezu kwala manyathelo athathwe ngokwemiqathango yecandelwana (5) tiBhodi le ingathatha namanye amanyathelo ongezwelelweyo ngokolo hlobo ibona lufanelekile ekwaziseni abo bantu banochaphazeleko ngeenjongo zayo zokwenza iinguqulelo kulwaphulelo okanye zokulurhoxisa olo lwaphulelo belunikwe phantsi kwemiqathango yecandelwana (2). 10

Ubungqina

72. (1) Ukuba ngaba kwiingxoxo zolwaphulo-mthetho okanye kwiintlanganiso zeBhodi le kuye kwafumaniseka ubungqina bokuba umntu othile ongenayo ilayisenisi okanye ipemethi yokuthengisa utywala phantsi kwemiqathango yalo Mthetho: 15

- (a) unomqondiso okanye isaziso endaweni yakhe okanye kufutshane nendawo yakhe esixela ukuba buyathengiswa utywala apho; 15
- (b) uhlala kwindawo ekukho kuyo ikhawuntala yebhari ebekwe ngendlela eyenza kubekho imihlaba yokuba kufikelelwe kuluvo lokuba kuthengiswa utywala apho; 20
- (c) apha kwindawo yakhe okanye kwindawo ephantsi kolawulo lwakhe kukho utywala obungaphaya kulaa mthamo kungenakudlulwa kuwo ubekiweyo uxelwe kwicandelo 47 engakhange ayifumane laa mvume ikhankanywe kwelo candelo; 20
- (d) uthenge okanye ufumene utywala obudlulileyo kulaa mthamo kungenakudlulwa kuwo ubekiweyo kwicandelo 48 engakhange ayifumane laa mvume ikhankanywe kwelo candelo, 25

konke oku bubungqina obucacisa bokuthengiswa kotywala.

(2) Ukuba ngaba kwiingxoxo zolwaphulo-mthetho okanye kwiintlanganiso zeBhodi le: 30

- (a) kuye kwangeniswa, njengobungqina, into yokufaka evalwayo engekavulwa iphetho into elulwelo, enombhalo okanye enye into ebonisa umthamo wegrangqa okhoyo kuloo nto ilulwelo iyiphetheyo, obo bubungqina bokuba loo nto ilulwelo inaloo mthamo wegrangqa ubonisiweyo, ngaphandle ke kokuba kunokuveliswa ubungqina obubonisa ukuba ayinjalo loo nto, kwaye ke ukuba ngaba loo mthamo wegrangqa ubonisiweyo ungaphezulu kwe-1%, loo nto ilulwelo ibutywala; 35
- (b) kuye kwangeniswa, njengobungqina, izinto zokuphatha ezidlulileyo kwenye, iyileyo iyinxenye yesitokhwe okanye yesixa sotywala obuye bafunyanwa kwindawo enye ngexesha elinye, kwaza kwangqiniseka ukuba enye okanye ezinye zezo zinto zokuphatha ziphetho utywala, oko bubungqina bokuba zonke ezo zinto zokuphatha ziphetho utywala, ngaphandle ke kokuba kunokuveliswa ubungqina obubonisa ukuba ayinjalo loo nto; 40
- (c) kuye kwangeniswa, njengobungqina, iphepha ekuthiwa yikopi yelayisenisi okanye yepemethi, ukuveliswa oko kwayo nje kububungqina bobukho belayisenisi kwaye ke nayo nayiphi na imiqathango okanye uqinisekiso lomqathango okanye lwemiqathango ehamba nayo okanye eqhotyoshelwe apho kuyo, ziya kuthathwa njengemiqathango enikwe phantsi kwalo Mthetho; 45
- (d) kuye kwangeniswa, njengobungqina, inkcazo okanye isiqinisekiso ekuthiwa sisayinwe yingcali yomphendli okanye ngunokhemesti osebenzela uRhulumente weRiphabliki, okanye osebenzela iyunivesiti okanye iziko lophando ngezamayeza, obethe wenza uphendlo lwaloo nto ilulwelo ingumxholo weengxoxo zolwaphulo-mthetho okanye zentlanganiso yeBhodi le, ke loo nkcazo okanye eso siqinisekiso bubungqina boko kuqulathwe yiloo nkcazo okanye seso siqinisekiso, ngaphandle ke kokuba kunokuveliswa ubungqina obubonisa ukuba ayinjalo loo nto; 50
- (e) kuye kwangeniswa, ubungqina bokuba lo mntu ungumnini welayisenisi otyholwa ngokutyeshela icandelo 42, uye wasilela ukufuna emntwini ongaphantsi kweminyaka elishumi elinesibhozo (18) ubudala, nokuba: 55
 - (i) sisazisi sakhe esisebenzayo; okanye 60

- (ii) ilayisenisi yakhe yokuqhuba enomfanekiso wakhe nomhla wokuzalwa kwakhe; okanye
- (iii) ipasipoti yakhe esebenzayo enomfanekiso wakhe nomhla wokuzalwa kwakhe, obo bungqina bubungqina obubonakalisa ukuba lowo mntu ungumnini welayisenisi ubemazi loo mntu ukuba usengaphantsi kweminyaka elishumi elinesibhozo (18) ubudala. 5

Izaziso ngezempilo

73. (1) UMphathiswa angathi, elithathele ingqalelo icandelo 41 loMthetho oyi*Liquor Act*, ngesaziso esikhutshwe kwiGazethi yePhondo, azibeke iziqulatho zezaziso zezempilo nendlela ekufuneka ukuba sibekwe ngayo emboniselweni kuloo ndawo ikhutshelwe ilayisenisi. 10

(2) Kululwaphulo-mthetho ukusilela ekubekeni isaziso emboniselweni ngokwemiqathango yeli candelo.

Izohlwayo

74. Nawuphi na umntu otyeshela imiqathango yalo Mthetho unokuthi akubanjwa aze afunyaniswe enetyala anikwe isigwebo— 15

- (a) esiyifayini engadlulanga kuma-R100 000;
- (b) sokuvalelwa entolongweni isithuba esingadlulanga kwiminyaka emihlanu (5); okanye
- (c) esiyifayini nesikukuvallelwa entolongweni. 20

