

A LIQUOR LICENSING POLICY FOR THE WESTERN CAPE PROVINCE

1. TERMS OF REFERENCE

The Policy Drafting Panel (PDP) was appointed by the Minister of Economic Affairs and Tourism to prepare a policy on liquor licensing for the Western Cape Province and to draft legislation to implement the policy.

The PDP consisted of the following representatives of civic society, including legal professionals, researchers and industry stakeholders:

- * Mr Solly Epstein, (Chairperson), C & A Friedlander Attorneys*
- * Mr Sam Buthelezi, South African Taverners Associations (SATA)*
- * Ms Trudi Hartzenberg, University of Cape Town (UCT)*
- * Dr Chan Makan, Association for the Responsible Use of Alcohol (ARA)*
- * Ms Anthea Michaels, Provincial Department of Community Safety*
- * Dr Charles Parry, Medical Research Council (MRC)*
- * Mr Helgard Wagener, Provincial Department of Economic Affairs, Agriculture and Tourism*

The PDP was guided by the following principles:

- Compliance with the South African Constitution
- The view that the regulation of the sale and consumption of liquor forms part of a broader policy on alcohol, which seeks to balance economic benefits with health and social issues.
- The system should impose the minimum amount of control necessary to achieve key objectives, without undue restrictions on the liquor retail trade.

- Whilst embodying principles to be applied consistently throughout the Province, legislation should be flexible enough to cope with changing circumstances and with the particular needs of local communities.
- The system should not discriminate against any section of the provincial community.
- The system should facilitate the economic empowerment of previously disadvantaged individuals.
- The licensing system should be simple to understand and easy to administer.
- The process should facilitate communication with all affected parties and be open and transparent.
- The liquor law should be capable of effective enforcement.

The policy and draft legislation must at least provide for the following:

- The Bill itself will deal with the principles of the law. Procedures will be contained in regulations to be published together with the Bill.
- A system of liquor licensing which deals with the retail trade of liquor.
- A provincial liquor authority, or authorities, to administer the system.
- Appropriate requirements for obtaining licences, applicable licensing procedures and an appeal mechanism.
- Conditions attached to the granting of liquor licences.

- Measures to allow local authority control over undertakings selling liquor to the public.
- The payment of licence fees.
- The enforcement of the liquor licensing system.
- Any other provision necessary for the administration or enforcement of an effective provincial liquor licensing system

In drafting the policy, the PDP also considered:

- a. Health and social issues related to the consumption of alcohol and ways to reduce the serious problems associated with alcohol abuse.
- b. Other applicable laws, such as the Liquor Products Act of 1989.
- c. Experience with the Liquor Act of 1989.
- d. Comparative experience and systems in other jurisdictions.
- e. Decriminalisation of the system of enforcement
- f. Cost of administering the system.
- g. Transitional measures which may be necessary to accommodate a major departure from previous policies.

2. AIMS & OBJECTIVES

The PDP aims to create a liquor licensing policy which will facilitate commercial enterprise and entrepreneurship, but at the same time protect the community against any negative consequences arising from the abuse of alcohol.

In its deliberations, the PDP has taken cognisance of past discriminatory policies and practices and has tried, where possible, to redress any imbalances or inequalities which still exist.

The PDP aims to put into place a licensing system that is fair, user-friendly and promotes the highest standards of integrity.

In order to achieve this, the PDP intends to involve the community and obtain the support of trade organisations in the licensing process and the enforcement of the Provincial Liquor Act.

The policy also aims to promote education regarding the responsible sale and consumption of liquor.

3. PUBLIC PARTICIPATION

Attached is a list of individuals and institutions that have provided written and oral representations. The PDP wishes to thank each one most sincerely for their input, without which the Panel would not have been able to complete its task. Although it was not possible to incorporate all the different points of view, the PDP did deliberate each representation in detail and attempted to include these invaluable guidelines into this document. [See *Annexure A*].

4. SUMMARY OF PROPOSALS

The PDP has attempted to establish a well balanced legislative framework for the liquor industry. The proposed policy can be summarised as follows:

Licensing Authorities

- Producers and wholesalers are to be regulated nationally, in line with the Constitutional Court ruling on the Liquor Bill No 131 of 1998.
- Retail liquor licensing is to be a provincial competence.
- Western Cape Local Authorities will play a major role in the licensing process.

User-friendly Licensing System

- Licence applications are to be lodged and processed by Local Authorities.
- The licensing process is to be simplified and town planning applications will be included, where required.
- An administrative fee, that includes advertising costs, will be payable.
- The onus is on the Local Authority to advertise and inform interested parties of the application. The Provincial Minister will prescribe minimum requirements.
- If unopposed, the licence must be issued by the Local authority.
- Opposed applications are to be referred to the Provincial Liquor Authority for resolution if objections cannot be resolved through negotiations.
- A web site will be developed to serve as a comprehensive database for all licencing authorities and the SAPS.
- Limited reader access to the website will be available to the public.

Engagement of Local Communities

- Local communities will play an important role in the licensing and monitoring process.
- Liquor Forums may be established by Local Authorities to resolve disputes and facilitate negotiations.

Transitional Measures

- A transitional registration system for illegal traders will be introduced in selected areas to be declared by the responsible provincial Minister.
- The registration system will only be introduced in gang free areas
- The onus to register will be on illegal traders who must prove existence for longer than one year.
- The register for illegal traders will be made available at local authorities.
- A task team of the SAPS, local authorities and the provincial Department of Economic Affairs, Agriculture and Tourism will assist with information and registration.
- A moratorium from prosecution of six months from date of declaration of an area will be provided for illegal traders who register.
- Registered illegal traders must apply for licences in the normal manner during the moratorium.
- The moratorium will apply until the licence application is finalised.

Provincial Liquor Authority (PLA)

- This will be a quasi-judicial body appointed by the Provincial Minister.
- Its decisions will be subject to an appeal or review of the High Court.
- It must provide reasons for decisions.
- It will determine the granting of licences in opposed applications.
- It will have the power to withdraw, suspend or amend the conditions of existing licences.
- It will have the power to issue Interim Orders.
- A Provincial Liquor Inspectorate is to be established.

Enforcement Agencies

- Designated Liquor Officers (DLO) will be appointed by the SA Police Services (SAPS) to enforce legislation and licence conditions.
- The Provincial Liquor Inspectorate will co-ordinate and assist in investigations and prosecute transgressors of licence conditions before the PLA.
- Local Authorities may designate officials to report to them on applications and enforce licence conditions in their areas.

Licences

- Provision will be made for on-consumption and Off-consumption licences
- In exceptional circumstances both categories of licence may be obtained for the same premises
- Except for sorghum beer, all types of liquor are to be treated equally.
- Liquor retailers may only sell liquor and liquor related products.
- Supermarkets may sell all types of liquor in specially designated areas, subject to certain conditions.
- Temporary licences will no longer be issued.
- Special event licences are to be issued by the Local Authority. Permits must be obtained for each event.
- Liquor tastings may be conducted at off-consumption outlets, subject to licence conditions.

Strict Control Measures

- Stricter measures against offenders are proposed.
- The sale of liquor to unlicensed or unregistered traders will be banned.
- Licensees are to keep registers of sales in excess of regulated quantities.
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- A Code of Conduct (See *Annexure C*) may be included as a licensing condition.
- Licences, certificates and permits, together with the Code of Conduct, are to be permanently and prominently displayed at licensed premises.

