

A LIQUOR POLICY FOR THE WESTERN CAPE

A LIQUOR POLICY FOR THE WESTERN CAPE

INDEX

Chapter	Title	Page
1.	Introduction	3
2.	Ensuring the entry of existing unlicensed traders into the regulated trade	13
3.	Liquor licences application procedure	33
4.	Dealing with the negative consequences of the licensed trading in liquor; complaints against licence holders; and the suspension and cancellation of licences	72
5.	The role of municipalities in the licensing of the liquor industry	81
6	The Provincial Liquor Board as public entity – Models considered and determination of principles	94
7	Functions and powers of the Liquor Board	101
8	The composition and terms of appointment of the Liquor Board	115
9.	Legislation and the enforcement agencies	129
10.	Land use management policy guidelines	147
11.	Business development support services for licence applicants and conditional licence holders	166
12.	Addressing the negative consequences of the abuse of alcohol	172
13.	Training of liquor licence holders and persons in charge of licensed premises	204
14.	Offences and presumptions	215
15	Regulations, transitional provisions, exemptions and miscellaneous matters	232
16	Definitions and glossary	243
17	Bibliography	246

A LIQUOR POLICY FOR THE WESTERN CAPE

CHAPTER ONE - INTRODUCTION

The history of alcohol in South Africa is an integral part of the history of apartheid and segregation. Conflict has long surrounded the production, distribution and use of alcohol and this continues today. In traditional African society the use of alcoholic beverages was well regulated. Drinking did not occur on a daily basis. People did not drink alone or just for the sake of drinking. Rather, drinking served a communal and ceremonial purpose. After colonisation, the British unsuccessfully prohibited the use of alcohol by Africans in an attempt to prevent what they saw as social decay and disorder encouraged by its use. Laws were passed to make it illegal for black Africans to produce and obtain liquor. Only in 1962 was it made legal for black people to purchase alcohol from white liquor outlets.

In the townships, municipal beer halls were established by local authorities to help finance township development and control. The responses to these and other controls included ambivalence, abuse and social decay, as well as defiance and resistance. Many people turned to illegal liquor related activities, both brewing traditional african beer and setting up illegal outlets (called shebeens) where liquor was sold for on- or off- consumption purposes. Most shebeens are part of or attached to residential premises. For some, setting up a shebeen was a move of defiance against the policies of the apartheid government that restricted business opportunities to a particular segment of society. For others it was a way of making a

meagre living and a means to provide recreational facilities in townships. The establishment of shebeens was also a natural response to a situation in which there were fifteen times more legal liquor outlets per unit of population in former white suburbs than in suburbs in which persons of other races resided.

The shebeen problem is a legacy of our apartheid past and cannot be allowed to linger on indefinitely. Unless an end is made to the untenable situation in which approximately 20% of liquor traders in the province are licensed but approximately 80% trade illegally with impunity, it will be impossible to implement a meaningful liquor policy. Currently in the Western Cape province approximately 5 700 liquor licences have been issued. These include licences that, in terms of the Liquor Act, No 59 of 2003, are regarded as manufacturers and distributors registration, which do not permit selling to the public. It is estimated that there are between 20 000 and 30 000 shebeens in the Western Cape province.

Drastic measures to correct the situation are fully justified, but care must be taken to ensure that these measures will pass constitutional muster. The present state of lawlessness and chaos in the industry cannot be allowed to continue. Traders from the previously disadvantaged communities who are law-abiding citizens and want nothing more than to earn an honest living for themselves and their families are unable to legitimise their business because of unrealistic barriers created by the present licensing system. On the other hand, many shebeens are dens of iniquity, which are a nuisance to the

communities in which they operate and contribute towards a climate of lawlessness and disrespect for community rights. Organised criminal elements have entered the unlicensed liquor trade, and shebeens under the control of gangs are venues where many criminal activities originate.

The policy seeks to meet a number of objectives as listed herein. It is important to realise that a balance between the divergent objectives is sought and that the Government of the Western Cape intends meeting each of the objectives.

It is recognised 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. The policy set out in this White Paper will devise a framework for the continued regulation of the established liquor trade, now in accordance with the Constitution of the Republic of South Africa and national and provincial policies, and in doing so will seek to maintain a balance between the interests of the liquor industry and communities. The Western Cape Government recognises the diverse nature of the liquor industry in the province and values the importance of its diverse aspects as a contributor to the economy of the Western Cape and South Africa.

The first objective of the policy is to make it possible for bona fide unlicensed traders in the historically disadvantaged communities to

legitimise their businesses without encountering unnecessary barriers to entry but, also to create an environment that will encourage them to do so. It is however a reality that the existing situation the unlicensed trader finds him, or herself in provides little incentive to enter into the legal trade. In the Western Cape an extremely small percentage of outlets in the historically disadvantaged townships are licensed. A lack of resources limits the ability of the law enforcement agencies to act in a consistent manner against unlicensed sellers of liquor. Operations by law enforcement agencies are sporadic and depend to a large extent on the analysis of the crime threat that a particular unlicensed establishment presents to the area and priorities regarding the allocation of resources. The unlicensed sale of liquor continues largely unabated and with little fear of consequences. The advantages to the unlicensed trader of the continued existence of the present circumstances are obvious. The unlicensed trader, unlike his or her licensed counterpart, does not form part of the tax network. The unlicensed trader falls outside the regulatory network as far as land use requirements, trading hours and restrictions are concerned.

It is necessary to provide sufficient incentive to encourage the existing unlicensed traders to enter the regulated trade while also providing adequate deterrents to discourage the sale of liquor outside the ambit of the law. Incentives to enter the regulated trade have to be sustainable. The limited availability of resources prevents the allocation of financial incentives that in any event cannot compete with the aforesaid sustained trading advantages that the unlicensed

trade provides. A range of alternative incentives, in conjunction with deterrents, is to be provided.

A second objective of the policy, which is closely associated with the objective of providing an enabling environment for the emerging traders, is to consider land use planning issues as determined by the municipal planning authorities. A dilemma that is facing planning and licensing authorities is the divergent interests of the currently unlicensed shebeens in residential areas and the interests of the surrounding residents. While maintaining the principles of land use planning and recognising the interests that the local government sphere has in mind in determining land use regulation, provision must be made for the achievement of the policy objectives in as far as the bona fide traders as emerging small business entrepreneurs are concerned. If this objective is not achieved, the currently unacceptable situation of unregulated shebeens will continue unabated.

A third objective of the policy is to provide for the involvement of communities in determining the location of licensed liquor outlets. One of the complaints received regularly by the licensing authorities is the lack of available information regarding the licensing of liquor trading establishments and opportunities to object to or comment on these applications. The current Liquor Act, Act 27 of 1989, only requires the applicant for a new liquor licence to have a prescribed notice of application published in the Government Gazette of the first Friday of the month and simultaneously to lodge the licence

application with the local magistrates office. No further notification is required. It has been left to community-based organisations such as the community police forums and residents and ratepayers associations to establish methods that make their communities aware of liquor licence applications and enable them to comment on such applications. In numerous instances such organisations are not fully functional, with the result that there is limited involvement of communities in decision-making.

A fourth objective of the policy is to involve the municipalities in the Western Cape. The municipalities can by means of the best available local options, inform communities of developments in the liquor trade in their areas and provide for processes and structures that allow for the communities to participate in the decision-making process. Provision is made for the appointment of certain municipalities as agents of the Liquor Board to administer the application and public notice process of liquor licences and for the assignment of certain legislative and licensing functions to specific municipalities after the appropriate prescribed legislative, administrative and financial requirements have been met. Measures are further provided to assist the municipalities in meeting their constitutional function of controlling outlets that sell liquor to the public.

The fifth objective of the policy is to reduce the social cost of liquor abuse to society in general, and to the people of the Western Cape in particular. While expressions of concern are often heard, the facts

reveal the true extent of the negative impact that the abuse of alcohol has on our communities.

According to the 2002 World Health Report released in 2002 by the World Health Organisation (WHO), global alcohol consumption has increased in recent decades, with most or all of this increase occurring in developing countries. Worldwide, alcohol is estimated to cause 3.2% of deaths (1.8 million per year) and 4.0% of disability adjusted life years lost (58.3 million years per year). The report states that, worldwide, alcohol is associated with 20%-30% of all oesophageal cancer, liver disease, epilepsy, motor vehicle collisions, and homicide and other intentional injuries.

While the proportion of the population that drinks in South Africa is lower than in most developing countries, levels of risky drinking among those persons who do consume alcohol are very high, especially at weekends. According to the 1998 South African Demographic & Health Survey, roughly one-third of current drinkers (both males and females) in the Western Cape drink at risky levels (defined as drinking five or more standard drinks per day for men and three or more drinks per day for women) over weekends. A community survey in Cape Town in August 2002 conducted by the Medical Research Council (MRC) found that more than 10% of 11- to 17- year olds had been drunk more than 10 times. The median age of first use of alcohol was 14 years. Adolescents who reported having been drunk were more likely to live in communities where

youth have easy access to alcohol and where they are exposed to public drunkenness.

A central aim of the Western Cape Liquor Policy is to protect the community against any negative consequences of the abuse of alcohol. Below are listed a number of ways in which research conducted in this province has indicated the substantial burden imposed on society as a result of the use of alcohol:

Alcohol-related mortality: In 2001, over 50% of non-natural deaths studied at the Salt River and Tygerberg mortuaries had blood alcohol (BAC) levels in excess of or equal to 0.05g/100 ml. Over two-thirds (68%) of pedestrian fatalities had BACs in excess of or equal to 0.05g/100ml compared to 55% of fatally injured drivers, 57% of murder victims and 37% of deaths due to suicide.

Alcohol-related trauma: In 2001, 36% of trauma patients seen at two large trauma units in Cape Town (Groote Schuur and GF Jooste Hospitals) had breath alcohol (BrAC) levels in excess of or equal to 0.05g/100ml. Over 60% of persons injured as a result of violence had positive alcohol levels compared to 46% in the case of transport related injuries.

Foetal Alcohol Syndrome (FAS): The Foundation for Alcohol-Related Research found a 61% increase in levels of FAS among school-age children in certain schools in Wellington between

1997 and 1999 (46.4 per 1000 to 74.7 per 1000). The 1999 rate is the highest rate ever recorded anywhere in the world.

School problems: Research conducted in 1997 by the University of Cape Town and the Medical Research Council among almost 3 000 Grade 8 and Grade 11 learners at Cape Town schools found a statistically significant relationship between drinking alcohol (in the last month) and absenteeism and repeating a year at school.

Alcohol and crime: Various studies indicate a significant statistical correlation between alcohol abuse and crime.

- Research conducted by the Medical Research Council in the rural South-western Cape in the early 1990s found that between 67% and 76% of domestic violence cases were alcohol-related.
- A 1999 study conducted among 960 arrestees at nine police stations in Cape Town, Durban and Johannesburg found that 22% reported being under the influence of alcohol at the time of their alleged crimes - 33% in Cape Town, 26% in Durban and 10% in Johannesburg.

Economic costs to society: A conservative estimate of the economic costs of alcohol abuse based on research studies conducted in other countries is 1% of gross domestic product (GDP). For South Africa this would work out at about R8.7 billion

per year, an amount almost twice that received in excise duties on alcoholic beverages in 2000/1. The cost to the Western Cape is likely to be well in excess of R1 billion per year.

The list of studies and statistics mentioned in the policy document is by no means exhaustive and merely serves to demonstrate the negative impact of the abuse of liquor on society and individuals.

CHAPTER TWO - ENSURING THE ENTRY OF EXISTING UNLICENSED TRADERS INTO THE REGULATED TRADE

A limited exemption during the process of regularization of the liquor industry for existing unlicensed traders who apply for liquor licences

The provincial liquor legislation will provide for measures to encourage existing unlicensed liquor traders who have been trading at the particular premises for a period of three years or longer, who wish to enter the regulated trade to apply for liquor licences. It must be emphasised that the intention is not to create new informal outlets but to encourage existing unlicensed traders who meet the objective requirements, to apply for liquor licences. A person who has traded less than the required three years from a particular premises will not qualify for the limited exemption during the process of regularization of the industry. The legislation will provide for a limited exemption during the process of regularisation from prosecution for trading in liquor without a licence for qualifying existing unlicensed traders who apply for licences and who register for the limited exemption pending the finalisation of the applicants' licence applications for a period of six months from the date upon which the provincial Minister responsible for the provincial liquor legislation, after consultation with the provincial Minister for Community Safety, may determine. The provincial Minister responsible for the legislation after consultation with the provincial Minister for Community Safety and if in his opinion it is justified to meet the objectives of the legislation, may extend the initial period of six-month by further periods of six months, or by lesser periods. During the initial six month period or any extended

period an applicant for a liquor licence who registers as a registered liquor trader will not be prosecuted for trading without a liquor licence, but will still be subject to other laws and provisions, such as those that relate to the sale of liquor to under-age child or intoxicated persons. It is intended that the existing unlicensed traders who qualify will be allowed to continue trading pending the consideration of their applications. The limited exemption during the process of regularisation is also an initial measure to draw a distinction between the existing unlicensed trader who is a bona fide business person who intends to conduct a legitimate business in future and who should therefore be supported in doing so, and those criminal elements who intend to remain outside the legal framework, and should therefore bear the consequences of the measures intended to put a stop to illegal trading in liquor.

Simultaneously with the submission to a relevant municipality of an application for a liquor licence and the correct land use application (e.g. for consent use), an applicant who wishes to benefit from the limited exemption during the process of regularisation will be required to apply directly to the designated liquor officer to be registered for the limited exemption. The requirements that an existing unlicensed trader who is an applicant will have to meet to be considered for the limited exemption during the process of regularisation are:

- Proof that a duly completed licence application has been lodged with the municipality.
- Proof that a duly completed application for the correct land use requirements has been lodged with the municipality.

- Submission of an application for a limited exemption during the process of regularisation, accompanied by the applicant's fingerprints and proof of being an existing unlicensed trader on the premises for which a licence is being sought for a period of three years or longer.

The purpose of the requiring applications to be lodged is to ensure that the necessary process of regularising the applicant's business has commenced, and it is therefore not incumbent upon the designated liquor officer to assess the various applications for correctness or completeness. He or she must merely be provided with proof that substantial applications as provided for in the policy have been lodged. Copies of the applications containing an acknowledgement of their having been lodged with the municipality will suffice.

A designated liquor officer, guided by established criteria, must determine whether the limited exemption during the process of regularisation should become applicable as he or she is in a position to determine whether the applicant is a person who qualifies to be a liquor licence holder. The applicant must place the designated liquor officer in a position to determine if the limited exemption is to be approved. Provision is made for an extended limited exemption that will only be applicable to a second new application for the same premises if so approved by the Liquor Board in exceptional circumstances. There is little to be gained by an applicant who lodges an insubstantial liquor application to obtain the benefits of a limited exemption during the process of regularisation.

As the limited exemption during the process of regularisation is a short-term interim measure that does not apply to the transgression of land use rights, there are not adequate reasons for the delay in granting the limited exemption by the designated liquor officer while the municipality is considering the land use planning application, or even to undertake the pre-application negotiation process, provided for by certain land use planning models. If an insubstantial land use application is lodged, the municipality may reject it outright and may take the necessary steps to enforce the land use rights. A municipality may further lodge an objection to the liquor licence application based on failure on the part of the applicant to obtain the correct land use rights for the premises. The Liquor Board may only conditionally approve the liquor licence application for a one-year period where the land use application has not been approved. If the land use rights applicable to the premises are found to be incorrect when the Liquor Board is considering whether it should grant approval, and if the municipality has lodged an objection to the effect that an insubstantial land use application has been lodged with it, the Liquor Board may take this into account in coming to its decision.

The provision of proof of prior trading and the applicant's fingerprints will accompany the documents that the applicant is to submit to the designated liquor officer in order to prevent persons who are on reasonable grounds suspected of being involved in organised crime activities or gang activities and persons associated with these

activities from benefiting from the limited exemption during the process of regularisation.

An existing unlicensed trader who complies with the requirements will, upon approval by the designated liquor officer of the application for a liquor licence, be registered as an unlicensed liquor trader who, under the limited exemption during the process of regularisation, may trade from the premises for which a licence application is pending. Under the liquor licensing system a prescribed certificate to this effect will be issued to the registered unlicensed trader by the designated liquor officer. If the report and decision are not positive the existing unlicensed trader will have an opportunity to appeal against the finding of the designated liquor officer to an official designated for this purpose by the provincial Minister responsible for community safety. During the appeal procedure the limited exemption during the process of regularisation will not be valid, and that particular existing unlicensed trader will therefore not benefit from it.

The following will be proof of having traded for a continuous period of three years before the commencement of the limited exemption during the process of regularisation:

- registration with a national liquor traders association, or a regional association that is affiliated to a national association for the preceding three years; or
- proof of prosecution for the offence of selling liquor without a licence on a continuous basis during the preceding three years; or

- proof of purchasing of liquor for trading purposes on a continuous basis during the preceding three years; or
- any other prima facie proof of the existing unlicensed trader having traded in liquor from the premises for a period of three years before the date of commencement of the limited exemption.

Registration particulars will be made available on the website, to which the SAPS, the municipality, distributors, manufacturers and the public will have access. The information will also be available on request. Registration of the existing unlicensed traders for the limited exemption during the process of regularisation pending the adjudication of the provincial liquor licence applications will mean that they are deemed to comply with the requirements set out in the national and provincial legislation and will allow the sale and supply of liquor to them by manufacturers (including micro-manufacturers) and distributors. Registered unlicensed traders will be encouraged to join recognised trade associations that adhere to an approved code of conduct. These associations will also be encouraged to persuade unlicensed traders to apply for licences.

The limited exemption in respect of a registered unlicensed trader will commence upon the registration of the approval of the limited exemption by the designated liquor officer under the liquor licensing system and the issuing of the requisite certificate and will terminate upon conclusion of the licence application by the Liquor Board. If the licence application is refused, the limited exemption will lapse with

immediate effect. The Liquor Board will forthwith inform the applicant, the municipality and the designated liquor officer of the outcome of the application and of the fact that the limited exemption is no longer applicable. The information will be made available on the website as well and will be available upon request.

Subject to a ruling to the contrary by the Liquor Board upon refusal of the first application, an applicant whose first application for any particular premises has been refused, will be precluded from registering for a second limited exemption during the process of regularisation in respect of the same premises. The reason for allowing the Liquor Board to rule to the contrary is that it would be unreasonable for the limited exemption to come to an end because of a purely technical refusal of the application by the Liquor Board. For this reason the Liquor Board is given a discretion to extend the limited exemption pending a further application. Conditions may be set by the Liquor Board regarding a limit to the extension.

As the registered unlicensed trader who is an applicant is required to be in direct control of the premises for which he or she is applying for a licence, the limited exemption will apply only in respect of such premises. Even if the applicant meets the criteria for registration in respect of several premises, he or she may not benefit from the limited exemption during the process of regularisation for all such premises. The benefit of the limited exemption is not transferable from one person to another or from any specific premises to other premises. The registered unlicensed trader must at all times when

liquor is traded from the premises be in charge of the premises, and trading in liquor must be to the exclusive financial benefit of the registered unlicensed trader. A registered unlicensed trader will, after due process, forfeit the limited exemption applicable to any specific premises if a person other than the registered unlicensed trader or a bona fide employee under his or her direct supervision trades in liquor on the premises or the limited exemption is abused in any other manner. The prescribed process regarding the withdrawal of licences by the Liquor Board, including the use of the procedure to obtain an interim order, may be used to ensure that limited exemptions during the process of regularisation that are being abused are withdrawn.

The provincial Minister must act as follows if this is warranted by circumstances regarding the maintenance or restoration of safety and security: He or she must discuss the matter with the provincial Minister responsible for community safety and then publish a notice of his or her intention to maintain or restore safety and security by deregistration of all or certain unlicensed traders in the Provincial Gazette and in two of the official languages of the Western Cape province predominately spoken in the area in two newspapers circulating in the affected area of jurisdiction of the municipality. Within the prescribed period after the publication of the notice the Minister may order the deregistration of all or any registered unlicensed traders for as long as it is necessary, or indefinitely. The notice will inform interested parties of his or her intention to deregister all or certain registered unlicensed traders in the area of jurisdiction (or part thereof) of a municipality and provide for registered

unlicensed traders to provide reasons for the Minister not to deregister a particular registered unlicensed trader. The deregistration of registered unlicensed traders will not prevent any person that is not otherwise disqualified, including an unlicensed trader, from applying for a liquor licence.

Temporary measures to deal with land use rights requirements

Shebeens, whether for on-consumption or off-consumption purposes or as combination of on- and off- consumption purposes, are for historical reasons almost exclusively in the historically disadvantaged residential areas. One of the most intractable problems facing the existing unlicensed liquor traders, the licensing authority and the municipality is that these businesses are in residential areas but do not meet the land use requirements to conduct business from the premises. Furthermore, the nature of the businesses has a detrimental effect on the residential character of the surrounding area, perhaps more so than most other businesses that are conducted from residential premises.

In an attempt to ensure that the residential nature of the areas is protected, stringent requirements are placed on trading in liquor by the planning authorities. In most town planning schemes some form of consent of the municipalities is required before an applicant may trade in liquor. These consents or departures are normally linked to strict conditions to reduce the negative impact of trading in liquor in residential areas. While these are necessary and well-intended measures, a lack of understanding of the requirements on the part of

the unlicensed liquor traders, the complexity of the application process to obtain such approval, the uncertainty of the outcome of the application and the costs associated with it, combined with other factors such as the perceived advantages associated with being outside the regulatory framework as a whole ensure that meeting the land use obligations is singled out by liquor traders associations and members of the legal profession who specialise in licence applications as the most important obstacle to entry by existing unlicensed liquor traders into the liquor licensing system.

Upon considering applications by existing unlicensed or registered liquor traders for liquor licences in instances where the land use requirements have not been met, the Liquor Board will consider the recommendations of the appropriate municipality in regard to land use planning requirements applicable to the application. If it is in the public interest and the applicant has lodged the necessary land use application with the municipality, the Liquor Board, in instances where the land use planning requirements have not been met, may approve conditional liquor licences for a period of one year from the date of approval.

The business premises will be deemed for the purposes of the liquor licence application to meet the land use planning requirements for the premises on condition that:

- the structure of the premises remains residential in nature.
- the licence holder will reside on the erf where the proposed licensed premises are located. In instances where the

prospective licence holder resides in the same dwelling unit, that section of the unit that will be used for trading of liquor must be separated from the remainder of the dwelling unit by means of a wall or securable door.

- the licence is not transferable to any other person.
- if, upon expiry of the period of one year the requirements of the planning authority have not substantially been met, the premises will revert to being residential.

If it is not in the public interest that the liquor licence should be granted, the Liquor Board may refuse the application at this stage.

No conditional licence may be issued to premises within a one kilometer radius from a religious, educational or recreational facility unless the premises already meet the correct land use provisions and where there has not been a social problem before.

During the one-year period the conditional licence holder must substantially meet the land use requirements set by the municipality for the premises or relocate to a more suitable location. As removal applications will not be provided for in the legislation, this will mean that application for a new licence at the more suitable location would have to be made and the liquor licence obtained and the business moved to such location. Once the Liquor Board is satisfied that the land use requirements have substantially been met, an unconditional liquor licence will be issued instead of the existing conditional licence.

The approval of conditional liquor licences by the Liquor Board where the premises do not meet the land use requirements set by the planning authorities do not imply that the newly licensed traders do not have to meet the prescribed municipal land use requirements. The principle that licenced premises must meet applicable land use requirements remains intact. The proposed measure is a step during the regularization of the currently unlicensed liquor trade and does not detract from the validity of the general principle. The approval of the conditional liquor licences do not detract from the municipalities' constitutional mandate to determine and enforce town planning requirements. The partial or non-compliance by licence holders with municipal land use requirements during the one year term that the conditional licences are valid will remain an issue that is to be resolved between the individual applicant or conditional licence holder and the planning authorities. Its effect for purposes of liquor licence applications will be limited to being an element that the Liquor Board has to consider in determining the suitability of the premises for use in the liquor trade.

The inclusion of town planning applications in the licensing process serves the following two purposes. It ensures that the applicant initiates the land use planning process and it assists the Liquor Board in determining, for its purposes, if the premises are suitable for the approval of licences to trade in liquor.

Spatial planning is recognised as a prerequisite for orderly development and is a function of the municipality. The measure

provided is of a temporary nature to allow the licence holder to develop the business from an unregulated business to a responsible trading entity in phases. The granting of a conditional licence allows the holder to invest entrepreneurial expertise, labour and capital in a legal business that develops, and encourages the holder to progressively meet all legal requirements, such as the land use requirements.

In the course of the one-year period the conditional licence holder will have to undergo such further training as the Liquor Board may prescribe. In this regard cognisance must be taken of the contents of that section of this policy document that relates to training and business development.

It is envisaged that during the course of the year from approval of the conditional licence, the newly licensed traders will be provided with business development support consisting of training and advice by the appropriate entities. The conduct of the businesses will be monitored and advice and guidance will be provided, as provided for in this policy.

It must be noted that all liquor licences are subject to conditions. The use of the term “conditional licence” in this policy relates to licences that are granted on condition that certain obligations are fulfilled within the set period and are subject to review, as provided for herein. The purpose of conditional licences is to enable the existing unlicensed traders to meet all relevant legal requirements in a phased manner.

Review of conditional licences

Four calendar months before the expiry of the initial one-year period a process will be initiated that allows the Liquor Board, or a committee thereof appointed for this purpose, to review the conditional licence, in a manner similar to the review of the annual renewal of licences that warrant review. In the event of the conditions pertaining to the land use not having been substantially met, the Liquor Board, after due process, may withdraw or extend the conditional licence for a further period that does not exceed one year. The extension of the conditional licence depends on the progress made in the meeting of the land use requirements set by the planning authority. The extension may be subject to further conditions. The purpose of allowing for a further extension is to enable the land use application process to be completed.

The Liquor Board will inform the conditional licence holder, the municipality and the designated liquor officer of the withdrawal or, if appropriate, the extension of the period. The information will also appear on the website and will be available upon request. The required steps to prevent further trading in liquor on the premises will be the responsibility of the appropriate authorities.

A conditional licence holder who substantially meets the land use requirements and receives the prescribed training during the course of the year may anticipate the review by the Liquor Board by providing the Liquor Board with proof of having met the land use and

training requirements, upon which an unconditional licence will be issued.

Despite the fact that an applicant has met the land use requirements, either at the time of lodging the application or subsequently, the Liquor Board may nevertheless approve an application conditionally and prescribe that the applicant should undergo the training deemed necessary.

Education, training and access to government services as incentives to enter the regulated trade

Most unlicensed liquor traders enter the liquor trade without any formal business skills training. In many instances the basic skills required to conduct a business, such as bookkeeping, stock control and business principles, are lacking. These businesses may be seen as emerging entrepreneurs entitled to support that is normally associated with black economic empowerment. Some of the larger role players in the liquor industry, particularly manufacturers, have embarked on training schemes to assist the emerging entrepreneurs. The provision of training and the involvement of government structures in it are dealt with in another part of the policy document, but access to business skills training must also be regarded as incentives for entering the licensed trade. These aspects will be dealt with more fully in other chapters of this document.

Access by persons involved in the retail liquor trade to government programmes in the Western Cape offered by the national, provincial

or local government, such as tourism-related initiatives, small business support services, the settlement of emerging wine farmers as micro-manufacturers or the granting of any other licence or consent required for gaming purposes, will depend on the possession by such trader of a valid liquor licence. The tourism industry in the Western Cape provides many opportunities for black economic empowerment. To ensure that the development of this sector is socially responsible, access to national, provincial and local government programmes will be within the licensed trade.

The re-introduction of a provision that makes it an offence to purchase liquor from an unlicensed shebeen and the possible forfeiture of any goods and money found on the offender will be a further deterrent to those who frequent unlicensed shebeens.

Access to the supply chain

Despite efforts in previous legislation to control the supply of bulk quantities of liquor by the licensed retail trade to unlicensed purchasers, for example the obligation to maintain a record of personal particulars of persons purchasing more than predetermined quantities of liquor, existing unlicensed liquor traders have enjoyed unfettered access to a reliable supply of liquor. In this regard certain of the manufacturers and distributors have contributed to the problem by providing the “informal trade” with fridges, advertisement materials and other marketing materials free of charge. Numerous instances are known of large quantities of liquor being ordered from licensed traders and delivered to the premises of shebeens. The distinction

drawn by suppliers between the licensed and unlicensed trade for marketing purposes has been negligible. Similarly the distinction between the liquor-consuming public and the unlicensed trade has been ignored by the licensed off-consumption trade. The volumes purchased by the unlicensed liquor traders from the licensed off-consumption trade have been the main source of income for many off-consumption retail traders. These traders conveniently state that the identity of the purchaser or the intended purpose of the purchased liquor is unknown to them. The reality is that the volumes, frequency of purchases and nature of the products purchased provide reasonable grounds for suspecting that the intention of the purchase is the resale of the liquor.

Section 4 of the newly promulgated National Liquor Act, No 59 of 2003 establishes a three-tier system consisting of manufacturers, including micro-manufacturers, distributors and retailers. The national system prevents the sale of liquor by manufacturers and distributors to any person that is not registered in terms of national legislation or holds a licence issued in terms of provincial legislation. Provision is made that manufacturers or distributors may obtain retail licences from provincial liquor authorities that allow for the sale of liquor for consumption purposes. For the purpose of this policy document manufacturers and distributors who have obtained licences for the retail sale of liquor are included in the term “retailers”, unless the contents indicate otherwise.

The national legislation further prohibits the holder of a retail licence from selling liquor for any other purpose but for the consumption thereof. The holders of retail licences for off-consumption purposes, such as liquor stores, who intend selling liquor to retail licence holders for on-consumption purposes, such as restaurants and guest houses, will have to obtain registration for distribution purposes in addition to their retail licences.

The only possible source of stock for the shebeens will be the holders of retailer licences, including manufacturers and distributors who have obtained retail licences allowing them to sell to the consuming public. The sale of liquor by holders of retail licences to a shebeens for the purpose of selling by shebeens will be in transgression of the national legislation's prohibition of sale by retailers for reselling by the purchaser of the liquor.

The licensed retailers, including the registered unlicensed liquor traders, will be able to purchase their stock from manufacturers and distributors and may enjoy any benefits of discounts that these suppliers are able to provide.

To ensure the disruption of unfettered access by the shebeens to a reliable stock flow, more stringent measures than those that have up to now been provided are required. , In addition to the provisions of section 4 of the Liquor Act, No 59 of 2003 there is therefore justification for limiting the maximum quantity that the holder of a retail licence, who is not also a distributor, may sell to an unlicensed

person without the permission of the designated liquor officer or some other authority determined by the provincial Minister or, if the retailer has been registered as a distributor, for requiring proof that a sale in excess of the prescribed quantity was to a licensed trader. No retailer may sell or supply to the same person a quantity of liquor in a single sale in excess of a quantity prescribed by the provincial Minister by regulation, unless permission is obtained or if the retailer is also a distributor, the sale is to a licensed trader. If an unlicensed person requires a quantity of liquor in excess of the prescribed quantity, application must be made in writing to the prescribed authority, being the designated liquor officer, providing reasons why, on the balance of probabilities, the required liquor is not intended for the purposes of trade. While provisions in past legislation were circumvented by the use of so-called runners or numerous transactions below the limit, the maximum allowed may be lowered by regulation to ensure disruption in the supply of stock.

The provincial legislation will, in addition to the offence established by section 4(8) of the national Liquor Act, No 59 of 2003, provide that it is an offence for a manufacturer or distributor registered in terms of national legislation or the holder of a retail licence or a micro-manufacturer licensed in terms of provincial legislation to sell or supply liquor to an unlicensed person that intends selling the liquor or who is suspected, on reasonable grounds, of intending to sell the liquor. Provisions that enforce these measures will provide that prima facie conclusions may be drawn from evidence given in prosecutions in courts of law and hearings before the Liquor Board regarding the

supply of liquor to shebeens. Measures for the forfeiture of equipment and goods found on unlicensed premises, such as fridges, are to deter suppliers from providing support to shebeens, but allowing registered unlicensed traders for the duration of the limited exemption during the process of regularisation, and newly licensed traders to benefit from the support of manufacturers and distributors.