ISAHLUKO 13

IMIGAQO, IZILUNGISELELO ZEXESHANA NESIHLOKWANA ESIFUTSHANE

Imigaqo

75. (1) UMphathiswa angathi abeke imigaqo ephathelele: 25
- (a) kwimigangatho ezifanele kuyifezekisa izinto eziphethe utywala obuthengiswayo nezo buhanjiswa ngazo;
 - (b) kwifomu nendlela ezenziwa ngayo nezingeniswa ngayo izicelo ezenziwa zingeniswe phantsi kwemiqathango yalo Mthetho;
 - (c) kwifomu nendlela ezifanele kwenziwa ngayo nezingeniswa ngayo izichaso zezicelo neemvakaliso zoluvo ezingeniselwa ukuchasa izicelo; 30
 - (d) kwiintlawulo ezifanele ukuhlawulwa xa kusenziwa izicelo phantsi kwemiqathango yalo Mthetho;
 - (e) kwiintlawulo ezifanele ukuhlawulwa xa kukhutshwa ilayisenisi okanye ipemethi; 35
 - (f) kwiintlawulo ezifanele ukuhlawulwa xa kusenziwa udluliselo lwe layisenisi;
 - (g) kwiintlawulo ezifanele ukuhlawulwa xa kuhlaziywa ilayisenisi;
 - (h) kwiintlawulo ezifanele ukuhlawulwa xa kuze kufundwa okanye kuze kukotshwa iimpepha eziselugcinweni lweBhodi okanye lukamasipala;
 - (i) kwinkqubo ekufuneka ukuba ilandelwe yiBhodi le okanye emayilandelwe ngumasipala ngokuphathelele kwizicelo ezithe zenziwa phantsi kwemiqathango yalo Mthetho; 40
 - (j) kwindlela yokuma kweelayisenisi okanye iipemethi okanye izaziso okanye iimvume okanye kweempepha zokubeka/zokuqesha okanye kotyetyesho okanye kweempepha zolwamkelo okanye kweempepha zogunyaziso nokwezinye nje iimpepha ezikhankanywayo kulo Mthetho; 45
 - (k) kwinkqubo ekufuneka ukuba mayilandelwe siSigqeba seZibheni;
 - (l) kwizibheni novandlakanyo olwenziwa phantsi kwemiqathango yalo Mthetho;
 - (m) kuwo nawuphi na omnye umcimbi ekufuneka ukuba okanye onokuthi ubekwe phantsi kwemiqathango yalo Mthetho. 50
 - (n) kwindlela ekufuneka ukuba azigcine ngayo iirekhodi zotywala obuthe bathengiswa lowo mntu ungumnini welayisenisi yendawo ekhutshelwe ilayisenisi ekunokuthengiselwa kuyo utywala bokuya kuselelwa kwenye indawo; 55

- (o) kumthamo wotywala ekungenakudlulwa kuwo ngokoluya hlobo lukhankanywe kwicandelo 48;
- (p) kwindlela yokuma kwesaziso sothotyelo kwakunye naleyo ndlela sihanjiswa ngayo, kwakunye neyokuma kwenkcazo yembambano nesiqinisekiso sothotyelo esikhutshwe phantsi kwemiqathango yecandelo 57; 5
- (q) kwindlela yokuma kwezaziso zezempilo nakwiziqulatho zazo kwakunye naleyo ndlela zibekwa ngayo emboniselweni phantsi kwemiqathango yecandelo 73; kunye
- (r) ngokubanzi nje, nakuwo nawuphi na umcimbi anokuthi uMphathiswa abone kuyimfuneko ukuba mawenzelwe imigaqo, khona ukuze kukwazeke ukufezekiswa iinjongo zalo Mthetho, kube kunjalo nje oku kuphangalala kwalo umhlathi kungavinjwa mihlaba yile ingentla apha imihlathi. 10
- (2) Umgaqo othe wenziwa phantsi kwemiqathango yeli candelo ngokuphathelele kwiintlawulo ezifanele kwenziwa okanye iimali ezifanele kuhlawulwa, kufuneka ukuba mayenziwe ngokudlana iindlebe nalowo Mphathiswa usingathe imicimbi yezemali zalapha kweli Phondo. 15

Izilungiselelo zexeshana

76. Ngomhla wokuqalisa ukusebenza kwalo Mthetho:

- (1) Nayiphi na ilayisenisi yolu hlobo lukwezi ntlobo zidweliswe ngezantsi apha ebisebenza kwisithuba esikufutshane phambi kwalowo mhla wokuqalisa ukusebenza kwalo Mthetho ithathwa ukuba iyilayisenisi yokuthengiswa kotywala obuselelwa kuloo ndawo ikhutshelwe ilayisenisi: 20
- (a) ilayisenisi yotywala basehotele; (b) ilayisenisi yotywala yaserestyu;
- (c) ilayisenisi yotywala bewine-house;
- (d) ilayisenisi yotywala benkoduso yamazimba bokuselelwa kuloo ndawo buthengiswa kuyo; 25
- (e) ilayisenisi yotywala basethiyeta;
- (f) ilayisenisi yotywala beklabhu; kunye
- (g) ilayisenisi eyodwa yotywala bokuselelwa kuloo ndawo buthengiswa kuyo.
- (2) Nayiphi na ilayisenisi yolu hlobo lukwezi ntlobo zidweliswe ngezantsi apha ebisebenza kwisithuba esikufutshane phambi kwalowo mhla wokuqalisa ukusebenza kwalo Mthetho ithathwa ukuba iyilayisenisi yokuthengiswa kotywala obuselelwa kwenye indawo engeyiyo le ikhutshelwe ilayisenisi: 30
- (a) ilayisenisi yotywala basenkanti/basebottle store;
- (b) ilayisenisi yewayini ethengiswa kwivenkile yezinto zokutya; 35
- (c) ilayisenisi yotywala benkoduso yamazimba bokuselelwa kwenye indawo engeyiyo loo ndawo buthengiswa kuyo;
- (d) ilayisenisi yomfama ovelisa iwayini; kunye
- (e) ilayisenisi eyodwa yotywala bokuselelwa kwenye indawo engeyiyo loo ndawo buthengiswa kuyo. 40
- (3) Nayiphi na ilayisenisi yolu hlobo lukwezi ntlobo zidweliswe ngezantsi apha ebisebenza kwisithuba esikufutshane phambi kwalowo mhla wokuqalisa ukusebenza kwalo Mthetho ithathwa ukuba iyilayisenisi yokwenziwa nokuthengiswa kotywala obuselelwa kwenye indawo engeyiyo le ikhutshelwe ilayisenisi: 45
- (a) ilayisenisi yotywala basehowuliseyili;
- (b) ilayisenisi yomvelisi wotywala;
- (c) ilayisenisi yomenzi wotywala; kunye
- (d) nelayisenisi yotywala benkoduso yamazimba yamazimba, ebekusenziwa ngemiqathango yayo utywala kwisithuba seenyanga ezilishumi elinesibini (12) ezandulela ukuqalisa kwalo Mthetho ukusebenza, kodwa wona umthamo wobo tywala benziwayo ungadluli kulo mlinganiselo umiselweyo phantsi kwemiqathango yecandelwana (10) lecandelo 4 loMthetho oyiLiquor Act. 50
- (4) Ilayisenisi ekhoyo kolu luhlu lungezantsi apha ethi inike lowo mntu ungumnini wayo ilungelo lokuthengisa utywala bokuselelwa kwenye indawo engeyiyo le ikhutshelwe ilayisenisi buthengiswa kuyo nethe yajikwa yaba yekhutshwe phantsi kwemiqathango yoMthetho oyiLiquor Act, nebisebenza kwisithuba esikufutshane phambi kokuqalisa kokusebenza kwalo Mthetho, ithathwa ukuba iyilayisenisi yokuthengiswa kotywala bokuselelwa kwenye indawo engeyiyo le ikhutshelwe ilayisenisi buthengiselwa kuyo: 55
- (a) ilayisenisi yotywala basehowuliseyili; 60
- (b) ilayisenisi yomvelisi wotywala;

- (c) ilayisenisi yomenzi wotywala; kunye
 (d) nelayisenisi yotywala benkoduso yamazimba.