Trading Hours

- Trading hours is to be determined by municipal bylaw.
- The PLA may curtail trading hours under specific circumstances.

Monitoring, Evaluation and Accountability

- Mechanisms will be introduced to facilitate the ongoing monitoring evaluation and reporting to the Provincial Legislature of the new system.

Education and Training

- The Provincial government is to budget for the education and training of consumers and retailers.
- Training and education may be done at local authority level.

5. INTRODUCTION

5.1 Legislative Background

The supply and consumption of liquor in the Western Cape was first regulated over a century ago when the Government of the Cape Colony introduced the ***Liquor Licensing Act of 1883***.

This Act and subsequent amendments formed the bedrock of liquor legislation in the Province until it was superseded by the ***Liquor Act 30 of 1928***, which applied to the whole of the Union of South Africa excluding the Transkeian territories.

The Act exercised strict control over the distribution and supply of liquor with a view to 'safeguarding the interests of the people in the use of a commodity potentially dangerous to national sobriety and welfare'. Its main concern was not so much about the production of liquor but about its distribution and supply. It enforced the existing restriction on the sale of liquor to the African population.

Between 1934 and 1977 the Act was amended 34 times, mainly to liberalise the austere controls but the amendments failed to address the causes of the existence of unlicensed trading ("shebeens") to the African population. The amendments were eventually consolidated into the **Liquor Act of 1977**, which centralised licensing powers into one national body, the Liquor Board, and provided the relevant Minister with the final say in the granting of licences.

The **Liquor Act No 27 of 1989** was introduced, which *inter alia* provided the Chairman of the Liquor Board with greater powers. In 1995 it was amended to make provision for nine provincial Liquor Boards and assign powers to the provincial ministers.

During 1998, national parliament introduced a **Liquor Bill (B131B-98)** which would regulate the manufacturing, wholesaling and retailing tiers of the industry. Following vigorous public debate regarding its constitutionality, the State President referred the Bill to the Constitutional Court.

On 11 November 1999, the Court unanimously ruled the Bill as unconstitutional to the extent that it contained *national* regulations for retail liquor licensing - which is an exclusive *provincial* legislative competence.

This judgement thus paved the way for the Western Cape to introduce its own provincial liquor legislation within the wider national context.

In the meanwhile, until new legislation is passed, the ***Liquor Act 27 of 1989*** serves as the present national regulatory framework for the liquor industry.

5.2 Alcohol in South Africa

5.2.1 Alcohol Abuse and the Burden to Society

Risky drinking behaviour: This is generally defined as drinking five or more standard drinks per day for men and three or more drinks per day for women. It is estimated that roughly one-third of current drinkers in the Western Cape drink at risky levels over weekends. (*Parry, 1999*).

Alcohol-related mortality: In 1999, almost 50% of national cases involving death due to homicide and traffic collisions, featured blood alcohol counts of 0.08g/100ml or more. About a quarter of deaths resulting from suicide or other 'accidents' featured blood alcohol levels of 0.08g/100ml or over. (*Parry & Peden, 2000*).

Alcohol-related trauma: A 1999 study conducted in six state funded hospitals revealed that 74% of violent incidents, 54% of traffic collisions and 42% of trauma cases were alcohol-related. (*Peden et al, 2000*).

Foetal Alcohol Syndrome (FAS): In 1997, about 5% of 992 rural children screened in 1997 during their first year at school in Wellington outside Cape Town were diagnosed as having FAS. (*May et al*)

School Problems: Research conducted in 1997 among almost 3 000 Grade 8 and Grade 11 students at Cape Town schools found a statistically significant relationship between drinking alcohol (in the last month) and absenteeism and repeating a year at school (*Parry et al, 1999*).

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

- Research conducted by the Medical Research Council (MRC) in the rural South Western Cape found that between 67% and 76% of domestic violence cases were alcohol-related (*Strydom et al, 1994; Van der Spuy et al, 1994*).
- A 1999 study conducted among 960 arrestees at nine police stations in Cape Town, Durban and Johannesburg, found that 22% were under the influence of alcohol at the time of their alleged crimes - 33% in Cape Town, 26% in Durban and 10% in Johannesburg (*Parry et al, 2000*).
- Western Cape data for 1996 found a high association between alcohol and drug abuse and/or proximity to shebeens and murders. (*Argus Newspaper, 14 August 1997*).
- The annual cost to the South African economy due to the abuse of alcohol is estimated to be R8,5 billion.

5.2.2 Alcohol Use and Positive Contributions

Consumption of alcohol *per se* is not problematic. While a great number of South Africans may abuse alcohol, the majority consumes alcohol responsibly. They cause no harm nor generate any costs for which society can demand compensation.

The liquor industry in South Africa contributes significantly to the country's economic activities. A perspective on the extent of this contribution may be gained from the following statistics.

- It contributes some R4,6 billion to State coffers in taxes the form of and excise duty.

- It provides direct and indirect employment for some 691 000 people.
- It earns the country some R900 million in export earnings.
- It spends more than R60 million on social responsibility programmes.

6. REMOVAL OF BARRIERS TO ENTRY

6.1 Background

One of the primary objectives of the liquor policy is to provide for the inclusion of previously unlicensed traders into the system. This objective is further linked to the empowerment of historically disadvantaged traders by providing them with an opportunity to enter the formal, licensed sector.

It must be emphasised that the present cumbersome system does not deter unlicensed traders from trading, but merely ensures that they remain unregulated. Due to lack of capacity, the enforcement agencies have not been able to prevent unlicensed trade. This is borne out by the flourishing number of informal outlets.

It is essential to remove all artificial barriers of entry, such as a user-unfriendly system, as these do not address the negative social and health implications of alcohol abuse, but merely perpetuate disregard for the regulatory system.

The vast majority of existing liquor retailers, approximately 80% , is unlicensed. With few exceptions, these outlets, or shebeens, are found mainly in the residential areas of traditional black townships.

Most are generally of a survivalist nature. "Consent" use for the trading in liquor may be obtained from local authorities in the instance where a premises is still primarily used for residential purposes, but in which a portion is being used to

conduct a shebeen. However, ignorance of legal requirements and the attendant costs in complying with the requirements have been found limiting.

In some instances, shebeens have developed into major tourist attractions and feature the same amenities licensed establishments. These shebeens are no longer used as residences, but have been converted for exclusive business purposes. The owner is required to apply to the relevant local authority for rezoning of the premises, but the costs involved in such applications are usually prohibitive.

Then again, some shebeens have actually contributed towards a climate of lawlessness and disrespect for community rights.

The proposed liquor policy differs materially from existing policy in that unnecessary barriers of entry will be removed, making it relatively easy for new players to enter the market, while at the same time maintaining applicable standards to prevent undesirable practices from being legitimised.

This is aimed at encouraging those informal traders, who are law-abiding citizens and who want nothing more than to earn an honest living for themselves and their families, to legitimise their business.

Not all existing shebeens are expected to meet the licensing criteria, but the intention is to ensure that the majority are included within the regulatory framework. Local authorities will have to ensure that applicants meet objective, attainable standards.

The PDP is convinced that drastic measures to correct the situation and to implement a meaningful liquor policy are fully justified and will pass constitutional muster.

6.2 Transitional Measures

The policy intends not only to make it possible for informal traders to legitimise their businesses through simple and easy mechanisms, but also to create an environment that will encourage them to do so.