The annual review of licences by the Liquor Board, in instances where this is justified, provides a further opportunity to disrupt the access that shebeens have to the supply of liquor as the licences of establishments that, on reasonable grounds, are found to be supplying liquor to the shebeens may not, after due process, be renewed.

These measures, while appearing onerous, are part of the package of measures designed to encourage existing unlicensed liquor traders to enter the licensed trade and to discourage the sale of liquor outside the legal framework. They are, moreover, intended to force the licensed retail trade to draw a distinction between the bona fide liquor-consuming public, the licensed trade and the shebeens and to be the resolution of the problem instead of contributing to it.

The above measures are further in line with the thinking of the drafters of the national legislation that provides for retailers to be able to sell liquor for consumption and not for resale.

CHAPTER THREE – LIQUOR LICENCE APPLICATION PROCEDURE

The categories of licences

The provincial liquor legislation will provide that any person, in the prescribed manner and subject to the payment of the prescribed application fee, may make application for a liquor licence. The principles relating to liquor licence applications will be contained in the provincial liquor act itself, whereas the procedure, prescribed forms and fees will be set out in regulations.

Provision will be made for the Liquor Board to grant licences. The municipalities will be entitled to grant permits, subject to a right of appeal to the Liquor Board. There will be four categories of licences, being for on-consumption, for off-consumption, and both on- and off-consumption licences and a special events category. Micro-manufacturers, traditional african beer manufacturers, manufacturers and distributors registered in terms of the national legislation will be required to obtain off-consumption licences. There will be two permits, being a special events permit and the sale of traditional african beer permit. A limited right to sell table wine for off-consumption purposes will be allowed to supermarkets and convenience stores.

The first category of licence that may be issued authorises the sale of liquor for consumption on the licensed premises on which the liquor is purchased e.g a restaurant or club. A second category of licence will

be a licence for the sale of liquor for consumption off the premises upon which the liquor is purchased e.g a liquor store or supermarket.

As part of the category of off-consumption licences, provision will be made for a limited right by supermarkets to sell table wine only. Table wine will be defined in the regulations that will be issued in terms of the legislation. The report of the Malan Commission of Enquiry into the general distribution and selling price of intoxicating liquor No. UG55/1960 was published in 1960 and recommended *inter alia* that grocers should be allowed to sell wine and beer. In 1963 an amendment to the Liquor Act provided that grocers' wine licences could be granted to shops selling food. These licences would permit the sale of table wine only and not beer. It also provided that the holder of a liquor store licence could obtain a wine counter within a grocery store. However, these new provisions would not be applicable to districts in which the sale of wine exceeded a certain quantity. The result of this was that grocers' wine licences were authorised throughout the Republic of South Africa with the exception of most of the wine-growing districts of the Western Cape. While the amendment was originally intended to make provision for the sale of beer as well as wine in grocery stores, beer was omitted after representations from the wine industry.

By 1966 there were only two grocers' wine outlets, namely Checkers Supermarket at Selcourt in Springs, Gauteng and Saamwerk Handelaars in Heilbron in the Free State.

Competition Board Report No. 10 of 1982 dealt *inter alia* with the position of grocers' wine outlets and recommended the following:

...as regards grocer's wine licences and wine counters, the Board cannot accept that these should authorize only the sale of unfortified wines and not that of beer as well, considering the grounds on which this concession was based.

... in view of the vested interests that have come into being over many years as a result of the system of limited licensing, the Board feels that it is only fair for the necessary changes in policy to be introduced gradually and after sufficient notice.

The recommendation of the Competition Board that the sale of beer should be allowed in supermarkets was not accepted by the government of the day and grocers' wine licences remained limited to table wine only.

The Green Paper published by the Provincial Government of the Western Cape titled "*A New Approach to the Liquor Policy of the Western Cape*" recommended that no distinction should be drawn between the different types of liquor and that all licence holders should be allowed to sell all kinds of liquor. In paragraph 10.1 on page 23 the following is stated: *There is no justification for discriminating between different kinds of liquor for licensing purposes. If the purpose of control is to protect the community, then there is no reason to suppose that a whisky and soda is potentially more harmful than a glass of wine or a bottle of beer.*

The aforesaid should ideally be the policy the Government of the Western Cape must strive for. However, in view of the peculiar circumstances created by the history of liquor licensing in the Western Cape and the existence of a large number of informal outlets, the abovementioned ideal situation is not readily and immediately attainable.

It appeared from the hearings held by the Standing Committee on Finance and Economic Development throughout the Western Cape, and in particular in as far as the liquor trade in the historically disadvantaged townships is concerned, that the consensus of opinion among the trade organisations representing the informal traders is that if beer is allowed to be sold in supermarkets, there would be no incentive for these emerging traders to legitimise their businesses and become part of the formal liquor industry. National and provincial policies further recognise the small and medium business sector as an important contributor to economic growth and job creation. The entry of large supermarkets into the full liquor trade will ensure the demise of many small and medium off-consumption establishments. It is acknowledged that the emerging historically disadvantaged traders and other small businesses need an opportunity to establish themselves and that they would have great difficulty in doing so if supermarkets and convenience food stores in the historically disadvantaged townships were allowed to sell beer in competition with them.

It has therefore been decided that the *status quo* should be maintained and that for the present the holders of liquor licences in respect of grocers' outlets will be allowed to sell only wine. This policy should be reviewed once the primary objective to legalise and control the existing unlicensed liquor traders has been achieved.

A third category provides for the sale of liquor both on and off the premises on which the liquor is purchased. The purpose of this category is to provide for the licensing of existing unlicensed shebeens which, being *de facto* on- and off- consumption outlets, can in terms of the present legislation only be licensed for on-consumption purposes. A licence of this nature could also be granted to a delicatessen with a restaurant area where alcoholic refreshments are served with food and incorporate a wine shop area where fine wine can be purchased for off-consumption purposes to take home.

Provision is further being made for a fourth category, the special events licence, which will be granted to a person whose business is to cater and provide facilities for the consumption of liquor at special events. The holder of such a licence will be required to obtain a permit in respect of each specific event from the municipality within whose area of jurisdiction the event is taking place. The municipality may set requirements that apply to each event to ensure the orderly trading of liquor at the event. Special events licences and permits will be required for concerts, fetes, fund-raising auctions and festivals.

In view of the decision of the Constitutional Court provision, is being made to license micro-manufacturers through provincial legislation. National legislation prescribes that a micro-manufacturer is a manufacturer who has manufactured less than a predetermined quantity of liquor in the previous financial year. The various thresholds for the manufacturers of beer, wine and spirits have been set in the newly promulgated national liquor regulations. Initial indications are that with the exception of the largest manufacturers the majority of manufacturers within the Western Cape may be regarded as micro-manufacturers.

Micro-manufacturers are an important part of the liquor and tourism industries in the Western Cape on account of the large number of wine estates in the province. The nature of the business of micro-manufacturers is similar to that of off-consumption premises with tasting facilities as the overwhelming quantity of sale is for off-consumption purposes. Requirements similar to those applicable to off-consumption establishments will be set. In certain instances wine estates have restaurants, conference centres or hotels operating from the premises, and as provision is made for the granting of two licences on the same premises in exceptional circumstances, difficulties are not foreseen in licensing the operation of an on-consumption facility on the premises of a licensed micro-manufacturer.

Where a registered manufacturer or distributor intends obtaining the right to sell liquor directly to members of the public, provision is made

for the appropriate licence to be obtained from the provincial Liquor Board. It is foreseen that applications by registered manufacturers and distributors will be subject to the same requirements as those for micro-manufacturers.

Provision is made for a licence authorising the sale of traditional african beer by the manufacturer thereof. This is not seen as a separate category but as part of the regulatory framework for micro-manufacturers. As far as the retail dealer in traditional african beer is concerned, provision is being made for the municipality to issue a permit for the conduct of such a business.

The sale of methylated sprits will be regulated by regulations issued in terms of the national Liquor Act, No 59 of 2003 and need not be dealt with by provincial regulation.

Traditional african beer – provision for exceptional circumstances

The background

The term “traditional african beer” for the product commonly known as “sorghum beer” has been preferred in the national liquor and customs and excise legislation and is accordingly used in this policy document to avoid confusion.

The position of traditional african beer in Western Cape society is such that it may be distinguished from other liquor and justifies a different regime from that imposed on other liquor. Traditional african beer has traditional roots in the continent of Africa and is associated

with the culture and heritage of the people of South Africa. According to available information the majority of consumers of traditional african beer in the Western Cape are Nguni-speaking males in the age group twenty-two to sixty-five years old, with marginal and low-income status. Although the majority of consumers are in mainly rural or peri-urban areas, urbanisation has ensured that traditional african beer is in demand in the formerly black townships in the province.

Few producers are found in the province. At present the distribution of traditional african beer to consumers in the Western Cape takes place from plants conveniently located in neighbouring provinces. Traditional african beer is also manufactured in an informal environment by the addition of water to powdered sorghum malt and other ingredients. The resultant traditional african beer is sold without presently being subject to regulation. Traditional african beer is for cultural activities also manufactured for home consumption.

Traditional african beer manufacturing, distribution and retail sale is an exclusive provincial competency due to the nature of the product. The unique position of traditional african beer was recognised in *Ex parte president of the Republic of South Africa: Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC)*, by the Constitutional Court in its judgment. Commercially traditional african beer is brewed with malted sorghum and maize grits. It is opaque, relatively viscous, pinkish-brown in colour and has a sour taste. It is consumed in an active state of fermentation when between two to four days old.

Commercially manufactured traditional african beer contains less than 3,2 percent alcohol per mass. It has a shelf life of four to six days, depending on the season, after which it becomes undrinkable. It is a product that has to be manufactured, distributed and consumed in less than a week.

Previous relevant traditional african beer legislation

Legislation relating to traditional african beer manufacture and sale in urban areas in terms of the Sorghum Beer Act, Act 63 of 1962, as amended, was used by authorities as a method to ensure acquisition of revenue. The right to manufacture and sell was granted by the relevant Minister to a local authority in an urban area to manufacture and sell traditional african beer as a monopoly in its area of jurisdiction. Certain employers were entitled to manufacture and provide traditional african beer to employees free of charge. Manufacturing and sale by parties other than the local authority was allowed in limited instances, such as by employers, and was strictly controlled. Manufacturing and selling of traditional african beer in the so-called homelands was controlled by other means.

The current Liquor Act, Act 27 of 1989, attempted to regulate the manufacture and sale of traditional african beer. Although minimal requirements were set for the manufacture of traditional african beer and for its sale for on-or off-consumption purposes, the provisions had little regard for the unique nature of the product and its consumers for the trader was required to comply with the general application process regarding liquor licences. This process is

cumbersome and acts as a disincentive to retailers to apply for licences. The legislative provisions were largely ineffective and were ignored by the majority of manufacturers, retailers and consumers.

Proposed policy for traditional african beer

Indications are that the manufacturing and sale of commercial traditional african beer ensures an income for approximately 300 000 persons nationally. Specific figures for the province could not be determined.

Two categories of licences for the manufacture and sale of traditional african beer are to be implemented:

- a licence to produce traditional african beer, and
- a permit for the sale of traditional african beer only.

Application for a licence to produce traditional african beer will be made to the relevant municipal authority in a manner similar to other licence applications. Application for a traditional african beer retailer's permit may be made to the municipality. The municipality will be the competent authority to deal with the applications for a traditional african beer retailer's permit.

It is envisaged that the manufacturers of traditional african beer will have to comply with relevant legislation regarding the quality of the product, as provided for by health legislation. This need not be regulated by the provincial Liquor Board. Application to the Liquor Board to have the manufacture and sale of traditional african beer

licensed will relate to the suitability of the location of the premises, public interest and the possibility of harm to the community caused by the proposed manufacture and sale at the premises. This will entail the standard requirements applicable to other liquor licence applications such as the public notice requirements and the provision of particulars of the applicant and information necessary for licensing purposes. As with other licences, the municipality will not have a discretionary powers to refuse the licence, and objections will be heard by the Liquor Board. The intention is to subject the manufacture and sale of traditional african beer to the same regime as other licences, particularly micro-manufacturers.

The manufacture of traditional african beer for domestic consumption will not require a licence or a permit. The sale of traditional african beer produced for domestic consumption will be prohibited; such manufacture and sale will require a licence. It will be assumed (unless the contrary is proven) that the manufacture of more than a quantity of traditional african beer per day determined by regulation by the Minister responsible for the legislation will not be for domestic consumption. It will be assumed (unless the contrary is proven) that the possession of more than the regulated quantity of traditional african beer will not be for domestic consumption.

A permit or licence to produce traditional african beer will not be required for the manufacture and consumption of traditional african beer at bona fide cultural events. Traditional african beer producers

may sell to permit holders, the holders of liquor licences and members of the public.

Permits for the sale of traditional african beer only (excluding the manufacture thereof) will be issued by the municipality, not the Liquor Board, upon correct application made for it. However, the Liquor Board will act as an appeal authority in instances where a party is aggrieved by the refusal or granting of a permit by the municipality. Such a permit will allow the holder to sell traditional african beer only and no other liquor. The traditional african beer sold by a permit holder must be obtained from the holder of a licence to produce traditional african beer and may not be manufactured by the permit holder, or any other person on his or her behalf. The purpose of these provisions is to allow for commercial trading in traditional african beer, either as a wholesaler or a retailer, only by small businesses without subjecting them to undue regulation.

Upon completion of the requisite form containing such information as may be required to identify the applicant and the premises sufficiently for proper control, and upon payment of the prescribed permit fee, a permit for the premises that is valid for the calendar year will be issued immediately to the applicant. The permit will be renewable annually. The onus will be on the permit holder to renew the permit annually. No provision is made for the advertising of or objections by other parties to, the issue of a permit upon proper application. Provision will be made for a process of complaint and refusal or withdrawal by the municipality of a permit in those instances where

the permit has been abused. The Liquor Board will once again be the authority for appeals against decisions of the municipality. Disqualified persons in terms of the legislation, including persons whose permits or liquor licences have been withdrawn, will not be allowed to obtain permits.

The permit will allow the holder to sell for wholesale or retail purposes. Wholesale distributors of traditional african beer who purchase their supplies from a licence holder will require the same permit as a retailer for the sale of traditional african beer.

A holder of a liquor licence for on-, off- or on- and off-consumption will be entitled to sell traditional african beer in terms of the provisions of the liquor licence and subject to the conditions of such licence. Complaints relating to the sale of traditional african beer by the holder of a liquor licence will be dealt with in a manner similar to that relating to liquor licences by the provincial Liquor Board.

In summary, therefore, a manufacturer will require a licence to produce traditional african beer, which will allow it to sell wholesale or retail. A distributor or retailer will require a permit to sell wholesale or retail. A holder of a liquor licence will not require a permit to sell traditional african beer as the right is covered by the liquor licence.

Requirements for the granting of licences

It is the intention that the licence itself will set out in detail the rights, privileges and conditions of a particular licence and that the licence

holder will be obliged to abide by these conditions and the provisions of the provincial liquor legislation.

In considering the granting of a licence or permit application, the competent authority (whether the Liquor Board, the Chairperson of the Board or the municipality) will not be entitled to grant an application unless it is satisfied that the following requirements have been met:

- The granting of the licence or permit must be in the public interest. Although the public interest is a term that is difficult to define, there have been a number of High Court decisions terminating with the decision in the matter of *Hardy's Cellars CC vs The Chairman of the Liquor Board and others (Unreported Decision in the High Court of South Africa (Cape of Good Hope Provincial Division) No 8643/94 on 25 April 1995)* that set out the principles to be applied. (See also *ASKO Beleggings v Voorsitter van die Drankraad N.O 1997 (2) SALR page 57*)

In the interest of transparency the term “public interest” as defined in the above judgments is encapsulated in the following propositions:

- (a) It does not mean that the public whose interest is to be served is necessarily to be widely representative of the general public.
- (b) It means that the public would be better served if the

applicant is granted the licence than that the existing state of affairs was to continue.

- (c) It is not the national interest that is intended but that of the inhabitants in the area for which the licence is sought or visitors to that area.
- The competent authority may not grant a licence where if the licence will prejudice the residents of a residential area, the learners of a school or the congregants of a religious institution located in the vicinity. The question that immediately arises is: what constitutes “the vicinity”. This is a matter to be decided by the competent authority in respect of each particular application. The Liquor Act, Act 27 of 1989, used the same wording which, although not defining a specific area, allowed the Board a free hand in determining the meaning with regard to each particular application. It presented no difficulty in practice.
 - A new provision is being introduced which requires the competent authority to determine whether the granting of the licence will be detrimental to the health, safety or wellbeing of the community within which the licensed business will be located. It is not possible to define these concepts precisely and the application of the provision must be left to the discretion of the particular competent authority. However, it is intended that the competent authority should *inter alia* consider the probable effect and impact of the granting of a licence on the

community, including the effect that an over concentration of licences in a particular area may have.

- Although provision is being made for both on- and off-consumption this cannot be a general or readily obtainable licence and should only be granted in exceptional circumstances which warrant the granting thereof. If this were not the case, then every restaurant would be entitled to a licence to sell liquor for off-consumption as well as their on-consumption licence which would cause chaos in the industry. The term “exceptional circumstances” has also been dealt with in a number of High Court decisions, and must be left within the discretion of the competent authority to determine whether in a particular instance there are exceptional circumstances or not.
- The competent authority may not grant a licence unless it is satisfied that the applicant is of good character and is not disqualified from holding the licence concerned. As far as disqualification is concerned, this is a strictly legal and objective test. However, it was felt that, despite the fact that from a strictly legal point of view, an applicant is qualified to hold a licence, the competent authority must have the discretion to refuse a licence to a person whom it considers not to be of good character. As a condition for granting an application, the Liquor Board may require an applicant or an employee of the applicant to undergo such accredited training as the Liquor Board may determine.
- Lastly, it is provided that a licence may not be granted unless the Board is satisfied that the premises to which the licence is

applicable are already suitable for purposes for which such premises will be used or if the premises have not yet been built or completed, that such premises will on completion be suitable for the purpose.

Provision is being made for the situation where the applicant dies or becomes insolvent or in any way incapable of handling his or her own affairs before the date upon which the application is granted. The executor, administrator or curator of the applicant will step into the applicant's shoes.

Transferring the ownership of a liquor licence from the holder to another person

The transfer of liquor licences in terms of the Liquor Act, Act 27 of 1989 was largely unproblematic and it is not necessary to bring about any drastic changes to the process.

The current transfer process is, however, not without practical problems that need to be taken into account. Experience has taught that problems arise in instances where existing businesses have not adhered to the conditions of their current liquor licences and the nature of such businesses has changed. The decision of the prospective holder to purchase an existing business is generally based on the assumption that such business is conducted in accordance with the existing licence conditions. It is only when the Liquor Board, upon consideration of the report by the designated

liquor officer, insists that the operation of the business should conform with the licence conditions, that attempts are made by the current holder to convert the licence conditions to meet the commercial realities of the business. The most common example is where the holder of a restaurant licence which has undergone a change and became a pub or nightclub, sells a successful business that does not conform with its licence conditions. An attempt is then made to transfer the existing restaurant licence.

Transferring a liquor licence is normally part of a commercial transaction relating to the sale of an established business. It may also occur with the establishment of a new business, when the prospective holder seeks to obtain the licence with the intention of using the newly acquired licence to shorten the application procedure or negate the possibility of objections to such newly established business acquiring the right to trade in liquor. The Liquor Board primarily considers the disqualification or suitability of the prospective holder to trade in liquor and the question of monopolistic practices. The application for the transfer of a liquor licence will be lodged in the prescribed format by the holder of the licence with the municipality in whose area of jurisdiction the premises are located. It will not be necessary for the applicant to advertise the transfer application, but a prescribed application fee will have to be paid. The municipality will, after receipt of the application and within the prescribed time, refer a copy of the application to the designated liquor officer. The designated liquor officer will within the prescribed time provide to the municipality a report on the suitability or otherwise of the prospective

holder to trade in liquor. The designated liquor officer may further include in the report any other relevant matter pertaining to the conduct of the existing business to which the licence applies or any aspect of the newly established business. The municipality must provide the Liquor Board with the original application and the designated liquor officer's report within the prescribed time.

The Liquor Board may approve or reject the application. It may postpone the application to obtain further information or to ensure that steps are taken to address any matter raised in the report by the designated liquor officer. If the Liquor Board intends imposing any further conditions on the licence, both the prospective holder and the current licence holder will be given the opportunity to comment on the proposed conditions. The powers and functions of the Liquor Board as described in this policy document will be applicable to applications for licences transfer. In particular the Liquor Board may require the prospective holder to undergo such training as it deems necessary and it may grant the licence conditionally subject to the prospective holder successfully completing the training.

Experience of the current Liquor Act has shown that even a simple transfer application may be delayed for an inordinately long time and that consequently the prospective owner assumes occupation and commences trading well before the transfer application has been approved. This occurs as a result of the realities of commercial transactions where dates of assumption of risk, dates of occupation of rented premises, etc. are determined by the agreement of sale. In

an attempt to regularise the situation the practice has developed of the seller, who is the licence holder, appointing the buyer, who is the prospective holder, as manager of the premises, thereby allowing the control of the premises to pass to the prospective holder before the transfer has been approved, or occasionally even considered. This is a fiction which is allowed by the authorities because of the demands of commercial trade, but which does not foster respect for the law. It is therefore necessary to ensure that applications for transfer of ownership of licences are expedited. It is foreseen that transfers of licences will be dealt with by a committee of the Liquor Board dedicated to this task, if necessary. Provision will be made for a prescribed period within which the application, once all the required documents have been lodged, will have to be considered.

Upon approval of an application for the transfer of a liquor licence by the Liquor Board, the new holder will be notified of the approval and the applicable licence conditions in the prescribed format. Upon payment of the prescribed transfer fee by the licence holder and submission of proof of such payment to the Liquor Board, a licence specifying the applicable conditions will be issued in the name of the licence holder. Such licence must be displayed on the licensed premises in the prescribed manner, together with any other information prescribed by the regulations.

There are further instances apart from commercial transactions where the transfer of a liquor licence is required, such as the death or incapacity of the holders of liquor licences or the prospective holders

during the application process. The rights accruing to a liquor licence are real rights, capable of being disposed of by inheritance, subject to limitations regarding disqualification, or attachment during legal process. In these instances the holder is not able to dispose of the rights and the executor of the deceased estate or the sheriff of the court will act on behalf of the estate during a transitional phase. It will be impractical to require the transfer of the licence to the executor or to the sheriff and provision is therefore made for the transfer of licences on behalf of holders who are not able to act on their own behalf. Provision is made for the business to which the licence relates to continue to trade in liquor, subject to measures to ensure that such trading takes place under suitable supervision.

If the holder of a licence dies, becomes insolvent or is otherwise legally incapable of exercising the rights relating to the licence, a person legally responsible for the affairs of the licence holder, such as the administrator of a deceased or insolvent estate, a judicial manager or curator or the sheriff (herein referred to as the administrator) will from the date of so becoming responsible be regarded as the licence holder and all rights and obligations regarding the licence will vest in such person. If the business that the licence relates to continues to trade in liquor and the administrator is personally not able to exercise the rights or ensure that the responsibilities regarding the licence are met, such administrator will give every person who has a financial interest in the business reasonable notice thereof and apply to the Chairperson of the Liquor Board for the appointment of a suitable and responsible manager

nominated by him or her to manage the business conducted under the licence. The Chairperson may require the responsible manager to have undergone or to undergo prescribed training. The trading of liquor under the liquor licence will cease until a responsible manager has been appointed. These provisions, with the necessary adaptation, are also applicable to instances where the only member of a company or close corporation who is the holder of a liquor licence becomes incapable of attending to his or her own affairs.

The administrator will as soon as possible in the execution of his or her duties ensure that the licence is transferred to the prospective holder. The administrator will in the execution of duties be entitled to take all the necessary steps, including making any application, to ensure the transfer of the liquor licence.

These provisions, with the necessary adaptation, are also applicable to the incapacity of a prospective holder to act on his or her own behalf. If an administrator has not been appointed, the Chairperson may appoint any other suitable person as responsible manager to attend to the management of the liquor licence on such conditions and for such period as may be necessary.

Disqualification from holding licences

No licence will be granted or transferred to the following persons, who will be disqualified from holding a liquor licence. The licence of a person who becomes disqualified will not be renewed when the

licence is due for renewal by application. Disqualified persons are the following:

- A person who has been sentenced to imprisonment without the option of a fine within sixty months prior to the lodging of the application.
- A person who within sixty months prior to the lodging of the application has been found by a competent authority to have contravened the provisions of the provincial or national liquor legislation or the conditions of a liquor licence or permit issued in terms of the provincial or national legislation or any prior legislation regulating the sale and distribution of liquor, and as a consequence, has been declared by that competent authority to have been disqualified from holding a liquor licence, or to be unfit to do so.
- Provision is being made that no licences may be granted to insolvents, persons under the age of twenty-one years or persons who in terms of the national liquor legislation may not hold specific provincial licences e.g. manufacturers and distributors, unless notice has been given to the national Minister of Trade and Industry that such a person intends applying for a licence issued in terms of provincial legislation and the Minister has exercised or waived the right to review the terms of the registration.
- Notwithstanding the above, the Liquor Board, upon good cause shown, may declare an applicant who has been disqualified in terms of the first two points to be qualified.

Disqualifications applying to a particular person will also apply to the spouse of that person and, in the case of a company and close corporation, to the controlling shareholders or members of the company or close corporation. Provision is being made that the disqualified person may neither directly nor indirectly obtain a financial interest in the business to which a liquor licence relates.

Incomplete premises, extensions and structural alterations

When the Liquor Board has granted a new licence, the licence must be issued to the applicant. The licence will authorise the holder to sell liquor in accordance with the provisions of the provincial liquor legislation and the conditions stipulated in the licence itself on premises depicted on a plan approved by the Board.

At any time after the issue of the licence the Liquor Board either with the consent of the holder or after affording the holder an opportunity to be heard, may declare the licence to be subject to such further conditions as the Board may deem fit to impose. The Liquor Board after following the prescribed procedures, may also suspend, withdraw or amend any condition of a liquor licence.

Where an application for a new licence is granted in respect of incomplete premises, the Liquor Board must issue a certificate informing the applicant of the approval of the licence subject to the condition that the holder will not be entitled to trade upon the premises until such time as the holder has provided conclusive proof that he or she has complied with the conditions of the licence relating

to the completion of the premises in accordance with the approved plan or any other conditions which the Board may have imposed upon granting the application, including, but not limited to, the successful completion of a prescribed training programme.

Where the conditions imposed per certificate by the Liquor Board on the approved licence, which has been issued in respect of incomplete premises, are not complied with within a period of twelve months from the date upon which the certificate has been issued, the approval will lapse and become of no force and effect. A new liquor licence application will have to be lodged and considered upon expiry of the one-year period, if the applicant still intends proceeding with the trading of liquor from the premises.

The holder of a licence may not structurally alter, extend or reconstruct the licensed premises without the prior approval of the Liquor Board. In view of the fact that in practice many licensed premises completely alter the nature of the business conducted there after the approval of the licence the provincial liquor legislation will provide that the holder of a licence may not at any time alter the nature of the business which is being conducted upon the premises without the consent of the Board. This will prevent the very prevalent practice of obtaining a restaurant liquor licence in respect of premises and then proceeding to operate a bar or night club there.

Prohibited financial interest and managers

The provincial liquor legislation will provide that a person who has a controlling interest in a company, a close corporation or a partnership which is registered for the manufacturing or distribution of liquor in terms of the national liquor legislation may not, without meeting the requirements contained in the national legislation relating to the review of such registration, be granted a licence in terms of the provincial legislation or be allowed to obtain a financial interest in such a licence.

It will not be permissible for the holder of a licence to allow any other person to obtain a controlling interest in the business to which the licence relates without the prior approval of the Liquor Board. This provision is necessary to prevent licences falling into the hands of disqualified and unsuitable persons by holding licences through fronts or by obtaining an interest in the company or close corporation holding the licence.

Where a licence is held by a company, close corporation, partnership or trust, the holder of the licence must appoint a natural person who is a permanent resident of the province and has not been disqualified from holding a liquor licence to manage and be responsible for the conduct of the licensed business. The Chairperson may upon application by any person who has a substantial proven interest in the conduct of a licensed business appoint a manager to manage the licensed business where the licence holder has abandoned the licensed business.

The licence holder or a person responsible for the management of the business will be required to undergo training with regard to the sale and supply of liquor as set out elsewhere in this document. A person may not be appointed as a manager of a licensed premises unless such person has successfully undergone the prescribed training.

A natural person appointed in terms of the abovementioned clause will be subject to the same obligation and liabilities as the holder of the licence. Nothing contained in the provincial liquor legislation will absolve the licensed holder from any obligation or liability in terms of the provincial liquor legislation or the licence or permit issued despite the appointment of a manager.

Other business on licensed premises

The holder of a licence must not allow the conduct of any other business and the sale of liquor upon the licensed premises except in accordance with the permission of the Liquor Board as endorsed upon the licence when issued or as amended at a later date. Except with the approval of the Liquor Board, as endorsed upon the licence, the holder of the licence may not allow the conduct of more than one licensed business upon the premises. Whether or not this is allowed will be at the discretion of the Board. A particular example that may be favourably considered is the conduct of an off-consumption business as a manufacturer or micro-manufacturer together with the

on-consumption business of a restaurant from the same building on a wine estate or at a micro brewery.

Liquor may only be sold on licensed premises at the points of sale indicated on the licence itself. Despite this the holder of the licence will have the right to advertise the sale of liquor elsewhere than upon the licensed premises.

Validity of licences

The legislation will provide that licences are valid for a period of one year from the date of issue. A renewal notice will therefore be issued automatically for every licensed premises in the eight month after the month of issue of the original licence, allowing the holder of the licence a four-months period in which to pay the annual renewal fee before the expiry of a twelve-month period. The process of issuing renewal forms will continue in respect of every licence every year, in the eighth month, subject to the provisions relating to the review of certain licences by the Liquor Board as described in this document. Late payments may only be accepted once the Board has condoned the late payment subject to such penalty as the Board may impose. An application for condonation must be made in writing within sixty days of the expiry date, failing which the licence will be deemed to have lapsed.

Licence holders who during the preceding twelve months have been convicted of an offence in terms of the Act, who have become disqualified from holding a licence, who have failed to comply with a

compliance notice or who have been found to be unfit to hold a licence by the Liquor Board will not be entitled to the automatic renewal of their licences. These licence holders will be notified after the expiry of eight months of the term of the licence that they have to apply for the renewal of their licences to the Liquor Board not less than three months before the date of expiry of the current licence. Such notice will contain the grounds on which it has been decided that a renewal application will have to be brought to enable the licence holder to address the issues mentioned in the notice in any renewal application that may be brought. The application process for the renewal of a liquor licence by a licence holder who has been notified that the licence will not be renewed automatically will be prescribed by regulation, but it is foreseen that the process will be similar to that applicable to a new licence application. A licence in respect of which a renewal application has been lodged will remain valid until the expiry date of the current licence period or, if the renewal application has not been disposed of, until the final adjudication of the application by the Liquor Board, after which it will either be renewed or it will lapse. The Liquor Board may at this stage also impose further conditions or amend the currently applicable conditions.

The licence of a licence holder who has been notified that it must apply for a renewal notice and fails to do so will lapse upon expiry of the current licence. A licence holder who has been notified that it must apply for a renewal notice and fails to do so within the prescribed time may only apply for the renewal of its licence if lodging

the late application is condoned by the Liquor Board upon justifiable grounds being shown by the applicant. The granting of condonation for the late application may be made subject to such conditions as the Board may deem appropriate, including, but not limited to, the imposition of an administrative fine for failure to lodge the application in good time.

A licence holder whose licence has lapsed may by public auction dispose of liquor stored upon the premises within thirty days of the date upon which the licence has lapsed.

A licence that has been suspended by the Board will be valid in all respects except that the holder thereof will not be entitled to sell liquor in terms thereof during the period of suspension.

A licence that has been withdrawn by the competent authority will lapse from the date of such withdrawal.