(5) Isaziso esikhutshwe phantsi kwemiqathango yecandelo 33 loMthetho oyi*Liquor Act*, 1989 (uMthetho 27 ka-1989) nebesisebenza kwisithuba esikufutshane phambi kokuqalisa ukusebenza kwalo Mthetho kufuneka ukuba sithathwe ngokuba sisiziso esikhutshwe phantsi kwemiqathango yecandelo 33(1) lalo Mthetho. 5

(6) Nokuba kunokwenzeka ukuba nawo nawuphi na omnye umthetho utshitshiseke kokuqalisa kwalo Mthetho ukusebenza, nasiphi na isicelo ebesithe senziwa phambi kokuba uqalise ukusebenza lo Mthetho kufuneka ukuba siqwalaselwe siqunjelwe phantsi kwemiqathango yaloo mthetho sasingeniswe phantsi kwawo. 10

(7) Imiqathango yamacandelwana (1), (2) nele-(3) eli candelo asebenza kwezo layisenisi zathi zakhutshwa phantsi koMthetho oyi*Liquor Act* emva kokuba sele uqalisile ukusebenza lo Mthetho.

(8) Ngaphandle ke kokuba iBhodi le ithe yamisa ngolunye uhlobo emva kokuba ithe yafumana isicelo, ilayisenisi ethe yakhutshelwa indawo ekwisiza ekukho kuso igaraji ethengisa ipetroli, idizili kunye nezinye iimveliso zepetroliyam ngalo mhla wokuqalisa ukusebenza kwalo Mthetho, iya kuthi iphelelwe ukuphela kwesithuba seminyaka emihlanu ukusukela kulo mhla wokuqalisa ukusebenza kwalo Mthetho. 15

(9) Ilayisenisi ezikhutshwe phambi kokuba uqalise ukusebenza lo Mthetho zikhutshelwa iindawo apho kunokuthengiswa khona utywala bokuselelwa kuloo ndawo buthengiswa kuyo okanye bokuselelwa kwenye indawo engeyiyo le buthengiswa kuyo evula iiyure ezingaphezulu kweziya zichazwe kwicandelo 46(3) ngentla apha, ziya kuthi emva kweenyanga ezilishumi elinesibini (12) ukusukela kuloo mhla uqalisa ngawo ukusebenza lo Mthetho, nazo zilawulwe ngokwemiqathango yeli candelo 46. 20

(10) Nayiphi na imvume, nalo naluphi na ulwamkelo okanye ilungelo elinikwe umntu ongumnini welayisenisi phantsi kwemiqathango yoMthetho oyi*Liquor Act* okanye eyawo nawuphi na omnye uMthetho owathi watshintshwa ngalo, ezingangqubaniyo nemiqathango elapha kulo Mthetho, zithathwa ukuba yimvume okanye lulwamkelo okanye lilungelo elinikwe phantsi kwemiqathango yalo Mthetho. 25

(11) Nawuphi na umqathango obekelwe ilayisenisi phantsi kwemiqathango yoMthetho oyi*Liquor Act* okanye yawo nawuphi na uMthetho ongangqubaniyo nemiqathango yalo Mthetho, uthathwa ukuba ubekwe ngokwemiqathango yalo Mthetho. 30

Izibonelelo zoguzulo-mthetho

77. Izibonelelo eziqukathwe kuMthetho woTywala, 1989 (UMthetho 27 ka-1989) ziguzuliwe apha kwiPhondo. 35

Isihlokwana esifutshane

78. Lo Mthetho uya kwaziwa ngokuba nguMthetho woTywala weNtshona Koloni, 2005, kwaye ke uya kuqalisa ukusebenza ngalowo mhla uya kuthi ubekwe yiNkulumbuso yePhondo ngokuwupapasha kwiGazethi yePhondo. 40

IMEMORANDAM ECHAZAYO

(i) **Intshayelelo kunye nezizathu zalo mthetho uyilwayo**

USHedyuli 5 kwindima engu-A kuMgaqo-siseko woMzantsi Afrika ka-1996 (uMthetho 108 ka 1996) uchaza ngokupheleleyo ukuba unikezelo lwempephamvume zokushishina ngotywala yindima ejongwa kuphela liSebe elilawulayo lephondo. Inkundla yoMgaqo-siseko yafumanisa ukuba iimeko ezikhoyo kushishino lotywala zivumelana nokuba kungaphunyezwa uMthetho woTywala weLizwe, ka2003 (uMthetho onombolo ingu59 ka 2003) obizwa ngokuba (nguMthetho woTywala weLizwe ka 2003) UMthetho woTywala weLizwe. ka-2003 ugunyazisa ukuba kubekho izintlu ezintathu zenkqubo kushishino lotywala eziza kuthi zibandakanye icandelo labenzi botywala (kubandakanywa necandelo labenzi botywala abasakhulayo), abo bakhupha okanye bahambise utywala kunye nabo bangabathengisi, kwaye uyakuthi ulawule icandelo laba benzi (ngaphandle kwabakwicandelo labenzi abasakhulayo) kunye nabo bakwicandelo labakhupha okanye bahambise utywala kwezoshishino, ngelo thuba iSebe elilawulayo lephondo lakube lisenawo amandla okulawula abakwicandelo labenzi abasakhulayo kunye nabo bakwicandelo lokuthengisa apha kwezoshishino.

Umthetho woTywala weLizwe uphinda urhoxise uMthetho woTywala ka-1989 (uMthetho onombolo ingu-27 ka-1989) (“Lo Mthetho ka-1989) ubusoloko ulawula ishishini lotywala phambi kokuba urhoxiswe. Umthetho woTywala weLizwe ka- 2003 usawagcinile onke amandla ebesakugunyaziswa nguMthetho woTywala ka- 1989 njengomthetho olawula utywala kumaphondo, ulawula amacandelo oshishino ngelixa bekungekabikho mthetho ulawulayo kumaphondo.