As a transitional measure, the PDP proposes a register of existing informal operators, containing basic information on each trader. The intention is not to encourage the entry of new informal traders, but to register existing ones.

Unlicensed traders who are able to provide adequate proof of having traded in liquor for a period of one year before date of registration will be allowed to register their particulars with their relevant local authority. Proof thereof may include membership of a national liquor traders' association, or a regional association that is affiliated to a national association or other acceptable means of proof. The Designated Police Officer of the area will provide an affidavit regarding the suitability of the registered illegal trader, particularly with regard to any links with known organised criminal activities.

The onus for registering will be on the illegal trader. A task team consisting of officials of the local authority, the South African Police Services and the provincial Department of Economic Affairs, Agriculture and Tourism will be responsible for the implementation of the transitional measures. This includes the provision of information and assistance with the registration process.

Provision will be made for a moratorium of six months from the date upon which the Provincial Liquor Act comes into being, or on any other date determined by the Provincial Minister, with the concurrence of the provincial Minister of Community Safety. The moratorium may be declared for the whole of the province or for parts thereof. The Provincial Minister may, with the concurrence of the provincial Minister of Community Safety decline to declare in area in the province if considerations of safety and security warrant this.

Should a registered trader apply for a licence during the initial six months, the moratorium will be extended pending the outcome of the particular application.

During this period, the registered trader will not be prosecuted for trading without a liquor licence, but will still be subject to other laws, such as those relating to the sale of liquor to under-aged or intoxicated persons.

Registration particulars will be made available on a website that will be accessible to SAPS, the Local Authorities, wholesalers, producers and the public. Registered traders will be able to purchase directly from producers and wholesalers during the period of registration. These traders will also be encouraged to join recognised trade associations that adhere to an approved Code of Conduct. Trade associations will be encouraged to persuade informal traders to register.

Upon registration, the trader will be provided with a certificate that will be valid during the six-month period. He or she will have to apply for a licence within the registration period, failing which, the registration will lapse and not be renewable. The task team will attempt to assist as many illegal traders as possible to apply for licences upon registration.

The position regarding town planning requirements will be the same as for new licence applications. The Provincial Department of Planning, Local Government and Housing, in conjunction with the provincial Department of Economic Affairs, Agriculture and Tourism will provide guidelines to the local authorities on how to deal with applications regarding the town planning prescriptions.

The Provincial Minister may, with the concurrence of the Provincial Minister of Community Safety, order the de-registration of an unlicensed trader or traders in a particular area of jurisdiction of a local authority, if adequate proof of involvement of such a trader or traders in criminal activities is submitted or considerations of safety and security warrant such a step. Notice of the intention

will occur by prior notification in the Provincial Gazette and in two newspapers circulating in the relevant local authority area.

De-registration does not prevent an unlicensed trader from applying for a liquor licence.

6.3 Enforcement Measures

The removal of unnecessary barriers to entry will be accompanied by the imposition of strict measures against licensed traders, including producers and wholesalers registered in terms of national legislation, who transgress the law - especially those who supply illegal operators or use them as 'runners' and 'fronts'.

Provision will be made for heavy penalties, including the confiscation of vehicles, property and stock used in the aiding and abetting of any illicit liquor trade. Penalties will also be imposed on landlords who knowingly allow their property to be used for illegal trading.

Licensed traders, including producers and wholesalers registered in terms of national legislation, will be prohibited from selling liquor to unlicensed or unregistered traders. In this instance, the transgressor's licence will be endorsed, suspended or cancelled in the case of repeated offences or appropriate steps, including criminal prosecution, will be taken against producers and wholesalers registered in terms of national legislation. This is necessary to stem the supply of liquor to illegal traders who choose not to avail themselves of the opportunity to legalise their businesses.

Licensed outlets will be required to keep a register of sales, including full particulars of the purchaser and of every sale of liquor in excess of a quantity to be determined by regulation.

6.4 Town Planning and Zoning Requirements

The PLA's main responsibility will be to issue liquor licences and to ensure compliance with licensing requirements.

A co-ordinated approach between the PLA, Local Authorities and enforcement agencies is essential to ensure that shebeens become part of the formal business sector.

Unless shebeens meet the zoning requirements of the Local Authority, the granting of a liquor licence serves no purpose as the holder remains subject to closure by the authorities. In most instances, unlicensed shebeens are unable to meet the strict zoning requirements. Clearly not every shebeen will meet the revised zoning and/or liquor licensing requirements. However an enabling environment will be created to allow for the maximum number of shebeens to be legalised while protecting the interests of surrounding communities.

Certain shebeens in the Western Cape have been found to be linked to organised crime syndicates. In legitimising existing shebeens, caution is necessary to ensure that such gang-related shebeens are not granted licences, while bona fide shebeens that meet the legal requirements are accommodated within the system.

In order to encourage the legalisation of existing informal operators, a concerted effort will be made to encourage town planning authorities to set attainable zoning and building requirements.

In the case of new licence applications, a licence will be granted when land use requirements are met. The procedures for liquor licencing and a change in land use may be followed at the same time. It is proposed that the application form for

a liquor licence should contain a short section that will serve as an application for the change in land use. Notice of the application for a liquor licence and for the change in land use will be done simultaneously and the time period for objections must correspond. Should a proposed licenced site already fulfil town planning requirements, proof thereof may be annexed and the section regarding land use in the application form may be deleted. It is envisaged that “consent use” approval or a similar approval for the use of the premises by the local authority will be sufficient to meet the requirements of the provincial liquor legislation. Guidelines regarding the land use applications for liquor licencing will be provided to local authorities by the Provincial Department of Planning, Local Government and Housing, in conjunction with the Provincial Department of Economic Affairs, Agriculture and Tourism.

6.5 Transfers, Removals and Structural Alterations

Transfers of licences, structural alterations to premises and other minor applications will be handled by local authorities. No separate provision has been made for the removal of a licence from one address to another as there is no material difference between a removal and an application for a new licence. In order to remove a licensed business, the licensee will thus have to apply for a new licence.

In the case of transfers, the only matter to be considered is the qualification or otherwise of the transferee. The Local Authority will be able to expedite such applications by checking with the SAPS whether the transferee has a criminal record.

7. GOVERNMENT FUNCTIONS AND RELATIONS

In line with the Constitutional Court judgement of 11 November 1999, the policy explicitly recognises a division of responsibilities between national, provincial and local governments.

7.1 Constitutional Position

Part A of Schedule 5 of the Constitution, as interpreted by the Constitutional Court in *Ex parte president of the Republic of South Africa: Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC)*, confers exclusive legislative powers on liquor licensing to the provinces.

Part B of Schedule 5 of the Constitution contains matters that are conferred to local government to the extent set out in section 155(6)(a) and (7) of the Constitution. One such matter is control of undertakings that sell liquor to the public. (*Annexure B*). This infers that Provincial legislation should deal with the licensing of liquor outlets while control of undertakings that sell liquor comprises a local government function.

7.2 Provincial Powers

7.2.1 Provincial Liquor Authority

A Provincial Liquor Authority (formerly known as the Liquor Board) and herein referred to as the PLA, will be appointed by the Provincial Minister. It will consist of a chairperson, a deputy chairperson, both of whom shall have legal qualifications, and three lay members. The quorum will be three members.