Requirements regarding the process of applying for new licences that are to be included in regulations

An application for a new liquor licence or a permit for a special events or a traditional african beer seller's permit must be lodged with the municipality in whose area of jurisdiction the proposed premises are situated. Provision is made for the appointment by the provincial Minister responsible for the provincial liquor legislation for the appointment as agents of the Liquor Board of municipalities which have the capacity to fulfil the functions of competent authorities. If

the premises are located in the area of jurisdiction of a municipality that has not been designated as a competent authority, the application will be lodged with the Liquor Board Administration, which will ensure that the functions that are normally dealt with by a municipal competent authority are complied with.

An applicant must provide the following information and documentation as part of the application and any additional information or documentation that the competent authority may require:

- The full name of the applicant, his or her identity number, company or close corporation number, residential and business addresses, postal address, business telephone number.
- Particulars of the applicant, including a curriculum vitae and particulars enabling the competent authority to establish whether the applicant is qualified and competent to be granted the licence concerned. The applicant is to include a description of the prescribed accredited training the applicant has undergone or will undergo or, if the applicant is a legal person, what accredited training its responsible manager has undergone or will undergo.
- In the case of an applicant being a company, close corporation or trust, the names etc of the shareholders, directors, members or trustees. The information that must be provided regarding applicants that are natural and legal persons includes the details referred to the national Liquor Act, No 59 of 2003 that

are to be supplied for the purpose of monitoring progress in transforming the industry in relation to black and women's economic empowerment.

- Full particulars of measures that the applicant intends taking to ensure the limitation of the abuse of alcohol that result from the sale or supply of liquor from the licensed premises. These measures may include, but is not restricted to membership of a trade organization capable of enforcement of approved code of conduct.
- Full particulars of all other interests in the liquor industry held by the applicant or any functionary of the applicant.
- In the case of applications by registered manufacturers or distributors, proof of the waiver of the right to review the terms of the registration or the terms of the revised registration by the national Minister must be provided.
- Type of licence applied for.
- Proposed name of the licensed business.
- A full description of the proposed business.
- The address of the proposed premises giving the erf, street or farm number.
- Whether the applicant will have the right to occupy the premises and the nature of the right, in other words whether the applicant is the owner of the premises or occupies the premises in terms of a lease agreement.
- The place or places where the liquor will be dispensed, stored and consumed.

- If the premises have been completed, colour photographs clearly depicting the inside and outside of the premises.
- If the premises have not been completed, a detailed description of the proposed premises, the date upon which construction has commenced or will commence and if construction has commenced, the progress that has been made and when construction will be completed.
- A plan of the premises showing the dimensions of each room and the construction of the premises, the layout, furnishings, décor, fixtures, fittings and floor coverings accompanied by specifications.
- If the premises are properly zoned for the conduct of the licensed business written proof of this fact.
- If the premises are not properly zoned, full particulars of the steps taken to obtain the consent of the local authority to conduct the licensed business on the premises. This may also consist of a copy of an application lodged with the municipality in this regard. It is envisaged that in most instances where the correct land use rights for the proposed premises have not already been obtained, the application to the municipal planning authority for the correct land use rights will be lodged simultaneously with the application for the liquor licence.

Procedure upon receipt of application

Within a prescribed number of days (seven days is proposed) from the receipt of an application the municipality must notify at least the following persons or institutions of the lodging of the application:

- The designated liquor officer in whose area of jurisdiction the licensed premises are located.
- The community policing forum for the area in which the premises are located.
- The appropriate local liquor forum, if any has been established by the municipality.
- In instances where the application relates to premises within a residential area, the municipality will inform the directly adjoining land owners in writing in the prescribed format of the liquor licence application. The municipality will be required to provide proof of notification of the land owners to the Liquor Board.

The public notification and advertisement process for liquor licence applications will simultaneously include notice to the public of the related land use applications, where this is applicable.

The municipality may at its own initiative inform any other interested person, including the local ward councilor or rate payers associations, that it deems necessary of the application.

It is foreseen that the prescribed application fees payable by applicants will include and make provision for the expenses incurred by the municipality to meet the minimum requirements.

It will be the responsibility of the applicant to ensure that at own cost notices appear in two of the official languages of the Western Cape Province predominately spoken in the area where the premise is located, in the prescribed format, on the date of lodgment of the application in the Provincial Gazette and in a community newspaper distributed in the area where the premises is located. The applicant must further ensure that notices are placed in the prescribed format in two of the official languages of the Western Cape Province predominately spoken in the area where the premise is located in a prominent place within public view on the premises for the full duration of the public notification period. The applicant is to provide proof of publication and notification to the Liquor Board.

While the Liquor Act, No 27 of 1989 does not prescribe any further public notification but the advertisement in the Government Gazette, the Liquor Board of the Western Cape has since May 2004 required adherence to guidelines issued by it similar to the above in instances where applicants have applied for liquor licences within the residential areas. The intention of the guidelines are to ensure that the Board is able to give due consideration to the requirements of section 22 (2)(d) of the Liquor Act, No 27 of 1989 that require that the impact of the licence on the activities of educational facilities, religious institutions and the residents of the residential area are to be assessed and considered. It has been found that the guidelines have been practical and effective in that the objective of improved public notification has been achieved at a reasonable cost to the applicant.

The municipality must keep a copy of the application and any document subsequently lodged available for inspection by the public at all times and must allow any person to make a copy at their own cost.

The website will further list the details of applications lodged and will allow those members of the public with access to the internet to peruse the detail of pending applications.

Objections, representations, recommendations of liquor forum

The proposed legislation differs from the current legislation in that it introduces the concept of affected and interested parties as objectors. This concept is a familiar one in the ambit of municipal functioning and has been tried and tested in land use applications. Any interested or affected person or organisation (including the designated liquor officer and the inspectorate), may within a prescribed number of days (twenty one days is proposed) from the date of lodgment of the application was lodged, lodge an objection to the application or make representations in support, provided that a copy of such objection or representations must be served on the applicant before being lodged and proof of such service submitted with the objection or representation. Every objection must disclose the interest (*locus standi*) that the objector has in the particular application, the grounds for objection to the application and contact persons and particulars of the objector or an authorised representative.

The liquor forum, if established, must within a prescribed number of days (forty-two days is proposed) from the date on which the application was lodged, lodge its fully substantiated recommendations to the municipality. If the proposed premises do not conform to the land use planning requirements for the proposed business, the local liquor forum may include in its report the land use planning requirements to be met and provide its recommendations in respect thereof for consideration by the Liquor Board.

If provided for in the by-law that establishes the liquor forum in such municipality, the municipality may instruct the liquor forum after receipt of objections to an application to act as mediator between applicants and objectors. Where such mediation results in the withdrawal of an objection, the liquor forum must lodge a notice of such withdrawal signed by the erstwhile objector with its report. Where the mediation results in an agreement on proposed licence conditions, a record of such agreement signed by the parties will be included in the report. As the municipality and liquor forum are not the competent authority in respect of new licence applications, the proposed agreed conditions are subject to the approval of the Liquor Board. If the liquor forum is unable to resolve the objection within the prescribed time, its report to the Liquor Board will contain its recommendation.

The Chairperson of the Liquor Board may on consideration of a written motivation from the liquor forum in particular instances extend

the time period within which the liquor forum is to submit its recommendation, as provided for in this policy document.

Forwarding of documents

The municipality must upon expiry of the prescribed period allowed for objections forward to the Liquor Board the original application and all documents received in connection with it. These documents include the application with all its supporting documents, proof provided by the applicant of compliance with its public notification obligations, proof of the sending by the municipality of notices to the nearest adjacent land owners where this is required, the designated liquor officer's report, objections (if any), the report by the liquor forum (if established), and any agreements entered into through the mediation of the liquor forum.

These documents must be forwarded to the Liquor Board within a limited prescribed period from the date of expiry of the objection period. It must be noted that the municipality is the competent authority in regard to the issue of permits only, while the Liquor Board is the competent authority on new licence applications, transfer applications, extension/alteration applications, renewal applications and applications for amendments and other applications regarding liquor licences not specifically allocated to municipalities, and therefore a delay in the submission of liquor licence applications to the Liquor Board for purposes other than those allowed for in the legislation will not be provided for. All objections and comments must be lodged within the prescribed period and the liquor forum must

submit its report within the prescribed period, unless the Chairperson of the Liquor Board has approved otherwise for a purpose as provided for in the policy.

CHAPTER FOUR – DEALING WITH THE NEGATIVE CONSEQUENCES OF THE LICENSED TRADING IN LIQUOR; COMPLAINTS AGAINST LICENCE HOLDERS AND THE SUSPENSION AND CANCELLATION OF LICENCES

Complaints by public

In those instances where affected or interested parties such as neighbours of licensed premises, the municipality or the South African Police Service have cause to complain that the licence holder is in breach of its licence conditions or breaches the provisions of the provincial liquor legislation or that the licence is no longer in the public interest or that harm is caused to the community by the sale and/or consumption of liquor at the licensed premises, a the complainant may lodge a complaint under oath with the Liquor Board Inspectorate or the designated liquor officer for the area of jurisdiction in which the licensed premises are located. Complainants who are unable to lodge the complaint in the prescribed manner, will be given the appropriate assistance to enable them to lodge the complaint. If a complaint is of such a nature that another law enforcement agency is in a better position to enforce the provisions of the provincial liquor act or the conditions of the licence or any other legislation that may be applicable, the designated liquor officer may refer the complaint to that agency.

Investigation by inspectorate/police

The designated liquor officer may enforce the provisions of the provincial liquor act and the licence conditions and issue a

compliance notice or also compile a report to the inspectorate, as provided for. He or she may also take the appropriate enforcement measures applicable to criminal proceedings, if so warranted. Complaints will be investigated by the designated liquor officer who, if he or she deems it appropriate, may compile a report to the provincial inspectorate and make recommendations regarding measures that in his or her opinion will resolve the complaints. The report will be submitted to the Manager: Monitoring and Compliance for a decision on the recommendations. If the designated liquor officer is not able to investigate the complaints, the inspectorate, after consultation with the relevant authorities, may assign an inspector to conduct the investigation. The Inspectorate may also refer complaints to the appropriate designated liquor officer for investigation.

Compliance notices

The designated liquor officer or an inspector of the provincial inspectorate may issue a notice to the licence holder or the person in charge of licensed premises to comply with the provisions of the act or the conditions of the licence. The compliance notice will be in the prescribed format and will contain the date, time and place and the nature of the transgression, the name of the transgressor and, if this differs from the name of the transgressor, the name of the holder of the licence. If so required, for example where an unauthorised extension of the licensed premises has taken place, a date before which the transgressor must comply with the act or conditions must be stipulated. A compliance notice will not be invalid merely because the details contained therein are incorrect, on condition that there is

substantial compliance with the prescriptions. The designated liquor officer or inspector will retain a copy of the compliance notice and a copy will be provided to the administration of the Liquor Board within the prescribed period. A licence holder or the person in charge of the premises who disputes the correctness of the substance of the compliance notice, may in writing and under oath submit to the provincial inspectorate a statement containing the grounds of the dispute and his or her version of the events. A copy of the statement must be served on the designated liquor officer or the supervisor of the designated liquor officer within the prescribed time from the date of the issue of the compliance notice, and the original, with proof of service of the copy, must be sent by pre-paid registered mail or hand delivered to the provincial inspectorate within the prescribed time from the date of service on the designated liquor officer or his or her supervisor. Upon receipt of the copy of the statement, the designated liquor officer will submit a statement of the event in writing and under oath to the inspectorate. The compliance notice and the statements of the licence holder or person in charge and the statement of the designated officer will be submitted by the Manager: Monitoring and Compliance, with his or her recommendation, to the Chairperson of the Board for resolution. The Chairperson may take any further steps that are expedient to determine the facts pertaining to the matter. The decision of the Chairperson on the matter is final.

Failure by the licence holder to comply with the instructions contained in a compliance notice may result in further steps being instituted against the licence holder by the Manager: Monitoring and

Compliance, acting on a report by a designated liquor officer or an inspector.

At a hearing of the Liquor Board a compliance notice will be prima facie proof of the transgression averred therein, unless the contrary is proven. During the annual renewal of licences the Liquor Board will take the compliance notices that had been issued in the preceding one-year period into consideration in determining whether a licence will be renewed.

Charges by inspectorate and police

After investigation of a complaint, as directed by the provincial inspectorate, in those instances where the Manager: Monitoring and Compliance deems it justifiable to initiate a hearing of evidence by the Liquor Board, a hearing will be initiated by the service of a summons to this effect upon the licence holder or the person in charge of the premises. The summons must contain a summary of the case the licence holder will have to meet, with a statement of his or her rights to legal representation and the possible consequences of such a hearing.

The licence holder may obtain copies of the report by the designated liquor officer and the statements of witnesses and copies of documents relating to the complaints from the inspectorate. The Manager: Monitoring and Compliance, after due notice to the licence holder or, where the licence holder has appointed a legal representative, due notice to the representative, may apply to the

Chairperson of the Liquor Board for approval not to supply such information to the licence holder. The Chairperson of the Liquor Board may only grant such approval where, on the balance of probabilities, it is found that reasonable grounds exist to believe that it will be to the detriment of the administration of justice if the information is made available. Any order of the Chairperson in this regard will include reasonable steps to enable the licence holder to exercise its rights, including but not limited to, deletion of the identification of witnesses from statements and reports.

Notices to attend the hearing will be served on the witnesses by the designated liquor officer or the provincial inspector, as determined by expedience.

A witness that has been properly notified and who attends a hearing is entitled to the prescribed allowances. The provincial Minister responsible for the provincial liquor legislation, after consultation with the provincial Minister responsible for finance, may determine scales of allowances for witnesses and prescribe specific allowances for witnesses who render expert evidence. In prescribing the allowances for witnesses the Minister may refer to other legislation prescribing allowances for witnesses that attend hearings of statutory bodies or courts.

Investigations/Enquiries/Hearings by Board

On the date of hearing the Chairperson of the Liquor Board will require the licence holder or any person who is present to represent

the licence holder, to respond formally to the averments in the summons by indicating those averments that are denied, those that are admitted and the essence of the licence holder's case. This may be done either in writing or verbally. If done verbally, the Chairperson must in writing record the averments that have been admitted and the essence of the licence holder's case and obtain confirmation from the licence holder that this has been correctly recorded. The averments that have been admitted will be regarded as proven on the balance of probabilities and no further evidence need to be presented in this regard by the Liquor Board prosecutor. As the Liquor Board is a statutory administrative tribunal and not a court of law the licence holder may not elect not to admit or deny averments nor refuse to disclose the basis of its case.

If the licence holder or any other person on behalf of the licence holder is not present at the hearing, the Chairperson may rule that the hearing is to proceed in the absence of that person.

The Manager: Monitoring and Compliance will thereafter be allowed to present any evidence that he or she intends to lead, and after finalisation of the Manager: Monitoring and Compliance's case, the licence holder will be allowed to present its case. Witnesses will be subject to questioning by the other party and the Liquor Board. The onus will be on the Manager: Monitoring and Compliance to prove the allegations contained in the summons sheet on a balance of probabilities. The law as applicable to administrative tribunals will be applicable as far as the rules of evidence are concerned.

If, during the course of the hearing, the evidence justifies interim measures, including the suspension of the licence in whole or in part, the Liquor Board, after due process, may make such order. An interim order will be discharged at the conclusion of the hearing or at such earlier stage during the hearing as the Board may determine.

Upon conclusion of the evidence the Liquor Board will come to a finding on the evidence. It may dismiss or postpone the case. It may withdraw the licence or as a corrective measure suspend it for a limited period or indefinitely. It may as a corrective measure to ensure the licence remains in the public interest, amend the licence conditions or impose further or other conditions, including requiring the licence holder or the person in charge of the premises to undergo training. The Liquor Board may also, in addition to corrective measures, as disciplinary measures impose an administrative fine or suspend the licence for a limited period, which measures may be suspended wholly or in part on the conditions and for the period by the Board deemed appropriate.

The Liquor Board has the power to enforce its own rulings and the Chairperson, after considering evidence in writing under oath of a failure to adhere to the ruling of the Liquor Board at a hearing, may take any steps as he or she deems appropriate, including ordering the forfeiture of the licence after due notice to the licence holder. Failure to adhere to the ruling of the Liquor Board will be a criminal offence.

The municipality and the designated liquor officer must be informed of any finding of the Liquor Board. The information will also be published on the website and may be made available upon request.

Interim orders

The legislation must provide for a process of interim orders to be issued by the Liquor Board in exceptional circumstances that justify the issue thereof. An interim order may be granted only upon application in writing supported by evidence on affidavit lodged by the Liquor Board prosecutor. Such an interim order may not be granted without the application and the supporting affidavits being served by a person authorised thereto by the Minister by regulation, such as the designated liquor officer or the provincial inspector, within the prescribed time before the application is presented to the Liquor Board. Service of the application and the supporting documents and any subsequent interim order will be proven by way of prescribed return of service duly certified by the authorized person.

If an interim order is granted, the order must be served upon the licence holder or the person in charge of the premises at the location of the premises, and the order will take effect from the time of being served.

The order must indicate a return date upon which it may be made a final order. The licence holder may answer to the application by way of affidavit within the prescribed time before the return date of the

interim order. On the return date the Liquor Board, after considering the evidence presented to it, may dismiss, amend or confirm as final the interim order or make such order, including referring the matter for a hearing of oral evidence, as it may find necessary.

The licence holder, after due notice to the Manager: Monitoring and Compliance, may anticipate the return date of the interim order, by application to the Chairperson of the Liquor Board. If reasonable grounds exist, the Chairperson may order the return date of the interim order to be amended and make a further order as may be appropriate in the circumstances.

CHAPTER FIVE – THE ROLE OF MUNICIPALITIES IN THE LICENSING OF THE LIQUOR INDUSTRY

The envisaged role of municipalities

It is envisaged that municipalities will, with due regard to the correct procedures determined by law, in principle be involved in the licensing of outlets for the sale of liquor in two ways.

Municipalities will serve as a point of lodgment of applications and objections and will act as agents for the Liquor Board in the licensing process. In this regard municipalities will have no decision making authority and are not designated as competent authorities for the purpose of liquor licensing.

Municipalities will further have assigned authority as competent licensing authority to consider and determine permits and promulgate bylaws regulating the liquor trading times and days, the establishment of liquor forums and the determination of areas and times when the possession or the consumption of liquor in the public will be prohibited, subject to minimum norms and standards determined by the provincial Minister responsible for liquor licensing legislation. These specific municipalities will be appointed as competent authorities for the purposes of the legislation. In this regard municipalities will have decision making functions.

These provisions do not detract from the municipalities' competency in terms of Schedule 5, Part B of the Constitution to control outlets

that sell liquor to the public that is exercised independently by the municipalities from the provincial liquor licensing function. The control of undertakings that sell liquor to the public relates to the function of the municipalities to ensure that all liquor retailers are licensed and to monitor and enforce compliance by licence holders with the applicable legislation and the terms and conditions of their licences.

Appointment of certain municipalities as agents

The Minister responsible for the provincial liquor legislation may, in consultation with the provincial Minister responsible for local government and in compliance with the provisions of section 238 of the Constitution of South Africa, appoint specific municipalities as agents of the Liquor Board. These municipalities will be points of lodgment of liquor licence applications and oversee the processes of public notification and objections described in this document. Adequate resources and capacity building provisions will be made available to ensure that the functions can be exercised.

It is foreseen that this function will be fulfilled by category A and B municipalities as determined in the Municipal Structures Act, Act 32 of 2000. In certain exceptional instances, Category C municipalities may be appointed to fulfil these functions. Category C municipalities will be appointed to fulfil the functions in those geographical locations that fall within their area of jurisdiction, but outside the jurisdiction of other categories of municipalities. Category C municipalities may be appointed by the Minister if a Category B municipality that is within its

geographical area of jurisdiction is not appointed to fulfil the functions. In those instances where the Minister does not appoint a municipality as agent, the Liquor Board will fulfil the functions that are normally performed by the municipalities as agents.

Functions of municipalities as agents

A municipality will serve as the point for lodging applications, objections and reports on applications by the designated liquor officers in respect of premises within the municipal boundaries. A municipality will within the prescribed time after the application has been lodged ensure that the affected and interested parties are informed of it in the prescribed manner. This includes at the minimum the community police forum and the liquor forum, if established. In residential areas, the adjoining land owners must be notified. The municipality will further provide the designated liquor officer with a copy of the application within the prescribed time limit to enable him or her to compile the report to the Liquor Board. If the municipality deems it necessary it may inform other interested parties, such as the ward councilor and the residents and rate payers association.

The municipality will provide a point for lodging for objections and the report on the application by the designated liquor officer as well as the report by the liquor forum, if established. The application, copies of the advertisements and notices to interested and affected parties, objections and the reports by the designated liquor officer and liquor

forum must be forwarded to the Liquor Board per registered mail by the municipality within the prescribed time limit.

Upon an application for a new liquor licence being lodged, the application will be registered by the appropriate municipality on a web-based provincial system that provides for data capturing of the details of the application by the municipality. The system will also provide for the requirements relating to the limited exemption that will apply to existing registered liquor traders who intend benefiting from the limited exemption during the process of regularisation. The system provides for financial control measures regarding every licence application and licence, including the payment of a prescribed application fee.

It must be noted that the municipality is not the competent authority for liquor licences, only for permits, and subject to the establishment of a liquor forum or forums in its area of jurisdiction that will be able to provide reports, it is not required to comment on the merits of liquor licence applications or make recommendations to the Liquor Board. It is a point for lodging and collating information. It may however lodge objections to applications on its own behalf for consideration by the Liquor Board.

The municipality does not have the authority to delay the application for consultation, either internally within its various departments and decision-making structures or, subject to the establishment of a liquor

forum, outside its structures to allow it to consult with interested and affected parties.

Assignment of functions to specific municipalities

The provincial Minister responsible for liquor licensing legislation may, after consultation with the provincial Minister responsible for local government and in compliance with the provisions of section 10 (2) and (3) of the Municipal Structures Act, No 32 of 2000, designate specific municipalities as competent licensing authorities for the purpose of the provincial liquor legislation. The functions assigned to such competent municipal authorities will be funded from the revenue generated through the licensing process. Provision will further be made for the capacity building of municipal officials tasked with the functioning.

A municipality may consider and approve applications for permits for individual special events by holders of special events licences. A municipality may also consider applications for permits to sell traditional african beer. If a municipality refuses or grants a special events permit or a traditional african beer seller's permit, an aggrieved party may lodge an appeal with the Liquor Board in the prescribed format and within the prescribed time limits.

A municipality may by by-law of general application determine the matters within its competence as provided for in this policy document. A by-law that relates to liquor licensing will meet the requirements prescribed for by-laws as contained in Municipal Structures Act, No

32 of 2000 and the minimum norms and standards contained in the regulations by the provincial Minister responsible for liquor licensing legislation.

Liquor trading days and hours are determined by by-law

Liquor trading days and hours in an area of jurisdiction of a municipality will not be imposed by the provincial liquor legislation. Provision will be made in the provincial legislation to authorise the appointed municipalities to set the liquor trading days and hours for general application by by-law. Should a municipality fail or omit to make the required by-law, the Liquor Board may be authorised to determine liquor trading hours for each application in a particular municipal area of jurisdiction. By-laws may provide for different trading days and times for different categories of liquor licences within its geographical area of jurisdiction as a whole and may distinguish between trading hours for different categories of licences and different land use planning zones within the municipal area or corresponding with the spatial area of a liquor forum, if more than one liquor forum has been established within the municipality. A municipality may not restrict the trading days or hours that an individual liquor licence holder may trade in liquor; restrictions on liquor trading days and hours are to be determined by law of general application only.

Nevertheless, in the case of individual applications where a restriction on the trading days and hours determined by by-law of general application has been agreed to by the applicant and other parties at

the liquor forum, an agreement on restricting the trading hours or days may be presented to the Liquor Board for consideration and approval.

Despite the municipal by-law regarding trading hours, in granting a licence or considering a complaint regarding an existing licence, the Liquor Board will have the right to impose restricted trading hours should the location or circumstances warrant this, e.g. an on-consumption outlet near homes may be required to close earlier than one in the business centre. Liquor forums may recommend the imposition of specific liquor trading days and hours for each application; this also applies where an agreement is not reached on the issue through the mediation of the liquor forum.

If the Liquor Board, upon granting an application or after a proper enquiry, finds that the sale of liquor on any particular day is detrimental to the public interest and/or potentially harmful to the community, then the Board may curtail the trading hours or prohibit trading on such a day. The reason for this provision is to protect the community against the ill effects of the sale and abuse of liquor.

The Liquor Board may not extend the liquor trading hours or days beyond that imposed by a by-law of general application.

The establishment and functioning of liquor forums

Each municipality that has been appointed as competent authority for purposes of the provincial liquor legislation may within its area of

jurisdiction establish a liquor forum by by-law, and may at its discretion establish more. The purpose of a liquor forum is to provide a locally based forum to consider and advise the Liquor Board on matters relating to the sale of liquor within the geographical area determined by the municipality.

A liquor forum provides the Liquor Board with its recommendations on new liquor licence applications for its geographical area.

It must be noted that no provision will be made for liquor forums to consider the transfer of liquor licences as this type of application relates only to a change in ownership of a business. The transfer of a liquor licence is linked to the commercial transaction relating to the sale of the business and entails a change of ownership, not a change in the licence conditions or location of the premises. A purchaser is entitled to accept that the business being sold is capable of being transferred subject to the rights and obligations applicable to the seller and that he or she would not be subjected to conditions not already applicable to the premises.

The functions of a liquor forum are as follows: The liquor forum may consider all applications lodged with the relevant municipality for new liquor licences and will also consider objections and comments received from affected and interested parties that may have been lodged with the municipality within the prescribed time limit. A liquor forum must provide the municipality within the prescribed period with its report containing its comments and recommendation. It may

further provide its comments and recommendation to the Liquor Board on land use planning requirements that an applicant has to comply with in instances where the premises do not already meet the requirements.

To ensure the resolution of disputes and objections within the shortest possible time the municipality may, subject to the maximum period prescribed by regulation refer any dispute over or objection to an application to a liquor forum in an attempt to resolve the objections to the satisfaction of the parties through mediation and provide a report(s) containing its recommendations.

Upon application in writing by the liquor forum, the Chairperson of the Liquor Board, in particular individual instances, will have the power to extend the time period if, in his or her opinion, there are justifiable grounds for doing so. It is foreseen that such extension will be granted mostly where the resolution of the dispute is eminent and that the extension will contribute to a negotiated settlement of the outstanding issues. It is not intended to delay the licensing process.

A by-law will adhere to the minimum norms and standards in this regard as determined by regulation by the provincial Minister responsible for the provincial liquor legislation. It is foreseen that in instances where a municipality establishes a liquor forum, a single by-law that regulates the liquor licensing process, including the operation of the forum, and the liquor trading hours and days will be promulgated.

The liquor forum will further serve as a local negotiating mechanism between the parties represented thereon regarding the liquor trade within the area of its jurisdiction. It may mediate in disputes over hours of trade and trade conditions and facilitate agreement over local methods to reduce the negative impact that the sale of liquor may have in its area of jurisdiction. It may present a negotiated settlement of opposed licence applications to the Liquor Board for consideration and approval by the Liquor Board. It may further facilitate the training of sellers of liquor and education of members of the public in its area of jurisdiction.

A liquor forum will meet under the chairpersonship of a senior official of the municipality acting in the course and scope of his or her duties. The liquor forum will consist of representatives of at least the following: The designated liquor officer for the area, the local Community Police Forum, if this organisation has been established and is functioning, an organisation(s) that is affiliated to 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. The local rate payers and residents associations and any other local community based interest group determined by the municipality may further be included as members of the Liquor Forum. It is foreseen that municipalities will establish liquor forums having jurisdiction over the spatial area that corresponds with administrative structures of municipalities for the area, for example with a liquor forum per ward,

or a liquor forum per administrative region. This will allow a municipality, through its representation on the liquor forum(s) as chairperson(s), to put its requirements on record and to provide such information as is necessary.

The functioning of the liquor forum may not be funded by the imposition of any additional direct charge on an applicant. The prescribed application fee will consist of a composite amount that will cover the direct expenditure incurred by the municipality in fulfilling its public notification function, its administrative functions and any liquor forum it establishes. It is not intended that the licensing system should be used as an additional source of revenue, but that the associated costs would be recovered as user charges. Excessively high application costs will undermine one of the objectives of the policy by imposing a prohibitive barrier to entry into the licensed trade by existing unlicensed traders.

Determination of prohibition of consumption of liquor in public

The Liquor Act, No 27 of 1989, that serves as legislation for the purpose of regulating the retail liquor industry, does not prescribe a general restriction on the possession or the consumption of liquor in the public or in areas to which the public has access. In terms of section 154 (1) of the Liquor Act it is an offence to be drunk in the public or places to which the public has access. A restriction on the consumption of liquor is limited to streets and vacant areas adjacent thereto in an urban area. Unrelated legislative measures have been used by municipalities to attempt to address unsocial behaviour that

accompanies the excessive use of liquor in the public over the festive season. While the vast majority of persons who enjoy a glass of wine or a beer during a picnic or a day at the beach do so in a responsible manner and their actions require no intervention, the occurrence of unsocial behaviour during public holidays, particular over the festive season, has been an ongoing concern to the authorities.

A balance has to be maintained between unjustified intervention in the innocuous behaviour of the majority of consumers of liquor and measures aimed at preventing the rowdy behaviour of a minority of revelers. In an effort to assist the municipalities with the achievement of their public order mandate, the provincial liquor legislation will provide for offences of possession or consumption of liquor in such public places within the area of jurisdiction of a municipality and at such times of the year as may be determined by a municipality by declaration in terms of a process determined by bylaw. This will allow the municipalities to prescribe places and times when the possession or consumption of liquor in public areas will be offences. Measures to aid the prosecution of these offence are included in a later chapter of this document. It is not intended that these measures will prevent the procurement and transportation of liquor from licenced off consumption premises or the consumption of liquor on licenced on consumption premises, but rather to prevent the possession or consumption of liquor on beaches, parks, picnic areas and resorts during festive days and periods.

Funding of the municipal mandates.

The Department responsible for the legislation will ensure that appropriate and sufficient funding is provided to the municipalities who have been appointed as agents of the Liquor Board to ensure that the functions required from these municipalities are fully funded. Additional adequate funding is to be provided by the Department responsible for the provincial liquor legislation to the municipalities that have been assigned functions as competent licensing authorities to the extent that the municipalities are adequately funded to be able to render the functions assigned to them. The funding of the functions that the municipalities provide as agents of the Board may be based on the number of liquor licence applications are dealt with by the particular municipal authority and may be collected as licence application fees directly by the municipalities, but are to be reflected on the web-enabled licensing system to ensure transparency and financial control. The further funding required for activities deriving from the assigned functions may be based on the number of valid liquor licences within the jurisdiction of the particular municipality and may be transferred to the municipalities in terms of the Division of Revenue Act utilizing the funds raised as user fees through annual fees.

CHAPTER SIX - THE PROVINCIAL LIQUOR BOARD AS PUBLIC ENTITY – MODELS CONSIDERED AND DETERMINATION OF PRINCIPLES

Introduction

In the development of the provincial liquor policy the policy drafters had to consider the most appropriate organisational frame work to enable the Liquor Board to meet the objectives of the policy (*structure to follow functions*). A number of options had to be measured against the predetermined criteria set out in this paragraph. The criteria are based on a study of the best international and local practices and the guidelines determined by the *Government Framework Review of Non-business Public Entities and Government Business Enterprises Operating at National Level*.

In determination of the optimum model it was required that the preferred option allows for the retention of the policy function by the Provincial Government, advised by the liquor licensing authority, while at the same time ensuring relative independence of decision making by the licensing authority in the implementation of the policy, an arm's length approach on daily licensing activities. The first requirement ensures that the individual applications and day to day regulation of the industry remains independent from interference and ensures that the provincial Minister is not encumbered with the daily decision making on individual applications.

The second important requirement is that the Liquor Board maintains governance control over its support functions for it to be accountable for its activities to the provincial Minister and the provincial Parliament. Good governance requires that a licensing authority should have governance control over its own support systems. This requires that that in accordance with the requirement for a measure of regulatory independence the agency mechanism supporting the implementation of the provincial liquor policy should also be at arm's length to government control. Failure to bring under the Board's control the *loci* of executive regulatory decision making and the governance over the means to give effect to those decisions will dilute effective accountability.

Based on an analysis of the prescribed functions of the Board and its administration, it was accepted that the majority of functions that are to be performed by the Board and its support structures are highly standardized bureaucratic functions that are as a matter of course available within the public sector either as part of the civil service or that may be obtained through outsourcing.

The Models considered

In pursuance of these requirements a number of models were considered. Comprehensive study of international best practice regarding regulatory functions and options were considered and a report was commissioned. These options are described as follows herein.

The creation of an agency under the governance of the Liquor Board conferred with the requisite powers and independently staffed. This option, known as the external option, is consistent with regulatory independence from the responsible provincial Department while the policy making role is retained by the Executive. It further allows the Liquor Board to be in control of its support structure and allows for the appointment of technical expertise not readily accessible within the civil service. The external option is however not consistent with the draft national guidelines on public entities that recommends that the external option is only justified where total independence or highly specialised skills are required. While regulatory independence provides partial motivation for adopting this option the requirement of specialized skill that is a key benefit of this option is not present.

The cost/benefit ration that the model represents is in view of the additional costs necessary to maintain a public entity not justified. The model provides for a remuneration structure detached from that applicable to the public service and is normally used to attract expertise not readily available in the civil service. The skills required for the provision of regulatory regime for liquor licensing are available within the public service and the perceived benefits of such a model are not applicable. The external model may lead to an escalation of costs without any conceivable benefit. The external option will further require the maintenance of support structures such as finance and administration that are currently available within the public service but will no longer be if the option is pursued.

The external model is not deemed appropriate, particularly from a cost/benefit point of view.

The second option on the opposite side of the continuum is the internal option. This entails the establishment within the responsible Department of a unit responsible for licensing by means of delegation of authority from the Minister responsible for the legislation.

Internationally such a model is normally associated with advisory committees with retention of full and direct Executive Authority over individual applications. It ensures good governance unity of responsibility and authority, in other words the decision maker has authority over the administration, but is inconsistent with independence of decision making from the Executive Authority.

This option requires the delisting of the Liquor Board from the provisions of the Public Finance Management Act, No 1 of 1999 (“PFMA”) and for it to be an advisory body for the Minister on licence applications, who then is tasked with the daily decisions relating to licensing based on the recommendations by the Board. The Board is then not directly accountable for the functioning of the administration, which is fully integrated within the responsible Department and is accountable to the Accounting Officer. Exercising this option implies that the Minister will be drawn directly into the fray of daily liquor licensing activities. The model is consistent with the draft national frame work on public entities only in respect of functions not requiring independence or specialist skills and is not consistent with the guideline for regulatory entities.

This option is consistent with the position of the Liquor Board in terms of the Liquor Act, No 27 of 1989 from an administrative and cost/benefit point of view.

The internal model is not recommended, particularly due to its lack of independence of the Board in daily decision making on liquor licensing and the impracticality of involvement of the Minister in decision making on a daily basis.

The third model considered is the intermediate ‘arm’s length” option. The model is consistent with regulatory independence from the provincial Government while ensuring that policy determination remains with the Executive Authority. It further supports full governance accountability through unity of responsibility and authority as required by the Public Finance Management Act. In this regard it provides the only viable option for fulfilling the requirements of the PFMA in regards to a statutory body staffed by public servants. An independent Liquor Board staffed and supported by seconded public servants most closely resembles the structure for regulatory public entities emerging from the national frame work of public entities currently underway. Importantly, it supports a functional, bureaucratically organized structure such as required to meet the tasks and requirements set by this policy document.

On condition that use is made of seconded public servants the option represents lower costs requirements than the external option although

a marginally higher cost structure is seen in comparison with the internal option as a result of the necessity of ensuring the establishment of a dedicated independent support platform for the Board. The increased costs are further associated with the compliance with the PFMA.

It is concluded that this option is the preferred option in terms of the provincial policy requirements with the condition that the institution will be entirely staffed by seconded personnel from the ranks of the public service and that any specialized services will be outsourced to competent service providers outside the board, including specialized agencies or other agencies of government, where appropriate.

Principles for the establishment of the Western Cape Liquor Board

From the aforesaid a number of principles are determined that guides the establishment of the Liquor Board and its organs.

- The Provincial Government of the Western Cape shall retain the full function of policy making in respect of liquor legislation.
- The Liquor Board of the Western Cape will be a statutory body and a juristic person with the indicated powers and functions in accordance with the provincial liquor policy as determined by the Provincial Government.
- Members of the Liquor Board (inclusive of the Chairperson) will be non-executive members appointed by the Minister responsible for the legislation from the ranks of the public and private sectors in terms of remuneration scales determined by

- the relevant Minister in consultation with the provincial Minister responsible for finance.
- In accordance with the regulatory independence of the Board a support structure be established or agency engaged at arm's length to the Department that is-
 - Managed by the Board
 - Functionally organized to meet the requirements of the liquor policy and legislation
 - Permanently staffed by public servants on secondment to the Board in terms of the relevant provisions of Section 15 of the Public Service Act, 1994
 - The accountability of the Board to the provincial Parliament through the Department responsible for the legislation be institutionalized by establishment within the Department the requisite oversight and policy making capacity in respect of liquor legislation generally and the Liquor Board's activities in particular.

These principles will guide the establishment and the functions and powers of the Liquor Board as described in the following chapters.

CHAPTER SEVEN – FUNCTIONS AND POWERS OF THE LIQUOR BOARD

Establishment

The Liquor Board will be an independent statutory body and a juristic person capable of litigation in its own right established by the provincial liquor legislation that will function at arm's length from of the Western Cape Provincial Government but accountable to the provincial Parliament through the provincial Minister and Department responsible for the liquor legislation.

It will have quasi-judicial powers that are to be exercised in accordance with the law of South Africa independent of the executive and administrative functions of the provincial Minister and the Department to which it is assigned.

Regulatory functions of the Liquor Board

The functions of the Liquor Board will be to regulate the retail sale of liquor, the micro-manufacturers and the traditional african beer manufacturers in the public interest within the Western Cape through a process of licensing of premises, and in the instance of special events licences, to licence persons; enforce of legislation and conditions, training of sellers of liquor and raise of awareness of liquor abuse among the public, particularly among vulnerable groups. The Liquor Board will further perform any other functions assigned to it by the legislation or by the provincial Minister responsible for the liquor legislation. It is explicitly recorded that in the event of the

delegation of regulatory functions in terms of the national Liquor Act, No 59 of 2003 such functions may be delegated to the Liquor Board and that the Board will have the required powers to render the functions delegated.

The decisions of the Liquor Board will be based upon the provisions set out in the policy document relating to the disqualification of persons, the suitability of premises, public interest, the health, safety and wellbeing of the community and proximity to schools, places of religious worship and residential premises.

Powers of the Liquor Board and other competent authorities

The Liquor Board will have the powers assigned to it by the liquor legislation and any other applicable legislation, including the power to approve, reject or postpone any application, with or without imposing conditions on such approval, rejection or postponement. The Liquor Board will further be empowered to determine the suitability of any person to be a holder of a licence and may in its discretion determine that a holder of a licence or a prospective holder must undergo the prescribed training. The Liquor Board may further impose on any licence or category of licence conditions that are appropriate for the objective of ensuring that the liquor trade in the province is in the public interest.

The Liquor Board will be empowered to transfer licences from one holder to another, convert current licences in terms of the transitional provisions, consider applications for structural changes to licensed

premises, including extensions, consider the appointment of suitable persons as managers of licensed premises, or changing the financial control of licensed premises (or legal person in the case of special events licences) or the category of licence in exceptional circumstances. Contrary to the provisions of the present legislation, the Board will not be able to approve the removal of a licence between premises; in instances where a licence holder intends relocating, a new licence will have to be obtained.

The applications referred to above will have been lodged with the municipality, where this is a requirement, and referred to the Liquor Board, with the objections of interested and affected persons and the reports of the designated liquor officers and the recommendations and reports of the liquor forums, where the municipalities have instituted such forums. The Liquor Board will duly consider the reports and recommendations of the designated liquor officers and liquor forums. If the Liquor Board intends imposing different or additional conditions to the conditions recommended by the liquor forum or in the absence of recommendations by a liquor forum any special conditions are being considered, it must notify the applicant, the interested and affected objectors, the designated liquor officer and the liquor forum, where appropriate, accordingly and give them an opportunity to respond in writing within a reasonable time that the Liquor Board determines. Such notification may be by ordinary mail or by fax to the addresses or facsimile numbers, respectively, that have been provided by these parties.

When considering any matter in terms of its functions, the Liquor Board and any other competent authority must duly consider the evidence presented to it, South African law and any other relevant matter that in the opinion of the Liquor Board or such competent authority ought to be taken into consideration.

The Liquor Board will act as an appeal mechanism to aggrieved persons in instances where the municipality has granted or refused permits for special events and for the sale of traditional african beer.

The Liquor Board will have the power to enforce the provincial liquor legislation through a system of compliance notices and administrative fines and, after due process which may include a hearing, to withdraw or suspend any licence or amend the conditions of such licence or impose further conditions thereon. The Liquor Board will have the power to consider urgent interim measures in instances where the circumstances require such measures. Urgent interim measures will include the temporary suspension of a licence or the imposition of temporary conditions or restrictions on a licence pending the outcome of the process of adjudication.

The Liquor Board will have the power to ensure that one or more aspect of the liquor trade in general in the province is investigated and may provide the Minister responsible for the liquor licensing legislation in the province with a report and recommendations on appropriate, generally applicable, measures to ensure a liquor trade in the province that is in the public interest. These measures may

include the imposition by regulations of restrictions on irresponsible practices within the liquor trade, irresponsible methods of conducting business in the liquor trade or liquor products packaging none of which is in the public interest but which all contribute to socially undesirable conditions. Such measures of general application will only be recommended by the Liquor Board after interested parties have been provided with a reasonable opportunity to make submissions to it. The Minister, after considering the report and recommendations of the Liquor Board, may issue regulations to provide for generally applicable measures with a view to ensuring that the liquor trade is in the public interest.

If an application or objection or a document accompanying such application or objection is defective, or any applicant or interested and affected person fail to lodge any document in support of his or her interest, the Liquor Board or any other competent authority, when dealing with the matter, may condone such defect if in its opinion there has been substantial compliance with the legislation, it is in the interest of the administration of justice, and the condonation is not likely to prejudice any person.

The Liquor Board will have such further power as is appropriate for fulfilling any of the functions assigned to it by legislation.

The Liquor Board will act as point for lodging, administering and issuing licences if a municipality has not been designated as an agent or where a municipality has not been assigned functions by the

Minister or a municipality has been appointed or assigned functions but is not able to fulfil the function of a competent authority in terms of the legislation. In this regard the Minister may issue regulations to prescribe matters that are normally provided for by municipalities, such as the public participation process, advertising and trading hours. The Liquor Board may give advice, guidance and support to municipalities on matters relating to liquor legislation, if so requested by the municipality.

Meetings of the Liquor Board

The meetings of the Liquor Board will be convened by the Chairperson of the Board at the times, dates and places determined by him or her and may be adjourned to a particular time, date and place or indefinitely. Meetings of the Liquor Board will be convened to enable the Board to fulfil the functions assigned to it by legislation. These provisions, with the required amendments, are also applicable to meetings of committees under the chairpersonship of the Deputy Chairperson(s).

Notices and summonses to ensure attendance of witnesses

Provision is made for two methods of ensuring the attendance of persons at meetings of the Liquor Board or its committees. In terms of the provisions of the Promotion of the Administration of Justice Act, Act 3 of 2000, notice must be given to any person who may be adversely affected by a decision of an administrative tribunal, of the nature and purpose of the proceedings, the possible consequences of the proceedings, the time, date and venue of the proceedings and

the person's right to be legally represented at the proceedings. It is therefore clear that a summons meeting these requirements will have to be issued to all known affected and interested parties. The purpose of the summons is to ensure that all persons who are involved in or affected by the decision of the Liquor Board or its committees are fully apprised of the importance of the meeting and are in a position to prepare for the meeting. Attendance at a meeting of the Board in these circumstances will be compulsory as the persons may be called upon to give evidence or produce documents or exhibits under their control. Provision will be made by regulation for the manner of service of the notice and the required period of notice to be given.

A second category of person that is to be notified is a person whose rights are not affected by the decision of the Board or a committee, but who nevertheless has an interest in the proceedings. The most obvious example of such person is the legal representative of an applicant, the relevant municipality or the designated liquor officer.

The Chief Executive Officer as head of the administration of the Liquor Board will be responsible for the issuing of summonses and notices.

Operational administrative support function of the Liquor Board

The operational administrative functions of the Liquor Board will be fulfilled by public servants seconded for a fixed period or permanently to its administration for this purpose in terms of the provisions of the

Public Service Act, 1994. The current staffing component within the Department of Economic Development and Tourism that has administered the Liquor Act, No 27 of 1989 will in accordance with applicable provisions be offered the opportunity to be seconded to the Liquor Board, which choice must be exercised within one year from the date of commencement of the legislation (or a further period approved by the provincial Minister responsible for the liquor legislation).

Staff that are not amenable to secondment are to be redeployed within the civil service or be rendered in excess to the staffing needs of the public service in accordance with the provisions of the applicable regulations and resolutions over a one year period following the promulgation of the legislation. Staff members are have to inform the Department thereof within one year from commencement date of the legislation (or a further period approved by the provincial Minister responsible for the liquor legislation) to allow for the provisions of the applicable regulations and resolutions to be implemented during the remaining available period of two years, (or the period approved by the provincial Minister responsible for the liquor legislation).

Staff that elect to be seconded will be subject to the provisions of all the relevant legislation and regulation applicable to the public service and will retain all the benefits of service conditions applicable to their service with the public service. The service with the Liquor Board will not be to the detriment of the seconded personnel.

Provision will be made for transitional provisions that ensures the delivery of services by the presently constituted Board in terms of the Liquor Act, No 27 of 1989 and the current administration within the Department of Economic Development and Tourism for the administration of the newly promulgated provincial liquor legislation for a one year period (or a further period approved by the provincial Minister responsible for the liquor legislation) while the required administrative and functional arrangements are made to ensure the establishment of the new Liquor Board and supporting organs.

The Liquor Board will enter into an agency agreement with the Department responsible for the liquor legislation for the provision of corporate services that includes the human resource management, procurement management and financial administration. The Department will assign staff within its support services function to attend to the aforesaid functions. It is foreseen that the agency arrangement between the Liquor Board and the Department responsible for the legislation will be permanent, but provision will be made for the development of own, seconded capacity for the delivery of the above functions within the structure of the Liquor Board, with the approval of the provincial Minister responsible for the legislation and after consultation with the Chairperson of the Liquor Board and the Head of the responsible Department.

The aforesaid arrangement ensures that the service conditions of staff and the Board and operational expenditure of the Board are

regulated by national and provincial policies and practices that are determinable in an open and transparent manner. This ensures that the operational costs of the Liquor Board is restricted in a manner similar to that which it would have been had the Liquor Board remained an entity within the sphere of government. The particular arrangement further has the advantage that it negates the additional requirements normally associated with independent organizations of the determination of policy and procedure relating to human resource management, organisational development, procurement and financial policy determination as these are prescribed by the public service human resource management and financial prescripts.

The detail requirements relating to the establishment and operation of the Liquor Board and its support functions, including the human resource management, financial management and procurement procedure may be prescribed by regulation.

Functions and powers of the Liquor Board not associated with the liquor licensing process

The Liquor Board will without the consent of the responsible Minister be entitled to-

- Engage in financial transactions required for the operation of a public entity such as opening of a banking account.
- enter into partnerships with other government organs and outside service providers and incur expenditure to ensure the delivery of services provided that such partnerships do not

compromise the integrity and independence of the regulatory function fulfilled by it.

- Obtain movable goods normally associated with or incidental to its functioning as regulatory authority such as office furniture and equipment, photographic equipment, electronic recording and transcription equipment, information technology and furniture
- Obtain services normally associated with or incidental to its functioning as regulatory authority such as transcription services, translation services, transport services, accommodation
- Any other movable goods or services than goods and services normally associated with or incidental to its regulatory function that the Liquor Board has indicated in its annual or additional budget requests as necessary for the performance of its functions, subject to the approval of the budget request by the Head of the Department responsible for the Liquor Board.

Restrictions on the power of the Liquor Board regarding functions not related to the liquor licensing process

As the purpose of the Liquor Board is to regulate the liquor industry within the Western Cape Province its powers are generally restricted to the direct and indirect achievement of its objectives.

Without detracting from the generality of the restrictive provision the Liquor Board may explicitly not engage in the following activities without the consent of the provincial Minister-

- It may not borrow or lend money or encumber any of its movable assets.
- It may not enter into lease agreements for immovable property as its accommodation is to be provided free of charge by the Department responsible for its functioning.
- It may not enter into agreements regarding human resource management, financial management and procurement outside the frame work of the agency service rendered by the responsible Department.

Public entity as defined by the Public Finance Management Act, 1999

The Liquor Board of the Western Cape Province is listed in Schedule 3C as a public entity as defined in the Public Finance Management Act, Act 1 of 1999 and its obligations will up to the date that the new legislation commences the obligations of the Liquor Board in terms of the PFMA will be met by the Accounting Officer of the Department responsible for its functioning. The Chairperson of the Liquor Board will assume the responsibility as Accounting Officer of the Board upon commencement of the provincial liquor legislation. An official of the Department responsible for the financial management of the Board will serve as Chief Financial Officer. In the event of the agency agreement between the Board and the Department being terminated due to the development of capacity within the Liquor Board provision will be made for the appointment of a Chief Financial Officer within the administration of the Liquor Board.

In as much as it may be necessary provision will be made in the provincial liquor legislation for the Liquor Board that is established by the provincial liquor legislation to be successor in title of the rights and obligations of the Liquor Board established in terms of the Liquor Act, No 27 of 1989. For the purposes of the Public Finance Management Act, 1999, a new public entity is not being established by the provincial legislation and the reference in Schedule 3C of the PFMA is to be regarded as a reference to the Liquor Board established by the provincial liquor legislation.

Revenue from liquor licences

The Liquor Board will collaborate with the Department responsible for its functioning to collect the revenue due from application fees, annual licence fees and administrative fines. The revenue will be paid into the provincial revenue fund and be dealt with in accordance with the applicable financial regulatory requirements set by national and provincial legislation and regulation. The Liquor Board administration, the responsible department and the municipalities that have been appointed as agents of the Liquor Board will ensure that the licensing revenue can be reconciled with the licensing process and records of the Liquor Board.

The currently applicable table of fees in terms of the Regulations issued in terms of the Liquor Act, No 27 of 1989 were imposed during June 1992 and are outdated. The revenue annually raised in terms of the current structure amounts to approximately R3,7 million. Utilising the proposed fee structure that has been adopted in terms of

provincial liquor legislation in other provinces in South Africa and basing projected revenue on the current data base of approximately 5700 valid licences in December 2004 in the Western Cape it is foreseen that the projected annual revenue may amount to R19 million.

The provincial Minister responsible for the liquor legislation may by regulation prescribe categories of fees for applications and for annual fees and after consultation with the provincial Minister responsible for finance prescribe fees for each category.

Income and expenditure of the Liquor Board

The income of the Liquor Board will be derived from annual budgetary allocation and additional funds from the Department responsible for the provincial liquor legislation and will be transferred to the Liquor Board on the basis of compliance with the provisions of the annual appropriation procedure or through the approved procurement system, if applicable.

It is not intended that the Liquor Board may raise funding in its own right separate from that obtained through the annual budgetary process from the Department responsible for its activities

CHAPTER EIGHT: THE COMPOSITION AND TERMS OF APPOINTMENT OF THE LIQUOR BOARD

Appointment of members of the Liquor Board

The Liquor Board will consist of at least six members duly appointed by the provincial Minister responsible for the provincial liquor legislation. The Chairperson of the Liquor Board and the Deputy Chairperson, or Deputy Chairpersons if more than one is appointed, must have the qualifications in law equivalent to those required for enrolment as an attorney or advocate of the Cape of Good Hope Provincial Division of the High Court, with not less than three years experience of legal practice or in the administration of justice.

The Chief Executive Officer of the Liquor Board will be responsible for the administration of the Liquor Board to the Chairperson, who in turn will be accountable to the Minister responsible for the liquor legislation in the province. The Chief Executive Officer as the head of administration of the Liquor Board is ex officio a member of the Liquor Board. A Chief Executive Officer of Liquor Board who meets the requirements may be appointed as a Deputy Chairperson of the Board.

At least one member of the Board must have a qualification in town planning equivalent to that required for enrolment as a registered Professional Town and Regional Planner, with not less than three years experience of town planning and be nominated by the provincial Minister responsible for development planning and appointed by the provincial Minister responsible for liquor licensing

legislation. One member must be a senior official of the South African Police Service nominated by the provincial Minister responsible for community safety and appointed by the provincial Minister responsible for the provincial liquor legislation. The fifth and sixth members must be members of the community of the Western Cape and appointed by the Minister responsible for the provincial liquor legislation.

It is envisaged that the Chairperson will be seconded official from the Department responsible for the liquor legislation or a suitable person appointed on a contract basis by the Minister for the liquor legislation on a full time basis for the purposes of fulfilling the Liquor Board's functions and mandate. The member of the Board nominated by the provincial Minister responsible for development planning may be a serving official of the provincial or local government sphere seconded for this purpose or may be appointed part-time on a contract basis to fulfil the functions and mandate of the Liquor Board. The member of the Board nominated from the South African Police Services may be seconded for this purpose to the Board on a full-time or part-time basis. The members of the community appointed by the provincial Minister will be appointed full-time or part time on a contract basis.

Appointment of committees of the Liquor Board

The provincial Minister responsible for the provincial liquor legislation may, in addition to the minimum number of members mentioned, appoint one or more persons deemed necessary as members of the Liquor Board after consultation with the Chairperson of the Liquor

Board for the proper functioning of the Liquor Board and in particular, its committees. To prevent the proliferation of Board members that may add an unforeseen financial burden to the Liquor Board's budget and may reduce its efficiency the number of Board members that may be appointed in addition to the prescribed number of six will be limited to nine. Such additional appointments will also provide for suitably qualified persons to be appointed Deputy Chairpersons to chair the committees of the Liquor Board. Additional members may further be required to hold such qualifications or have such experience as may be appropriate in the circumstances.

It is foreseen that the increase in the workload of the Liquor Board may require that committees of the Liquor Board under the chairpersonship of the Chairperson or one or more Deputy Chairpersons will have to fulfil some or any of the functions of the Liquor Board. In particular it is foreseen that the annual review of those licences for which there have been grounds for complaint or for which there is due cause for review will be considered by a committee of the Board. The review of conditional licences granted as a temporary measure to formerly unlicensed traders that are deemed to meet land use requirements for a period of one year as well as the conversion of current licences will probably also be undertaken by one or more committees of the Liquor Board.

Composition, procedures and functions of committees

A committee of the Liquor Board will consist of at least three members, one of whom will be the Chairperson or a duly appointed

Deputy Chairperson. In appointing the members of a committee of the Liquor Board the Chairperson having due regard to the nature of the matters to be considered, will, as far as is practicable, appoint members of the Board that have the expertise relevant to the nature of such matters to serve on the committee. The Chairperson, in appointing a committee, will delegate some or all of the functions of the Liquor Board to the committee to enable it to fulfil the required task at hand. A decision of a committee of the Liquor Board will be final and need not be ratified by the Liquor Board. A decision of a committee of the Liquor Board will be deemed to be a decision of the Liquor Board and will be subject to review and appeal as provided for in the policy document. A committee may approve or reject any matter that it considers, and may postpone any matter or refer any matter to a sitting of the majority of the appointed members of the Liquor Board. The quorum of a committee will be the majority of its members. The procedural rules applicable to the Liquor Board, with the necessary adaptation, will be applicable to committees. In considering the referral of a matter to a committee, the Chairperson will have due regard to the consequences of any decision of such committee in establishing precedent or policy for the Liquor Board. The Chairperson should refer any matter that is likely to establish precedent or policy for the Liquor Board to a sitting of the majority of all the appointed members of the Board.

Provision will be made for the referral by the person who chairs a meeting of a committee of any issue that during the adjudication of a matter may reasonably be anticipated to establish a precedent or a

policy for consideration by a sitting of the majority of all the appointed members of the Board. In the event of such referral, the sitting of the majority of the members will provide the committee with guidance on the issue that relates to the policy or precedent that has been referred, but the committee will remain seized with the matter and must adjudicate upon it. This is necessary to prevent the whole matter from having to be considered *de novo* by the full Board

Co-option of additional persons on to the Board for particular purposes

The Chairperson of the Liquor Board, if of the opinion that a particular person is able to assist the Liquor Board or a committee of the Liquor Board, may, when considering a matter, co-opt such a person for the duration of the matter. An additional member is normally appointed if additional expertise is required by the Board or a committee in dealing with a particular matter. Such a person will not be entitled to vote at any meeting of the Board or committee.

Availability of the Chairperson

When the Chairperson is not available to perform his or her functions, or if the office of the chairperson is vacant, the Chief Executive Officer of the Liquor Board, appointed as Deputy Chairperson, will act as chairperson during the absence of the Chairperson appointment of a new chairperson. The Chief Executive Officer of the Liquor Board, acting as Chairperson, will have all the responsibilities and functions assigned to the Chairperson by the Act and any other legislation. If the Chief Executive Officer of the Liquor Board has not been

appointed as a Deputy Chairperson, and the position of Chairperson is vacant, the Minister may appoint any of the Deputy Chairpersons to act as Chairperson during the vacancy of the Chairperson. If the Chief Executive Officer of the Liquor Board has not been appointed as a Deputy Chairperson, and the Chairperson is unavailable, the Chairperson may delegate any or all of his or her duties while unavailable to any of the Deputy Chairpersons.

Remuneration of the members of the Liquor Board

A member of the Liquor Board, including the Chairperson and Deputy Chairperson(s), will be paid such remuneration, on a part-time or full-time basis, as well as such allowances (including allowances in respect of traveling and accommodation) as the Minister responsible for the provincial liquor legislation, in consultation with the provincial Minister of Finance, may determine. As the members of the Liquor Board are to be seconded officials within the public service it is foreseen that the remuneration scales applicable to their posts will apply.

Provision is however made for the appointment by the Minister responsible for the provincial legislation of suitable persons on contract. In determination of the remuneration of persons appointed on contract the determination may be linked to provisions made in other legislation for the remuneration of statutory bodies. In determining the remuneration the Minister may further take into account tariffs recommended by the relevant professional bodies for

services rendered by members of the Liquor Board who are members of such registered statutory professional bodies.

Term of Office

Appointments to the Board will be part-time or full-time and will be for an initial period of five years. The terms of office may be extended by the Minister and, where relevant, after consultation with the provincial Ministers responsible for the nomination of members, for such further period as he or she may deem expedient, but this period may not exceed five years. Upon expiry of any member's term of office, that member will be eligible for reappointment.

Disqualifications from being appointed to the Liquor Board

No person may be appointed to serve as a member of the Liquor Board who-

- in the preceding ten years has been convicted for 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;
- in the preceding ten years has been convicted of any offence in terms of the Liquor Act, 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;
- is an unrehabilitated insolvent;
- is less than twenty-one years of age;
- has a direct interest in the liquor trade;

- is the spouse or life partner of a person with a direct interest in the liquor trade, unless the Minister is of the opinion that the interest of the spouse or life partner in the liquor trade does not imply that the person is unsuitable to hold office.

Removal from office

The Minister responsible for the provincial liquor legislation, where relevant after consultation with the provincial ministers responsible for the nomination of members, may at any time remove any member from office if there are sound reasons for doing so.

Recusal

Appointment as a member of the Liquor Board will require the highest level of personal integrity and impartiality on the part of that member. No member of the Liquor Board may consider any matter in which he or she has a direct interest. The interpretation of a direct interest will include, but will not be limited to, involvement either as an applicant, or having an interest in an applicant, an objector or a witness before the Liquor Board of any spouse, life partner, child, family member or close business associate. If a member of the Liquor Board has an indirect interest in any matter serving before the Board, such member will have to disclose his or her interest at the earliest possible opportunity and the Chairperson, or in the case of a matter being considered by a committee of the Liquor Board, the Deputy Chairperson, will determine whether the member will have to recuse him-or herself from considering the matter. In considering the recusal

of a member the presiding official will heed the legal principles applicable under the administrative law.

Components of the Liquor Board

The functioning of the Liquor Board will be supported by its administration under the authority of the Chief Executive Officer as the head of Liquor Board administration. The staff of the Liquor Board administration as seconded personnel within the public service will be remunerated in accordance with the system that is applicable within the public service.

The Chief Executive Officer will be responsible for the functioning of the administration to the Chairperson of the Liquor Board. The administration of the Liquor Board will consist of a Manager: Monitoring and Compliance, a secretariat, an inspectorate, an education and awareness component and a corporate services component.

The components will have the following functions: The Manager: Monitoring and Compliance will ensure the prosecution before the Liquor Board of licence holders who fail to adhere to licence conditions or to the prescripts of the provincial liquor legislation. The relationship between the Manager: Monitoring and Compliance and the inspectorate is broadly speaking comparable to that between the enforcement agencies and the prosecution authorities in the South African criminal justice system. The secretariat will be responsible for the maintenance and management of the liquor licensing system,

including any electronic system designed for this purpose. It is further responsible for providing secretarial support to the Liquor Board. In this regard the secretariat will also provide for the recording and transcription of the proceedings of the Liquor Board. The inspectorate will be responsible for the enforcement of the licensing system and will ensure compliance with the conditions of the licences and provincial liquor legislation by licence holders. The inspectorate will provide a nodal point for liaison with law enforcement agencies and assist in the investigation of complaints. The inspectorate will be able to issue compliance notices and administrative fines in appropriate cases. Upon conclusion of an investigation the inspectorate will submit the relevant reports and documents to the Manager: Monitoring and Compliance, who has to decide whether a prosecution is to be instituted before the Liquor Board, whether further investigation is required, or any other steps may be justified in the circumstances. The education and awareness component will be responsible for ensuring that prospective and current licence holders are aware of the conditions of their licences, the provisions of the liquor licensing legislation, the provision of support services to historically disadvantaged emerging traders and any other relevant matter. The education and awareness component will further be responsible for the continued training of enforcement agencies in the provisions of the Act and standard licence conditions. It is further responsible for creating awareness of the negative consequences of the abuse of alcohol among members of the public, particularly among vulnerable groups and individuals. Education of the public in general will include awareness of the provisions of the liquor

legislation and its protective measures, the duties of licence holders and the rights of the public, as well as providing information on where complaints may be lodged. The education and awareness component may engage the services of any person, including any organisation, to fulfil its mandate. It will further co-operate with other parties in strategic partnerships in this regard. Provision is made in this policy document for the development of emerging licensed businesses and this component will be tasked to establish and maintain partnerships and co-operation with parties identified to assist in fulfilling this mandate. The corporate services component will provide for the internal human resource and financial management. It will be headed by the Chief Financial Officer, as required by the Public Finance Management Act.

Files and records of the Liquor Board

The files, records and documents under the control of the Liquor Board will be subject to the provisions of the Promotion of Access to Information Act, Act 2 of 2000. The Liquor Board may engage the Department responsible for the administration of the liquor legislation as an agent to render the required support services associated with record keeping.

In addition the files, records and documents of the Liquor Board will be available for perusal by any person who requires access thereto so as to enable such person to fulfil his or her functions in terms of the legislation. The Chairperson, on application by the party seeking access, may further order the files, records and documents of the

Liquor Board to be made accessible to such person to the extent and for the purpose that the Chairperson determines.

Copies of any file, record or document may be made available to a person being allowed access thereto in accordance with the provisions of the empowering legislation.

Appeal and review of decisions of the Liquor Board

There will be a right of appeal against and review of any decision of the Liquor Board that has the effect of a final order to a Liquor Licence Appeal Tribunal of the Western Cape. In appeal proceedings the Liquor Licence Appeal Tribunal may reconsider all the evidence considered by the Liquor Board. It will uphold or dismiss an appeal or review application or amend or substitute any order made by the Liquor Board with another order or refer any decision back to the Liquor Board for reconsideration.

The Minister responsible for the provincial liquor legislation may prescribe by regulation the process of prosecuting an appeal or review against a decision of the Liquor Board. It is foreseen that the process will be similar to that applicable to the appeal and review process in the case of a decision of a magistrates court in a civil matter and the Minister may by regulation incorporate such appeal and review procedure. The Minister may prescribe by regulation an amount payable to the Liquor Board Administration as surety for the costs of prosecuting any appeal or review. The Liquor Licence Appeal Tribunal will make an appropriate order of forfeiture or

repayment of the amount paid as surety upon conclusion of the matter.

The right of appearance in the Liquor Licence Appeal Tribunal will be limited to persons allowed to appear in the High Court of South Africa, as prescribed by the Right of Appearance in Courts Act, 62 of 1995.

The Liquor Licence Appeal Tribunal will consist of a retired judge of the High Court of South Africa or a retired senior magistrate with at least fifteen years experience as magistrate who will be appointed by the Minister responsible for the provincial liquor legislation for a period of five years. Upon expiry of the term of office of the member he or she will be eligible for reappointment. The disqualifications applicable to be appointed as a member of the Liquor Board will also be applicable to appointment to the Liquor Licence Appeal Tribunal. It is envisaged that the Liquor Licence Appeal Tribunal will function on a part- basis and that the remuneration of its member will be determined by the provincial Minister in consultation with the provincial minister responsible for finance in the same manner to that of the Liquor Board members who are appointed on contract.

The administrative functions of the Liquor Licence Appeal Tribunal will be supported by the Liquor Board Administration

The provisions of the Promotion of Administration of Justice Act, Act 3 of 2002 will apply to reviewing of decisions of the Liquor Licence Appeal Tribunal of the Western Cape.

CHAPTER NINE – LEGISLATION AND THE ENFORCEMENT AGENCIES

The Western Cape province has been in an advantageous position in that the Office of the Provincial Commissioner, through its provincial Commander of Firearm and Liquor Licensing, has provided a system of designated liquor officers to enforce the provisions of the Liquor Act, Act 27 of 1989. The system consists of designated liquor officers located at every police station in the province, supervised by area and provincial designated liquor officers. These officers have rendered invaluable service and have since implementation of the system served as the “eyes and ears” of the Liquor Board. The system is seen as an asset and may be used and developed in new provincial legislation.

Appointment of designated liquor officers

The provincial liquor legislation will provide for one or more designated liquor officers to be appointed by the provincial Minister responsible for the legislation or an official designated for this purpose by the provincial Minister. The provincial Minister, or where applicable, the designated official, may determine the requirements for the appointment of designated liquor officers. It is however appropriate to describe the functions and powers of the designated liquor officers in the legislation.

In addition, the provincial liquor inspectorate will be expanded and given more powers and functions. The inspectorate effect liaison

between the Manager: Monitoring and Compliance and the designated liquor officers but will also function as an inspectorate in own right, having its own functions and duties as more fully described in this policy.

Functions of the designated liquor officers

The function of the designated liquor officer will be to enforce the applicable legislative provisions and any other associated function. This means that a designated liquor officer will fulfil functions relating to the various application processes, the enforcement of licence conditions and legislative provisions regarding the conduct of the licensed liquor trade as well as functions relating to reports to appropriate authorities.

Powers of designated liquor officers

In addition to any powers that designated liquor officers that are members of the South African Police Services or municipal police services may have, as members of such service, they will have powers that will enable them to fulfil the functions assigned to them by the provincial liquor legislation.

A designated liquor officer will fulfil a vital function ensuring a regulated liquor trade and will at all times be independent and objective in the performance of these functions. In the performance of the designated liquor officer's functions, the highest levels of honesty, integrity and objectivity will be required.

Reports on applications

The designated liquor officer for a particular area will provide reports, addressed to the Liquor Board, for every application in respect of new liquor licences, the transfer of licences from one party to another, the extension or alteration of licensed premises and the appointment of suitable managers to the licensed premises in his or her area of jurisdiction. The reports will be in the format and contain the information that the Chairperson of the Liquor Board, after consultation with the member of the Liquor Board nominated by the provincial Minister responsible for community safety, determines. At the request of the Chairperson or a Deputy Chairperson the designated liquor officer will provide any further information required to enable the Liquor Board to consider an application. The designated liquor officer will further provide reports to the municipality on applications by holders of special events licences for permits for particular events and by applicants for permits to sell traditional african beer.

The legislation will provide an opportunity for existing unlicensed traders to enter into the licensed trade. In this regard a limited exemption on the prosecution of those existing unlicensed traders who apply for liquor licences during the process of regularisation will act as an incentive to such traders to apply for licences. It is however imperative that unlicensed persons who are involved in organised crime or gang activity should not be allowed to enter the regulated trade or take advantage of the limited exemption during the process of regularisation. These requirements place on the designated liquor

officer during the implementation of the limited exemption during the process of regularisation the responsibility to determine the suitability of applicants in order to qualify for the limited exemption. It will be a requirement that applicants who wish to qualify for the limited exemption should, upon lodging the application for the new liquor licence and lodging of the application for the correct land use rights, if applicable, should submit to the designated liquor officer, as provided for in this policy document, their personal details and fingerprints as well as proof that they have for the previous three years been selling liquor from the premises to be licensed as well as a formal request to be considered for the limited exemption during the process of regularisation. The designated liquor officer will have to conduct the necessary investigation and decide if the applicant is to be granted a limited exemption on prosecution for the offence of trading in liquor without a liquor licence pending the finalisation of the application. The decision of the designated liquor officer will be based primarily on the suitability of the applicant to be the holder of a liquor licence, but consideration may be given to the location and nature of the premises and other appropriate factors. It is to be borne in mind that the designated liquor officer is not the licensing authority and the purpose of the limited exemption is to allow for existing traders who apply for licences to continue trading pending the finalisation of the application.

Owing to the nature of the limited exemption during the process of regularisation the suitability of the applicant to qualify for the limited exemption will be determined as soon as possible, and consequently the period in which such decision will have to be finalised is to be

prescribed by the provincial Minister responsible for the provincial liquor legislation, after consultation with the provincial Minister of Community Safety. This period may correspond with that relating to the submission to the municipality of the report on the licence application by the designated liquor officer. This may result in the submission of the report and the issuing of the certificate regarding the limited exemption occurring at the same time.

The designated liquor officer, upon approval of the limited exemption, will register the limited exemption on the liquor licensing system against the licence application, and the registered trader will be issued with a certificate to this effect. Should the designated liquor officer decide that the applicant does not to qualify for the limited exemption, the applicant may, in writing set out the grounds of the review in order to have the decision of the designated liquor officer reviewed by the official designated for this purpose by the provincial Minister responsible for community safety. The decision of the reviewing authority will be final.

Reports on the conduct of licensed trade

It is a common occurrence that, after licences have been granted, the demands of commercial survival and ignorance of the conditions of the licence and provisions of the legislation result in licensed trade being conducted in flagrant breach of the public interest. As an example, restaurants that initially have the support of their surrounding community, convert to night clubs that are associated

with noise disturbance and unsocial behaviour by patrons leaving the premises and become unacceptable to the neighbours.

It is in the non-compliance with licence conditions and provisions of the liquor legislation that the authorities, be it the Liquor Board, the municipalities or the designated liquor officers, are faced with major challenges. Provision will be made in the legislation for enforcement measures by the Liquor Board, but these measures will be ineffective unless the designated liquor officers, in collaboration with the provincial liquor inspectorate and the municipalities through the functioning of the liquor forums, ensure that appropriate and timely steps are taken to prevent transgressions, or if transgressions do occur, to take remedial action. The designated liquor officer finds him or herself in the forefront of the battle to ensure that the licensed trade is in the public interest. He or she is primarily responsible for enforcing the liquor licence conditions and the provisions of the liquor legislation.

The designated liquor officer will be required to submit reports to the inspectorate of the Liquor Board on becoming aware of any failure by the holder of a licence or the manager of licensed premises to comply with the provisions of the provincial liquor legislation, the conditions applicable to a licence or any other circumstance arising that may result in the licence no longer being in the public interest. A designated liquor officer will further submit a report if the holder of a liquor licence or the manager of licensed premises becomes disqualified from holding a licence or being in charge of licensed

premises or if such person's control of licensed premises places in doubt their suitability to be a licence holder or to be in charge of licensed premises. The designated liquor officer may further report any matter that in his or her opinion ought to be reported to the inspectorate.

Copies of reports, as well as the correspondence and any other document that relate to the enforcement of licence conditions and provisions of the provincial liquor legislation in respect of particular licensed premises may be sent to the appropriate municipality by the author thereof. It is foreseen that, in appropriate circumstances, the liquor forums might be able, through mediation to resolve certain of the disputes regarding the conduct of licensed trading in liquor.

A designated liquor officer must further report to the inspectorate any conviction, payment of an admission of guilt or the issue of a compliance notice to a licence holder or person in charge of licensed premises for any offence in terms of the provincial liquor legislation or a transgression of licence conditions or any other offence within the prescribed time. Such a report will be prima facie proof of such conviction, payment of admission of guilt or compliance notice at any hearing of the Liquor Board, unless the contrary is proven. Reporting must take place in the prescribed manner. It is foreseen that a computer based licensing system will be available to the provincial inspectorate, the municipality and the designated liquor officer that will allow for the endorsement of the required information on a licence

or the record of the person in charge of the licensed premises and that may be used for reporting purposes.

The designated liquor officers may further be required to provide reports on any aspect of the licensed trade in liquor in general within their areas of jurisdiction by way of procedure agreed upon with the education, awareness training and research component of the Liquor Board administration. The reports may include, but are not limited to, information relating to the effectiveness of harm reduction measures, the impact of the training of sellers of liquor or the education of members of the public and the impact and extent of the unlicensed trade in liquor. The information will be required in the development and revision of strategies to reduce the negative aspects of the liquor trade.

Every designated liquor officer will at the end of each year provide the Liquor Board with a report in the prescribed format regarding the state of the liquor trade in his or her area for the preceding year. The intention of the report is to provide for the monitoring of the enforcement measures, the effect of measures taken to limit the negative social consequences of the sale of liquor and any training that licence holders have undergone during the period and to contribute to the strategic planning of the Liquor Board and support structures so as to achieve the objects of the legislation and policy for the next year.

Powers of designated liquor officers regarding access to premises and investigations on licensed and registered premises

A designated liquor officer, in the performance of his or her functions in terms of the provincial liquor legislation, may enter premises licensed in terms of the provincial liquor legislation or registered in terms of national legislation, any premises in respect of which an application for a licence in terms of provincial legislation has been made or any premises for which a permit in terms of the provincial liquor legislation has been issued or applied for (referred to as “the licensed premises” in this paragraph), and after identifying him- or herself and informing the person in charge of the licensed premises of the purpose of the visit, conduct such investigation as he or she may think necessary. Access may be obtained by the designated liquor officer to any part of the licensed premises. If necessary, reasonable force may be used by the designated liquor officer, or members of the South African Police Service or municipal police service under his or her authority and in his or her presence, to obtain access to the licensed premises, or any part of the premises. It is foreseen that entrance to premises registered in terms of national legislation (which, for the sake of simplicity, are included in the term “licensed premises” in this paragraph) may be required by the designated liquor officer for investigation purposes in the performance of his or her functions in terms of provincial legislation. In particular this may be required when it is alleged that persons registered only in terms of national legislation sell liquor for consumption directly to the public, in contravention of the provisions of provincial legislation that require provincial licences to do so. The

sale of liquor to the public without a provincial licence will be an offence. It is anticipated that the imposition of the three-tier system created through national legislation will increase the number of registered distributors and that it may lead to an increase in the number of small scale distributors. The increase in the number of smaller distributors who are unable to compete successfully and consequently contravene the prohibition on sale directly to the consuming public, without obtaining the required provincial licences, in order to survive economically is anticipated as a distinct possibility.

The designated liquor officers may at any time demand that a licence holder, a person in charge of licensed premises or any other person under the authority of the licence holder or the person in charge of the licensed premises should produce a document or record, whether on paper or in electronic format, which of such person possesses or has control of, inspect such document or record and make copies of the whole or part thereof, or seize such document or record for evidential purposes. The designated liquor officer may demand from such person an explanation of any entry in the document or record. The designated liquor officer may alone, or in the presence of any other person that he or she may require, question a licence holder, a person in charge of licensed premises or any other person under the authority of the licence holder or the person in charge of the licensed premises or any other person that he or she on reasonable grounds believes may be able to provide information about any aspect of the licensed premises being investigated. The designated liquor officer may require these

persons to appear before him or her at such time and place fixed by him or her, and at a time and place may question these persons. Such person must at all reasonable times while a designated liquor officer is on the licensed premises render any assistance that the designated liquor officer may require in the exercise of his or her powers.

The designated liquor officer may further during an investigation of any matter on the licensed premises seize any object, including liquor, equipment, money, or any other item that is associated with the conduct of the business on the licensed premises as evidence in the course of the investigation.

Approval of the purchasing of larger than prescribed quantities of liquor

With the exception of the sale and purchase of liquor between licensed traders, whether they are manufacturers and distributors who have obtained provincial licences, micro-manufacturers or retail sellers of liquor, no person may purchase and no licensed trader may sell to a member of the public a larger quantity of liquor than the quantity prescribed by the provincial Minister, without the written consent of the designated liquor officer for the area in which the licensed off-consumption premises are located. It must be noted that the purchase and sale of quantities of liquor in excess of the prescribed volume is not prohibited, but may only take place with the approval of the designated liquor officer or in instances of commercial transactions between traders registered in terms of national

legislation or licensed in terms of the provincial legislation. If a person requires a quantity of liquor in excess of the prescribed maximum quantity for a lawful purpose, a written application specifying the intended use of the liquor and any supporting documents, such as wedding invitations, must be lodged with the designated liquor officer. Written consent must be obtained in duplicate from the designated liquor officer for such purchase. The designated liquor officer will be required to satisfy him- or herself on reasonable grounds that the purpose of the purchase is not for resale of the liquor.

No licensed premises may sell for off-consumption purposes a quantity of liquor in excess of the prescribed quantity without receiving and retaining a copy of the written consent of the designated liquor officer, or a written order from the purchasing licensed trader. The copy of the written consent or written order must be retained on the licensed premises by the seller and must be available for inspection by the enforcement agencies. If, upon inspection by an enforcement agent of the records of sale of liquor for off-consumption purposes by licensed premises, the seller is unable to produce a copy of the written consent of the designated liquor officer or a written order containing the licence particulars of the purchasing licensed trader, it will be regarded as prima facie evidence, unless the contrary is proven, that the sale of liquor took place in contravention of the provisions of the legislation.

These provisions are provided in the provincial legislation in addition to the provisions of section 4(7) and (8) of the national Liquor Act, No 59 of 2003. These sections of the national legislation prohibits the sale of liquor for the purpose of resale to unregistered or unlicensed persons and provides for inferences that may be drawn from arrangements between sellers and buyers of liquor regarding the delivery, the frequency of purchases and the financial and credit arrangements.

The purpose of limiting the purchase of excessive quantities of liquor is to disrupt unfettered access to large quantities of liquor by unlicensed traders. The proposed system will allow purchasers of larger quantities of liquor for bona fide purposes to purchase liquor. Purchasers of quantities of liquor in excess of the limit for bona fide purposes normally require the larger volumes for weddings or other festivities that are planned in advance and it is not foreseen that the requirements will cause any serious disruption for such purchasers. The requirement that the sale of liquor between registered or between licensed entities must be accompanied by a written order reflecting the particulars, including the licence number of the purchasing party is not unreasonable and should in any event form part of normal commercial practice. The seller must retain a copy of the written order and the corresponding invoice and have it available for inspection upon demand by the appropriate enforcement authority.

Powers of search and seizure by peace officers in general

A peace officer, with or without a search warrant depending on legal requirements regarding lawful search and seizure, may at any time enter and search any premises, place, vehicle or vessel, or search any person or object, if there are reasonable grounds to suspect that an offence in terms of the provincial liquor legislation is being committed on or in the premises, place, vehicle or vessel, or that such person is committing an offence in terms of the provincial liquor legislation or the object is being used in connection with the commission of an offence in terms of the provincial liquor legislation. A peace officer is defined as such in terms of the provisions of the Criminal Procedure Act, Act 55 of 1977, and includes all members of the South African Police Service, duly established municipal police forces and law enforcement agencies. If during such search liquor, equipment, money, or any other item that is associated with the commission of an offence in terms of provincial liquor legislation is found in or on such premises, place, vehicle, vessel or person, it may be seized as evidence in the course of the investigation.

If there are reasonable grounds to suspect that a person is committing an offence in terms of the provincial liquor legislation, a peace officer may, after complying with legal requirements, question or search such person regarding the alleged offence.

A peace officer may enter any premises, place, vehicle or vessel from which liquor is sold and demand that the licence or permit authorising the sale should be produced to him or her and inspect any record or

document required to be kept by virtue of the provincial liquor legislation. A peace officer may demand and obtain the name and personal particulars of any person found on or in any premises, place, vehicle or vessel from which he or she seizes liquor, equipment, money, or any other item that is associated with the commission of an offence in terms of provincial liquor legislation. If such person fails to provide the required information, or provides information that the peace officer on reasonable grounds suspects is false, the peace officer may arrest such person and detain him or her in accordance with the provisions of the legislation.

Any member of the South African Police Service of or above the rank of inspector or any member of a duly established municipal police force holding the equivalent rank, if of the opinion that a public disturbance or public violence is occurring or is threatening to occur at or near premises that are licensed or are registered in terms of the national liquor legislation or are unlawfully selling liquor may order the closure of such premises for such period as may be necessary to prevent the threat or occurrence of public disturbance or public violence or take such other steps as in his or her opinion may be necessary to stop, prevent or limit the extent of such threat or occurrence. The holder of the licence, the registered person or the responsible person in charge of the premises must immediately comply with such order and failure to do so will be an offence. The member of the South African Police Service or duly established municipal police force that has given such order may take such steps that are necessary to enforce the order, including the use of

reasonable force that is necessary. The order may be withdrawn at any time by such member or any member of the South African Police Service or duly established municipal police force that holds a more senior rank.

Functions of inspectors

The function of an inspector will be to co-ordinate the measures to be taken to enforce the licence conditions and the provisions of the legislation as these apply to licences and conditional licences. The inspectors are to liaise with the designated liquor officers in the investigation of complaints, provide guidance on the gathering of evidence and give support and advice in the preparation of matters to be presented to the Liquor Board by the Manager: Compliance and Enforcement. An inspector must perform any functions of a designated liquor officer that the Board or the Chief Executive Officer as head of administration of the Liquor Board determines and any other functions in connection with the administration of this Act that are assigned to him or her by the Board or Chief Executive Officer of the Liquor Board. An inspector must be provided with a certificate, signed by the Chairperson, declaring that he or she has been designated as an inspector for the purposes of the legislation. An inspector performing any function in terms of the legislation or assigned to him or her will on demand by any person affected by the performance of that function be required to produce to that person the certificate with which he or she has been provided.

Powers of inspectors

The inspectors will have powers similar to those of the designated liquor officers regarding access to premises and investigations on licensed and registered premises to enable them to fulfil their functions in terms of provincial legislation. These powers assigned to designated liquor officers, with the required adaptation, are applicable to inspectors.

An inspector, when so instructed by the Board or the Chief Executive Officer of the Liquor Board, will in respect of applications made in terms of the provincial liquor legislation report to the Liquor Board or the Chief Executive Officer of the Liquor Board on prescribed matters or matters which, in the opinion of that inspector, ought to be taken into consideration in respect of any application. An inspector will submit a report to the Chief Executive Officer of the Liquor Board as soon as possible after becoming aware of any failure on the part of a licence holder to discharge an obligation which is attached to the licence concerned, or of a holder becoming disqualified or otherwise incompetent to hold the licence, or of alterations or repairs which in his or her opinion ought to be effected to any licensed premises, or of any other matter which in the opinion of the inspector ought to be brought to the notice of the Board.

Reports on certain convictions

The inspectorate will ensure that any conviction, payment of an admission of guilt or the issue of a compliance notice to a licence holder or a person in charge of licensed premises for any offence in

terms of the provincial liquor legislation or any transgression of licence conditions or any other conviction is recorded against the licensed premises concerned.

If a licence is endorsed as provided for in the policy, a replacement licence will be issued containing the endorsement thereon but will it be regarded as a duplicate of the original. No amendments of the conditions pertaining to the earlier version of the licence or a change in the date of renewal will be implied. The purpose of the duplicate is solely to reflect the endorsement. An annual renewal notice will not be issued automatically in respect of endorsed licences; such licences will be reviewable by the Liquor Board.

CHAPTER TEN - LAND USE MANAGEMENT POLICY GUIDELINES

This chapter aims to provide guidelines to applicants, municipalities, the liquor forums and the Liquor Board pertaining to business development and land use management issues which impact on administration of the liquor licence only. These guidelines do not impinge on the constitutional mandate of municipalities to provide for land use management measures.

The provincial Department responsible for development planning has also provided model scheme regulations for adoption by municipalities. At the time of the approval of this policy the City of Cape Town was in the process of adopting a revised scheme regulations that allows for the supply of liquor as primary or secondary rights on land within its jurisdiction.

Definitions

The following definitions are used, for the purposes of the liquor policy, to apply to land use planning and business development as contained in this chapter. It must be noted that these categories are not liquor licence categories that are to be considered and approved by the Liquor Board.

- *Off-consumption (formal) and (informal)*: This refers to establishments where liquor is sold, but not consumed, on premises. In this document off-consumption (informal) is used to refer to businesses in the poorer, residential parts of the

municipality. In certain schemes this category is referred to as “liquor shops”. This category is where the existing unlicensed liquor traders generally find themselves at present. The on-consumption (formal) is referred to as “bottle stores” in certain schemes.

- *On-consumption (formal) and (informal)*: These terms are used where liquor is consumed on the premises. On-consumption (informal) refers to a more informal establishment, predominantly located in poorer, residential parts of the municipality. Certain schemes have referred to this category as shebeens. The term “shebeen”, however, is also used to refer to an illegal unlicensed outlet and in the policy document is used in that context. This category is where the existing unlicensed liquor traders generally find themselves at present. On-consumption (formal) refers to more formalised businesses and in certain schemes are known as “bars”.
- *Tavern or restaurant*: Both of these refer to establishments where meals are prepared and consumed with liquor on the premises. Tavern refers to more informal establishments located in poorer, residential parts of the municipality, whereas restaurant refers to businesses in more established parts of the municipality.

The current situation

Municipalities throughout the Western Cape make varying provisions for liquor trading activities. The following table summarises the typical definitions used by municipalities:

Affordable Housing and Informal Residential Areas	Established and Formal Residential Areas	Description
Liquor shop	Bottle store	These terms refer to establishments where liquor is sold, but not consumed, on the premises.
Shebeen	Bar or Pub	These terms are used where liquor is consumed on the premises
Tavern	Restaurant	Both of these refer to establishments where meals are prepared and consumed with liquor on the premises

Most current municipal zoning schemes allow for these activities to varying degree. Some municipalities have allowed liquor shops, shebeens and taverns on properties zoned for residential use through consent from the municipality. This use requires the retention of residential use (generally 60%) and that the owner resides on site. The arguments used in favour of this requirement include the assumption that the activities and behaviour of customers can be monitored by the owner at all times; the operator saves on renting expensive business premises; the property will not be left vacant at night and the building will still have the appearance and function of a dwelling unit. The arguments against this requirement are the impact of liquor activities on normal family activities, in particular if the family includes under-age children and school-going children.

In some zoning schemes these activities are regarded as “home industry” and have been allowed as consent uses, whereas taverns have been allowed to be located on properties zoned for business use as a primary use. There has, however, been a realisation that liquor trading has a far greater impact on residential areas than other

home-based businesses and there have therefore been a move away from using the “home industry” zoning category.

Not all municipal zoning schemes make provision for the liquor trade as a primary activity and most schemes allow this activity as a consent use. In order to facilitate consistency, it is therefore recommended that municipalities make provision for liquor shops, shebeens, taverns, bottle stores and bars/pubs to operate as a primary use in areas zoned for business and industrial purposes.

Land Use Activity	To be permitted as a Primary Use	To be permitted as a Consent Use
Shebeen, Bar, Tavern, Liquor Shop, Bottle Store	Business, Industrial	Residential, Agricultural and Rural Resort

Approach and Purpose set out in the Guidelines

It is recognised that the business and residential areas in the Western Cape vary significantly in terms of availability and type of liquor establishment. This is a reflection of the needs and perceptions of local residents regarding the advantages and disadvantages of convenient and localised liquor facilities. Another reason for the disparity in the availability and distribution of liquor outlets is the past spatial planning approach of limiting retail and commercial development in historically disadvantaged residential areas.

It is therefore important that when guidelines are formulated, cognisance is taken of the differences between the needs and perceptions of various communities when a liquor licence is awarded.

In drafting its by-laws the municipality, in consultation with the local liquor forum (if such a body has been established), should then have the flexibility to decide which of the categories of guidelines is most applicable to a specific category of application. A distinction is made between business development and land use management guidelines for established and emerging liquor traders, depending on the location of the premises.

Overriding principles

There are, however, overriding principles that are applicable to both established formal and emerging traders, including the following:

- The approval of a new liquor licence application should not result in a change in the character of the local area in which it is to be located, without the accompanying land use approval of the responsible municipality.
- It should generate economic activity through the provision of income and employment opportunities for the local community.
- It should make for increased convenience for the local community in terms of access to this service.
- The operator must be in a position to contain and remove any nuisance factors resulting from the operation of the liquor business (These include factors such as noise, smell, safety, littering and parking.).
- Access to a liquor licence is not a right and must be accompanied by duties and responsibilities that limit the negative social impact of the sale of liquor.

Guidelines for formal and established liquor traders

The following guidelines present ideas on how prospective liquor traders in the formal and established areas should deal with land use applications. Generally most traders within this category are located in the older, more established urban areas, in central business districts (CBDs), along main roads and in shopping centres.

Key issues and concerns

While zoning regulations deal with most of the land use-related issues and do not present problems, there are a number of business development issues that have relevance for formal and established liquor traders. These include:

- Liquor establishments previously owned by disadvantaged individuals (PDIs) are underrepresented in formal and established areas.
- There are also few opportunities for emerging small liquor businesses within these areas.
- Supermarkets and convenience stores are encroaching on the market traditionally held by stand-alone liquor outlets.

Business development strategy and policy guidelines for formal and established liquor traders

There is a need to create significantly more opportunities for small business operators and emerging entrepreneurs within these formalised and established areas. In order to meet the objective, it is important that the municipalities and the Liquor Board assess

whether liquor licence applications contribute to national and provincial policies in relation to economic empowerment and job creation. Ownership by previously disadvantaged persons or entities and joint ownership of liquor outlets should be important considerations when assessing liquor licence applications in formal, established areas. For example, if the municipality and the Liquor Board are presented with applications in a formal/well-established area, the emphasis must be on increasing the establishment of businesses owned by previously disadvantaged persons, provided that minimum standards set by the Liquor Board may not be compromised.

Land use Management policy guidelines for formal and established liquor traders

It is recommended that local authorities give consideration to the following critical land use control issues with regard to liquor trading activities. These should only be regarded as a guide for those local authorities revising their zoning schemes.

Criteria	Assessment
Noise	<ul style="list-style-type: none"> Application of conventional mitigatory measures, for example sound-proof walling, control of operating hours in terms of by-laws etc.
Privacy	<ul style="list-style-type: none"> Minimal impact where adjacent to other compatible uses
Parking	<ul style="list-style-type: none"> Provision for customer parking and service delivery vehicles to be accommodated on site or adjacent to site with adjoining owners'

	consent.
Loitering	<ul style="list-style-type: none"> To be controlled by the operator.
Safety	<ul style="list-style-type: none"> Normal requirements to ensure National Building Regulations
Health	<ul style="list-style-type: none"> Standard health regulations

Guidelines for informal and emerging traders

This policy directive focuses on existing unlicensed liquor traders predominantly located in affordable housing and informal residential areas. These areas have generally a combination of licensed and unlicensed liquor outlets.

Key issues and concerns

In most of these areas few licensed liquor outlets are to be found, providing an opportunity for unlicensed trading in liquor by shebeens in residential areas. The shebeens also offer a decentralised service and tend to operate on a 24-hour basis. Key concerns and issues raised with regard to the existing unlicensed liquor traders include the following:

- There is conflict between residential and business activities associated with alcohol misuse, loitering and public nuisance activities.
- The majority of existing unlicensed liquor traders do not operate within formal taxation and regulatory systems, resulting in a loss of revenue and disregard for the rule of law.
- Although existing unlicensed liquor traders are not legally registered, they are able to access public sector assistance in terms of advice and support for business development.

- As with other businesses in affordable housing and informal areas, redlining by financial institutions prevents existing unlicensed liquor traders from gaining access to funding for business establishment and expansion.
- There is limited progression from unlicensed to more formal liquor establishments, resulting in stagnation in terms of business development.
- Law enforcement with regard to illegal liquor trade differs from area to area and there is a tendency for greater enforcement in formal areas than informal areas.

Business development strategy and policy guidelines for informal and emerging traders

The issues and concerns indicate that the mere application of regulatory measures will not address the long-term developmental challenges posed by the existing unlicensed traders. There are a number of possible scenarios in dealing with the existing unlicensed traders:

- Existing unlicensed liquor traders remain illegal and operate outside the system. This is undesirable as these shebeens contravene liquor, zoning and municipal by-laws.
- Existing unlicensed liquor traders are legalised through the issuing of liquor licences and providing a temporary waiver of zoning requirements. Newly licensed traders would then proceed to apply formally for land use permission. Although this could result in a significant number of traders being

incorporated into the liquor licensing system, it does not deal with planning concerns where this activity is embedded in the residential areas. It is possible that the problem could reoccur, after the conditional approval period, and traders would then revert to trading illegally.

- Existing unlicensed liquor traders are legalised through the issuing of conditional liquor licences which provide for the granting of a temporary waiver of zoning requirements. A strategy is then put in place to deal with the land use issues, allowing conditional licence holders, with the approval of the municipality and the Liquor Board, the opportunity to apply for the correct land use dispensation, with the possibility of extensions if they can demonstrate sufficient progress. It must be noted that no conditional liquor licence will be issued to premises within a one kilometer radius from a religious, educational or recreational facility unless the premises already meet the correct land use provisions.

It is recommend that the last option should be adopted and an appropriate strategy should be formulated to deal with the land use issues.

Proposed land use strategy in affordable housing areas

The only effective manner of dealing with the land use issues is for local communities to agree to:

- where business development should be allowed within their local area; and

- where within these business areas, liquor licence applications should be approved.

Most towns and cities in the Western Cape have over the last decade prepared and updated their local spatial development plans, which attempt to deal with the reality of and need for business development in previously disadvantaged communities.

The preparation and updating of spatial development plans and frameworks are also important components of Integrated Development Plans (IDPs) and are required in terms of the Western Cape Planning and Development Act, 1999. These revised and updated plans should be the starting point for reaching agreement with local communities on where liquor trading should be allowed. This should be considered in the context of the need for a significant increase in business areas in poorer areas in order to facilitate the creation of new businesses and associated employment opportunities.

Location of liquor traders within business demarcated zones

Local Spatial Development Frameworks (SDFs) provide important guidelines for where business activity should be concentrated, for example along business activity routes/streets and in business nodes. These new business zones generally criss-cross residential areas and thereby significantly increase the areas for business activities and access to business opportunities for emerging liquor traders.

It is recommended that municipalities should approve existing liquor outlets located within the existing and newly demarcated business zones. In addition, proactive incentives should be put in place to encourage existing liquor establishments to relocate to the demarcated business zones. These could include the following:

- The removal of all restrictive planning and development control legislation around the use of the land for business development within the identified business zones. This can be achieved through the declaration of specific sites or areas to be special business areas.
- Public and private sector grant-in-aid and soft-loan packages to encourage the construction of business infrastructure that would provide affordable rental space to local businesses, including liquor traders. These financial packages could be made available for the construction of a basic structure, i.e. as a stand-alone liquor facility or potentially as part of a business hive development.
- Subject to the provisions of the applicable legislation, the granting of licences or consents to engage in gaming must be restricted to holders of on-consumption liquor licences within the demarcated business zones.

Preference should be given to existing unlicensed liquor traders relocating from residential areas. This should be accompanied by business development and mentoring programmes for newly licensed emerging liquor traders. The intention is therefore to create

favourable conditions to encourage existing unlicensed liquor traders to relocate their businesses from their residential premises to an alternative site within the demarcated business zones, which would still be easily accessible to their customer base. By so doing the impact of the operation on the surrounding residential community would be reduced. Assistance should only be provided to newly licensed traders who are the holders of conditional licences during the one-year period that the conditional licences are applicable.

Location within residential fabric

The ideal situation that the liquor policy is striving for is the phasing out of trading in liquor from residential premises. This objective will not be achieved by the imposition of a prohibition on the sale of liquor from residential premises at this stage. The existing situation has developed over decades and is entrenched. A phased approach will be followed of initially allowing existing unlicensed liquor traders who meet the objective criteria to become licensed, subject to conditions that are less favourable than those imposed on outlets that are located in more acceptable areas.

If the owner chooses to retain an existing operation from residential premises, the onus should be on the licence applicant to take responsibility for the following:

- The applicant should demonstrate that the operation of the to-be-licensed establishment is acceptable to the surrounding community;

- The applicant must address nuisance factors such as noise disturbance and the adjoining neighbours' right to privacy by means of the following:
 - Soundproofing of walls;
 - Proper screening through vegetation or high walls;
 - Ensuring that there is no loitering of customers within a predetermined zone from the residence;
 - Other related conditions as determined by the municipality.
- Health and safety standards must not be compromised and must be addressed through:
 - Proper garbage disposal and management;
 - Lockable storage facilities;
 - Adequate ablution facilities;
 - Structures which comply with the National Building Regulations for businesses;
- Parking areas for patrons, taking into account that limited space is available;
- If on-site consumption takes place, then this should be clearly separated from the residential component of the premises by means of a wall or securable doors;
- Signage should comply with municipal regulations for residential areas;
- Hours of sale should be substantially reduced for liquor outlets operating from residential premises, whereas hours of trade for liquor outlets located in identified business areas should be less restrictive. This must be imposed by means of a by-law of general

application that provides for the differentiation of liquor trading days and hours for liquor trading activities within the outlets located in residential areas from those for outlets that are located where liquor trading is a primary right and not per individual instance. Enforcement would be needed to ensure that restrictions on trading hours are enforced and community input will be crucial.

Special incentives to encourage these activities within residential areas are therefore not recommended. If allowed, these activities should remain a Consent Use.

Proposed land use strategy in informal settlement areas

There are a number of shebeen operations in very dense, informal settlements, often on vacant and under-utilised land identified for alternative uses (school sites, detention ponds, buffer strips etc.). Until an approved residential subdivision plan is in place, the strategy should not be to formalise these operations. The primary goal should be to facilitate entry into the market through skills development, to generate awareness of the legal and procedural requirements; to minimise any confusion and uncertainty around the liquor licensing process and the duties and responsibilities attached to the sale and consumption of liquor.

Land use management policy guidelines

The following land use guidelines are proposed to inform municipal zoning schemes, in particular for affordable housing areas and informal settlements.

Assessment Criteria	Affordable Housing Areas (Medium-Density Areas)	Informal Settlements (High-Density Areas)
Noise	<ul style="list-style-type: none"> • Do not locate liquor outlets adjacent to schools, old-age homes or health facilities • Relocate to business site close to customer base or take responsibility for the following mitigatory measures: <ul style="list-style-type: none"> ○ Soundproofing, screening in terms of high walls, vegetation ○ Restrictions on trading hours 	<ul style="list-style-type: none"> • Ensure adequate spacing between liquor outlets and adjacent residential structures • Consider restrictions on hours of operation through by-law of general application for the category of licence or recommendations to the Liquor Board regarding a specific application
Privacy	<ul style="list-style-type: none"> • Structural alterations to premises must meet with the consent of adjoining neighbours and the municipality • Restrictions on hours of operation through by-law of general application for the category of licence or recommendations to the Liquor Board regarding a specific application • Encourage location along/in activity routes/nodes and along public transport routes where there is a higher traffic volume and reduced impact on residential properties 	<ul style="list-style-type: none"> • Locate close to public through routes where there is a higher degree of exposure in order to protect neighbourhoods
Parking	<ul style="list-style-type: none"> • Should parking/loading be needed and should it not be possible to accommodate this on site, the adjacent streets must be of sufficient width to allow on-street parking/loading • Alternatively, the property must 	<ul style="list-style-type: none"> • Provision should be made for localised parking and loading bay facilities.

	have easy access to public parking or public transport facilities	
Loitering	<ul style="list-style-type: none"> Liquor outlets should not be located near vast undeveloped public open spaces, parks, etc Liquor licence holder to be responsible for controlling customer-loitering near outlet, within a predetermined zone 	<ul style="list-style-type: none"> Liquor outlets should not be located near vast underutilised open spaces, parks, and pedestrian alleys which encourage loitering and negative social behaviour
Safety	<ul style="list-style-type: none"> Restrictions on use of materials, adjacent land uses, that could be a fire hazard 	<ul style="list-style-type: none"> Facilities along routes accessible to fire brigades Encourage use of materials that reduce fire hazard
Health	<ul style="list-style-type: none"> Ensure sufficient ventilation and light in facilities. 	<ul style="list-style-type: none"> Ensure sufficient ventilation and light in facilities.

Land use management guidelines applicable to all liquor licence holders

The following are suggested guidelines for municipalities pertaining to documents and information required when considering whether a land use application is substantial:

- All the applicant's personal details
- The site location and surrounding land uses
- The anticipated impact on the surrounding neighbours
- Certified copies of the erf diagram and title deed
- Site development plan indicating:
 - Building footprint on site
 - Vehicular access and egress to and from the site as well as parking (if required)

- Building plans and an indication of what portion of the building will be used for the liquor activity
- Reasons for a change in land use
- Completion of the necessary application forms as required by the relevant municipality.

Municipalities could also, in addition to the zoning requirements, impose conditions with regard to the following when approving land use rights for any liquor establishment:

- Hours of operation: As determined by the municipal by-law or through recommendations to the Liquor Board in instances where stricter liquor trading hours and days are desirable.
- Parking and traffic requirements: adequate parking, loading zones, access and egress to and from the facility to the satisfaction of the transport branch or similar authority.
- Signage permitted: Consent is required for signage in excess of minimum size specified by the relevant municipality.
- Residential component: The liquor trader may be required to reside permanently on the property, especially if located in residential area. There should however be a clear separation between the residential and business components, i.e. liquor should be stored and sold in a dedicated room or building attached to the main dwelling.
- Right to revoke: Should conditions not be adhered to, or the activity pose a nuisance, the municipality could rectify or withdraw the consent.

- Landscaping: The municipality could specify that the licensed liquor trader should provide landscaping at the premises.
- The municipality could require the licensed liquor trader to display the approved liquor licence as well as other notices with regard to health regulations and codes of conduct.
- Any other requirements as set by the municipality.

The assessment of applications should take the following into consideration:

- The characteristics of the surrounding community
- Loss of privacy of surrounding owners
- Proximity of community facilities (child-care places, schools, places of worship, etc)
- Traffic generation and patterns (vehicular and pedestrian)
- Delivery of liquor
- Littering/removal of liquor from premises
- On-site facilities provided (entertainment and its impact, toilets, food prepared and sold on premises, etc).

CHAPTER ELEVEN - BUSINESS DEVELOPMENT SUPPORT SERVICES FOR LICENCE APPLICANTS AND CONDITIONAL LICENCE HOLDERS

Key criticism of unlicensed liquor trading includes its intrusive nature in residential neighbourhoods, loitering, nuisance, increased criminal activity and associated lawlessness and its operation outside existing taxation and public administrative systems. The response from authorities includes raids on existing unlicensed establishments, the confiscation of liquor and the arrest and conviction of transgressors. In spite of an increase in legislation, regulations and other procedures to eradicate unlicensed liquor trading, it remains a reality in South African society and is evidently growing and expanding.

The primary reasons why this activity continues are high unemployment levels, the market demand for the associated products and services and the relatively high levels of profitability. The responsibilities and duties associated with a liquor licence set this type of business activity apart from other informal small, medium and micro-business operations. Formalisation of this activity will lead to better services and increased competitiveness in the industry and marginalise unlicensed traders who have no intention to comply with the law. It is therefore clear that the current impasse can only be addressed through the transformation of unlicensed businesses into formal businesses.

While some of the existing unlicensed liquor traders have been accepted in certain areas, the negative connotation of shebeens in townships relates to a large extent to the type of structure, the associated activities and the management style of the operator. Liquor establishments operating in a fashion similar to that of formal businesses by abiding by codes of conduct and from structures that comply with the National Building Regulations are generally more acceptable in these communities.

The formalisation of existing unlicensed liquor traders will require the provision of business training, support and advice and, if possible, also access to funding. The following business development strategy is based on the assumption that the provision of advice and support to newly licensed liquor traders would lead to better services, increased access to products, viability and profit margins and act as an incentive for shebeeners to formalise their activity.

In order to increase the success of this initiative and accelerate the process of business development, the focus should be on newly licensed liquor traders who display the following characteristics:

- It must be existing businesses that have expressed a willingness to become formalised by obtaining at least a conditional licence.
- Businesses owned by previously disadvantaged individuals should be prioritised.
- The owners must display entrepreneurship and view their operations as businesses in the first instance.

- The businesses should have the potential to create employment opportunities.
- The businesses must display the potential for becoming a success.

It is proposed that the Department of Economic Development and Tourism as well as municipalities proceed with the following mechanisms and tools to facilitate the transformation of existing unlicensed liquor establishments into formalised operations:

- The Department of Economic Development and Tourism in conjunction with the Liquor Board will, as part of its assistance to small, medium and micro-enterprise development, provide a dedicated service for new licence holders, particularly conditional licence holders, to help them to deal with enquiries and to provide information with regard to the necessary legislation, procedures and availability of business development services. This will not be a “one-stop shop” but rather a referral centre. Municipalities that do have the capacity and resources are urged to proceed with similar initiatives.
- In most cases liquor trading from a residential property requires planning approval from the relevant authorities. Municipalities are urged to make this procedure as simple and cost-effective as possible and to allow for more rapid approval procedures where liquor establishments are located within areas or zones identified for business activities through local spatial development plans and frameworks.

- The Department responsible for the liquor legislation may formally recognise liquor trade organisations that represent the interests of a significant number of liquor trade operators. The Liquor Board may accredit codes of conduct of liquor trade organizations that have been recognized by the Department with a view of contributing to a culture of socially responsible supplying of liquor. These organisations could assist in accrediting training programmes, facilitating networking and mentorship between their members and other operators within this trade, and also act in an advisory capacity for the industry.

The following business support services and programmes can best be provided by the private and non-government (NGO) sectors, and the Department of Economic Development and Tourism will facilitate this process through the accreditation of service providers and the identification of potential public or industry sector funding sources.

- Programmes are required to assist new liquor licence holders with training and advice on how to operate and manage a business. The South African Breweries, for example, offers a three-day training programme which includes the development of skills regarding numeracy; basic selling; customer service; how to obtain a liquor licence; costing and pricing; record keeping; credit control; cash flow management; purchasing and stock control; social aspects: code of practice and community investment. This programme targets licensed outlets and pending licence applications. The chapter of this policy document relating to training programmes discusses these aspects in more detail.

- Business advice and support are required regarding the most appropriate legal entity to formalise existing unlicensed liquor traders. Possible types of business ownerships include sole trader, partnership, limited liability or private limited company. Other alternatives could include cooperatives, community development corporations, etc. Of importance is to ensure that both the advantages and disadvantages of these vehicles should be carefully explained to prospective business operators.
- A number of conditional licence holders would require ongoing business advice and counselling in order to progress to unconditional licence holders. Of importance is to ensure that the advice offered is affordable, credible, client orientated and accessible. Case studies have shown that the chance of advice being heeded is greater when peers within the particular field provide it.
- Licence holders that succeed in progressing beyond the initial stages of formalisation and proceed to grow into small and macro-businesses may require general administrative and logistic support, as it may not be feasible to provide this service in-house. This could include accounting services, bookkeeping, taxation advice, including VAT, PAYE and company tax, secretarial and printing, joint marketing and advertising, etc.
- Newly licensed businesses owned by previously disadvantaged persons may qualify for government funding programmes targeting Small, Micro and Medium Enterprises (SMMEs). Formalisation of the liquor trade would also increase the likelihood of access to funding through commercial banks.

- It would be in the interest of licensed liquor operators to participate in and contribute towards programmes aimed at reducing and eradicating loitering and nuisance factors and improving public relations, advertising and marketing. This would require close cooperation with community-based organisations and non-government organisations (NGOs) operating in the local area.

CHAPTER TWELVE - ADDRESSING THE NEGATIVE CONSEQUENCES OF THE ABUSE OF ALCOHOL

There are four main ways in which the Western Cape liquor policy and legislation aim to protect communities against the harms associated with alcohol abuse:

- Restricting or controlling access to liquor
- Education and training initiatives of sellers of liquor and the consumer public
- Improved enforcement of regulations and handling of complaints relating to the sale of liquor
- Increasing access to information by the public and enforcement agencies and improved accountability of the sellers of liquor.

Restricting or controlling access to liquor

The sale of alcohol will be controlled in a number of ways to decrease access in general, and specifically to end harmful practices:

- Limits on days and hours of business as determined by municipal by-law, subject to prescribed norms and standards, with increased limits on liquor outlets operating in residential areas outside business nodes and corridors imposed either by by-law or by licence conditions.
- Restricting public drunkenness.
- Restricting the sale of liquor to persons who are drunk.
- Prohibiting the supply of liquor to employees in lieu of remuneration.

- Restricting the sale or supply of clearly harmful forms of liquor or of liquor in packaging deemed to be harmful.
- Restricting the sale of liquor at or near certain sensitive locations.
- Restricting the sale of alcohol from supermarkets to wine.
- Instituting a variety of measure to decrease access to liquor by persons under eighteen years of age.
- Prohibiting the use of liquor in motor vehicles or opened or unsealed alcohol containers in motor vehicles.
- Prohibiting the possession or consumption of alcohol during festive days and period in high risk public areas such as on beaches and picnic areas.
- Prohibiting the use of vending machines to sell liquor.

While some of these provisions exist in current legislation, others are new or have been made more explicit.

Limits on days and hours of business

A major frustration with the current liquor legislation is the perceived lack of participation by community members in matters such as the days and hours of sale of liquor in a particular area. The new legislation makes greater provision for local input by giving municipalities powers to regulate hours of sale in their areas of jurisdiction by means of by-laws, making provision for the establishment of liquor forums that will act as an important channel for community inputs both at the time of licence applications and in

the resolution of disputes relating to licensed outlets, and for increasing community access to information about specific licence applications and the functioning of the liquor licensing process in general. The Minister will have the power to set closed days and maximum hours of trade by regulation. The Liquor Board may impose more restrictive trading hours in particular instances where this may be justified. All liquor establishments will be required to display information on trading times prominently, together with code(s) of conduct, licence details, special conditions (if applicable) and public health notices.

Drunk persons

It will be an offence to sell or supply liquor to a person who is drunk. A person who sells or supplies liquor, in contravention of the prohibition of selling or supplying of liquor to a drunk person, who reasonably ought to foresee that the sale or supply of liquor to such a drunk person may cause damages to such drunk person or a third party may incur civil liability for such damages.

It will be an offence to be drunk in a public place. The licence holder will have to refuse access to, or to eject from, the licensed premises any person who is drunk and/or disorderly.

Municipalities who have been appointed as competent authorities and who have promulgated the appropriate bylaws may, by declaration, prohibit the consumption or possession of liquor for prescribed periods and public places in their jurisdiction. It is foreseen that these

measures may be used to prevent the large scale abuse of liquor that occurs during the festive season in public places such as beaches and picnic areas.

The supply of liquor to employees

An employer may not supply liquor to an employee for his or her own consumption as wages or remuneration, as an inducement to enter his or her service employment or as a supplement to wages or remunerations or deduct from wages or remuneration the cost of liquor supplied or purchased on behalf of an employee. Liquor may not be supplied by an employer to an employee on credit and any such arrangement will be unenforcable in law.

Harmful liquor or harmful packaging of liquor products

The Minister will have the right to prescribe by notice in the Provincial Gazette minimum norms and standards for the packaging of liquor products that may be sold within the Western Cape province or to prohibit the sale or supply of liquor that, because of its nature or packaging, in the opinion of the Minister is harmful to the health and wellbeing of the community. The supply of a product in contravention of a notice by the Minister will be an offence.

Decanting liquor into empty containers when selling liquor on off-consumption premises, whether such premises are licensed or not, will not be permitted and will be an offence.

Location of outlets

The Liquor Board may not grant a licence if it will prejudice the residents of a residential area, the learners of a school or the congregants of a religious institution located in the vicinity. The Liquor Board must further determine whether the granting of the licence will be detrimental to the health, safety or wellbeing of the community within which the licensed business will be located.

- The status quo will be maintained with regard to supermarkets and grocery and convenience stores, i.e. access to liquor will not be increased by allowing supermarkets and grocery and convenience stores to sell liquor other than wine.
- While there are legitimate concerns associated with allowing liquor to be sold from houses in residential areas, it is acknowledged that historically there were restrictions in certain areas that prevented the development of a more formal retail trade in liquor in such areas. The intention with the new legislation is to phase in the entry of existing unlicensed liquor traders who meet the objective criteria into the regulated market and then, through a programme of incentives and enforcement, to encourage the relocation of their businesses to more suitable areas while at the same time decreasing the negative impact that the remaining outlets in the residential areas have on the neighbouring communities. No licensed liquor outlets will be allowed to operate from public housing units or from multi-unit dwellings.
- In addition to the areas listed above (residential areas, schools and religious institutions) there are other areas where the Liquor Board will be particularly sensitive to the possibility of public

disturbance (e.g. near beach or seafront areas) or already high levels of alcohol dependence (e.g. in certain farming communities) being exacerbated. In such areas the Liquor Board may choose to limit the number of outlets further or impose other special conditions (e.g. restrictions on trading hours).

Restricting access of underage children to liquor

The state has a major interest in preventing the sale of liquor to under age children.

- It will be an offence to employ a child under the age of eighteen years to sell or supply liquor unless the child is registered as a student or trainee in catering with an accredited learning institution.
- A person who holds a liquor licence or any person in the licence holder's employ must not permit an under-age child to enter or be on the premises where liquor is sold or kept for sale except if the under-age child is accompanied by a parent or guardian, or if the under-age child has a lawful excuse, or in prescribed circumstances, for example at a venue where meals are served. The concept of a "restricted area" as it exists in the current Liquor Act, No 27 of 1989, is to be retained and the Liquor Board may by imposition of licence conditions ensure that under age persons are not allowed access into inappropriate on-consumption premises, such as night clubs and taverns. On-consumption premises where prepared meals are served such as restaurants or where entertainment is

provided, such as theatres, need not be declared restricted areas.

Where the liquor outlet is also a residence, for example in the case of a registered liquor trader or conditionally licensed premises that had used to be a shebeen, children under eighteen years of age, including family members of those owning or managing the establishment or serving there, should remain in other parts of the home at times when liquor is being served. Provision has been made for that section of the dwelling that is the licensed premises to be separated from the remainder of the premises by a wall or by doors that are capable of being closed.

Supplying liquor to under-age children

No person may sell, give or otherwise supply liquor to an under-age child, or have liquor in his or her possession for the purpose of selling, giving or otherwise supplying it to an under-age child, or in or at a place under his or her control permit an under-age child to consume liquor, but it will not be an offence if the liquor is given to an under-age child by his or her parent, spouse or guardian or with the express consent of the parent, spouse or guardian in a residence for consumption in that residence. The primary relationship of authority and care between parents and children and the discretion of parents in the education of their children is acknowledged by not prohibiting the supply of liquor to underage children by their parents. Where parents fail to afford children the proper care or abuse their children,

other statutory measures and conventions that deal with the rights and abuse of children are at the disposal of authorities to address the problem. It will also not be an offence if the liquor is administered to an under-age child by or under the authority of a medical practitioner or dentist for medicinal purposes or administered to an under-age child by a registered religious institution as part of holy communion or some other recognised religious observance. The duty will be on the seller or provider of liquor to confirm the age of the purchaser or consumer in his or her establishment.

Prohibitions with respect to under-age children

Under-age children who intentionally mislead a person regarding their age in order to induce the supplier to provide them with liquor will be committing an offence in terms of the provincial liquor legislation. This offence will be in addition to any common law offence pertaining to fraud that may also be committed. It will not be an offence for an under-age child to be in off-consumption premises if he or she is accompanied by a parent or guardian, nor will it be an offence for an under-age child to be in on-consumption premises where meals are served.

As mentioned above, the Liquor Board, upon granting an application, will impose conditions with regard to the age of patrons allowed on the premises where it appears that the nature of the business warrants such a condition and after hearing the applicant on the subject.

Liquor in motor vehicles

It will be an offence to drink liquor in a motor vehicle being driven or parked in a public place or on a public road, unless the motor vehicle is licensed for this purpose, such as tourist buses. Provision is made in the policy for the definition of licensed premises to include vehicles and vessels that are used mainly for tourists. Opened or unsealed containers of liquor are not permitted in the interior section of a motor vehicle.

Service stations

No liquor may be sold for on- or off-consumption at service stations. A service station is defined as premises for the retail supply of fuel to motor vehicles and includes a petrol or diesel filling station, a convenience store that provides for the sale of groceries or a restaurant or coffee shop that provides for the sale of prepared food for consumption on the premises that are located on the same premises as the petrol or diesel filling station.

In terms of the provisions of the Liquor Act, Act 27 of 1989, restaurant licences have been granted in the Western Cape to restaurants located on the same premises as petrol stations, particularly on through routes where service stations provide facilities to motorists. Applications for grocers' wine licences by the convenience stores located on the same premises have been refused, generally on the grounds that, in view of the unacceptably high rate of liquor-related road traffic incidents, it is not in the public interest to allow for the sale of liquor for off-consumption purposes to the travelling public. It is

however anomalous to allow for the on-consumption of liquor by motorists and consequently the sale of liquor from service stations, whether for on- or off-consumption, is prohibited. The existing licences will gradually be phased out over a one-year period by not allowing for the conversion of the existing licences.

Vending machines:

In order to control the sale of liquor to under-aged and drunk persons and the sale of liquor outside stipulated trading hours, the sale of liquor from vending machines will be prohibited.

Education and training initiatives of sellers of liquor and the liquor-consuming public.

Education and training are a second key element in the province's plan to protect communities from the harms associated with alcohol abuse. Education and training will focus on:

- the public at large;
- persons who own or manage liquor outlets or who serve liquor.

Protecting the public at large

The display of public health notices at points of sale

Licence holders will be required to display those public health notices that are prescribed by national legislation or by the Minister responsible for the provincial liquor legislation in the Western Cape. It is foreseen that the Minister will only prescribe such notices if

national legislation does not provide for the compulsory display of public health notices.

It is proposed that, if the responsible Minister prescribes the display of public health notices, the public health notices should focus on:

- driving of motor vehicles under the influence of intoxicating liquor;
- alcohol intoxication and the association with increased mortality and morbidity arising from intentional and non-intentional injuries and risky sexual intercourse;
- abuse of alcohol and the risks associated with pregnancy;
- intoxication and aggressive behaviour;.
- alcohol dependency;
- alcohol abuse and other health effects;
- problems associated with underage alcohol abuse;
- selected offences and possible punishments.

The prescribed public notices will be made available by the Liquor Board to all licensed outlets where liquor is sold. The public notices will be part of a set of information and other documents supplied to licence holders with the issuing of both licences, conditional and full liquor licences, and a set will accompany each renewal notice sent to liquor licence holders every one years. If the display of public notices is not prescribed by national legislation and the Minister responsible for the provincial liquor legislation prescribes the display of the notices, the design and evaluation of such notices will be put out to

tender and prepared by experts in public health and communications in conjunction with the provincial departments responsible for health, social development, transport and community safety.

Code(s) of conduct

A code of conduct for licensed liquor traders, or more than one code of conduct if it is deemed appropriate, will be drafted by each liquor forum (where such bodies have been established) for its area of jurisdiction. Codes of conduct for various categories of licences may differ if necessary, for example for off-consumption licences and special events licences. In instances where liquor forums do not exist, the Liquor Board will provide a basic code that will apply to all the licence holders within that particular area of jurisdiction. Codes of conduct developed by liquor forums will have to comply with minimum norms and standards relating to any or all of the following prescribed by the Liquor Board:

- Practices relating to the sale or supply of liquor to under-age children
- Practices promoting a responsible attitude to the consumption of liquor on the premises, e.g. making drinking vessels and water easily available to the patrons at on-consumption premises at no additional charge. International best practice in this regard is to place containers with water and glasses where the patrons are served, either on each table or at regularly spaced on the bar counter.

- Practices relating to intoxication and disorderly behaviour on the premises, e.g refusal to supply liquor to inebriated persons.
- Practices promoting a responsible attitude to advertising and the promotion of liquor sold on the premises e.g provision of incentives or prizes to encourage the consumption rapid or vast quantities of liquor
- Practices relating to the purchase of illicit and stolen liquor by the licence holder.
- Practices relating to the containers and packaging of liquor products sold on the licensed premises.

Other issues may be included in codes of conduct such as the adherence to legislative measures relating to tobacco and smoking control, the exchange of items such as food parcels or clothing for liquor, the provision of condoms and undertakings about hygiene and cleanliness of the premises, including the toilets. These issues are not prescribed by the minimum norms and standards as they are not directly related to the sale or supply of liquor or the issues addressed may not be applicable to all licence categories or in all circumstances.

The liquor forums, or where applicable, the Liquor Board, will make available copies of the applicable code of conduct to be displayed at points of sale, alongside the public health notices. The code of conduct developed by the Industry Association for Responsible Alcohol Use has been subscribed to by a number of the presently unlicensed traders and may be used as an example or guideline by liquor forums. The codes of conduct will display the telephone

number and contact details of the provincial contact centre through which complaints may be lodged with the provincial liquor inspectorate.

Certain liquor trade organizations have developed extensive codes of conduct that are more comprehensive than the envisaged minimum requirements that are foreseen. Where the Department responsible for the liquor legislation has recognized a traders organisation as representing a constituent part of the industry the Liquor Board may accredit codes of conduct applied by such organizations on condition that these codes meet the minimum standards determined by the Liquor Board.

Broader public education

In addition to such information the Liquor Board will take steps to educate the broader public about:

- the provisions of the new liquor legislation;
- the community protection measures contained in the new legislation;
- risk factors associated with alcohol abuse.

This could be done by means of signage at points of sale, mass electronic and printed media, billboard advertising or a website, and pamphlets. Such information should also be made available to schools and places of higher learning.

Licence holders and persons who manage licensed premises

Given the high levels of misuse of liquor among drinkers in South Africa and the Western Cape, for example drinking to the point of intoxication over weekends, priority needs to be given to the training of those who sell liquor to the consuming public. This includes the licence holders, but also those in charge of licensed premises and employees. The development of a training programme is discussed in detail in another chapter of this policy document.

Other protection measures

Community input

The provincial liquor legislation will provide for increased participation by members of the community.

- Increasing community access to information about licence applications as provided for in the policy document
- Allowing for concerned community members who are representatives of civic associations to be represented on local liquor forums
- Ensuring that complaints regarding licensed premises are effectively registered and addressed
- Having two suitable layperson appointed to the provincial Liquor Board by the Minister, or more, in instances where committees of the Liquor Board are established.

Stricter rules for licensed liquor outlets operating in residential areas

The intention is to impose stricter requirements on licensed liquor outlets operating in residential areas outside business nodes or corridors, such as more restricted liquor trading days and hours. This

is to protect community members from public disturbance and to decrease the exposure of under-age children to liquor. Newly licensed liquor outlets operating from residential areas will be required to have a clear separation of the living area from the licensed area where liquor is served, as more fully described in this policy

Annual review of licences

Licences will only be automatically renewed on an annual basis (following payment of a licence fee) in instances where the licence holder has adhered to the conditions of the licence and the liquor legislation. The Liquor Board will review licences in instances where offences have been committed by the holders, or where complaints have been received regarding the conduct of the licensed business, or where compliance notices have been issued in the preceding one-year period, as provided for in this policy document. As the proceedings provide in these instances for application by the licence holder in these instances for the issue of the renewal notice in a manner similar to that applicable to a new licence, the licensing authority will be able to take into account any changes in the environment in which the licence holder is operating (e.g. the opening of a school in the area) or any other representations that are made to it by interested and affected persons.

Where conditional licences have been approved and the holders are required to meet the prescribed land use requirements or where prescribed training must be undergone, the conditional licences will in

a similar manner not be renewed automatically, but will be subject to review towards the end of one year to ensure that these businesses develop into trading entities that are able to fully participate in regulated liquor trading in a responsible manner.

Improved enforcement, effective and efficient handling of complaints and increased punitive measures for offences

Improved enforcement

Enforcement is one of the key elements to ensure that the community protection measures are realised. Issues relating to enforcement are addressed in more detail in another section of the policy document.

The new legislation aims to improve enforcement in several ways:

- Improving the mechanisms for handling complaints brought by other licence holders and interested and affected persons.
- Increasing the number and functions of liquor inspectors to be appointed to assist the Liquor Board and to work with the designated liquor officers.
- Establishing the position of a Manager: Monitoring and Compliance to ensure a dedicated service to deal with transgressors of licence conditions and the legislation before the Liquor Board.
- Providing for a system of Liquor Board committees that may provide a full-time dedicated service to attend to reviews of licences and deal with complaints.

- Provision of an administrative system of enforcement through compliance notices, administrative fines and administrative hearings that allow for interim and final orders.
- Retaining the system of designated liquor officers and providing the designated liquor officers with increased powers and functions to enforce the legislation.
- Providing for appropriate offences in association with an easing of the burden of proof in respect of such offences in courts of law through the use of rebuttable evidential presumptions and provisions as far as confiscation of stock is concerned.
- Improving liaison between the Liquor Board and other key stakeholders (municipalities, the SAPS).
- The provision of civil liability of suppliers of liquor to drunk persons.

Effective and efficient handling of complaints and transgressions

In order to facilitate the effective handling of complaints the Liquor Board, through its Inspectorate, will establish a provincial call centre (with an 0860 number and e-mail address) that will log and handle complaints about liquor matters. The number will be widely advertised (among other places in the code(s) of conduct) displayed at points of sale.

In most cases callers will be referred to a liquor inspector and/or the appropriate designated liquor officer. The current number of liquor inspectors will be increased substantially to improve the ability of the

Liquor Board to respond to complaints and to identify and prevent undesirable liquor trader practices. Those complaints that fall outside the ambit of the provincial liquor legislation will be referred to the relevant authorities for resolution.

Depending on the nature and extent of the complaint, the matter may be referred to the designated liquor officer or the Liquor Board Inspectorate. In many instances a problem will be dealt with informally, either directly or by involving the local liquor forum, if such a forum has been established by the municipality. Other complaints may result in the issue of a compliance notice by the designated liquor officer, a liquor inspector or the Liquor Board. Administrative fines may be imposed by the Liquor Board on licence holders who transgress the licence conditions or the provisions of the provincial Liquor Act. In serious cases a licence may be temporarily suspended or permanently withdrawn. Consideration should be given to implementing a points system in the future whereby infringements incur points and the licence holder will have to reapply for a licence after a certain number of points.

Increased penal provisions

An increase in the number of offences that are currently provided for as well as an increase in the possible penalties will reflect the serious intent of the Provincial Government of the Western Cape to enforce the provisions of the liquor legislation. An easing of the burden of proof required by the State in the prosecution of offenders for certain offences, for example by the provision of presumptions regarding the

proof of liquor, will ensure that the prosecution of such offences is not prohibitively expensive for the State.

The improved ability of the Liquor Board to record convictions of licence holders will ensure that licence holders who are convicted may be found, after due process, not to be fit and proper persons to continue to hold liquor licences; alternatively it may be found that the continued validity of the licences is not in the public interest and that these licences are to be permanently withdrawn.

Improving access to information

The licensing system will provide for the establishment and ongoing maintenance of a comprehensive database that not only provides information on licence applications and individual licences and allows for the monitoring of infringements and how they have been dealt with, but also on the impact of training and education initiatives.

The purposes of the information system are:

- to facilitate planning by provincial and local government departments;
- to provide guidance to such departments in taking preventive action;
- to provide access to information to the general community, thereby securing greater community involvement and empowerment in the application process and in ensuring that licence holders comply with liquor legislation;

- to facilitate greater accountability to the general public and the provincial Parliament;
- to meet the requirements of the national Liquor Act, No 59 of 2003;
- to provide information for research purposes and to determine research requirements.

Information requirements

Information pertaining to particular licence holders

Broad areas where information needs to be collected on an ongoing basis are listed below. A licensing system that is capable of recording the information is being developed as part of the implementation of the policy and resultant legislation.

*-restricted access use by officials only

Area	Specific information to be recorded
Current licences	Name of liquor outlet, address of liquor outlet, phone number of premises, GIS reference area, name of licence applicant, licence number, type of licence, date of issue (will always be the Liquor Board, except permits), special conditions (if any)
New applications	Proposed site (address), GIS reference area, name(s) of applicant(s), contact details of each member of applicant*, identity number(s) of applicant(s)*, the HDI and gender status of applicants, particulars of the representative of the applicant, type of licence applied for, municipality where application has been lodged, date of application, date on which application was entered on database, has application been forwarded to Liquor Board, date on which application is to be heard by Liquor Board (if determined)
Registrations in terms of the limited exemption during	Name of liquor outlet, address of liquor outlet, phone number of premises*, GIS reference area, name(s) of applicant(s), identity number(s) of applicant(s)*, date of application, date certificate issued for the first

Area	Specific information to be recorded
the process of regularisation	time, date on which application was entered on database, expiry date of certificate (or extension)
Incidents involving licensed outlets	Date of incident, day of week of incident, time of incident, type of outlet (on- or off-consumption or both), name of investigating officer, police station from which officer works (if police), contact details of investigating officer*, name of liquor outlet, address of liquor outlet, GIS reference area, name of licence holder, licence number, particulars of complainant*, address of complainant*, phone number of complainant*, nature of incident, actions taken
Compliance notice	Date of issue of notice, starting date for compliance, name of officer issuing the notice, police station from which officer works (if police), phone number of officer*, name of liquor outlet, address of liquor outlet, GIS reference area, name of licence holder, licence number, conditions of compliance notice
Liquor Board hearing to deal with complaints	Date of hearing, name of liquor outlet, address of liquor outlet, GIS reference area, name of licensee, licence number, name of prosecutor*, contact details of prosecutor*, name(s) of complainant(s) (if any)*, addresses of complainant(s)*, phone number(s) of complainant(s)*, nature of incident, disposition of the case
Premises coming up for review	Name of liquor outlet, address of liquor outlet, GIS reference area, name of licensee, licence number, the HDI and gender status of licence holder and members, type of licence, date of expiry of licence, contact details of reviewing authority, special conditions (if any), number/nature of complaints within past one years
Persons disqualified from holding a licence	Name of person, identify number, reason(s) for disqualification (see incident codes), period of disqualification
Education and training initiatives	List of retailers (owners, managers, servers with ID numbers) and details of training initiatives attended (and dates). Details of community-wide education initiatives

Information on the website should be updated on a continuous basis by municipalities, liquor inspectors, designated liquor officers and the

Liquor Board. Provision is made in the liquor licensing system for areas of common usage by all and exclusive usage by each of the implementing agencies.

Additional information requirements

It is essential that the liquor policy and legislation are revised and updated to ensure their efficiency and effectiveness. There are several areas where reliable information and ongoing research to inform the development of policy are lacking and consequently where further research would be required, for example:

- The relationship between outlet density and negative health and other consequences (drunk driving, alcohol-related pedestrian fatalities and crime).
- Effective strategies for getting health messages across at points of sale.
- The impact of licensed and unlicensed outlets on children under eighteen years, focusing especially on those children living as part of the household on such premises.
- Characteristics that distinguish liquor outlets (specific outlets and specific categories of outlets) that function responsibly and do not contribute substantially to negative health and social consequences as compared to those who do not.
- An investigation into where the last drink was obtained (if applicable) in cases involving drunk drivers and persons injured as a result of bad road behaviour or violence. Similar information has proven useful in certain foreign jurisdictions to

enable authorities to provide preventative and corrective measures.

- A study of underage drinking and issues related to access to liquor.
- Alcohol utilisation patterns in different areas and the ways in which liquor outlet policy in such areas could assist in reducing alcohol-related problems. For example, are different strategies required to reduce alcohol problems in areas where there is high outlet density but low levels of driving as compared to areas of lower density but higher levels of driving?

Ongoing monitoring of the implementation of the provincial liquor policy and legislation and an evaluation of the extent to which the stated aims and specific objectives of the provincial liquor policy are being met is required. To a large extent the information needed to facilitate such monitoring and evaluation will come from the information system referred to above. In addition it, will be necessary to have periodic, independent studies of various persons involved in the liquor trade and of the general public. This could take place by means of periodic quantitative surveys, for example three- or five-yearly, of the general public and retailers involved in the liquor trade.

In addition, more regular (e.g. annual) targeted studies will be undertaken by means of key informant interviews or focus group interviews to evaluate whether the objectives of the liquor policy and legislation are being met and how to address any shortcomings. This could involve the following:

- The designated liquor officers and liquor inspectors
- Relevant officials of municipalities
- Members of the provincial Liquor Board
- Persons living in the vicinity of liquor outlets
- Persons frequenting such establishments
- Young persons under eighteen years of age who have been exposed to the use of liquor
- Persons involved in the retail trade in liquor.

Accessibility of information

The information will be made accessible in a variety of ways:

- Internet: Where possible, information will be made available on the Liquor Board's website. There will be access restrictions to certain identifying information, as indicated with an asterisk in the table above, to prevent victimisation and to protect the privacy of individuals. Where possible, information will be made available in summary format, by geographic area (using, if possible, the Geographic Information System (GIS) mapping), and at the level of individual licence holders and incidents.
- Annual report to Provincial Legislature: The annual report of the Liquor Board to the Provincial Parliament will include annual statistics on the following:
 - Number of licence holders (overall and via GIS area) per licence type

- Number of new applications (overall and via GIS area) per licence type
- Number of new licences granted (overall and via GIS area) per licence type
- Number of incident reports (overall and by GIS area)
- Number of compliance notices issued
- Summary of conditions imposed by compliance notice
- Number of complaints heard before the Liquor Board
- Summary of how Liquor Board disposed of these cases
- General information on alcohol-related fatal and non-fatal injuries, and drunk driving arrests (from Medical Research Council and Department of Community Safety).

In addition, the results of relevant research (both research funded by the Department responsible for the liquor legislation and research funded by other sources) should also be presented. The annual report should be presented to the Provincial Parliament for discussion and will also be made available on the Liquor Board's website.

The Regulations issued in terms of the newly promulgated national Liquor Act, No 59 of 2003 read with Schedule 1 of that Act further prescribes the information regarding each licence holder that the provincial liquor authorities are to supply the National Liquor Authority with.

Summary of community protection measures

A table summarising community protection measures provided for by the new legislation is given below.

Restrictions or controls on access	Education and training	Other protection measures	Improved enforcement and handling of complaints	Increased access to information and improved accountability
<ul style="list-style-type: none"> • Limits on days and hours of business • Drunk in public • Sale to drunk persons • Supply of liquor to employees • Sale/supply of harmful alcohol or packaging • Restrictions on outlet locations (esp. at/near educational institutions, petrol stations, residences, multi-dwelling housing) 	<ul style="list-style-type: none"> • Public at large through <ul style="list-style-type: none"> ▪ (i) specific notices at points of sale regarding the harms associated with alcohol misuse; ▪ (ii) placement of codes of conduct, at points of sale; and ▪ (iii) mass media campaigns providing information about the new provincial legislation and the harms associated with alcohol misuse • Persons who own or 	<ul style="list-style-type: none"> ▪ Strengthening community input ▪ Stricter regulations on liquor outlets in residential areas (not in business nodes or along corridors) ▪ Mandatory annual review of existing licences that do not qualify for automatic renewal ▪ Programme for encouraging existing unlicensed outlets to licence and to move to business nodes or 	<ul style="list-style-type: none"> ▪ Increasing liquor inspectorate, ▪ Quick & efficient handling of complaints & infractions ▪ Improved liaison with other stakeholders 	<ul style="list-style-type: none"> ▪ Establishment and maintenance of a comprehensive database covering existing licences, licence applications, unlicensed premises, incidents and their disposition, licences to be reviewed, persons disqualified from holding a licence, education and training courses attended ▪ Accessible in a variety of formats (through the internet, annual reports to the Provincial Parliament ▪ Support for further research

Restrictions or controls on access	Education and training	Other protection measures	Improved enforcement and handling of complaints	Increased access to information and improved accountability
<p>units, places of worship, other sensitive areas)</p> <ul style="list-style-type: none"> • Types of liquor sold in supermarkets and grocery and convenience stores • Under-age children (employment of, on licensed premises, purchasing by, supply to, • Alcohol in motor vehicles • Vending machines 	<p>manage liquor outlets or who serve alcohol</p>	<p>corridors</p> <ul style="list-style-type: none"> ▪ Better integration with other government departments ▪ Civil liability for persons who supply liquor to drunk persons. 		<p>of a general nature or pertaining to the implementation of the liquor legislation</p>

Implementation of the legislation

In addition to the issues referred to above there are several other key issues relating to the implementation of the new liquor legislation that are

likely to have an impact on its long-term success in terms of protecting the community from the harms associated with alcohol abuse:

- The phasing in of increased requirements which licence holders must meet over time
- The support given to liquor outlets operating in previously disadvantaged areas to improve their functioning
- Furnishing the public (and other stakeholders) with information regarding the new liquor legislation
- Liaison with other government departments.

Phasing-in approach

It is recognised that because of the legacy of apartheid, there are major differences in the nature of liquor outlets in different communities, namely the older, established areas, public and affordable housing areas, and informal settlements. While most of the community protection measures will come into force once the liquor legislation is signed into law, a few selected protection measures will be phased in over time for outlets in public and affordable housing areas and in informal settlements, namely:

- Restricted trading rights applicable to liquor outlets in residential areas (e.g. restricted trading days and hours).
- Restrictions on liquor outlets that are also used as residential dwellings (e.g. requiring a separate entrance and a clear separation between the residential area and the liquor outlet with a dividing wall or doors that may be permanently closed off).

Public awareness campaign to publicise the policy and legislation

For the policy and new legislation to succeed they will need to be driven in their initial stage by a taskforce comprising officials of the Department of Economic Development, the Liquor Board, the municipalities and the designated liquor officers to publicise and to create an awareness in the liquor trade and the community of its provisions, benefits, avenues for complaint, application procedures, and other aspects. The task force must use the media, and visit schools and colleges and also persons and organisations involved in the liquor trade (both currently licensed and unlicensed). Due to the negative connotation that shebeens have in communities where they occur a well developed information campaign must accompany any attempt to license the currently unlicensed traders.

Integration with other provincial and national departments

The policy and legislation have as one of their objectives to facilitate the protection of the community against any negative consequences of the abuse of alcohol. Addressing the harms associated with alcohol abuse is, however, the responsibility of many other government departments at local, provincial and national levels. It is vital that the Western Cape's liquor policy and legislation are synergistic with the policies and practices of these departments.

The Western Cape Department of Economic Development and Tourism, with the involvement of the Liquor Board, is ideally placed to play a useful role in stimulating liquor policy development and other activities in these departments, interdepartmentally and in other

interest groups. The Western Cape Department of Economic Development and Tourism must play a facilitatory role in the development of integrated alcohol action plans in the Western Cape province. Among the activities are the following:

- To encourage and cooperate with the provincial Departments of Community Safety and of Public Works and Transport to ensure the enforcement of existing legislation regarding the abuse of liquor and road safety, for example by increasing the level of random breath testing of drivers. The Department of Economic Development must further support programmes to educate the public about the consequences of the abuse of liquor and about road safety, such as the Arrive Alive campaign.
- To encourage the provincial Department of Community Safety to collect and report on information about where the last drink was taken in cases of driving under the influence of intoxicating liquor.
- To support the national Department of Health in its efforts to develop and implement effective health education messages.
- To ensure that the provincial Department of Community Safety gives appropriate attention to the enforcement of national and provincial liquor legislation, that police officers are adequately trained in these laws (especially legislation pertaining to underage drinking, trading without a licence or trading outside allowable hours, and creating a public nuisance) and how to enforce such laws, and regarding the

roles and responsibilities of provincial liquor inspectors and how to work together with such inspectors. Designated liquor officers must be fully acquainted with the municipal by-laws on liquor trading hours and days and public areas and periods declared prohibited for drinking for their areas of jurisdiction.

- To exercise care that fully trained and experienced designated liquor officers are appointed and that adequate support and resources are provided to such officers.
- To engage the Department of Justice in the Western Cape to ensure that all relevant staff members are adequately trained in liquor legislation and especially liquor offences and the importance of prosecuting such cases, and that they have the capacity to deal with liquor-related cases.
- Liaise with the national Department of Trade and Industry to ensure adequate enforcement of national liquor legislation in the Western Cape.
- To encourage the Departments of Health and of Social Development to provide adequately for funding the implementation of prevention programmes as well as the treatment and rehabilitation of persons who misuse alcohol.
- To encourage and cooperate with the Department of Education to develop life skills projects and programmes intended to raise awareness of the consequences of the abuse of alcohol among learners and staff.

CHAPTER THIRTEEN - TRAINING OF LIQUOR LICENCE HOLDERS AND PERSONS IN CHARGE OF LICENSED PREMISES

Introduction and curriculum framework of training in the legal and social obligations of licence holders

As has been described in this policy, the retail sale of liquor in the Western Cape, as in the rest of South Africa, used to be characterised by a prohibition on the sale of liquor to the majority of the population that was maintained over many decades until it came to an end in the 1960s; the development of an unlicensed trade over the course of a century, currently estimated to comprise eighty percent of the retail trade; and the association of the unlicensed trade with crime and social decay. Contributing to the complexity of the current situation is insufficient employment opportunities for semi-skilled persons, the inadequate provision of licensed outlets to meet the demand of the inhabitants of historically disadvantaged areas, and a lack of adequate law enforcement to effectively prevent the flourishing of unlicensed outlets.

Comparative analysis of foreign jurisdictions indicates that an important mechanism that has been developed over an extensive period of time to reduce and contain the negative aspects of the liquor trade is the requirement to undergo continuous training imposed on liquor licence holders, as well as public education campaigns. In one instance the development of training curriculums is overseen by a separate national body and the training is conducted at tertiary level, resulting in a system of accreditation of trained

persons who are placed in charge of licensed premises. In other instances the training curriculums are developed and implemented by the licensing authorities. In all the countries that have developed training curriculums, ongoing and regular training is provided for. The contents of syllabuses in general deal with the legal and social responsibilities of the sellers of liquor. A South African example that may be useful to examine is the gambling authorities, both at national and provincial levels, where the provision of education and support programmes has been functions of these authorities.

Unlike the situation in foreign jurisdictions where the liquor trade has largely been licensed over a considerable period of time and where training and education has been confined to the legal and social issues, the situation in the Western Cape requires more than only an awareness on the part of liquor licence holders of their legal and social obligations. In ensuring that the largely unlicensed trade enters the regulatory framework, training of the new licence holders is an incentive to ensure the entry of formerly unlicensed traders into the system and an opportunity for economic empowerment, particularly for the historically disadvantaged business community, through the provision of basic small business development skills. The acquisition of business skills through an existing training programme conducted by one of the large producers as a pilot study in an urban and a rural environment has proven the effectiveness of correct training for the profitability and sustainability of currently unlicensed outlets. A business development training programme launched as a pilot project by the South African Breweries in an

urban environment (Wadeville, Gauteng) and a rural environment (South Coast of KwaZulu–Natal) among emerging liquor traders produced the following results:

- Wadeville:
 - Monthly turnover increase 32%
 - Debtors outstanding decrease 45%
 - Savings and Investment increase 67%
- South Coast
 - Monthly turnover increase 35%
 - Debtors outstanding decrease 26%
 - Savings and Investment increase 24%

In requiring newly licensed traders who have been granted conditional licences to undergo prescribed training it is intended to provide an incentive to license the premises, while at the same time providing the skills to ensure that such licensed businesses are successful.

Any training programme for licence holders, both existing and prospective, must encompass information on the licence holders' legal and social obligations, awareness of their responsibilities to the society that allows them to trade and profit, and the acquisition of the basic skills needed to run a profitable business enterprise. Training needs will vary from one licence holder to another. Not all entrants to the liquor trade require business training. Training in legal and social responsibilities relating to the particular category of licence may be sufficient to ensure that the licence holder is placed in a position to conduct the business in accordance with the provisions of the

legislation. For this reason the curriculum will have a modular format, thus allowing authorities to prescribe appropriate module(s) in accordance with the particular needs of the licence holder or conditional licence holder.

Specific aims of the training programme

An important objective of this liquor policy is to draw into the legal framework the thousands of liquor traders who currently trade in the Western Cape province without legal sanction. In contemplating fair and equitable means to achieve this objective, it takes cognisance of past policies, which have been responsible for the current and untenable situation.

The licence training programme envisaged in this policy aims to achieve the following specific objectives:

- To empower licence holders with knowledge of their legal and social obligations so that expectations of compliance on their part are fair and reasonable.
- To enlighten licence holders of the responsibilities that business enterprises have to the society that permits their existence, and to demonstrate that discharging those responsibilities is in their own interest.
- To make available business skills training to those who require it, and particularly those currently operating outside the legal framework so that there is informed appreciation of the benefits of legal trading.

With these specific objectives in mind, the training programme is divided into three parts. The first part of the training programme will deal with legal and social aspects of trading in liquor. The theme of the first part will be an explanation of the legislative framework around liquor use in the Western Cape and in South Africa. The learning outcomes that have been identified are the following:

- To define the role of licensing authorities
- To define the licensing system
- To demonstrate an understanding of the role of local communities
- To define the role of the provincial Liquor Board
- To define the role of the enforcement agencies
- To define the role of the municipality in facilitating and controlling land uses, including business activities such as liquor establishments. The specific outcomes include:
 - a brief overview of municipal zoning schemes and other legislation impacting on land use
 - consideration of the potential impact of liquor establishments on other land uses
 - mitigating measures liquor licence holders should consider to minimise impact on surrounding land uses.
- To demonstrate an understanding of the promotion of commercial enterprise and entrepreneurship
- To demonstrate an understanding of the various control measures

- To explain the different kinds of liquor
- To explain licences required to trade
- To explain the trading hours and days and the role of municipalities and the Liquor Board in setting these
- To demonstrate an understanding of the monitoring, evaluation and accountability principles
- To define the code of conduct to be applied.

The second theme of the first part will relate to an explanation of the generic framework regarding liquor in the Western Cape and in South Africa. The learning outcomes envisaged are:

- To explain the historical background of liquor use in the Western Cape and in South Africa
- To explain the causes of alcohol abuse
- To explain the burden placed on communities by alcohol abuse, including fetal alcohol syndrome, family violence and risky sexual behaviour
- To define the economic contribution liquor makes
- To define the health hazards relating to liquor
- To define “drinking in moderation”
- To define the potential health benefits of moderate liquor use for older persons
- Define the social hazards relating to liquor.

The third theme that will be explored is barriers of entry relating to liquor in varying contexts. The learning outcomes that have been defined are:

- To explain the historical background relating to liquor use

- To define the transitional measures relating to liquor
- To define enforcement measures.

The next theme to be explored is the governmental responsibilities with regard to the control of the use of liquor. The learning outcomes that are envisaged are the following:

- To explain the constitutional position of the sale of liquor
- To explain the powers and functions of the provincial governments
- To explain the role of provincial and national governments
- To explain hearings of the provincial Liquor Board
- To explain the role of the provincial Liquor Board inspectorate and the designated liquor officers
- To explain the granting/discharging of interim orders
- To explain the powers and functions of municipalities and the liquor forums.

The licensing process in the province will be the next training theme.

The following outcomes are expected:

- To define the process of new applications for licences
- To define the objections process
- To demonstrate an understanding of the adjudication process
- To explain the monitoring, evaluation and accountability process

Adherence to licence requirements will form an important theme to be discussed and conveyed to those participating in the first part of the

training course. The outcomes that are to be pursued are the following:

- To define responsible liquor sales and service
- To explain the licensing requirements relating to the selling of liquor
- To define the different types of licences
- To explain the licence fees that are applicable
- To explain the functions of off-consumption premises
- To explain the functions of the on-consumption premises
- To explain the special events type of licence
- To define the disqualification process
- To define the lifespan and renewal process
- To explain the process relating to the granting of applications
- To explain the delivery of liquor process
- To explain the storage of liquor process
- To explain the functioning of off-consumption tasting facilities
- To explain the conditions relating to restrictions and offences
- To explain the issuing of compliance notices and the process
- To explain the prosecution of offences process, and the trading hours and days as determined by municipalities
- To explain civil liability relating to the sale or supply of liquor to persons who are drunk
- To explain exemptions.

The last theme to be dealt with under the first part of the proposed training programme relates to the application of conflict resolution techniques. The outcomes to be envisaged are:

- To explain the mechanism to deal with conflict between the different interest groups at municipal and provincial levels
- To demonstrate an understanding of conflict resolution processes.

The second part of the training programme will deal with the social responsibility aspects that will inevitably repeat some of the ground covered in the first part under social obligations. Currently a curriculum is being developed relating to the social responsibility of licence holders that will deal with the following subjects:

- Defining liquor
- The strength of intoxicating drinks
- Amounts of alcohol in different drinks
- Alcohol and the human body's reaction to it
- Eliminating alcohol from the body
- The "happy hour"
- Drinking and driving
- The prevention of violence
- Underage consumers
- Drugs
- Door staff
- "Crime watch" – participation by licence holders in neighbourhood and business watch organisations.

The third part deals with basic business skills that are often lacking among existing unlicensed traders because of the disadvantages

imposed by policies of the past. The following broad outline consists of items that are being considered in developing the training module that relates to the development of basic business skills. The particular items have been reproduced from a training programme developed by the South African Breweries for the training of taverners that has proven to be successful. There are however other accredited training programmes relating to the development of business skills as well, and it is intended to develop the curriculum using the full spectrum of available programmes in finalising the module.

- Defining a business
 - Ownership and employees
 - Finance
 - Material (stock and cash management)
 - Machinery
- Numeracy
- Costing and pricing
- Credit control, with customers and with suppliers
- Code of practice as proposed by the Association for Responsible Alcohol Use.

The development, accreditation and presentation of the training programme

The training programme will be developed by suitably qualified developers under the guidance of the Department of Economic Development and Tourism in cooperation with the Industry

Association for Responsible Alcohol Use and other authorities and interested parties.

Accreditation in accordance with the South African Qualifications Authority and the National Qualifications Standards will be sought. This will ensure that the training is of an acceptable standard. The funding will be provided under the Skills Levy Fund.

CHAPTER FOURTEEN - OFFENCES AND PRESUMPTIONS

Restrictions and offences regarding the supply and consumption of liquor

- No drunk persons will be allowed on any licensed premises. It will be an offence for any licence holder or the responsible person in charge of licensed premises to allow a drunk person on the licensed premises.
- Liquor may not be sold or supplied to a drunk person.
- A person who sells or supplies liquor, in contravention of the prohibition of selling or supplying of liquor to a drunk person, who reasonably ought to foresee that the sale or supply of liquor to such a drunk person may cause damages to such drunk person or a third party may in addition to committing an offence incur civil liability for such damages.
- It will be an offence to be drunk, violent or disorderly on any premises, whether licensed or not, on which liquor is sold.
- It will be an offence to be drunk in a public place.
- It will be an offence for any person to consume or possess liquor in a prescribed public place during the period as determined by notice issued in accordance with a duly approved bylaw. A public place will include a place to which the public has access, but does not include a licensed premises or part thereof. It is not intended that these measures will prevent the procurement and transportation of liquor from licenced off consumption premises or the consumption of liquor

on licenced on consumption premises that may be located within declared areas, but rather to prevent the possession or consumption of liquor on beaches, parks, picnic areas and resorts during festive days and periods.

- An employer may not supply liquor to an employee for his or her own consumption as wages or remuneration, as an inducement to enter his or her service, or as a supplement to wages or remuneration, or deduct from wages or remuneration the cost of liquor supplied or purchased by the employer or by a third party on behalf of an employee.
- The Minister will have the right either to prescribe by notice in the Provincial Gazette minimum norms and standards for the packaging of liquor products that may be sold within the Western Cape province or to prohibit the sale or supply of liquor that, because of its nature or packaging, in the opinion of the Minister is harmful to the health and wellbeing of the community. Supplying a product in contravention of a notice by the Minister will be an offence.
- Decanting liquor into empty containers and selling such liquor on off-consumption premises, whether such premises are licensed or not, will not be permitted and will be an offence.
- It will be an offence to employ an under-age child to sell or supply liquor unless the under-age child is registered as a student or trainee in catering with an accredited learning institution.

- No person may sell, give or otherwise supply liquor to an under-age child, or have liquor in his or her possession for the purpose of selling, giving or otherwise supplying it to an under-age child, or in or at a place under his or her control permit an under-age child to consume liquor, but it will not be an offence if the liquor is given to an under-age child by his or her parent, spouse or guardian or with the express consent of such parent, spouse or guardian in a residence for consumption in that residence. It will also not be an offence if the liquor is administered to an under-age child by or under the authority of a medical practitioner or dentist for medicinal purposes or administered to an under-age child by a registered religious institution as part of holy communion or some other recognised religious observance. The duty will be on the seller or provider of liquor to confirm the age of the purchaser or consumer in his or her establishment.
- It will be an offence to drink liquor in a motor vehicle being driven on a public road or parked in a public place, unless the motor vehicle is licensed for this purpose. Provision is made in the policy for the definition of licensed premises to include vehicles and vessels that are used mainly for tourists.
- Opened or unsealed containers of liquor are not permitted in the interior passenger section of a motor vehicle, unless the vehicle is duly licensed in terms of the provisions of the liquor legislation as premises.
- All deliveries of liquor to any licence holder by a supplier registered in terms of national legislation or licensed in terms of

provincial legislation must be accompanied by an invoice that reflects the particulars of the seller and the purchaser, identifies the liquor products being delivered and discloses the relevant transaction amount. Failure to do so will be an offence.

- All deliveries of liquor by or on behalf of an off-consumption licence holder to any person must be accompanied by an invoice that reflects the particulars of the seller and the purchaser, identifies the liquor products being delivered and discloses the relevant transaction amount. Failure to do so will be an offence.
- No persons under the age of eighteen years will be allowed in restricted areas of on-consumption licensed premises. A restricted area for on-consumption licences will be defined as that portion of an on-consumption premises that is demarcated by the Liquor Board as part of the premises where liquor may be served without prepared food being available during liquor trading hours. The Liquor Board may demarcate the whole of the licensed premises as the restricted area.
- A person who holds a liquor licence or any person in the licence holder's employ may not permit an under-age child to enter, or be in the restricted part of, an off-consumption premises; however, it will not be an offence if:
 - the under-age child is accompanied by a parent or guardian; or
 - access by an under-age child to the premises on which the restricted part is located is permitted; or

- the under-age child has a lawful reason for being on the premises.

The Liquor Board may declare the whole or part of off-consumption premises to be restricted areas. The intention of the provision is to prevent access by unaccompanied under-age children to off-consumption premises. In instances where supermarkets are allowed to sell wine, the wine section will be designated as a restricted area, allowing the unaccompanied under-age child access to the rest of the supermarket but not to the restricted area.

- An under-age child or any other person who intentionally misleads another person regarding the age of an under-age child in order to:
 - induce the supplier to provide the under-age child with liquor;
or
 - allow the under-age child to gain access to a restricted area, regardless of whether or not the under-age child intends to obtain liquor,

will be committing an offence in terms of the provincial liquor legislation. This provision is aimed particularly at reducing the abuse of liquor by under-age children at on-consumption premises where entertainment is provided, such as night clubs, but will also provide for the restriction of access to liquor stores.

- It will be an offence for a licence holder to sell to an unlicensed person in a single transaction more than the prescribed quantity without the written consent for such sale by the designated liquor officer.

- The sale of traditional african beer produced for domestic consumption will be prohibited and will be an offence.
- Non-compliance with the conditions of a liquor licence will be an offence.
- The adulteration or fraudulent substitution of liquor will be an offence.
- It will be an offence to sell liquor without a licence in terms of the provincial liquor legislation or in terms of the provisions of national legislation.
- It will be an offence by a licence holder to sell liquor contrary to the provisions of a licence issued to the licence holder in terms of the provincial liquor legislation.
- It will be an offence to supply liquor to a person who, on reasonable grounds, is suspected of selling liquor unlawfully.
- It will be an offence to obtain liquor from a person who is not licensed to supply liquor for consumption or who, on reasonable grounds is suspected of selling liquor unlawfully. This offence will ensure that the buyers of liquor from unlicensed outlets face the risk of prosecution and hopefully in this manner the client-base of the shebeens will be eroded.
- It will be an offence to sell liquor by using a vending machine.
- Offences will be created in the proposed legislation to ensure the enforcement of the provisions of the legislation.

Offences regarding information

- It will be an offence to provide false or misleading information or documents in an application or objection or a report.
- It will also be an offence to provide false or misleading information when lawfully asked by a member of the SAPS or an inspector to provide information in the course of their duties in terms of the legislation.

Offences regarding meetings of the Liquor Board

- Any person who fails to appear before the Board at the time, date and place set out in a notice properly served on such person will commit an offence.
- If such person, after appearing at a meeting, fails to remain at the meeting and leaves without the consent of the Chairperson an offence will be committed.
- Provision is further made that at a meeting the Chairperson may warn persons present who have been duly notified to attend a further meeting of the Board at a later time, date and venue. Failure to attend will constitute an offence.
- Failure to give evidence if called upon to do so or failure to provide documents or produce any item under a witness's control when called upon to do so will be an offence.
- If a person refuses to take the oath or confirm the truth of evidence that he or she will give, or if, after being sworn in, that person refuses to testify or answer questions lawfully being put to him or her, such person will be guilty of an offence.

- If a person wilfully interrupts, disrupts or hinders the proceedings of the Board, he or she will commit an offence.
- If a person, including a person who has a material interest in the proceedings, having been duly notified of the proceedings, fails to attend the proceedings of the Liquor Board, the Chairperson may take any steps that he or she deems appropriate to ensure that the administration of justice will prevail, including, but not limited to, continuing with the proceedings of the Board in the absence of such a person.

Offences regarding inspectors and police officers

- Any person who falsely gives out to be a designated liquor officer or an inspector will be guilty of an offence.
- If a person makes a false or misleading statement or refuses to answer a question lawfully put to him or her by a member of the South African Police Service, including, but not limited to, a designated liquor officer, or an inspector during the exercise by that official of his or her functions in terms of the legislation, an offence will have been committed.
- If such official gives a lawful instruction to a person in terms of legislation and the person refuses to comply with the instruction, an offence will have been committed.
- The hindrance or obstruction of a member of the South African Police Service or an inspector in the execution of his or her duties in terms of legislation will also be an offence.

Unlike the Liquor Act, Act 27 of 1989, no provisions regarding so-called “tie” agreements will be provided. The national legislation regarding competition issues, as well as the provisions contained in the national liquor legislation, address these issues.

Offences by provincial licence holders and entities registered in terms of national legislation

Trading in liquor without a licence as provided for in the provincial legislation or without being registered as provided for in national legislation will be an offence.

As the Constitutional Court has found that the retail sale of liquor is part of the exclusive constitutional competency of provinces, no person registered in terms of national legislation may sell or supply liquor to any member of the public unless such registered entity is also the holder of an appropriate licence in terms of the provincial liquor legislation. Provision has been made in the national legislation that the national Minister of Trade and Industry must be notified that persons registered as manufacturers or distributors intend applying in terms of provincial legislation for the right to sell liquor directly to the public and for the national Minister to review the terms of such registration or to waive the right of review. The particular provision in the national legislation is of importance to the wine and tourism industries in the Western Cape because it will allow the larger wine manufacturers, who will not be classified as micro-manufacturers and who are the owners of internationally renowned estates, to continue

to sell wine directly to the liquor consuming public from such estates. Such revision of registration provisions or the waiver of such right by the national Minister will only allow the registered manufacturer or distributor to “cross-hold” between the two tiers; it will not relieve the particular manufacturers or distributors from the obligation to obtain the appropriate provincial licences for on- and/or off- consumption in terms of the provisions of the provincial legislation. The sale of liquor directly to an unlicensed person by a registered manufacturer or distributor, who is not the holder of the applicable provincial licence, will be an offence.