Bekusoloko iyinto eyamkelekileyo ukuba kuyimfuneko ukuba kubekho ulawulo kushishino lotywala ngenxa yomonakalo onokwenziwa yimveliso yotywala. Ziliqela izimiselo zolawulo eziye zamiselwa kweli shishini lotywala ngaphambili oko kusenzelwa ukuhlangabezana neemfuno zentlala-kahle kuluntu kunye nezopolitiko njengoko kuyimfuneko efunwa ngurhulumente olawulayo. Kodwa ke, eli candelo lokuthengisa apha kushishino lotywala ubukhulu becala ibilicandelo ekungekho lulawulo kulo oko kubangelwa zimeko zangaphambili zembali, meko ezo ezaba ngunozala wocalucalulo lwabo babevinjwe amathuba ngaphambili ukuba bangayinxalenye yeli candelo limiselwe ngokusesikweni kushishino lotywala. Oku kuye kwakhokelela ekubeni kubekho inani elikhulu leendawo ezishishina ngotywala ngaphandle kwempepha-mvume, ndawo ezo zande ubukhulu becala kwiindawo ezihlala abantu kwaye zingalungiselelwanga oko, kuba ezi ndawo zazingacetyelwanga oku kwakunye nezinye iimfuno zolawulo lotywala. Utywala kwakhona luye lubandakanywe nezenzo zolwaphulo mthetho kumacandelo omabini, elo lilandela imigaqo emiselweyo nelo lingenayo le migaqo yoshishino lotywala, kwaye nemimiselo eyayenziwe ngaphambili yahlangabezana nentlobo-ntlobo zempumelelo.

Kuyimfuneko ukuba kulungiselelwe izimiselo zolawulo kumasebe amaphondo karhulumente njengoko kumiselwe njalo kwiziphakamiso zoMgaqo—siseko obonisa iimfuno zolwawulo kushishino lotywalo.

(ii) **Igalelo lalo Mthetho uYilwayo kuluNtu**

Lo Mthetho uYilwayo unika uxanduva kwiBhodi yoTywala yeNtshona Kapa njengesebe elizimeleyo lesigqeba esimiselwe ngokomthetho njengoko kugunyaziswa nguMthetho kaZwelonke woLawulo lweZoqoqosho ka-1999 (uMthetho onombolo ingu-1 ka-1999) uthi uxhobise ngokufanelekileyo ukuqinisekisa ukuba kukho ulawulo olungenamakhwiniba kwinkqubo yonikezelo lweempepha-mvume zotywala, ukunyanzelisa kunye nokuhlola-hlola iindawo ezingenamaphepha-mvume kwakunye nokwenza uqeqesho olusisinyanzelo kwabo bashishina ngotywala, kwakunye nokukhuthaza ezinye iintlobo zokufundisa ukuzama ukuthibaza imiphumela engamkelekanga ebangelwa lushishino lotywala.

Lo Mthetho uYilwayo uphinda kwakhona uvuselele ukuqonda kuluntu kunye nokulenza ukuba luthabathe inxaxheba kwinkqubo yokukhutshwa kwamaphepha-mvume kunye nokumiselwa kwemigaqo eyakuthi iqwalasele izikhalazo mayela neendawo zoshishino lotywala ezinawo amaphepha-mvume okushishina ngotywala. Izibonelelo zenziwe ukuba amaphondo akwazi ukuba yinxalenye

kwinkqubo yokukhupha amaphepha-mvume oshishino lotywala oko kusenziwa ngokuthi kutyunjwe umasipala onakho ukwenza oku etyunjwa njengommeli weBhodi yoTywala ukuba abe nokunceda kwinkqubo ejongene namaphepha-mvume otywala. OoMasipala banakho ukuba bangaqeshwa njengabanegunya lokulawula babe nakho ukuseka amaqumrhu anokuthi indima yawo ibe kukunika iingcebiso kwakunye nokusombulula iyantlukwano ngelixa lenkqubo yonikezelo lwamaphepha-mvume. OoMasipala abaqeshwe njengabanegunya lokulawula ngabo abakuthi basungule iintsuku namaxesha oshishino phantsi komasipala abanegunya lolawulo kuwo, banikezele namaphepha-mvume kubathengisi abathengisa utywala besiNtu umqombothi kunye nemibhiyozo yethutyana ekhoyo, kwaye banakho kanaanjalokuba bangabhengeza ukuba iindawo ezithile eziphantsi kolawulo lwabo azivumelekanga ukuba zingaba notywala esidlangalaleni. Isibonelelo siyenziwa kwakhona ukuba kubekho iNkundla yaMatyala eziBheno ukuqinisekisa ukuba iyenzeka imeko yophononongo ngokutsha kwakunye naleyo yezibheno kwizigqibo zeBhodi yoTywala

Unyanzeliso kwakunye nolawulo lalo Mthetho woTywala uYilwayo uqinisekisa ukuba uyakusoloko ukhona ngobukho bale nkqubo yala magosa otywala abekwe ngokusesikweni eqeshwa ephantsi kwenkonzo yamapolisa oMzantsi Afrika kwiphondo leNtshona Kapa, enamagunya namandla ongezelelweyo. Kuphuculwe amagunya okukwazi ukunyanzelisa, Ulwaphulo mthetho kunye nezohlwayo luye lwabandakanywa ukuzama ukuqinisekisa ukuba kuxhotyiswe ngokwaneleyo ukwenzela ukuba kubekho ulawulo kushishino lotywala kwabo banamaphepha-mvume kwaye kuliwe neemeko ezichasana nalo Mthetho uYilwayo.

Lo Mthetho uYilwayo wenza ukuba kubekho inani eliphunguliweyo lweendidi zentlobo zamaphepha-mvume otywala. Ezi ndidi zibandakanya amaphepha-mvume agunyazisa ukuba utywala bungaselelwa phakathi kwamasango ale ndawo kuthengiswa kuyo utywala, ukuselwa kotywalwa phakathi kwamasango okanye ngaphandle kwawo, amaphepha-mvume emibhiyozo yethutyana kunye namaphepha-mvume kunye namaphepha-mvume abenzi botywala abasakhulayo. Amalungelo amashishini avenkile zithengisa ukutya zikwathengisa nangewayini asagciniwe. Izibonelelo zenziwe eziya kuba ngumlinganiselo wemiqobo yala maphepha-mvume kwakunye nokumiselwa kwemiqobo eyakuthi ijongane neemfuno ezingundoqo kushishino ngalunye olunamaphepha-mvume. Indlela yokuphonononga uqwalaselo lwezicelo yiBhodi yoTywala zidandalazisiwe kwaye zikwaquka amagunya osetyenziso lomhlaba njengemfuneko xa kunikezelwa amaphepha-mvume.

Izimiselo eziyalelayo zokunyanzelisa uqeqesho lwabathengisi ngotywala ziya kuqinisekisa ukuba abathengisi ngotywala bathengisa ngendlela efanelekileyo. Kwenziwe nezibonelelo eziza kuthi zidale ukuphaphama kuluntu ngeengozi ezithi zibangelwe kukusebenzisa utywala kakubi oko kusenziwa ngokuthi kukhutshwe izaziso zempilo kwakunye neenkqubo ezivuselela ukuphaphama. Lo Mthetho uYilwayo ukwabeka uxanduva kumagosa eBhodi yoTywala ukuqinisekisa ukuba iinkqubo zokucutha umonakalo owenziwa butywala ziyakhuthazwa.

(iii) **Imirhumo equlathwe ngulo Mthetho uYilwayo**

Lo Mthetho uYilwayo uthi unike umkhomba ndlela wentlawulo zezicelo, iintlawulo zezicelo zonyaka kwakunye nezohlwayo eziqingqwe nguMphathiswa owongamele unikezelo lwamaphepha-mvume otywala kwiphondo leNtshona Kapa. Ezi ntlawulo zikhoyo ngoku zagqityelwa ukuphononongwa ngomnyaka ka 1992. Izimali ezizuzwe ngenxa yale nkqubo yokuhlawulelwa kwamaphepha-mvume iyakuthi ifakwe kwiNgxowa-mali enguVimba wePhondo. Icandelo loluntu eliyilwe ngulo Mthetho uYilwayo kwakunye namasebe alo kwanemisebenzi yalo iyakuthi ixhaswe ngezimali ezithunyelweyo ezivela minyaka le kuMphathiswa ojongene noku, emva kwale meko iSebe liye lahlangabezana neemfuno eziqukathwe ngulo Mthetho uYilwayo njengoko kugunyaziswa nguMthetho kaZwelonke woLawulo lweZoqoqosho ka-1999. Iindleko ezizayo eziya kuthi zibekho kuyakufanela ukuba zibandakanywe kwintelekelelo yenkcitho-mali kwakunye nolwabiwo olwenziwa liSebe elilawulayo lephondo.

Izibonelelo ziya kuthi zenziwe eziya kuxhasa iinkqubo ezifanele oko apho amanye amacandelo oluntu athe anyulwa ngokweemfuno ezigunyaziswa nguMgaqo-siseko kwakunye nemithetho ejongene noko emva kokuba kwenziwe ulumano zindlebe

oluyimfuneko. Iinkqubo zoqeqesho oluyalelwayo ziyakwamkelwa liQumrhu eliliso loMgangatho weziQinisekiso zeMfundo kweli loMzantsi Afrika.kwakunye nabo babucala abangamagosa ajongene noqeqesho.

(iv) **Inkcazelo yomhlathi ngomhlathi**

IZIQLATHO

ISAHLUKO 1

INKCAZO

Umhlathi 1. Inkcazelo —Lo mhlathi unika iinkcazelo zemihlathi kwakunye namagama aqulethwe kweli xwebhu lalo Mthetho uYilwayo.

ISAHLUKO 2

IBHODI YOTYWALA KUNYE NENKUNDLA YEBHUNGA LEZIBHENO YENTSHONALANGA KAPA

Umhlathi 2. Ukusekwa kweBhodi — Ukusoloko kukho iBhodi yoTywala eyamiselwa nguMthetho woTywala ongunombolo 27 ka 1989 oko kumiselwe kuba kwenzeke.

Umhlathi 3. Uqulunkqo lwale Bhodi — Inani lamalungu ale Bhodi, umgangatho wabo wemfundo kwakunye nezihlalo ezikwiBhodi zichaziwe kulo mhlathi.

Umhlathi 4. Inkqubo yokuqesha — Lo mhlathi uthi unike uhlobo lwenkqubo eyakulandelwa malunga nokugxothwa okanye ukungathatyathwa kwamalungu aqeshwe kwiBhodi yoTywala oko kusenzeka mayela nokubanjwa kwawo kulwaphulo mithetho, igunya lomthetho, iminyaka, umdla welungu kushishino lwotywala okanye ilungu losapho.

Umhlathi 5. Ixesha eliya kuchithwa kwi-ofisi — ixesha eliya kuchithwa kwi-ofisi yeBhodi yoTywala ngamalungu iyakuba yiminyaka emihlanu kukwavumelekile ukuba uqesho lusenokuqhubeka eminye iminyaka emihlanu xa kuyimfuneko yoko.

Umhlathi 6. Ukupheliswa kobulungu — Ubulungu bebhodi buyakupheliswa nguMphathiswa phantsi kweemeko ezithile.

Umhlathi 7. Amandla nemisebenzi yeBhodi — Lo mhlathi ugunyazisa ukuba iBhodi inakho ukuba ingaqwalasela izingxelo oko kuqulathwe ngulo Mthetho uYilwayo, ukumelwa ngokubhekiselele kwiizingxelo, iingxelo zamagosa, izikhalazo mayela neendawo ezinamaphepha-mvume, ukulungiswa kwemiqathango yamaphepha-mvume, izibheno mayela nezigqibo ezibhekiselele kumaphepha-mvume ezenziwa ngomasipala, nayiphina into ethunyelwe kwiBhodi okanye nayiphina into eyalelwe nguMphathiswa ukuba mayenziwe. Ikwagunyazisa kananjalo unikezelo, olunemiqathango okanye ukwala izingxelo kwakunye namandla okunqumamisa, ukurhoxiswa, kwanokunizelwa kwezohlwayo kwakunye nemiqathango ngokubhekiselele kwiingxelo kwakunye nezikhalazo, kwanokuchotshelwa kwezibheno. Ikwandisa ilungelo kwiBhodi ukuba ikwazi ukuxhoma, ukurhoxisa okanye ilungise nawuphina umqathango kwiphepha-mvume.

Isahluko 8. Iintlanganiso kwakunye nezigqibo zeBhodi — Lo mhlathi ubhekiselele kwintlanganiso elivumelekileyo elinika igunya lokuba iBhodi ingaqhubeka okanye ingaqhubeki nemisebenzi yayo, ikwanika nomkhomba-ndlela wenkqubo ngelixa leentlanganiso

Umhlathi 9. Ukukhwetyulwa kwamalungu aneemfuno eziphixeneyo — Imihlaba ekuthi kukhwetyulwe ngayo ilungu leBhodi kwakunye nenkqubo ejongene noko iyamiselwa ngulo mhlathi.

Umhlathi 10. Uxhaso lwezimali lweBhodi — Lo mhlathi unika indlela yoxhaso lwezimali kwakunye neemeko ekufuneka zilandelwe ukwenzela ukufumana inkxaso yezimali kwanokuqinisekisa ulawulo olululo.

- Umhlathi 11. Uphononongo lwezimali olusesikweni neengxelo zonyaka— Uphononongo lwezimali olusesikweni lonyaka kwakunye neengxelo ezifuneka kwiBhodi yoTywala njengoko kugunyaziswa ngulo mhlathi.
- Umhlathi 12. Inkqubo zeBhodi — Lo mhlathi unika indlela uMgcini-sihlalo anokuqhuba ngayo, ukuya ezintlanganisweni kwamalungu kwakunye nendlela yokukwazi ukufumana ulwazi.
- Umhlathi 13. Ikomiti zeBhodi — Ukuqeshwa kweekomiti zeBhodi yoTywala, inkqubo emazisebenze ngayo kwakunye nemisebenzi yazo ithi imiselwe ngulo mhlathi.
- Umhlathi 14. INkundla yeBhunga leziBheno—INKundla yeBhunga leziBheno yathi yasekwa kwaye nobulungu kuyo bakuthi busekwe.

ISAPHLUKO 3

IMIVUZO KWAKUNYE NOLAWULO LWEBHODI YOTYWALA KWAKUNYE NENKUNDLA YEBHUNGA LEZIBHENO

- Umhlathi 15. Ukuvuzwa kwamalungu kwakunye neNkundla yeBhunga leZibheno — Ukuvuzwa kuya kuthi kusungulwe nguMphathiswa ojongene noko kumiselwe ngulo mhlathi.
- Umhlathi 16. Ulawulo lwebhodi kwakunye neNkundla yeBhunga leziBheno — Uqesho lomlawuli oyintloko kwiBhodi yoTywala, ubukho babantu bokusebenza kwakunye nolawulo lwezimali zeBhodi, uthunyelwe lwabasebenzi lwethutyana olwenziwa lelo Sebe linokwenza oko kwakunye neenkqubo zolawulo zithi zimiselwe.

ISAPHLUKO 4

IMISEBENZI EYENZIWA NGOOMASIPALA

- Umhlathi 18. Oomasipala njenge-arhente zeBhodi kwakunye namagosa anobuchwepheshe ngokubhekiselele kumaphepha-mvume — Lo mhlathi uthi unike umkhomba-ndlela wokuqesha oomasipala njengamagosa anobuchwepheshe kwakunye nobunganga.
- Umhlathi 19. Amabhunga otywala — Lo mhlathi uthi ugunyazise ukuyilwa kwakunye nokusekwa kwamaBhunga oTywala ngabo masipala banobuchwepheshe kwaye bathe batyunjelwa oku.

ISAPHLUKO 5

UNIKEZELO LWAMAPHEPHA-MVUME

- Umhlathi 20. Amaphepha-mvume kunye nesiqinisekiso — Imfuno zokuba ube namaphepha-mvume kunye nesiqinisekiso kubenzi abasakhulayo okanye uthengiso lotywala kwanokusekwa komgaqo wolwaphulo mthetho ngokuthi ungabinakho ukuthi ufumane iphepha-mvume okanye isiqinisekiso soko kumiselwe ngulo mhlathi
- Umhlathi 21. Iintlobo zamaphepha-mvume — Lo mhlathi umisela iintlobo ezintlanu zamaphepha-mvume otywala.
- Umhlathi 22. Iintlobo zeziqinisekiso — Lo mhlathi uthi ubonelele ngeentlobo ezimbini zeziqinisekiso.
- Umhlathi 23. Izimiselo zokunikezelwa kwempepha-mvume — Lo mhlathi uthi ubonelele ngezimiselo eziya kuthi ziqwalaselwe xa kunikwa ingqwalasela kumaphepha-mvume kwakunye nakwiziqinisekiso.
- Umhlathi 24. Inqanaba lemfundo yabo bafaka izicelo — Imihlaba yokuchithwa kwamaphepha-mvume yabo benze izicelo kwakunye neziqinisekiso kumiselwe ngulo mhlathi.
- Umhlathi 25. Inkqubo yolawulo lwamaphepha-mvume — Lo mhlathi uthi umisele indawo apho kunokuthi kuthunyelwe kuyo izicelo zamaphepha-mvume kunye neziqinisekiso, oko kumiselwe kulo mhlathi.
- Umhlathi 26. Ukwazisa ngezicelo — Izaziso ezibhekiselele kuluntu kufuneka zenziwe kwaye kusasazwe nabo bantu ezi zicelo zeziqinisekiso

- zotywala ziza kunikwa bona, ngabo bafaka izicelo kwakunye noomasipala okanye iBhodi yoTywala, oko kumiselwe kulo mhlathi.
- Umhlathi 27. Izicelo ekusafuneka zihlolwe — Lo mhlathi ulawula inkqubo yohlolo lwezicelo malunga namaphepha-mvume.
- Umhlathi 28. Umelo — Izimiselo zenziwe ukuhlangabezana nomelo malunga namaphepha-mvume acelwayo ngabantu abafake izicelo bechaphazeleka koku kwakunye nenkqubo yolawulo enxulumene noku.
- Umhlathi 29. Uqithiso lwala maphepha ezicelo — Uqithiso lwezi zicelo zamaphepha-mvume kwakunye namanye amaphepha anento yokwenza nezi zicelo kumasipala athi adluliselwe kwiBhodi yoTywala, oku kumiselwe apha kulo mhlathi.
- Umhlathi 30. Uphononongo lwezicelo — Lo mhlathi uthi ubonelele ngendlela emakuphononongwe ngayo izicelo yiBhodi yoTywala kwakunye nenkqubo ezingqamene noko.
- Umhlathi 31. Ukvamkeleka kweendawo — Lo mhlathi uthi uthintele ukukhutshwa kwamaphepha-mvume apho abo bafaka izicelo bengenalo ilungelo lokusebenzisa iindawo ezo zigunyazisiweyo.
- Umhlathi 32. Iindawo ezingagqibekanga ukwakhiwa — Lo mhlathi uthi uthintele ukukhutshwa kwamaphepha-mvume de kube iindawo leyo igqityiwe ukwakhiwa ukulungiselela ushishino lotywala.
- Umhlathi 33. Imfundo kunye noqeqesho — lo mhlathi uthi umisele umyalelo woqeqesho lwabo benze izicelo okanye abaqeshwa babo oko kusenziwa yiBhodi yoTywala.
- Umhlathi 34. Imiqathango yokvamkeleka — lo mhlathi uthi uvumele iBhodi yoTywala ukuba ikwazi ukwenza imiqathango yokumisa ukukhutshwa kwamaphepha-mvume.
- Umhlathi 35. Unikezelo lwamaphepha-mvume kunye neziqinisekiso — Lo mhlathi uthi umisele unikezelo lwamaphepha-mvume kunye neziqinisekiso xa kuthe kwaphunyezwa izicelo.
- Umhlathi 36. Ukufa okanye ukhubazeko lwalowo wenze isicelo — Lo mhlathi uthi umisele uqhubekeko lwesicelo xa kuthe kwasweleka okanye kwakhubazeka lowo obefake isicelo phambi kokuba kuqakunjelwe iziphumo zesicelo ebesenziwe.