The PLA will have the powers to grant or refuse applications referred to it by the Local Authority, suspend or withdraw licences, impose further conditions, consider objections against applications and deal with complaints regarding the conduct of licensed businesses. It will be obliged to give reasons for its decisions, and such decisions will be subject to review by the High Court.

It will further have the power to initiate and conduct enquiries into any matter relating to the retail sale of liquor.

The PLA will further act as point of lodgement and issue licences in the event of a Local Authority being unable to fulfil this function. In this regard the Provincial Minister may prescribe regulations for matters normally governed by municipal by-laws such as trading hours and the placement of advertisements. If requested, the PLA may provide advice and support to Local Authorities on matters relating to liquor legislation.

After giving all parties an opportunity to make further representations, the PLA will have the power to refuse or grant an application with or without special conditions. If the PLA intends imposing special conditions, it shall communicate this to all parties and give them sufficient opportunity to respond. The Minister may prescribe by regulations a framework for decision making by the PLA.

A complaint may be lodged with the PLA in instances where affected parties, such as neighbours, the Local Authority or the SAPS, have cause to complain that the licensee is in breach of licence conditions or the provisions of the Provincial Liquor Act.

The PLA will deal timeously with the withdrawal or suspension of existing licences that are not in the public interest.

7.2.2 Hearings of the Provincial Liquor Authority

The PLA will function as a quasi-judicial body, tasked to deal with disputes between applicants for licences and objectors and between existing licensees and complainants. Objectors or complainants may include SAPS, Community Police Forums, schools, the general public or the relevant Local Authority.

Hearings of opposed applications and complaints must be dealt with as soon as possible after receipt of the referral. All parties must be advised of the outcome in writing and reasons given.

The PLA will not be obliged to conduct formal hearings of matters referred to it by Local Authorities, but may determine a process to deal with the matter informally.

7.2.3 Provincial Liquor Inspectorate

A small Provincial Liquor Inspectorate will be established primarily to co-ordinate and facilitate the prosecution of matters referred to the PLA.

The Inspectorate will not be expected to enforce licence conditions or the provisions of the legislation. This will be the task of the SAPS through its Designated Liquor Officers (DLOs). Law enforcement over unlicensed outlets will also be the responsibility of the SAPS.

The Inspectorate will however assist enforcement agencies in the execution of their functions where necessary. Inspectors will have the necessary rights of access and seizure that are allowed in terms of the provisions of the Constitution.

To ensure consistency in the application of the Provincial Liquor Act, the Inspectorate will monitor the reporting standards of law enforcement agencies. It

will also ensure a uniform reporting format in order to maintain the integrity of the database.

The Local Authority or the SAPS Designated Liquor Officer may initiate a complaint by providing the Provincial Inspectorate with statements and relevant reports.

The Inspectorate shall assess the nature of the complaint and direct it to the appropriate organ of state for investigation. In instances where the appropriate body is the SAPS, the matter shall be referred to the Designated Liquor Officer.

In cases where reports have to be obtained from both the Designated Liquor Officer and the Local Authority officials, the Provincial Inspectorate shall co-ordinate the prosecution of the matter.

It will also be responsible for the prosecution of cases that justify the need for a hearing. For this purpose, the inspectors shall present evidence that may be in the form of an affidavit to the PLA.

7.2.4 Interim Orders

The PLA shall be empowered by legislation to grant and confirm or discharge interim orders in exceptional circumstances.

An interim order shall be granted only upon written application supported by affidavits being presented to the PLA. In the event of an interim order being granted, the order shall be served upon the licensee or the person in charge of the premises.

7.3 Local Authority

The Liquor Act, No 27 of 1989 involves the local magistrate as referral point for new licence applications and objections. It does not provide a role for Local

Authorities in the licensing process, nor does it recognise their particular interest in the control of liquor retail outlets. These omissions are the cause of numerous complaints from local communities and Local Authorities.

The Businesses Act, No 71 of 1991 has already set a precedent in the designation of the local government as licensing authority for business licences. This has allowed Local Authorities to develop the necessary infrastructure to inspect and monitor compliance through a structure of inspectors and enforcement officials, mandated in terms of the Provincial Liquor Act.

It is proposed that liquor licence applications be handled by the Local Authority in terms of a simple and user-friendly procedure.

Through its existing licensing/health/zoning officials, the Local Authority may obtain relevant reports relating to applications. It may enforce conditions relating to the existing liquor licences such as the suitability of the premises, building requirements, noise levels, health requirements and any other matters that do not require the assistance of the SAPS.

7.3.1 Control of Retail Outlets

The negative impact of the sale and abuse of liquor is most prevalent at the retail level of the industry.

It is at this point that the interests of the community and the liquor trader may differ widely. Irresponsible on-consumption establishments create a nuisance in residential areas through the anti-social or criminal behaviour of intoxicated patrons. Off-consumption establishments may contribute to social decay, and crime in those instances where liquor purchases utilise the outlet as a focal point to congregate and consume liquor in public. Such anti-social behaviour leads to a general deterioration of the surrounding environment.

Local Authorities have a direct interest in controlling these outlets in order to minimise such negative consequences. It thus follows that the relevant Local Authority is more suitable than the local magistrate as the place of lodgement of applications and objections.

A Liquor Forum may be formed by the Local Authority, SAPS Designated Liquor Officer, the Community Police Forum and the local liquor traders association or representatives of provincial or national liquor traders' organisations.

The Liquor Forum may agree to a code of conduct governing the granting of liquor licences. It may also be required to assist in dispute resolution in appropriate instances, the co-ordination of training and education and the negotiation and implementation of accords.

If a Code of Conduct has been agreed to by a particular Local Authority, such code will be imposed as a condition to all licences issued in such area of jurisdiction.

The holder of a licence, certificate or permit must display these permanently and prominently on the premises. These include the annual renewal notice, the valid liquor licence and the conditions pertaining to the premises. If the licensee has agreed to a code of conduct, such code must be displayed in a similar manner with contact details of the responsible law enforcement agencies to be contacted in the event of a suspected violation.

8. LICENSING PROCESS

8.1 Application for New Licence

Applications for new licences are to be submitted to the Local Authority in whose jurisdiction the proposed premises are situated.

Application forms will be simplified and the Local Authority will guide the applicant

through the licensing process, including, if necessary the process to change the approved use of the land.

The application form must contain details of the applicant, the premises, the category of licence applied for and any such information as will be necessary to determine licensing. The form must be of such a nature that any applicant should be able to complete it without requiring professional assistance. It must contain a pro-forma advertisement and a voluntary undertaking to abide by the Code of Conduct. An application fee, to be determined by regulation by the Provincial Minister, and sufficient to cover the administrative costs of the Local Authority, is payable to the Local Authority upon submission of the application.

If the application is in any way incomplete or incorrectly filled in, the applicant will be informed at an early stage and allowed the opportunity to amend the application.

In the past, the required notification in the Government Gazette as the only notice given to interested parties, has not been effective, often resulting in applications being granted without prior knowledge of the Local Authority or residents.

The Local Authority will determine the nature and format of the advertisements, as well as the list of stakeholders it intends notifying of the application. This may be done as a matter of policy or as stipulated in a bylaw of general application, following the procedure determined by the Western Cape Municipal Ordinance, No 20 of 1974. It is envisaged that the local authority will give notice of the application in a manner similar to that required by that local authority for consent usage in terms of its town planning requirements. If an application for the change in land use is being done simultaneously with the liquor licence application, the local authority may use the same advertisement and notification process. The Provincial Minister may determine the minimum categories of persons that have to be notified. It is foreseen that the SAPS Designated Liquor Officer and the local Community Police Forum should at least be informed of each application.