Failure of a licence holder to comply with any condition applicable to its licence will be an offence. A person who keeps licensed premises open for the sale, consumption or supply of liquor, or sells or supplies liquor, when the sale of liquor is not permitted, either by municipal by-law or licence condition applicable to the licence, will commit an offence. The delivery of liquor at a time when it is prohibited will be an offence.

In an attempt to curtail the supply of liquor to unlicensed outlets by licensed outlets an offence will be created that the delivery of liquor by a licence holder, or an agent or person under his or her control, to a place other than that which appears on the invoice relating to the sale will be punishable. The delivery of any consignment of liquor must be accompanied by an invoice applicable to the sale that correctly reflects the details of the sale. The details on the invoice will include the names and addresses of the seller and the purchaser,

identifying the items and quantity purchased and must contain the licence reference number.

The sale or supply of liquor by the holder of a special events licence without the appropriate permit for an event issued by the appropriate authority will be an offence. The mere holding of a special event licence will not allow the holder to sell or supply liquor. Liquor may only be sold in accordance with the provisions of the permit and at the location that relates to the particular event for which it has been issued.

The opening of any container that contains liquor as well as the decanting of liquor from a container into another container on the premises to which an off-consumption licence applies will be an offence. The maintenance of this offence is necessary as many instances are known of bottle stores opening bulk containers and decanting liquor into other vessels such as smaller plastic bottles normally used for the sale of milk or fruit juice.

Punitive jurisdiction

Appropriate penalties to ensure that the legislation will be effective will be provided. Insignificant penalties, particularly inappropriate fines that are imposed on the shebeens, make a mockery of the current licensing system. In many instances the law enforcement operations are preceded by police trap operations in which the police trap liquor purchased for consumption. This results in the confiscation

of the stock of liquor found on the premises. It has become common practice for shebeen owners to pay a negligible admission of guilt fine when law enforcement agencies act against their establishments and confiscate the stock of liquor. Upon payment of the admission of guilt fines the stock of liquor is returned to the shebeen owner.

Presumptions in the prosecution of offences regarding the supply and consumption of liquor

In a criminal trial evidence that any sealed container that had been seized from the control of the accused contains a statement as to the alcohol content of the contents thereof, such evidence, unless the contrary is proven, will be conclusive proof that the contents of the container contains the level of alcohol indicated on the container.

Where an unsealed or resealed container has been seized from the control of the accused a statement on the container as to the alcohol content of the contents of the container will be conclusive proof that the contents contains the level of alcohol indicated on the container only if evidence *aliunde* is provided to corroborate that the contents of the container does indeed contain alcohol. This provision is intended to assist with the prosecution of the offence of unlawful drinking in a public place. The evidence *aliunde* may *inter alia* include evidence regarding the physical characteristics of the content of the container, the physical appearance, the actions and responses to questions and the state of sobriety of the accused when found in possession of the container found in possession of the accused that corroborate that the contents of the container contains alcohol.

A presumption will be created that, if the State in a criminal trial proves that the contents of a sealed container that was seized from the control of the accused are proven by scientific analysis to be liquor, as defined, and the State tenders evidence that the other containers so seized at the same time and same premises are sealed and carry a label or bear distinguishing features similar to the container whose contents have been analysed, such evidence, unless the contrary is proven, will be conclusive proof that the contents of the other containers so seized are liquor with the same characteristics as the sample analysed.

In the event of the conviction of a person for an offence created by the provincial liquor legislation, a court may declare forfeit to the State all money, coins, bills or promissory notes found in or on any unlicensed premises or on any person who was in or on such premises.

If a quantity of liquor in excess of the prescribed allowed quantity is found in a motor vehicle and the driver of the vehicle is unable, upon demand, to provide the prescribe invoice relating to the lawful delivery of the liquor or the applicable written consent of the designated liquor officer, it will be conclusive proof, unless the contrary is proven, that the liquor is being delivered by the driver of the vehicle in contravention of the provisions of the provincial liquor legislation. The purpose of this offence is to assist the enforcement

agencies with curbing the prevalence of “mobile shebeens” in rural areas.

If criminal proceedings are instituted in terms of the provincial liquor legislation and the accused pays an admission of guilt fine, the local magistrate must determine whether the liquor in question, if any, should be declared forfeit to the State. It may not be returned to the convicted person. The purpose of the provision is to prevent the return to the shebeener of his confiscated stock in trade where he or she has been found guilty by payment of an admission of guilt fine.

Upon conviction of a holder of a liquor licence for any offence in terms of the provincial liquor act, the court must order the endorsement of the licence with the particulars of the offence and the Clerk of the Court, or some other person who is responsible for the maintenance of records of conviction of offenders must in writing notify the relevant designated liquor officer and the Liquor Board of the endorsement within the prescribed period. The provincial liquor authority, in any hearing regarding the withdrawal or suspension of the endorsed licence, may take cognisance of the endorsements noted against the licence holder and take such endorsements into account in its deliberations. Such endorsement will be conclusive proof that the offence mentioned therein has been committed. In the event of a third endorsement the Liquor Board, after allowing the licence holder the opportunity to provide sufficient grounds to sway the Liquor Board otherwise, must withdraw the liquor licence.

Evidence in any criminal proceedings that a person who is not the holder of a licence or registered to manufacture or distribute liquor in terms of national legislation has on or near premises occupied by that person any signboard or notice purporting that that person sells liquor, or that the person who is in occupation or control of unlicensed premises is on reasonable grounds suspected of selling liquor; or has on the premises more liquor than is reasonably required for personal use; or has bought or has had under that person's control more liquor than is reasonably necessary for consumption by that person, the person's family or bona fide guests will be prima facie proof of the sale of liquor.

Evidence in a criminal proceeding that a licence holder has sold more than the prescribed quantity of liquor to a person in a single transaction:

- for which the designated liquor officer has not provided written consent, or
- for which a record of sale to a licensed person in the prescribed format cannot be produced by the licence holder,

will be prima facie proof that the sale took place without such consent or to a person that is not the holder of a licence.

It will be presumed (unless the contrary is proven) that the manufacturing of a quantity of traditional african beer per day in excess of the prescribed quantity of traditional african beer per day will not have been manufactured for domestic consumption. It will

further be presumed (unless the contrary is proven) that the possession of a quantity of traditional african beer in excess of the prescribed quantity will not be for domestic consumption.

The purpose of these provisions is to assist the State, in dealing with the prosecution of offences relating to inter alia the unlawful sale of liquor, by acting as a deterrent. Such further presumptions as may be necessary to enforce the provisions of the legislation will be created.

Vicarious responsibility

The licence holder will be responsible for the acts and omissions of his or her manager, agent or any other person engaged in the operation of the licensed business which constitute offences in terms of the provincial legislation unless the licence holder satisfies the Liquor Board or the Court, as the case may be, that:

- he or she did not connive at or permit the act or omission; or
- he or she took all reasonable steps to prevent the act or omission; or
- the act or omission did not fall within the scope of the authority or employment of the person concerned.

The issuing of an instruction prohibiting an act or omission will not in itself be deemed to be reasonable steps as set out above. The vicarious liability of the licence holder will not excuse the transgressor in his or her personal capacity from prosecution or liability.

Civil liability of sellers and suppliers of liquor

A person who sells or supplies liquor, in contravention of the prohibition of selling or supplying of liquor to a drunk person, who reasonably ought to foresee that the sale or supply of liquor to such a drunk person may cause damages to such drunk person or a third party may incur civil liability for such damages.

Debt of employee for liquor supplied on credit is unenforceable by employer

Liquor may not be supplied by an employer or any person on behalf of an employer to an employee on credit and any debt so incurred will not be enforceable in law.

CHAPTER FIFTEEN – REGULATIONS, TRANSITIONAL PROVISIONS, EXEMPTIONS AND MISCELLANEOUS MATTERS

The proposed legislation differs in numerous respects from the Liquor Act, Act 27 of 1989, but the most obvious is that a substantial number of the matters contained in the existing legislation have been omitted and will be prescribed by way of regulations by the Minister responsible for the provincial liquor legislation. All the regulations required for purposes of operation and administration of the licensing procedures will be published prior to the coming into operation of the provincial legislation. While the general principles must and will be determined by legislation, much of the detail that is required in the implementation need not be contained in legislation itself but may be prescribed by regulation. The purpose of this is to allow for more flexibility so as to provide for development. The liquor industry will, as a result of the repeal of the Liquor Act, Act 27 of 1989, and the imposition of national and provincial legislation, be subject to major changes. These changes will affect a number of economic sectors of the Western Cape province, for example the agricultural sector and the tourism sector. It is further necessary to address the discrepancy between licensed and unlicensed retail outlets. It is necessary to ensure that a process is initiated, developed and managed to reduce the number of unlicensed outlets and increase the number of licence holders in the previously disadvantaged business community. As a result it will be necessary to amend and adapt processes and requirements to accommodate developments and demands without having to amend the legislation.

Provision is made for the Minister responsible for the provincial liquor legislation to make regulations regarding the following matters:

- The Minister will by regulation appoint various categories of municipalities as agents of the Liquor Board and may assign functions to them as competent authorities. The prescribed procedures in terms of section 126 read with section 156 of the Constitution will be followed before a municipality is appointed or assigned functions as competent authority.
- Regulations will prescribe the requirements relating to each category of licence and permit as determined by legislation. This may include, but is not limited to, defining subcategories of licences and permits and setting norms to guide the licensing authorities.
- The regulations may further prescribe forms for the various applications as well as fees payable for each type of application.
- Areas of jurisdiction of a municipality may be declared in respect of which a limited exemption during the process of regularisation is imposed on the prosecution of existing traders who sell liquor without the appropriate licences, the duration of the limited exemption during the process of regularisation and the conditions applicable to the limited exemption.
- The minimum requirements and conditions that applicants for the limited exemption during the process of regularisation must

comply with so that the limited exemption can apply to their activities.

- The format and minimum requirements of the application for a limited exemption during the process of regularisation.
- The period within which the designated liquor officer must compile a report and decide whether or not to grant an application for a limited exemption during the process of regularisation, the period, format and minimum information required for the appeal of such decision and the period within which the appeal authority is to conclude the appeal procedure.
- The period, format and minimum information required for advertising applications.
- The format and minimum information required for every type of application.
- The format and minimum information required for the conversion of current licences.
- The maximum period prescribed by by-law within which applications are to be referred to the relevant liquor forum and designated liquor officer by the municipality.
- The maximum period within which objections and comments by interested and affected parties are to be lodged as well as the minimum information that such objections and comments are to contain.
- The maximum period within which the designated liquor officer is to lodge a report as well as the minimum information required in such report.

- The maximum period within which a liquor forum is to submit all relevant documents and its report to the municipality.
- The minimum requirements prescribed by by-law in respect of applications for permits, the time limits applicable to such applications and the limits and minimum requirements applicable for appeal and review purposes.
- The periods and minimum requirements applicable to compliance notices as well as the administrative fines.
- The format, minimum requirements and time periods prescribed in respect of applications for interim orders.
- The format, minimum requirements and periods prescribed in respect of notices to appear at hearings of the Liquor Board.
- The format, minimum requirements and time limits prescribed in respect of appeals and reviews of decisions of the Liquor Board.
- The procedures and time limits applicable to the functioning of the Liquor Licence Appeal Tribunal, including the determination of the amount(s) payable as surety for costs by the appellant.
- The allowances for witnesses duly notified and appearing at Liquor Board hearings.
- The employment and remuneration structure of the Liquor Licence Appeal Tribunal, the Liquor Board and its staff.
- The minimum requirements regarding training programmes for prospective licence holders, conditional licence holders and licence holders.

- All forms, including, but not limited to, licences, declarations, notices, consents, appointments, directions, determinations, approvals, authorities and other documents in terms of the legislation.
- All fees referred to in the legislation, including, but not limited to, advertising fees, all application fees, annual renewal fees and administrative fines.
- The maximum quantity of liquor per category that may be sold in a single transaction for off-consumption purposes without the written consent of the designated liquor officer.
- The maximum quantity of liquor that may be delivered in a motor vehicle without the driver of the vehicle being in possession of a prescribed invoice for the delivery of the liquor.
- Minimum standards of packaging and products allowed for the retail selling of liquor products from licensed premises within the province.
- Duties and powers of designated liquor offices and inspectors.
- The application process and requirements for the conversion of current licences will be prescribed by regulation.
- The format of the annual report by designated liquor officers to the Liquor Board.
- Any matter which in terms of legislation is required or permitted to be prescribed.
- In general, any matter in respect of which the Minister responsible for the provincial liquor legislation thinks it

necessary or expedient to make regulations for achieving the objects of the legislation.

The detail requirements relating to the establishment and operation of the Liquor Board and its support functions, including the human resource management, financial management and procurement procedure and the Board's functioning as a public entity may be prescribed by regulation.

By-laws relating to municipal liquor regulatory functions provided for in the proposed legislation will be submitted to the Minister in accordance with the requirements prescribed for by-laws by statute. Different regulations may be made for different categories of licences and different categories of persons. Regulations relating to fees or allowances must be made in consultation with the Chairperson of the Liquor Board and the provincial Minister of Finance. The Minister must, in making regulations relating to the functioning of the Liquor Board and its staff, consider the recommendations of the Chairperson of the Liquor Board. The Minister must, in making regulations relating to municipal functions including liquor forums, in terms of legislation, consider the recommendations of the Chairperson of the Liquor Board. The Minister must, in making regulations relating to functions of the designated liquor officers, consider the recommendations of the Chairperson of the Liquor Board and of the provincial Minister responsible for community safety.

Miscellaneous matters

The Chief Executive Officer of the Liquor Board will be responsible for the keeping of records of all licensed premises in the province. The records to be kept will include the documentary information provided by applicants, objectors, municipalities, designated liquor officers, inspectors and any other documentary information provided in connection with licensed premises. The Chief Executive Officer of the Liquor Board will further maintain the electronic database and the liquor licensing system. The information of the Liquor Board will be subject to the provisions of the Promotion of Access to Information Act, Act 2 of 2000. It is intended that most of the information about applications for licences, licences, applicable conditions and endorsements will be available to the general public. The availability of information is regarded as a measure to enforce licence conditions through public awareness. A limited amount of information will be regarded as confidential, particularly that which may jeopardise ongoing and pending litigation or law enforcement operations.

If any application or document accompanying the application in terms of the proposed legislation is defective in any respect or the applicant or objector fails to lodge any document in support of its case, the Liquor Board, if in its opinion there has been substantial compliance with the provisions of the legislation and the condonation is not likely to prejudice any person unreasonably, may condone such omission.

The Liquor Board, or the municipality in the case of applications for permits, will in considering any application take into account the

application and supporting documents, the report by the designated liquor officer and, where provision has been made for the submission of other documents, for example in respect of objections, such objections and supporting documents, replies to objections and any other information obtained regarding the particular licence application. The Liquor Board or municipality may further take into consideration any other matter that in its opinion ought to be taken into consideration – in this regard cognisance may be taken of research material, policy documents or any officially authorised statistics or reports that have relevance to the matter under consideration.

Transitional provisions

A liquor licence listed in section 20 (a) of the Liquor Act, Act 27 of 1989, will be deemed to be a licence for the consumption of liquor on the licensed premises granted in terms of the proposed legislation.

A liquor licence listed in section 20 (b) of the Liquor Act, Act 27 of 1989, will be deemed to be a licence granted in terms of the proposed legislation for the consumption of liquor off the licensed premises.

Any right, privilege, obligation or liability attached to such licence immediately prior to the commencement of the proposed legislation will remain in force for a period of one year that commences from the end of the month in which the annual renewal notice applicable to that licence in terms of the provincial liquor legislation is issued. Any

holder of a valid liquor licence at the commencement of the provincial liquor legislation that intends continuing trading in liquor in terms of such a licence must apply in the prescribed manner for the conversion of the licence. All liquor licences that are valid upon commencement of the provincial liquor legislation are subject to conversion by the Liquor Board within a one-year period, upon application by the holder thereof, in accordance with the criteria for new liquor licences and categories contained in this policy and the legislation. The particular one-year period for a licence that is to be converted will commence at the end of the month in which the renewal notice for that particular licence had been issued in terms of the provincial liquor legislation. Licences issued before the commencement of the provincial liquor legislation that have not been converted upon expiry of the applicable one year period will lapse and the holder thereof will not be entitled to sell liquor. The responsible Minister may extend the one-year period by regulation by a further period not exceeding one year if in his or her opinion the circumstances warrant this.

The application process and requirements for the conversion of current licences will be prescribed by regulation. It is foreseen that the information that is required in an application for new licences will have to be submitted by the current holders directly to the Liquor Board for its consideration without the public notification and objection procedures. The Liquor Board may approve, reject or postpone applications for conversion and may appropriately exercise any of its powers provided for in the policy and legislation. The

intention of the provision is to allow for the conversion of the current licences and the updating of the records of the Liquor Board and not for a review of each licence.

Provision will be made for transitional provisions that ensures the delivery of services by the presently constituted Board in terms of the Liquor Act, No 27 of 1989 and the current administration within the Department of Economic Development and Tourism for the administration of the newly promulgated provincial liquor legislation for a two year period while the required administrative and functional arrangements are made to ensure the establishment of the new Liquor Board and supporting organs.

If the newly promulgated national Liquor Act, No 59 of 2003 becomes operative and the Liquor Act, Act 27 of 1989 is repealed before the provincial liquor legislation becomes operative, the Liquor Act, Act 27 of 1989, will remain in full force and effect for the purposes of that portion of the industry in the Western Cape that is not regulated by national legislation until the provincial legislation becomes operative.

Exemptions and non - applications

As the licensing of the sale of liquor for consumption is an exclusive provincial competence, the provincial liquor legislation will provide that, notwithstanding any other legislation to the contrary, the following exemptions that in the Liquor Act, Act 27 of 1989, provided for the sale of liquor for consumption will cease to apply:

- Legislative Assemblies

- Defence Force.
- South African Police Service
- Airports Company of South Africa
- Post Office
- Armscor
- South African Broadcasting Corporation
- National Parks
- Museums licensed by customs and excise
- Collectors
- Auctioneers in aid of charity.

The following exemptions will continue to apply:

- Customs and excise officers in the execution of their duties
- Administrators of deceased or insolvent estates
- Sheriffs or other officers acting in terms of a court order
- Sellers of perfume
- Sellers of medicine as defined in the Medicines and Related Substances Control Act, Act 101 of 1965, as amended
- Sellers of sweets in respect of the sale of sweets containing more than 1% by mass of alcohol to the holder of a licence.

DEFINITIONS AND GLOSSARY

‘Board’ means the Liquor Board of the Western Cape.

‘Chairperson’ means the Chairperson of the Board or a person acting as such.

‘Competent authority’ means the Board, the Minister, the Chairperson of the Liquor Board, a municipality to whom liquor licensing functions has been assigned or an inspector appointed in terms of the provincial legislation, as the case may be, by which or whom a function authorised by the legislation will or may be performed.

‘Conditional licence holder’ refers to the holder of a licence granted for a period of one year, after which it is subject to review by the Liquor Board. A conditional licence is granted to enable the holder to meet the land use requirements of the relevant municipality and/or to enable the licence holder or a manager in charge of the premises to complete prescribed training successfully.

‘Controlling interest’ means an interest as defined in the Competition Act, Act 89 of 1998.

‘Designated liquor officer’ means a police officer designated by the SAPS to perform duties prescribed in terms of the legislation.

‘Existing unlicensed trader’ refers to a trader in liquor either for on- or off-consumption, or for on- and off-consumption purposes, who on the date of commencement of the legislation is unlicensed. The term refers to shebeen but is preferred because of negative connotations associated with shebeens.

‘Financial interest’, in relation to a business, includes shares held in a company, a member’s interest in a close corporation conducting the

business, and any interest in the business that gives the holder thereof the right to benefit directly or indirectly from the trading of the business.

‘Inspector’ means an inspector appointed to perform duties set out in the legislation.

‘Licence’ means a licence authorising the sale of liquor in terms of the provisions of the proposed legislation or any legislation of national application that provides for the registration of entities for the manufacture or distribution of liquor.

‘Licensed premises’ means the place where liquor may be sold in terms of a licence.

‘Liquor’ means any liquid or substance containing 1% or more of alcohol by volume or by mass, as the case may be.

‘Minister’ means the member of the provincial Cabinet responsible for the provincial liquor legislation in the Government of the Western Cape.

‘Municipality’ means a municipality as defined in the Municipal Structures Act, Act 32 of 2000.

‘National Minister’ means the member of the national Cabinet responsible for liquor matters in the national sphere of government.

‘Person’ includes a company, close corporation, partnership or the trustees of a trust.

‘Regulation’ means a regulation promulgated in terms of the provincial legislation.

‘Sell’ includes either directly or indirectly to exchange, offer for sale except by way of advertising, display for purposes of sale, deliver, supply or dispose of for sale, or authorise, direct or allow a sale.

‘Shebeen’ or ‘shebeener’ means an unlicensed outlet selling liquor for on- or off-consumption purposes or for both on- and off-consumption purposes. In this policy document the terms are used to denote an illegal operation.

‘Supply’, in relation to liquor, means to place a person in control thereof.

‘Traditional african beer’ means a drink or substance manufactured from grain sorghum, millet or other grain and any fermented liquor or substance declared by the competent authority to be traditional african beer.

‘Under-aged person’ means a person below eighteen years of age

‘Wine’ means a wine as defined in section 1 of the Liquor Products Act, 1989 but does not include wine fortified with alcohol or wine diluted with fruit juice or fruit juice flavourant.

BIBLIOGRAPHY

Constitutional and Legal Sources

Bills, Draft Bills, Policy Documents and Commission Reports

- Competition Board Report No. 10 of 1982
- Eastern Cape Liquor Bill, 2002, as published in the Eastern Cape Provincial Gazette No. 912 dated 16 August 2002
- Gauteng Liquor Bill, 2002, as published in the Gauteng Provincial Gazette No. 354 by Notice 2876/2002 dated 17 October 2002
- KwaZulu-Natal Liquor Licensing Bill, 2003
- Land Use Management Bill dated 21 June 2002
- Licensing Act, 1988 (Great Britain)
- Liquor Act and You and Complaints against licensed premises : Liquor Licensing Division, Queensland Government.
- Liquor Control Act, 1987 and Federal Government's Trade Practices Act – State of Victoria, Aus. (extracts)
- Malan Commission of Enquiry Report No. UG55/1960
- Time for Reform: Proposals for the Modernisation of Our Licensing Laws (White Paper) CM 4696 (Home Office - Great Britain) of 26 February 2000
- Western Cape Planning and Development Amendment Bill (W11-2002)

- Procedures on Application: Queensland Government (Department of Tourism, Racing and Fair Trading incorporating Liquor Licensing.)

Legal Opinion and reports commissioned by the Department of Economic Development and tourism

- A. Breytenbach: The Constitutional Court's Judgment in the Liquor Bill Case; opinion provided to the Provincial Government of the Western Cape dated 12 November 1999
- W Trengrove SC and A Breitenbach: The Constitutionality of the Proposed Liquor Policy: Provincial and Local Government dated 14 June 2004
- Unistel Consultus (Pty) Ltd: Towards the institutionalisation of the national frame work liquor policy in the Western Cape received on 12 November 2004

Legislation:

- Close Corporations Act, Act 69 of 1984
- Constitution of the Republic of South Africa Act , Act 108 of 1996
- Companies Act, Act 61 of 1973
- Competition Act, Act 89 of 1998
- Criminal Procedures Act, Act 51 of 1977
- Division of Revenue Act, No
- Insolvency Act, Act 24 of 1936
- Less Formal Settlements Act, Act 113 of 1991

- Liquor Act, Act 87 of 1977
- Liquor Act, Act 27 of 1989
- Liquor Act, No 59 of 2003
- Liquor Products Act, Act 60 of 1989
- Magistrate's Court Act, Act 32 of 1944
- Municipal Systems Act, Act 32 of 2000
- Municipal Structures Act, Act 117 of 1998
- Promotion of Administrative Justice Act, Act 3 of 2000
- Promotion of Access to Information Act, Act 2 of 2000.
- Public Finance Management Act, Act 1 of 1999
- Sorghum Beer Act, Act 63 of 1962
- Supreme Court Act, Act 59 of 1959
- Western Cape Gambling and Racing Act, Act 4 of 1996
- Western Cape Planning and Development Act, Act 7 of 1999
- Western Cape Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

South African Law Reports, Juta, Cape Town

- *Asko Beleggings v Die Voorsitter van die Drankraad en andere* 1997 (2) SA 57 NK
- *Bulk Deals Six CC & Another v Chairperson: Western Cape Liquor Board and others* 2002 (2) SA 99 CPD
- *Cherry v Minister of Safety and Security and others* 1995 (3) SA 323 SECLD
- *Ex parte President of the Republic of South Africa: Constitutionality of the Liquor Bill* 2000 (1) SA 732 (CC)

- GA Fichardt Ltd v Liquor Licensing Board, Area 36 1974 (3) SA 425 (O)
- Maharaj vs Chairman of the Liquor Board 1997(1) SALR 273(T)
- Montagu Springs (Pty) Ltd trading as Avalon Springs Hotel v The Liquor Board of the Western Cape and others 1999 (4) SA 716 (C) Parys Drankwinkel (Edms) Bpk en andere vs Minister van Nywerheidswese en andere 1985 (2) SALR 584(T)
- Simpson v Lewin 1956 (4) SA 486 (SR)
- S v Lawrence, S v Negal, S v Solberg 1997 (2) SACR 540 CC
- Rastopolous v Liquor Licensing Board and others 1971 (1) SA 497 (RA)

Unreported decisions of the High Court of South Africa

- Daniel Gerhardus Jordaan vs Die Voorsitter van die Drankraad, unreported Cape of Good Hope Provincial Division decision handed down by Burger AJ on 26th April 1996, Case No.4774/1995
- Hardy' Cellar CC v The Chairperson of the Liquor Board and another, Case 8643/1994, unreported Cape of Good Hope Provincial decision
- Andrew Lionel Phillips and another v The Director Of Public Prosecutions (Witwatersrand Local Division) & Others CC 20/02, a Constitutional Court judgement handed down by Jacobo J on 11th March 2003

- Peter Guy Gibson and Anor vs The Chairman of the Liquor Board, unreported Transvaal Provincial Division decision handed down by Roos J on 18th December, 1994, Case No 10356/93
- Roelof Davel Du Plessis vs Voorsitter van die Drankraad, an unreported decision of the Orange Free State Provincial Division handed down by Malherbe J on 29th April, 1994.

LAND USE PLANNING SOURCES

- City of Cape Town : Guidelines for the Consideration of Rezoning Applications for Taverns, May 1994 and July 1994
- City of Cape Town, Towards a Shebeen Policy for the City of Cape Town, Draft Report, June 2002
- City of Cape Town, A Tavern and Shebeen Policy for the City of Cape Town, Contextual Report, February 2002
- City of Cape Town, Policy Analysis for the Land Use Management System. Discussion Document. MCA Planners, November 2002
- City of Tygerberg : Zoning Scheme Regulations, May 2000
- City of Cape Town, Tygerberg Administration. Tavern/Shebeen Policy for the City of Cape Town, August 2002
- Municipality of the City of Cape Town: Zoning Scheme Regulations. October 1998

- Western Cape Provincial Zoning Scheme Model By-Law. March 2002. Provincial Department of Environmental Affairs and Development Planning

PUBLIC HEALTH AND TRAINING AND EDUCATION SOURCES

- Alcohol Availability and Consumption : Iowa Sale Data Revisited – University of Iowa
- Alcohol and the Internet, State of Texas website www.texassafetynetwork.org
- Alcohol Law and Policy Government of New Zealand
- Alcohol licensing system changes and alcohol consumption: introduction of wine into New Zealand grocery stores – Alexander C Wagenaar & John D Langley
- Development of an Alcohol Control Policy in the Netherlands – Dr. M. J. van Iwaarden Rijswijk, Netherlands
- Development of a National Alcohol Strategy – The Politics of the Real World. Keith Evans. New Zealand
- Department of Health. (2000). South Africa Demographic and Health Survey 1998. Pretoria: Department of Health
- Drowning in Alcohol: Retail Outlet Density, Economic Decline and Revitalization in South L. A. – Mary Lee, San Rafael California, CA 94901
- Flisher, A.J., Parry, C.D.H., Evans, J., Muller, M., & Lombard, C. (2003). Substance use by adolescents in Cape Town: prevalence and correlates. Journal of Adolescent Health, 32, 58-65

- Gumede, V. (1995 not 1986). Alcohol use and abuse in South Africa: A socio-medical problem. Pietermaritzburg: Reach Out Publishers
- Kotze, F.G. en A.C. Redelinghuys. Armoede en Drankmisbruik in n Landelike Konteks – Realiteite en Strategie: (Universiteit Wes- Kaapland)
- Leler, L. B. and Bradshaw, D. (1994) A Profile of Violence and Injury Mortality in the Cape Town Metropole 1994 Parow: Medical Research Council
- Matzopoulos, R. (2002). Alcohol-related mortality. In A Plüddemann, S. Hon, A. Bhana, N. Harker, H. Potgieter, W. Gerber, & C.D.H. Parry (Eds.) Monitoring alcohol and drug abuse trends in South Africa: Proceedings of the SACENDU Report Back Meetings, October 2002. Parow: Medical Research Council
- May, P.A., & Viljoen, D.L. (2002). The epidemiology of fetal alcohol syndrome (FAS) in the Western Cape Province: Wave III (unpublished manuscript)
- Nordic Alcohol Studies. 1994
- Pressing On: Citizen Action and the Oakland Alcohol Outlet Ordinance by Joan Kiley, San Rafael., California. March 1998
- Parry, C.D.H., & Bennetts, A.L. (1998). Alcohol policy and public health in South Africa. Cape Town: Oxford University Press
- Parry, C.D.H., Morojele, N.K., Flisher, A.J., & Saban, A. Social and neighbourhood correlates of adolescent drunkenness: A

- pilot study in Cape Town, South Africa. Parow: Medical Research Council
- Parry, C.D.H., Myers, B., Thiede, M. (2003). The case for an increased excise tax on alcohol in South Africa. South African Journal of Economics, 71, 265-281
 - Parry, C.D.H., Louw, A., & Plüddemann, A. (May 2000). Drugs and crime in South Africa: The MRC/ISS 3-Metros Arrestee Study (Phase 1). Parow: MRC
 - Parry, C.D.H., & Peden, M.M. “Alcohol-related mortality and morbidity in South Africa”. Paper presented at the joint meeting of the WHO Management of Substance Dependence and Violence & Injuries Prevention Units on “The social consequences of alcohol use: Establishing and monitoring alcohol’s involvement in casualties”, Prague (Czech Republic), May 2000
 - Parry, C.D.H., Flisher, A., Muller, M, & Lombard, C. (1999). Correlates of alcohol, tobacco, and cannabis use among Cape Town students in grades 8 and 11. [Abstract] Southern African Journal of Child & Adolescent Mental Health, 11, 132
 - Plüddemann, A., Parry, C.D.H., Donson, H., & Sukhai, A. Alcohol use and trauma in Cape Town, Durban, and Port Elizabeth, South Africa: 1999-2001. Parow: Medical Research Council
 - Strydom, M., van der Spuy, J., Abrahams, N., & Peden, M. (1994). ‘Home violence: Some data from the National Trauma Research Programme’. MRC Trauma Review, 2(3), 2-5

- South African Breweries. Taverners Training Programme. February 2003, (unpublished document)
- The Enforcement of Liquor Licensing Legislation : Australasian Conference on Drugs Strategy 27- 29 April, 1999
- Van der Spuy, J., Strydom, M., & Abrahams, N. (1994). 'Home violence: The Cape Metropolitan Study'. MRC Trauma Review, 2(3), 2-3
- World Health Organization (2002). World Health Report 2002. Geneva: WHO.