ISAPHLUKO 6

IMIQATHANGO YOKUKHUTSHWA KWAMAPHEPHA-MVUME

- Umhlathi 37. Imiqathango esisiseko samaphepha-mvume — Lo mhlathi umisela ukuba utywala kunokuthi kuthengiselwe ukuba buselwe ngaphakathi okanye ngaphandle kwamasango endawo enamaphepha-mvume, oko kusenzeka ngendlela evunyelwa luhlobo lodidi lwamaphepha-mvume kwaye ukwamisela namalungelo evenkile ezishishina ngokutya ukwenzela ukuba zibe nakho ukuthengisa iwayini eza kuthi iselelwe ngaphaya kwendawo leyo inamaphepha-mvume.
- Umhlathi 38. Ukuhanjiswa okanye ukuthunyelwa kotywala — Izimiselo mayela nokuhanjiswa okanye ukuthunyelwa kotywala kumiselwe ngulo mhlathi.
- Umhlathi 39. Inkqubo yoqoqosho lwezimali — Lo mhlathi uthi uqinisekise okokuba ngulowo unelungelo lokushishina kuphela oyakuthi athengise ngotywala kwindawo evunyelwe ukuba ingakwenza oko njengoko amaphepha-mvume esalatha njalo, kunye nenguqu kuqoqosho lwezimali zamashishini anamaphepha-mvume oko kuyakufuna imvume yeBhodi yoTywala.
- Umhlathi 40. Ulawulo — Lo mhlathi uthi uqinisekise umiselo lwenkqubo kwakunye nemimiselo ethi iqinisekise ulawulo olululo lwezo ndawo zivumelekileyo okokuba zingashishina kwabo bantu bathi bahlangabezane nezimiselo eziqingqiweyo.
- Umhlathi 41. Uguqulo lweendawo ezivumelekileyo—Uguqulo kwiindawo ezivumelekileyo ukuba zingashishina ngotywala okanye kuhlobo lweshishini kufuneka ukuba luphunyezwe yiBhodi yoTywala.

- Umhlathi 42. Abantwana — Lo mhlathi ulawula ukuthengiswa kotywala okanye ukunikwa kotywala kubantwana abaminyaka engaphantsi kweshumi elinesibhozo leminyaka.
- Umhlathi 43. Abaqeshi nabaqeshwa — Intsebenziswano phakathi komqeshi kunye nomqeshwa mayela nokunikezelwa kotywala kubaqeshwa kuya kuthi kulawulwe ngulo mhlathi.
- Umhlathi 44. Ungeno kwiindawo ezivumelekileyo ukuba zingashishina ngotywala —Lo mhlathi ulawula ungeno lwabantu abangaphantsi kweminyaka elishumi elinesibhozo kwiindawo ezivumelekileyo ukwenza oko.
- Umhlathi 45. Ugcino lotywa — Lo mhlathi ulawula ugcino lotywala ngulowo unemvume yokuthengisa utywala.
- Umhlathi 46. Indawo yokuthengisa utywala—Lo mhlathi uthi umisele imiqathango kwindawo yokuthengisa kwabo bavumelekileyo ukuba bangathengisa ngotywala.
- Umhlathi 47. Iiyure zokuthengisa — Lo mhlathi uthi uvumele ukuqingqwa kweeyure zokuthengisa utywala kwakunye nemithetho yemihla elawulwa ngomasipala abakhethelwe oko, oku kusenzeka phantsi kwamasoloty ezimiselo aqulathwe ngulo mhlathi kwakunye nemiqathango elawula iiyure zokuthengisa, kwakunye neentsuku zeendawo ezithile ezivumelekileyo kwiBhodi yoTywala.
- Umhlathi 48. Ubungakanani botywala kunye nogcino lweengxelo — Lo mhlathi uthi umisele ugcino lweengxelo zokuthengisa ngulowo unelungelo lokuthengisa utywala, uthi uvumele kananjalo nomlinganiselo wobungakanani botywala obuvumelekileyo ukuba bungathengiswa emntwini ngosuku ngulowo unemvume yokuthengisa, kwaye ukwathintela ukuba umntu ongenamaphepha-mvume abe notywala obugqithisileyo ngaphaya komlinganiselo ovumelekileyo.

ISAPHLUKO 7

IZIQINISEKISO

- Umhlathi 49. Iziqinisekiso zemibhiyozo eyodwa — Inkqubo mayela nezicelo zeziqinisekiso zemibhiyozo eyodwa imiselwe kulo mhlathi.
- Umhlathi 50. Iziqinisekiso zomqomboti wesintu — Izimiselo mayela nezicelo zeziqinisekiso zomqomboti wesintu zimiselwe kulo mhlathi.

ISAPHLUKO 8

ULWAMKELEKO KUNYE NOKUVUSELELWA KWAMAPHEPHA-MVUME KUNYE NEZIQINISEKISO

- Umhlathi 51. Ulwamkeleko lwamaphepha-mvume kunye neziqinisekiso — Ixesha lolwamkeleko lwamaphepha-mvume kunye neziqinisekiso lumiselwe apha kulo mhlathi.
- Umhlathi 52. Uhlaziyo lwamaphepha-mvume oluzenzekelayo — Lo mhlathi uthi umisele uhlaziyo lwamaphepha-mvume oluzenzekelayo kwakunye nenkqubo ebhekiselele koku.
- Umhlathi 53. Izicelo zohlaziyo — Lo mhlathi uthi umisele iimeko apho uhlaziyo lwamaphepha-mvume lungenzeki ngokuzenzekela kwaye uthi umisele inkqubo yezicelo zokuhlaziya amaphepha-mvume.

ISAPHLUKO 9

UGUQULO LWAMAPHEPHA-MVUME

- Umhlathi 54. Uguqulo lwamaphepha-mvume — Inkqubo yoguqulo lwamaphepha-mvume eguqulelwa kubantu abatsha abanamalungelo amiselwe kwakunye nenkqubo yethutyana yokutyunjwa kwabantu abanokuthatha olu xanduva njengabalawuli bezi ndawo ngethuba kusenziwa izicelo
- Umhlathi 55. Ukungahoywa kweendawo kunye nokufa okanye ukukhubazeka kwalowo unelungelo lokushishina — Lo mhlathi uthi umisele

iinkqubo zokuqinisekisa ulawuleko lwezi ndawo zivumelekileyo ukuba zingashishina xa kuthe kwakho ukungahoywa kweendawo kunye nokufa okanye ukukhubazeka kwalowo unelungelo lokushishina

ISAHLUKO 10

IZIBHENO

- Umhlathi 56. Izibheno kwiNkundla yeBhunga leziBheno — Inkqubo yezibheno kunye nophononongo ngokutsha kwiNkundla yeBhunga leziBheno imiselwe apha kulo mhlathi.

ISAHLUKO 11

UKUTHOBELA

- Umhlathi 57. Izaziso zokuthobela — Lo mhlathi uthi umisele umbandela wokuthotyelwa kwezaziso kwabo banamalungelo okushishina oko kusenziwa ngamagosa ajongene namaphepha-mvume kunye nenkqubo ejongene noko.
- Umhlathi 58. Imiqathango yethutyana — Lo mhlathi uthi uvumele ukumiselwa kwenkqubo yiBhodi yoTywala eza kuqinisekisa ukuthotyelwa ngabo banamalungelo okushishina xa kukho izikhalazo ezamkelekileyo eziye zafunyanwa eziya kuhlolwa yiBhodi ukuba kothatyathwa manyathelo mani mayela nazo izikhalazo ezo.
- Umhlathi 59. Umiso lwethutyana, ukurhoxiswa kwakunye nokuphelelwa kwexesha ngamaphepha-mvume — Lo mhlathi uthi umisele ukupheliswa kwamaphepha-mvume.

ISAHLUKO 12

UNYANZELISO LOMTHETHO

- Umhlathi 60. Uqulunqo kwakunye nemisebenzi ebekelwe amagosa otywala kwakunye nabahloli — Lo mhlathi uthi umisele ukuqeshwa kwamagosa abekelwe oko kwiSebe leNkonzo yamaPolisa eloMzantsi Afrika oko kusenziswa ngumKhomishala wamaPolisa wePhondo kwakunye nokuqeshwa kwamagosa ajongene namaphepha-mvume, oko kusenziwa nguMphathiswa ojongene noko, kuqulunqwe nentsebenziswano yawo kunye neBhodi yoTywala.
- Umhlathi 61. Amandla ala magosa otywala kwakunye nabahloli — Lo mhlathi uthi umisele amandla kula magosa otywala atyunjiweyo kwakunye nabahloli mayela nokunyanzelisa imithetho emiselwe ukulawula abo banemvume zokushishina ngotywala.
- Umhlathi 62. Amandla jikelele abagcini boxolo — Amandla abagcini boxolo mayela nokunyanzeliswa komthetho njengoko oko kumele ukuba kwenziwe zezo ndawo zinamalungelo okushishina ngotywala, konke oku kuqulathwe kulo mhlathi.
- Umhlathi 63. Amatyala — Lo mhlathi uthi umisele izimiselo malunga namatyala ngokubanzi apha kuthengiso lotywala, kunikezelo okanye ukuselwa kotywala obungeyiyo inxalenye yecandelo lalo Mthetho uYilwayo.
- Umhlathi 64. Amatyala mayela nolwazi — Amatyala avuselelwa ngulo mhlathi ajongene nenkqubo emayela nolwazi ngethuba kusenziwa izicelo ngokubhekiselele kulo Mthetho uYilwayo kwakunye ne-arhente ezinyanzelisa lo mthetho kwabo banamalungelo okushishina ngotywala kwakunye nabasebenzi babo.
- Umhlathi 65. Amatyala mayela neentlanganiso zeBhodi kunye neNkundla yeBhunga leziBheno — Amatyala athe enziwa ngulo mhlathi aqulathe oko kwenziwa ngokufanelekileyo kwiinkqubo zeBhodi yoTywala kwakunye nakwiNkundla yeBhunga leziBheno.
- Umhlathi 66. Amatyala mayela namagosa angamapolisa kunye nabahloli — Amatyala aqulathwe ngulo mhlathi abhekiselele ekuphazamiseni

- i-arhente zabanyanzelisa ukuthotyelwa kwemithetho bangawenzi umsebenzi wabo ngokufanelekileyo.
- Umhlathi 67. Inqwelo mafutha — Lo mhlathi uthi wenze kubekho ubutyala mayela nokuselwa kotywala kwiinqwelo mafutha eziqhutywa ezindleleni zikawonke-wonke.
- Umhlathi 68. Iindawo ezithengisa ipetroli. Lo mhlathi uthi ulawule ukuthengisa, ukunika okanye ukuselwa kotywala kwiziza apho kufumaneka iindawo ezithengisa ipetroli.
- Umhlathi 69. Ukungaphumeleli ukuthobela le miqathango yeBhodi — Lo mhlathi uqinisekisa ukululanyelwa konyanzeliso lwemiqathango yeBhodi yoTywala.
- Umhlathi 70. Usuleleko lobutyala ungakhange ulenze buqu wena ngokwakho (this translation is preferred and should be used in s70 of the Bill itself) — Lo mhlathi uthi uqinisekise ukuba abo banamalungelo okushishina ngotywala bakusoloko ingabo abakuthi bafunyaniswe benobutyala ngenxa yolwaphulo mthetho olwenziwa ngabasebenzi babo abasebenzela kwezi ndawo zivumelekileyo ukuba zingashishina ngotywala.
- Umhlathi 71. Ukungabandakanywa — Lo mhlathi uthi umisele uludwe lwamacandelo athi angabandakanywa kulo Mthetho uYilwayo kwaye uthi uvumele ukumiselwa kwakhona kwabantu abangabandakanywa yiBhodi yoTywala kwakunye nenkqubo equlethwe koku.
- Umhlathi 72. Ubungqina — Lo mhlathi uthi umisele inkqubo yokunizezelwa kobungqina ngendlela elula phambi kweBhodi kwanangelixa kuchotshelwe inkqubo yomthetho.
- Umhlathi 73. Izaziso zempilo — Lo mhlathi uthi umisele umyalelo wokuboniswa kolwazi olumayela nezempilo kwindawo apho kuthengiswa okanye kunikezelwa ngotywala.
- Umhlathi 74. Izohlwayo — Lo mhlathi uthi umisele izohlwayo ezifanelekileyo ezithe zaqulunqwa ngulo Mthetho uYilwayo.

ISAHLUKO 13

IMITHETHO, IZIMISELO ZETHUTYANA, UKURHOXISWA KWEMITHETHO KWAKUNYE NESIHLOKO ESIFUTSHANE

- Umhlathi 75. Imithetho — Lo mhlathi uthi umisele uMphathiswa onelungelo amandla aqulathwe yimithetho emayela nalo Mthetho uYilwayo.
- Umhlathi 76. Izibonelelo zethutyana — Lo mhlathi uthi uqinisekise uqhubekeko kushishino lotywala, oko kumiselwa nguMthetho woTywala ka 1989 (uMthetho onombolo ingu 27 ka 1989).
- Umhlathi 77. Izibonelelo zoguzulo-mthetho — Le nkqubo irhoxisa uMthetho woTywala ka 1989 (uMthetho onombolo ingu 27 ka 1989).
- Umhlathi 78. Isihloko esifutshane — Lo mhlathi uthi umisele isihloko esifutshane salo Mthetho uyilwayo kwanokuphunyezwa ngokusesikweni kwalo Mthetho uYilwayo.