The placement of advertisements and the notification of interested parties shall remain the responsibility of the Local Authority. Placing the burden on the applicant may constitute a barrier to entry and act as a disincentive. The costs of advertisements will be included in the application fee.

The Local Authority shall obtain a report from the SAPS Designated Liquor Officer regarding the applicant and may obtain a report pertaining to any other matter deemed necessary.

If, after advertisement and notification of all affected parties, no objections are received within the prescribed time limit the Local Authority is obliged to issue the licence to the applicant. This will be done by an official of such Local Authority as provided for in the Municipal Systems Act. If the application is opposed, the Local Authority shall be obliged to refer the application to the PLA for determination. The Local Authority shall have no discretion in granting or refusing a licence application, but may object to any application in its own right, including any objection based on the non-compliance of land use requirements. As already stated, a licence will only be granted when land use requirements are met.

Details of licence applications are to be incorporated on a website provided by the provincial Department of Economic Affairs, Agriculture and Tourism. Applications will be processed by the Local Authorities, which will have user access to the website. Applications will be registered on the website, as soon as they have been lodged, prior to the expiry date for objections. This will also serve the purpose of notification to interested parties. The original application must be available for public inspection at the Local Authority.

8.2 Objections

In terms of the current Liquor Act, objections are lodged with the local magistrate and only forwarded to the PLA after the expiry date for objections. The PLA may not consider objections received after this date, unless the Chairperson refers the matter for a hearing at which the objectors are allowed to voice their objections.

If objections have been received, or if the Local Authority itself objects to the licence, the Local Authority, may facilitate negotiations between the applicant and the objectors, if it is of the opinion that there is a reasonable prospect of resolving the matter through negotiations. Such negotiations may be done through the Local Liquor Forum, if such exists, or through any other means determined by the Local Authority. These negotiations are voluntary and must be concluded within a limited time frame to ensure that the applications are not delayed inordinately, thereby effectively refusing the application.

If the Local Authority is of the opinion that objections will not be resolved through negotiations, or if the parties elect not to enter into negotiations, or if the negotiations are not finalised within the prescribed limit, then the applications and objections will be referred to the PLA.

8.3 Provincial Registration System

The present system used by the Liquor Board is outdated. The provincial Department of Economic Affairs, Agriculture and Tourism will develop a liquor registration system based on the Website which will allow Local Authorities, the Provincial Liquor Authority, the Provincial Liquor Inspectorate and the SAPS user access to the web site, based on their respective requirements and legal responsibilities.

The Local Authority will have access to all information relating to licences in its area of jurisdiction. User access codes and levels of access by local government officials and provincial officials will have to be determined. The public will have access on a “read only” basis.

The Local Authority will be the custodian of the documents relating to applications, objections, annual licence fee receipts and other relevant issues. If a matter is referred to the PLA, such documents will accompany the referral and be returned to the Local Authority following the completion of the matter.

The licensing system must provide for a comprehensive database that not only provides information on individual licences and applications, but allows for the monitoring of infringements and provides a list of persons who have been disqualified due to the suspension or withdrawal of a previous liquor licence.

8.4 Monitoring, Evaluation and Accountability

Standardised data collection of alcohol-related incidents is required. The purpose of the database is to assist the provincial and local governments in the planning and implementation of preventative measures. The database will also provide reliable and current information for research purposes.

There is a need to monitor the process by collating statistics on the following: numbers of permits/licence applications received and the outcomes, the number/type and geographic distribution of infringements, the number and type of education and training initiatives implemented, levels of satisfaction among members in the liquor trade, Local Authorities, the police and community members. This should be collected through routine statistics and through primary research (e.g. interviews with role players).

Annual reports are to be provided to the provincial Department of Economic Affairs, Agriculture and Tourism by the Local Authorities regarding the number of applications, the number granted, summary of incident reports and the handling of incidents.

The Local Authorities will need to work with SAPS Designated Liquor Officers in compiling their annual report, which will be collated at a provincial level and incorporated with other material at provincial level, e.g. handling of hearings of complaints, etc.

To assess how the situation has changed from year to year, the Provincial Minister will present to the Provincial Legislature a report integrating the inputs from each of the Local Authorities and the PLA.

9. LICENCES

9.1 Selling of Liquor

No person shall sell liquor except in terms of a valid licence. Selling will include the keeping, displaying, offering, delivering or supplying of liquor for sale as well as directing, authorising or allowing such sale. The licensing of producers and wholesalers will take place in terms of national legislation, however such licences will not enable the sale of liquor at retail level [i.e. to unlicensed persons]. For example wine estates or brewers who wish to sell to the public will do so in terms of a licence issued by the Provincial or local licensing authorities.

9.2 Types of Licences

The Constitutional Court has determined that the licencing of liquor retailing, sorghum beer manufacturing and micro manufacturing are exclusive provincial functions. Provision will be made for two kinds of retail licences, on- and off-consumption. Micro and sorghum beer manufacturers will be accommodated within the liquor retail licensing system. The sale of sorghum beer only will be allowed in terms of a permit system.

It will be possible under exceptional circumstances to obtain both types of retail licences in respect of the same premises. Application will however have to be made for each type of licence and the public must be informed of the applicant's intention to do so at an early stage in the process.

As part of the regulations to the Provincial Liquor Act, general conditions will be published which will apply to the types of licences and standard conditions relating to the kinds of businesses to be licensed e.g. hotels, restaurants, night clubs, bars, taverns, liquor stores etc.

As in the past, the definition of premises will include transportation vessels or vehicles used primarily for tourism purposes.

It is essential that prospective applicants are familiar with the requirements for each type of business. The PLA will have the right to impose further conditions either on granting the licence or after a proper enquiry.

9.3 Licence Fees

An annual licence fee shall be payable at the offices of the Local Authority in which area of jurisdiction the licensed premises are situated. In instances where a new licence is applied for, a pro rata part of the annual licence fee will be payable upon approval. The revenue raised through licence fees shall accrue to the Provincial Revenue Fund.

9.4 Off- Consumption Premises

In order to properly control licensed premises and prevent the sale of liquor to persons under the age of 18 or vagrants or illegal traders, off-consumption sales should take place in an enclosed area devoted mainly to the sale of liquor. This implies that liquor stores will only be allowed to sell liquor and liquor related products.

Supermarkets and other stores that wish to sell liquor must obtain off-consumption licences. Such licences will only be granted in respect of separate, areas with access control, dedicated to the sale of liquor and with a separate point of payment in such dedicated area. The "liquor dedicated areas" must be separate and must have the facility to be closed to the public outside of liquor trading hours.

Sales of more than a prescribed quantity must be recorded at the point of sale in a manner that will reveal to the authorities whether the licensee is regularly selling to illegal traders. Failure to record sales will be an offence and may lead

to the withdrawal of the trader's liquor licence. Legislation will provide for the inference that a Court may draw from the regular sale of quantities of liquor above the prescribed quantity , subject to acceptable constitutional safeguards.

Liquor stores and liquor-dedicated areas will be off-limits to persons under the age of 18 who are not accompanied by an adult, as well as persons under the influence of liquor.

9.5 Disqualifications

A person whose liquor licence has been withdrawn by the competent authority, will be disqualified from applying for or obtaining transfer of a liquor licence for a period of five years from the date of such withdrawal. Minors, unrehabilitated insolvent persons, convicted criminals and their representatives will be disqualified from holding licences, or from managing a licensed premises, unless the PLA rules that the particular conviction is of such a nature that it does not detract from the applicant's suitability to hold a licence or manage a licensed premises.

9.6 Lifespan and Renewals

Licences will be granted for an indefinite period, linked to the renewal of an annual licensing fee. Failure to renew the annual fee will result in the lapse of the licence. Defaulters may however appeal to the PLA within 2 months from the year end, in which case the PLA may allow a late payment and the reinstatement of the licence. It may also impose a fine for late payment where appropriate.

A licence that has lapsed may at any time be re-instated by the High Court, upon good cause being shown by the applicant.

9.7 Granting of Applications

In considering the granting or refusal of an application the PLA must take into account the qualifications of the applicant, the fulfilment of requirements regarding the premises, the public interest and any potential harm to the community caused by the sale and/or consumption of liquor at the proposed licensed premises.

9.8 Temporary Licences

By speeding up the licensing process, the need for temporary licences will be eliminated. (These were previously necessary to bridge the gap between the date of application and the date of issue.)

9.9 Special Events

Organisers of special events may apply for a special events licence. This application will be dealt with in a similar manner as other licence applications and will be subject to the fulfilment of the necessary requirements.

In applying for a special events licence, applicants will be required to abide by a code of conduct that will be monitored by the SAPS or the Local Authority. The provincial inspectorate may also monitor these events at random.

To limit possible abuse of a special events licence, liquor may not be sold by anyone at the event except by the licence holder. The event must have the approval of the Local Authority and a permit will be issued only after the necessary planning has been done. In the event of abuse of a permit, the licence holder runs the risk of loss or endorsement of his/her liquor licence.

9.10 Delivery of Liquor

In order to effectively monitor the supply of liquor to unlicensed outlets, delivery vehicles will need to be clearly identified and delivery personnel must be able to show invoices which were issued on the licensed premises and which identify the liquor and the recipient.

9.11 Storage of liquor

Liquor may be stored both on and off the licensed premises provided that no liquor may be sold or delivered from storage facilities located off the licensed premises.

9.12 Tasting Facilities

All off-consumption outlets will have the right to conduct liquor tastings except where this is specifically prohibited by the licence conditions of the particular outlet and provided there is no direct or indirect charge for such tasting.

9.13 Restrictions and Offences

Offences will be defined in the legislation to ensure the enforcement of the provisions of the legislation. These include:

- It will be an offence to sell liquor without a valid liquor licence or permit.
- It will be an offence to sell liquor in breach of the conditions of a liquor licence or permit.
- No intoxicated persons will be allowed on to any licensed premises.
- It will be a crime to supply liquor to an intoxicated person.

- No unaccompanied persons under the age of 18 years will be allowed into areas dedicated to the sale of liquor for off- consumption.
- It will be an offence to sell or supply liquor to a person under the age of 18 years.
- No person under the age of 18 or any other disqualified person may be employed in connection with the sale of liquor except whilst undergoing training.
- It will be an offence for any person to mislead a licensee regarding his age or that of another in order to induce the sale or supply of liquor to a minor.
- It will be an offence for an employer to supply liquor to an employee in lieu of wages.
- It will be an offence for an employer to deduct from the salary of an employee any sum owing in respect of the purchase of any liquor by the employee either from the employer or from a third party.
- The adulteration or fraudulent substitution of liquor will constitute a serious offence.
- The sale of dangerous concoctions such as '*skokiaan*' and '*Barborton*' will be prohibited.

9.14 Compliance Notices

Provincial as well as Local Authority inspectors and SAPS Designated Liquor Officers may issue compliance notices to licensees who violate the provisions of the licence, the code of conduct or legislation. Such notices will be in the prescribed format, indicating the time, date, place and nature of the transgression and, if necessary, state a due date for compliance. A record of such compliance notices shall be kept by the Local Authority. The SAPS Designated Liquor Officer will also be informed. The compliance notices shall be available as proof at any future hearing.

9.15 Exemptions

Exemptions from the provisions of the Act will be limited to sales by executors, liquidators, Sheriffs of the Court, sacramental beverages, medicines and perfumes. There will be no exemptions for Provincial or National Government departments or semi-state institutions as in the past. They will have to apply for and obtain licences in the normal manner.

9.16 Prosecution of Offences

If the State proves conclusively in a criminal case that the seized contents of a sealed container comprise liquor, this would be regarded as *prima facie* proof that the contents of other containers so seized and carrying similar distinguishing features, also comprise liquor.

In the event of a conviction in terms of the Provincial Liquor Act, a court may forfeit to the Province all money, coins, bills or promissory notes found on any unlicensed premises or on any person present on such premises.

If criminal proceedings are instituted and the accused pays an admission of guilt fine, the local magistrate shall determine whether the liquor in question shall be forfeited to the State.

Upon conviction of a licensee for any offence in terms of the Provincial Liquor Act, the court shall order the endorsement of the licence with the particulars of

the offence. The Clerk of the Court, or any other person who is responsible for the maintenance of records of conviction of offenders, shall in writing notify the Local Authority and the SAPS of the endorsement.

The PLA may, in any hearing regarding the withdrawal or suspension of the endorsed licence, take cognisance of these endorsements in its deliberations. Such endorsement shall be conclusive proof that the offence had been committed. In the event of a third endorsement, the PLA may, after allowing the licence holder sufficient opportunity to defend the case, withdraw the licence.

The following instances will be regarded as *prima facie* proof of the illegal sale of liquor and may be used as evidence in any criminal proceedings:

- if any person, who is not the holder of a licence, displays any signboard or notice purporting to sell liquor on or near a premises occupied by such person,
- if such person has on the premises more liquor than is reasonably required for consumption by such person, such person's family or bona fide guests.

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. Such further presumptions as may be necessary to enforce the provisions of the legislation will be created.

9.17 Trading Hours

The Local Authority will determine by-laws governing liquor trading days and hours within its area of jurisdiction.

Notwithstanding the municipal bylaw regarding trading hours, the PLA will have the right to impose more restrictive trading hours in the granting of a licence or in

considering a complaint regarding an existing licence, should the location or circumstances warrant this.

If the PLA, 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 it may curtail the trading hours or prohibit trading on such a day.

The reason for this provision is the protection of the community against any negative effects of the sale and consumption of liquor. [See *S v Lawrence*; *S v Negal*; *S v Solberg 1997(4) SALR CC, pg1180, paragraph H.*]

10. DEFINITIONS OF LIQUOR

10.1 Definition

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 PDP proposes that “liquor” be defined as follows:

- Any liquid containing more than 1% by volume of alcohol and any substance containing more than 1% by mass of alcohol.
- Any drink or substance with which a liquid or substance defined in 1 above has been mixed.

- Notwithstanding the above, perfume, methylated spirit or medicine as defined by the Medicines and Related Substances Control Act, 1965 [Act 101 of 1965] will not be considered to be liquor.
- Sorghum beer will be defined as the drink commonly manufactured from grain sorghum, millet or other grain or any other fermented liquor declared to be sorghum beer.

10.2 Sorghum beer

The production, distribution and retail sale of sorghum beer is an exclusive provincial competency due to the nature of the product. Its unique position was recognised by the Constitutional Court in its judgement *Ex parte president of the Republic of South Africa: Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC)*.

Activities relating to sorghum beer were previously regulated in terms of the Sorghum Beer Act, No 63 of 1962, as amended.

The current Liquor Act, No 27 of 1989 attempted to regulate the manufacture and sale of sorghum beer by setting minimal requirements for the manufacture and sale of the product for on- or off- consumption purposes. These provisions took little regard of the unique nature of the product and its consumers and traders were required to comply with the general application process regarding liquor licences. This process is cumbersome, providing 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.

Two categories of licences are proposed - a sorghum beer producer's licence that will allow a manufacturer to sell to wholesalers or retailers and a permit for the sale of sorghum beer only. A holder of a liquor retail licence will not require a permit to sell sorghum beer.

Application for a sorghum beer producer's licence will be made to the relevant Local Authority. The intention is to subject the manufacturing and sale of sorghum beer to the same regime as other licences. It is envisaged that the manufacturers of sorghum beer are to comply with relevant health legislation regarding the quality of produce. The licensing authority need not regulate this.

A licence application for the manufacturing and sale of sorghum beer will relate to suitability of the location of the premises, public interest and any possible harm to the community. This will entail the standard requirements applicable to other liquor licence applications. As with other licences, the Local Authority will not have discretion to refuse the licence and objections will be heard by the PLA. Sorghum beer producers may only sell to permit holders or the holders of liquor licences (or to registered persons during the period of registration).

Permits for the sale of sorghum beer only will be issued by the Local Authority upon correct application thereof. Upon completion of the requisite form and payment of the prescribed permit fee, a permit that is valid for the ensuing calendar year will be issued to the applicant for the premises.

The permit will be renewable annually. The onus will be on the permit holder to renew the annual permit. No provision is made for the advertisement or objection to the issue of a permit upon proper application, although provision will be made for a process of complaint and refusal or withdrawal of a permit by the Local Authority in those instances where the permit had been abused. Disqualified persons in terms of the legislation, including persons whose permits or liquor licences had been withdrawn, will not be allowed to obtain permits.

The permit will allow the applicant to sell for wholesale or retail purposes. Distributors will require the same permit as a retailer for the sale of sorghum beer.

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

The brewing of sorghum beer for domestic consumption does not require a licence or a permit. The sale of sorghum beer produced for domestic consumption will be prohibited. It will be assumed that the manufacturing of more than twenty litres of sorghum beer per day or the possession of more than 40 litres of the product will not be for domestic consumption.

A permit or licence will not be required for the manufacture and consumption of sorghum beer at bona fide cultural events.

11. EDUCATION AND TRAINING

Education and training form an integral part of a provincial strategy aimed at protecting the community from any negative consequences arising from the sale and consumption of alcohol. The PDP supports the notion that the liquor industry has a responsibility towards preventing the social costs of alcohol abuse and steps by the industry in this regard are to be encouraged.

Funding of such initiatives will need to be specifically budgeted for by the provincial government, although the execution of such initiatives will in many instances need to be outsourced.

It is foreseen that training may be a function of the Local Liquor Forums in the relevant municipal areas.

Training is required on several fronts.

Part of the licensing fee will be channelled towards educating the sellers of liquor regarding the potential health and social hazards attendant upon the sale and consumption of liquor. In particular such persons or their employees need to be educated about specific provisions of the legislation. These include the ban on selling alcohol to intoxicated persons or persons under 18 years of age, how to deal with intoxicated patrons; and how to refuse service to persons not providing adequate proof of age. They also need to be trained on how to comply with other provisions of the Code of Conduct. It is envisaged that continuing education, based on a points system, may be required for retail traders. As most retailers are unlicensed, this requirement may be seen as a barrier to entry.

The correct approach will be to encourage voluntary training, whereafter compulsory training may be introduced as a requirement to obtaining a licence or being placed in charge of a liquor retail business. Licensees and prospective licensees will be encouraged to undergo training arranged by the Local Authorities. The PLA may, in addition to any condition it imposes after a hearing, insist that the licensee undertakes a prescribed training course.

Adequate training of persons directly or indirectly involved in the liquor trade will be regarded as a priority. These include persons involved in the production, wholesaling and retailing of liquor, the SAPS, Local Authorities, provincial liquor inspectors and community interest groups. In particular, national liquor traders' associations or regional liquor traders' associations must be encouraged to get involved in the training of liquor retailers.

Consideration should be given to joint training options organised by Local Authorities, the PLA, enforcement agencies and liquor associations. The focus of such training will be on the provisions of the liquor legislation, the roles and responsibilities of each sector, and ways of working together to ensure the fulfilment of each others needs. Training should also include the review of actual cases from South Africa and other countries (e.g. Australia) involving conflict

resolution between different sectors. Participants should also be trained in conflict resolution and the development of Licensing Accords.

Education is also required on several fronts. The broader public needs to receive on-going education with regards to the following:

- the provisions of the new liquor legislation and the context in which it was drafted
- the community protections contained in the new legislation (i.e. increased access to information, opportunities for community input at the application stage, ongoing monitoring and annual reports to the provincial legislature, the Code of Conduct, the role of the provincial inspectorate and the range of provisions aimed at strengthening the State's ability to swiftly take action against offenders)
- the provisions of the legislation in terms of who may not be served alcohol (e.g. persons under 18 and persons who are intoxicated), certain offences under the new legislation (e.g. a person under 18 falsifying their age in order to obtain liquor), and the unauthorised sale or provision of alcohol.
- specific action that can be taken against liquor traders suspected of violating the Code of Conduct or any provincial legislation (e.g. a producer or wholesaler selling to an unlicensed outlet).
- Persons at risk of abusing alcohol or those vulnerable to the potential negative consequences of alcohol consumption. These include teenagers, pregnant women, persons in certain occupations, persons who are about to drive a vehicle or use some other form of heavy machinery and persons under medication.

- The broader public should be alerted to the potential harm of abusing alcohol.

The Minister shall have the right by proclamation to prescribe the placement of advertisements, point of sale material and other measures aimed at providing such education.

12. BIBLIOGRAPHY

Albertyn, C., & McCann, M. (1993). Alcohol, employment and fair labour practice. Cape Town: Juta.

Department of Trade and Industry. (1997). Liquor: Policy document and Bill (Government Gazette No. 18135). Pretoria: Government Printer.

Gumede, V. (1995 not 1986). Alcohol use and abuse in South Africa: A socio-medical problem. Pietermaritzburg: Reach Out Publishers.

Hurst, W., Gregory, E., & Gussman, T. (1997). International Survey: Alcoholic Beverage Taxation and Control Policies. Ottawa: Brewers Association of Canada.

Jernigan, D.H., Monteiro, M., Room, R., & Saxena, S. (2000). Towards a global alcohol policy: Alcohol, public health and the role of the WHO. Bulletin of the WHO, **78**, 491-499.

Knobel (1998). "Alcohol-related mortality." Paper presented at the 7th Report Back Meeting of the SACENDU Project, Cape Town, March 2000.

Louw, A. du R. (1994). 'n Vergelykende studie oor siekteafwesigheidspatrone van enkelkwartier en woonhuisbewoners werksaam by 'n saagmeule, en die role at alkohol daarin speel. University of Stellenbosch: MMed Thesis.

May, P.A., Brooke, L., Gossage, J.P., Croxford, J., Adnams, C., Jones, K.L., Robinson, L., Viljoen, D. (in press). The epidemiology of fetal alcohol syndrome in a South African community in the Western Cape Province. American Journal of Public Health.

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. "South African Demographic and Health Survey: Alcohol findings." Paper presented at the report back meeting of Phase 6 (January - June 1999) of the South African Community Epidemiology Network on Drug Use, Johannesburg, October 1999.

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.

Peden, M., Donson, H., Maziko, M., Smith, P. "Substance abuse trends among trauma patients - the South African experience." Presented at the 5th World Injury Prevention and Control Congress, New Delhi, India, March 2000

Peden, M.M., Knottenbelt, J.D., van der Spuy, J., Oodit, R., Scholtz, H.J., Stokol, J.M. (1996). Injured pedestrians in Cape Town - the role of alcohol. South African Medical Journal, **86**, 1103-1105.

Perry, L., S. G. Wannamethee, M. K. Walker, A. G. Thomson, P. H. Whincup and A. G. Shaper. Prospective study of risk factors for development of non-insulin dependent diabetes in middle aged British men. British Medical Journal 310(1995): 560-4.

Rocha-Silva, L, & Stahmer, I. (1996). Nature, extent and development of alcohol/drug-related crime. Pretoria: HSRC.

Shaw, M, & Louw, A. (1997). The Violence of Alcohol: Crime in Northern Cape. Midrand: Institute for Security Studies (<http://www.und.ac.za/und/indic/tpcc.htm>).

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.

Van der Spuy, J., Strydom, M., & Abrahams, N. (1994). 'Home violence: The Cape Metropolitan Study'. MRC Trauma Review, **2**(3), 2-3.

World Bank. (1993). World Development Report 1993: Investing in Health. New York: Oxford University Press.

ANNEXURE A**SUBMISSIONS LIST FOR THE LIQUOR POLICY****INSTITUTIONS AND INDIVIDUALS**

8 Till Late
Adelphi Cellars
Alpha and Omega Christian Fellowship
Aroma/Drop Inn
Association of Liberal Democratic Councillors
Attorney General of Western Cape
Baker, Kevin
Bergvliet Meadowridge Ratepayers Association
BKS (Pty) (Ltd)
Boer, A
Brito, C J
C W Building Suppliers & Consulting cc
Cape Wine & Spirit Institute
City of Cape Town
City of Tygerberg
Coburn, Ronald W
Coetzee, K
Community Police Forum Bothasig
Community Police Forum Durbanville
Community Police Forum Epping 1
Community Police Forum Goodwood
Community Police Forum Mowbray
Community Police Forum Oudtshoorn
Community Police Forum Rondebosch
Community Police Forum Somerset West
Community Policing Forum Knysna

INSTITUTIONS AND INDIVIDUALS

D L Consultants

Damming, Pat

De Beer, A

Department of Justice

Department of Public Prosecutions

Diamond Discount Liquor Traders

Duze, Fanele

East Claremont Congregational Church

East Metropole Policing Area Board

Federated Hospitality Association of SA

Forceville Alexander

Great Brak Municipality

Helderberg Municipality

Helderberg Tourism

Herbert, Judith

Honey Bee Foundation & Products

Hout Bay Community Health Forum

Khayelitsha Shebeener Association

KWV and Vinpro

Late Night Traders Association

Law Review Project

Liquor Lodge

Makro

Nathan, L

National Department of Agriculture

National Sorghum Breweries Ltd

Neethling, B J

Office of the Provincial Commissioner SAPS

Oliviera, Omar

Picardi/Rebel

INSTITUTIONS AND INDIVIDUALS

Pick 'n Pay

Pinelands Baptist Church

Pinelands Ratepayers & Residents Association

Porterfield Mews, Body Corporate

Riverview Lodge

Roos, R A

SAPS (Atlantis)

SAPS (Ladismith)

SAPS (Mossel Bay)

SAPS (Table View)

SAPS, Eastern and Western Metropole

Seven Eleven Corporation SA (Pty) Ltd

Silverstream Hotel

Smith, Dave

South Africa Liquor Initiative

South African Breweries (Ltd)

South African Liquor Stores Association

South African Liquor Traders Association

Southern Africa Taverners Association

St James Church of England in South Africa

St Stephen's Church

Tableview Residents Association

The Anglican Parish of St Peter and St Simon

Three Arts Centre

United Distillers and Vintners (Pty) Ltd

Velddrif Sport Council

Ward S2 Civic Association

Western Cape Amalgamated Liquor Traders Association

Western Cape Independent Liquor Retailers Association

ANNEXURE B**EXTRACT FROM THE CONSTITUTION OF THE RSA**

Section 155(6) of the Constitution allows the Provincial Government to monitor and support local government in the exercise of its functions. Section 155(7) provides the Provincial Government with legislative and executive authority to see to the effective performance by Local Authorities of their Schedule 4 and 5 functions by regulating the exercise by the Local Authorities of their executive authority referred to in section 156(1) of the Constitution.

Section 156(1) of the Constitution confers executive authority in respect of and the right to administer, inter alia, the control over undertakings that sell liquor to the public. Section 156(2) states that in the case of section 156(1) matters, a local government may also make and administer by-laws for the effective administration of the matters which it has the right to administer.

ANNEXURE C

CODE OF CONDUCT

I undertake to minimise the abuse of alcohol beverages and to promote responsible attitudes towards the supply, sale, promotion and consumption of alcohol beverages.

REQUIRED PRACTICES:

In order to achieve the object of the code, I undertake to abide by the following practices upon signing the code.

1. PRACTICES RELATING TO MINORS (PERSONS UNDER 18 YEARS OF AGE)

- 1.1 I will not supply minors with alcohol beverages.
- 1.2 Unless accompanied by parent or legal guardian, I will not allow minors to consume alcohol beverages.
- 1.3 If uncertain, I will request evidence of age.

2. PRACTICES PROMOTING A RESPONSIBLE ATTITUDE TO THE CONSUMPTION OF ALCOHOL BEVERAGES

- 2.1 I will discourage the rapid and / or excessive consumption of alcohol beverages and will not allow promotions with this objective.
- 2.2 Where practical, I will ensure that information about taxi and public transport services will be displayed.
- 2.3 I will ensure that food and non-alcoholic drinks are available.

3. PRACTICES RELATING TO INTOXICATION AND DISORDERLY BEHAVIOUR

- 3.1 I will guard against the supply of alcohol beverages to intoxicated persons.
- 3.2 I will not tolerate disorderly, offensive or criminal behaviour on the part of customers in my establishment.
- 3.3 I will ensure that activities on the premises will not result in undue offence, annoyance, disturbance, noise or inconvenience to people who reside, work or worship in the vicinity of the premises.

4. PRACTICES PROMOTING RESPONSIBLE ATTITUDE TO ADVERTISING AND PROMOTION

I, as a producer or trader will subscribe to the Advertising, Packaging and Promotions Code of the Industry Association for Responsible Alcohol Use or the Code of the Advertising Standards Authority.

5. PRACTICES RELATING TO THE PURCHASE OF ILLICIT AND STOLEN ALCOHOL BEVERAGE PRODUCTS

- 5.1 I will not purchase or supply illicit or stolen alcohol beverages.
- 5.2 I will not supply unlicensed traders with alcohol beverage products for resale.

I, , Proprietor of

Undertake, with my signature, to abide by the above Code: