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CONTENTS

INHOUD

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Provincial Notices

Provinsiale Kennisgewings

iSaziso Sephondo

111 Withdrawal of Notice2

111 Herroeping van Kennisgewing2

111 ukuRhoxiswa kweSaziso2

The following draft Bill is published for comment:

Die volgende Konsepwetsontwerp word vir kommentaar gepubliseer:

Olu Qulunqo loMthetho oSayilwayo lupapashelwa ukufumana izimvo:

112 Draft Western Cape Liquor Amendment Bill, 20143

112 Konsepwysigingswetsontwerp op die Wes-Kaapse Drankwet, 201424

112 uMthetho weziLungiso oSayilwayo woTywala weNtshona Koloni, 201447

PROVINCIAL NOTICE

The following Provincial Notice is published for comment.

ADV. B. GERBER,
DIRECTOR-GENERAL

Provincial Building,
Wale Street,
Cape Town.

PROVINSIALE KENNISGEWING

Die volgende Provinsiale Kennisgewing word vir kommentaar gepubliseer.

ADV. B. GERBER,
DIREKTEUR-GENERAAL

Provinsiale Gebou,
Waalstraat,
Kaapstad.

ISAZISO SEPHONDO

Ezi zaziso zilandelayo zipapashelwe ukunika izinvo.

ADV. B. GERBER,
UMLAWULI-JIKELELE

iSakhiwo sePhondo,
Wale Street,
eKapa.

P.N. 111/2014

17 April 2014

**PROVINCIAL NOTICE
WITHDRAWAL OF NOTICE**

The Provincial Minister of Finance, Economic Development and Tourism has withdrawn the publication of the Notice published on pages 780 and 781 of *Provincial Gazette 7252* of 11 April 2014 relating to the draft Western Cape Liquor Amendment Bill, as the Notice was published erroneously.

P.K. 111/2014

17 April 2014

**PROVINSIALE KENNISGEWING
HERROEPPING VAN KENNISGEWING**

Die Provinsiale Minister van Finansies, Ekonomiese Ontwikkeling en Toerisme het die publikasie van die Kennisgewing herroep wat op bladsye 780 en 781 van *Provinsiale Koerant 7252* van 11 April 2014 rakende die Konsepwysigingswetsontwerp op die Wes-Kaapse Drankwet, 2014, gepubliseer is, aangesien die Kennisgewing verkeerdelik gepubliseer is.

I.S. 111/2014

17 kwekaTshazimpuzi 2014

**ISAZISO SEPHONDO
UKURHOXISWA KWESAZISO**

UMphathiswa wePhondo wezeMali, uPhuhliso lwezoQoqosho noKhenketho ulurhoxisile upapasho lweSaziso esipapashwe kwiphepha lama-780 nelama-781 le*Gazethi yePhondo 7252* yangomhla we-11 kwekaTshazimpuzi 2014 esinxulumene noqulunqo loMthetho weziLungiso oSayilwayo woTywala weNtshona Koloni, nanjengoko esi saziso sipapashwe ngempazamo.

P.N. 112/2014

17 April 2014

PROVINCIAL NOTICE

The Draft Western Cape Liquor Amendment Bill, 2014, is published for comment. Any person or organisation wishing to comment on the said draft Bill is requested to submit the comments in writing before or on 23 May 2014—

- (a) by posting it to:
The Chief Director: Tourism, Arts and Entertainment
Attention: Madeleine Mitchell
Department of Economic Development and Tourism
PO Box 979, Cape Town 8000;
- (b) by hand delivery to:
The Chief Director: Tourism, Arts and Entertainment
Attention: Madeleine Mitchell
Department of Economic Development and Tourism
10th floor, 80 St George's Mall
NBS Waldorf Building, c/o Castle and Burg Street
Cape Town 8001;
- (c) by emailing it to:
Madeleine.Mitchell@westerncape.gov.za; or
- (d) by faxing it to:
021 483 8776
Attention: Madeleine Mitchell.

For enquiries, contact Adv. Sanet Botha at 084 620 0088.

GENERAL EXPLANATORY NOTE:

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

_____ Words underlined with a solid line indicate insertions in existing enactments.

DRAFT BILL

To amend the Western Cape Liquor Act, 2008, in respect of certain definitions; to make provision for the appointment of not more than three Deputy Presiding Officers to the Liquor Licensing Tribunal; to enable the Presiding Officer of the Liquor Licensing Tribunal to delegate his or her powers and functions; to make provision for the appointment of substitute members of the Liquor Licensing Tribunal; to extend the functions of the Liquor Licensing Tribunal that may be delegated to a committee; to specify a further factor that the Liquor Licensing Tribunal or Presiding Officer may take cognisance of when considering an application for a licence; to further regulate the conditional granting of licences; to do away with special event liquor licences and instead make provision for event liquor licences; to make further provision regarding temporary and event liquor licences; to further regulate the appointment of managers for licensed businesses; to make different provision regarding access by persons under the age of 18 years to restricted areas on licensed premises; to make different provision regarding the trading days and hours of licensed businesses; to repeal the provision prohibiting unlicensed persons from having more than a specified quantity of liquor in their possession; to make further provision regarding the closing of licensed premises; to amend provisions regarding the functions of certain members of the South African Police Service in terms of the Act; to provide that members of municipal police services are peace officers for the purposes of the Act, and to extend the powers of peace officers in terms of the Act; to make further provision for the entry, search and investigation of certain premises; to repeal the provision prohibiting the sale, supply or consumption of liquor on an erf upon which the business of a service station selling petrol, diesel or other petroleum products to the public is conducted; to further specify evidence amounting to *prima facie* proof of the sale of liquor; to make further provision regarding offences and penalties; to make provision for the sale by public auction of certain items forfeited to the State; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 4 of 2008, as amended by section 2 of Act 10 of 2010

1. Section 1 of the Western Cape Liquor Act, 2008 (the principal Act), is amended—
 - (a) by the insertion after the definition of “Chief Executive Officer” of the following definition:

- “**‘Commissioner’**, except in section 12, means the National Commissioner of the South African Police Service as referred to in the South African Police Service Act, 1995 (Act 68 of 1995);”;
- (b) by the substitution for the definition of “Deputy Presiding Officer” of the following definition:
 “**‘Deputy Presiding Officer’** means [the] a person appointed as Deputy Presiding Officer of the Liquor Licensing Tribunal in terms of section 16(1)(b);”;
- (c) by the insertion after the definition of “drugs” of the following definitions:
 “**‘event’** includes an exhibition, sports meeting, gathering, performance or function;
‘event liquor licence’ means a licence referred to in section 33(2)(a);”;
- (d) by the substitution for the definition of “manager” of the following definition:
 “**‘manager’** means a person whose appointment as manager is approved in terms of section [52(1)] 52;”;
- (e) by the insertion after the definition of “municipality” of the following definition:
 “**‘municipal police service’** means a municipal police service established under section 64A of the South African Police Service Act, 1995;”;
- (f) by the substitution for the definition of “peace officer” of the following definition:
 “**‘peace officer’** means any [police officer] member of the South African Police Service or a municipal police service and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334(1) of the Criminal Procedure Act, any person who is a peace officer under that section;”;
- (g) by the deletion of the definition of “special event”; and
- (h) by the insertion after the definition of “standing committee” of the following definition:
 “**‘substitute member’** means a person appointed as a substitute member in terms of section 16(3A);”.

Amendment of section 16 of Act 4 of 2008

2. Section 16 of the principal Act is amended—

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 “(b) **[one member] not more than three members** with the qualifications stated in paragraph (a) appointed by the Board as Deputy Presiding **[Officer] Officers;**”;
- (b) by the substitution for paragraph (d) of subsection (1) of the following paragraph:
 “(d) one member who is a police officer of the rank of **[Superintendent] Lieutenant Colonel** or above, appointed by the Board in consultation with the **[Provincial] Commissioner [of the South African Police Service]** and the Minister responsible for community safety in the Province; and”;
- (c) by the insertion after subsection (2) of the following subsection:
 “(2A) (a) The Presiding Officer may in writing delegate any power or function of the Presiding Officer to a Deputy Presiding Officer to exercise or perform on his or her behalf.
 (b) The provisions of section 10(2), (3) and (6) apply, with the necessary changes, to a delegation in terms of paragraph (a).”;
- (d) by the substitution for subsection (3) of the following subsection:
 “(3) If the Presiding Officer is not available to perform his or her functions or the office of Presiding Officer is vacant, **[the] a Deputy Presiding Officer designated by the Chief Executive Officer** must, during the unavailability of the Presiding Officer or

until a Presiding Officer is appointed, act as Presiding Officer and perform all the functions assigned to the Presiding Officer by this Act.”; and

(e) by the insertion after subsection (3) of the following subsection:

“(3A) (a) Notwithstanding subsections (1) and (2), the Board may, in consultation with the Minister, at any time appoint not more than four suitable persons as substitute members, to act as members of the Liquor Licensing Tribunal or a committee thereof on the request of the Presiding Officer in the circumstances contemplated in section 21(4) or 24(2A).

(b) A substitute member holds office for such period, not exceeding two years, as the Board may determine at the time of his or her appointment.”.

Substitution of section 17 of Act 4 of 2008, as amended by section 17 of Act 10 of 2010

3. The following section is substituted for section 17 of the principal Act:

“Disqualification for appointment as member or substitute member of Liquor Licensing Tribunal

17. The following persons are disqualified from being appointed, continuing or acting as members or substitute members of the Liquor Licensing Tribunal—

- (a) anyone who has in the preceding ten (10) years been convicted of an offence and sentenced to imprisonment without the option of a fine, unless the Board is of the opinion that the offence was of such a nature that it does not imply that the person is unsuitable to hold office;
- (b) anyone who has in the preceding ten (10) years been convicted of any offence in terms of this Act, the Liquor Act or the Liquor Act, 1989 (Act 27 of 1989), unless the Board 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;
- (c) an unrehabilitated insolvent or anyone who is subject to any legal disability;
- (d) anyone younger than twenty-five (25) years of age;
- (e) anyone who has a direct interest in the liquor trade;
- (f) anyone who is the family member, partner or business associate of a person with a direct interest in the liquor trade, unless the Board is of the opinion that the interest of the family member, partner or business associate in the liquor trade does not imply that the person is unsuitable to hold office;
- (g) anyone who is disqualified in terms of section 35 to hold a liquor licence; or
- (h) anyone who is not resident in the Province.”.

Amendment of section 18 of Act 4 of 2008, as amended by section 18 of Act 10 of 2010

4. Section 18 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) The re-appointment of a member referred to in section 16(1)(c) [and] or (d) may only be done after consultation with the Minister responsible for local government in the Province, or the [Provincial] Commissioner [of the South African Police Service] and the Minister responsible for community safety in the Province, respectively.”.

Amendment of section 19 of Act 4 of 2008, as amended by section 19 of Act 10 of 2010

5. Section 19 of the principal Act is amended by the substitution for paragraph (c) of the following paragraph:

“(c) such member is absent from three consecutive meetings of the Liquor Licensing Tribunal without the prior written leave of the Presiding Officer, or where applicable, [the] a Deputy Presiding Officer;”.

Amendment of section 20 of Act 4 of 2008, as amended by section 20 of Act 10 of 2010

6. Section 20 of the principal Act is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) any application for the transfer of a licence in terms of section [65(9)] 65(1);”.

Amendment of section 21 of Act 4 of 2008

7. Section 21 of the principal Act is amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) A quorum for a meeting of the Liquor Licensing Tribunal is four members, including the Presiding Officer or [the] a Deputy Presiding Officer [or both].”; and

(b) by the addition of the following subsection:

“(4) (a) If a member of the Liquor Licensing Tribunal, other than the Presiding Officer, is absent from a meeting of the Liquor Licensing Tribunal or unavailable to attend the meeting, the Presiding Officer may request a substitute member to act as a member in the place of the member who is absent.

(b) A substitute member who so acts as a member has the powers and duties of a member.”.

Substitution of section 22 of Act 4 of 2008

8. The following section is substituted for section 22 of the principal Act:

“Recusal of member with conflicting interest

22. (1) A member or substitute member of the Liquor Licensing Tribunal may not vote, attend or in any manner participate in the proceedings at any of its meetings or hearings and the Presiding Officer may not consider a matter if, in relation to that matter—

- (a) he or she is a family member, partner or business associate of the applicant for a licence, certification, or any other right or privilege to be granted by the Liquor Licensing Tribunal or the Presiding Officer, as the case may be;
- (b) he or she or his or her family member, partner or business associate is a director, member or partner of, or has a financial or other interest in, the business of the applicant for a licence, certification, or any other right or privilege to be granted by the Liquor Licensing Tribunal or the Presiding Officer, as the case may be; or

(c) he or she has any interest which precludes him or her from performing his or her functions as a member or substitute member of the Liquor Licencing Tribunal in a fair, unbiased and proper manner.

(2) If at any stage it appears that a member, a substitute member or the Presiding Officer, as the case may be, has or may have any interest contemplated in subsection (1)—

(a) in relation to a matter to be considered by the Liquor Licensing Tribunal, that member or substitute member must without delay and fully disclose the nature of his or her interest and leave the meeting or hearing so as to enable the remaining members or substitute members to discuss the matter and determine whether that member or substitute member is precluded from participating in the proceedings at such meeting or hearing by reason of a conflict of interest; and

(b) in relation to a matter to be considered by the Presiding Officer, he or she must without delay and fully disclose the nature of his or her interest to the Liquor Licensing Tribunal in which case it must consider the matter.

(3) The disclosure and the decision taken by the remaining members or substitute members of the Liquor Licensing Tribunal, referred to in subsection (2)(a), must be recorded in the minutes of the proceedings in question.”.

Amendment of section 24 of Act 4 of 2008

9. Section 24 of the principal Act is amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Presiding Officer may appoint one or more committees consisting of him or herself or **[the]** a Deputy Presiding Officer and any member or any person co-opted in terms of section 20(5).”;

(b) by the insertion after subsection (2) of the following subsection:

“(2A) (a) If a member of a committee is absent from a meeting of the committee or unavailable to attend the meeting, the Presiding Officer may request a substitute member to act as a member of the committee in the place of the member who is absent.

(b) A substitute member who so acts as a member of a committee has the powers and duties of a member of the committee.”; and

(c) by the substitution for subsection (3) of the following subsection:

“(3) The Liquor Licensing Tribunal may delegate to a committee the functions of the Liquor Licensing Tribunal set out in sections 52, 64, 65, 66 and 71.”.

Amendment of section 27 of Act 4 of 2008, as substituted by section 23 of Act 10 of 2010

10. Section 27 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The members of the Board and Liquor Licensing Tribunal, the person appointed to act as the Appeal Tribunal, substitute members and persons co-opted in terms of section 11(1) or 20(5) are entitled to receive reasonable remuneration and allowances as determined by the Minister, in consultation with the Minister responsible for finance in the Province.”.

Substitution of section 30 of Act 4 of 2008, as amended by section 26 of Act 10 of 2010

11. The following section is substituted for section 30 of the principal Act:

“Revenue accruing to Provincial Revenue Fund, Authority or municipalities

30. (1) The fees referred to in [sections] section [46(2), 48(1) and (4),] 63(2) [and 65(16)] must be paid into the Provincial Revenue Fund.

(2) The following moneys accrue to the Authority—

(a) fines referred to in sections 20(3)(b)(v) and 82(2)(b);

(b) **[the penalty]** penalties referred to in [section] sections 46(6), 48(12), 62(3), 63(4), 64(4), 65(19) and 66(8); **[and]**

(c) fees referred to in sections **[26(8),]** 36(1)(e), **[38,]** 46(2), 48(1), 48(4), 53(1), 59(7), 64(1), 65(4), **[and 65(9)]** 65(16), 66(2) and 66(6); and

(d) fees referred to in sections 26(8) and (38).

(3) The fees referred to in section 37(4)(a)(i) and (b)(i) accrue to the municipality concerned.

(4) No amount contemplated by this section is refundable.”

Amendment of section 33 of Act 4 of 2008, as amended by section 29 of Act 10 of 2008

12. Section 33 of the principal Act is amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) a licence for the sale of liquor for consumption on or off, or both on and off, the premises upon which liquor is sold at **[special]** events; and”.

Amendment of section 41 of Act 4 of 2010

13. Section 41 of the principal Act is amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Liquor Licensing Tribunal or Presiding Officer may, when considering an application, take cognisance of the following—”; and

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) subject to section 23(9)[,]—

(i) the proximity of the proposed licensed premises to an undertaking conducting the business of a service station selling petrol, diesel or other petroleum products to the public; and

(ii) any other matter which, in the opinion of the Liquor Licensing Tribunal or Presiding Officer, should be taken into consideration.”.

Amendment of section 42 of Act 4 of 2008, as amended by section 36 of Act 10 of 2010

14. Section 42 of the principal Act is amended—

(a) by the insertion after subsection (4) of the following subsection:

“(4A) The Liquor Licensing Tribunal may at any time, on good cause shown, revoke the conditional granting of a licence.”; and

(b) by the substitution for subsection (7) of the following subsection:

“(7) When the Presiding Officer is satisfied that the applicant [complies] has complied with the conditions imposed by the Liquor Licensing Tribunal, the Authority must issue the licence as prescribed, subject to section 46.”.

Substitution of section 48 of Act 4 of 2008, as amended by section 38 of Act 10 of 2010

15. The following section is substituted for section 48 of the principal Act:

“Temporary liquor licences and [special] event liquor licences

48. (1) The Presiding Officer may upon application by a licensee referred to in section **[33(1)(b) or (d),]** 33(1) and upon the payment of the prescribed fee, grant a temporary liquor licence for the use by that licensee only.

(1A) An application for a temporary liquor licence must be made at least **[fourteen (14)]** twenty-one (21) days prior to the first day of the period referred to in subsection (2).

(2) The Presiding Officer may not grant a temporary liquor licence under subsection (1) to a particular **[person] licensee** for a period longer than fourteen (14) consecutive days and for more than a total of thirty (30) days per year beginning on 1 January.

(3) A temporary liquor licence must be made subject to the prescribed conditions and such other conditions and restrictions as the Presiding Officer may impose.

(4) The Presiding Officer may upon application by—

- (a) **an educational institution, other than a school as defined in section 1 of the South African Schools Act, 1996 (Act 84 of 1996);**
- (b) **a welfare or cultural organisation;**
- (c) **the organiser of an exhibition;**
- (d) **the secretary, manager or chief steward of a *bona fide* race or sports meeting or similar event; or**
- (e) **the organiser of an artistic performance,**

a person in the prescribed manner and upon the payment of the prescribed fee, grant **[a special] an** event liquor licence for the sale of liquor for consumption on or off, or both on and off, the premises on which liquor is sold at **[a special] an** event.

(5) An application for **[a special] an** event liquor licence must be made at least **[fourteen (14)]** twenty-one (21) days prior to the **[date] first day** of the **[special] event**.

(6) **[A special] An** event liquor licence may not be granted for a period exceeding the duration of the **[special] event** concerned.

(7) **[A special] An** event liquor licence **[is] must be made** subject to the prescribed conditions [referred to in section 49, where applicable,] and such other conditions and restrictions as the **[Liquor Licensing Tribunal] Presiding Officer** may impose.

(8) Liquor may be sold under an event liquor licence only at the event for which the licence was granted and only on the premises approved in terms of the licence.

(9) The Presiding Officer may request any additional information from the applicant for a temporary or event liquor licence for the purposes of considering the application.

(10) The Presiding Officer may not grant a temporary or event liquor licence unless a manager has been appointed for the licensed business concerned and the appointment has been approved in terms of section 52.

(11) The Presiding Officer may at any time, on good cause shown, by a notice delivered or tendered to the holder of a temporary or event liquor licence—

- (a) declare the licence to be subject to such conditions or restrictions, or such further conditions or restrictions, set out in the notice as he or she may in his or her discretion impose;
- (b) suspend, revoke or amend any condition or restriction imposed in respect of the licence; or
- (c) suspend or revoke the licence.

(12) The Presiding Officer may condone the late filing of an application for a temporary or event liquor licence on good cause shown and on payment of a penalty of 100% of the prescribed application fee for every day that the application is submitted late.

(13) A contravention of, or failure to comply with, any condition or restriction contemplated in subsection (3) or (7) is an offence.”.

Amendment of section 52 of Act 4 of 2008

16. Section 52 of the principal Act is amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) The Presiding Officer may, when—

- (a) granting a temporary liquor licence under section 48(1);
- (b) granting an event liquor licence under section 48(4);
- (c) acting under section 49(6);
- (d) acting under section 53(1); or
- (e) granting a consent in terms of section 65(5).

approve the appointment of a natural person nominated by the applicant for the licence, the licensee or proposed licensee, as the case may be, as manager of the licensed business.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) A licensee who is not a natural person may at any time, and in the prescribed manner, nominate a natural person resident in the Province to be the manager of the licensed business, in which event the Liquor Licensing Tribunal or the Presiding Officer, as the case may be, may approve such person's appointment as manager.”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) The Liquor Licensing Tribunal or the Presiding Officer, as the case may be, may not approve the appointment as manager of a person who is disqualified from holding a liquor licence in terms of section 35 or who is not of good character.”;

(d) by the substitution for subsection (5) of the following subsection:

“(5) The Liquor Licensing Tribunal or the Presiding Officer, as the case may be, may direct that the proposed manager undergo such training and education as the Liquor Licensing Tribunal may specify as a precondition of the approval of such appointment.”;

(e) by the substitution for subsection (8) of the following subsection:

“(8) The approval of the appointment of a manager in terms of subsection (1), (1A) or (2) remains valid until the appointment of a new manager or the expiry of the period for which the licence or consent was granted, as the case may be.”;

(f) by the substitution for subsection (9) of the following subsection:

“(9) If a person[,] whose appointment as a manager has been approved in terms of subsection (1), (1A) or (2)[,] ceases to manage the licensed business or becomes disqualified from doing so, the licensee must, within thirty (30) days from such event,

apply in terms of subsection (2) for the approval of the appointment of a manager in his or her place.”;

- (g) by the substitution for subsection (10) of the following subsection:
 “(10) If a licensee fails to comply with subsection (9), [its] the licence may be revoked in terms of section 20(3)(b)(ii) or suspended in terms of section 20(3)(b)(iii).”; and
- (h) by the addition of the following subsection:
 “(11) In this section “licensee” includes the holder of an event liquor licence.”.

Amendment of section 56 of Act 4 of 2008

17. Section 56 of the principal Act is amended—

- (a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
 “(b) a room or place which the Liquor Licensing Tribunal or Presiding Officer has demarcated as an area in which persons under the age of eighteen (18) years are not allowed to be; and”;
- (b) by the substitution for subsection (3) of the following subsection:
 “(3) A person under the age of eighteen (18) years may have access to a restricted area on licensed premises where liquor is sold for consumption only off the licensed premises if accompanied either by a parent or a guardian or by an adult with the consent of a parent or a guardian.”.

Amendment of section 59 of Act 4 of 2008, as amended by section 43 of Act 10 of 2010

18. Section 59 of the principal Act is amended—

- (a) by the substitution for subsection (3) of the following subsection:
 “(3) If a municipality has not determined the trading days and hours for licensed businesses selling liquor for consumption on or off the licensed premises, the trading days and hours for such a business are those approved at any time by the Liquor Licensing Tribunal or the Presiding Officer, as the case may be, as part of the conditions of the licence concerned.”;
- (b) by the substitution for subsection (4) of the following subsection:
 “(4) If a municipality has not determined the trading days and hours for licensed businesses selling liquor for consumption on or off the licensed premises, the Presiding Officer may at any time upon application by the licensee of such a business, by a notice delivered or tendered to the licensee, extend the trading days and hours for that business.”;
- (c) by the insertion after subsection (4) of the following subsection:
 (4A) The trading days and hours for a licensed business may not be approved or extended in terms of subsection (3) or (4) to a time later than 20:00 in respect of a licence for the sale of liquor for consumption off the licensed premises and later than 02:00 the following day in respect of a licence for the sale of liquor for consumption on the licensed premises.”;
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) The Presiding Officer must have regard to the criteria referred to in section 34(1)(a) and (e) when considering an application in terms of subsection (4).”;
- (e) by the substitution for subsection (6) of the following subsection:

- “(6) The **[Board]** Authority must, within the prescribed period after the granting or **[refusing] refusal of** an application made in terms of subsection (4), notify the applicant of the decision of the **[Liquor Licensing Tribunal] Presiding Officer.**”; and
- (f) by the substitution for subsection (8) of the following subsection:

“(8) Subject to section 89(10), a licensee who sells or supplies, or allows the consumption of, liquor on the licensed premises at a time when the sale of liquor is not permitted in terms of subsection (1) **[or],** (3) or (4), is guilty of an offence.”.

Amendment of section 60 of Act 4 of 2008

19. Section 60 of the principal Act is amended—

- (a) by the deletion of subsection (3); and
- (b) by the substitution for subsection (4) of the following subsection:

“**[(4)] (3)** A contravention of or failure to comply with subsection (1)**[,]** or (2) **[or (3)]** is an offence.”.

Amendment of section 63 of Act 4 of 2008, as amended by section 45 of Act 10 of 2010

20. Section 63 of the principal Act is amended by the insertion after subsection (2) of the following subsection:

“(2A) Where a licence contemplated in section 89(10) is automatically renewed in terms of subsection (2) and if the municipality concerned has not determined the trading days and hours for licensed businesses selling liquor for consumption on or off the licensed premises, as the case may be, the trading hours on any day on which the licensee is allowed to sell liquor in terms of the licence concerned are restricted to—

- (a) in the case of a licence for the sale of liquor for consumption off the licensed premises, not later than 20:00 on that day; and
- (b) in the case of a licence for the sale of liquor for consumption on the licensed premises, not later than 02:00 on the following day.”.

Amendment of section 66 of Act 4 of 2008, as amended by section 50 of Act 10 of 2010

21. Section 66 of the principal Act is amended by the deletion of the word “special”, wherever it occurs.

Substitution of section 70 of Act 4 of 2008

22. The following section is substituted for section 70 of the principal Act:

“Closing of licensed premises

70. (1) An inspector, a designated liquor officer, peace officer or any police officer of or above the rank of **[inspector] Warrant Officer** may, if—

- (a) a public disturbance, disorder or public violence is occurring or threatening upon licensed premises;
- (b) there is an imminent and identifiable threat to the health, well being or safety of the public, a person or property upon or near licensed premises; or

- (c) the licensee or any person in control of licensed premises has repeatedly and in a material manner contravened the licence conditions or the provisions of this Act,

order the licensee or any person in control of the licensed premises[,] to close the premises concerned **[for a period not longer than the remainder of the trading hours for that day]** until the order of closure is revoked in terms of subsection (3).

(2) The licensee or any person in control of licensed premises, must, on receipt of an order given under subsection (1), forthwith comply therewith, and, if he or she fails to do so, the person who has given the order may take or cause to be taken such steps **[and use or cause to be used such force]** as he or she may consider expedient in the circumstances **[require]** to close the premises.

(3) Any order given under subsection (1), may at any time be revoked—

- (a) by the **[designated liquor officer, inspector or police officer]** person who gave **[such an]** the order;
- (b) where **[such an]** the order was given by a police officer, by a police officer of more senior rank; **[or]**
- (c) where the order was given by a designated liquor officer, by the **[Liquor Licensing Tribunal]** Chief Executive Officer or someone delegated by him or her; or
- (d) by a decision of the Liquor Licensing Tribunal upon application by the licensee in the prescribed manner.

(4) A person revoking an order in terms of subsection (3) may do so subject to such conditions as he or she may determine.

(5) A person who refuses or fails to comply with an order in terms of subsection (1) or conditions imposed in terms of subsection (4) is guilty of an offence.”.

Amendment of section 73 of Act 4 of 2008, as amended by section 54 of Act 10 of 2010

23. Section 73 of the principal Act is amended—

- (a) by the substitution for subsection (1) of the following subsection:

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

- (b) by the substitution for subsection (3) of the following subsection:

“(3) The **[Western Cape Provincial]** Commissioner **[of the South African Police Service]** may at any time terminate an appointment made or deemed to have been made in terms of subsection (1).”;

- (c) by the substitution for subsection (5) of the following subsection:

“(5) The Commissioner must, when designating a liquor officer in terms of subsection (1), and the Authority must, when appointing an inspector in terms of subsection (4), issue a certificate of designation or letter of appointment signed by the Commissioner or the Chief Executive Officer on behalf of the Authority, as the case may be.”.

Substitution of section 74 of Act 4 of 2008

24. The following section is substituted for section 74 of the principal Act:

“Powers of designated liquor officers, peace officers and inspectors

74. (1) Subject to section 75, a designated liquor officer, peace officer or **[an]** inspector may in the performance of his or her functions—

- (a) at all reasonable times enter—
 - (i) any licensed premises;
 - (ii) any premises in respect of which an application in terms of this Act has been made; and
 - (iii) any premises or vehicle on which he or she on reasonable grounds suspects that liquor is being stored, conveyed or sold contrary to the provisions of this Act,
and make such investigation, enquiries or inspections as he or she may deem necessary;
- (b) at any time and place request from any person that he or she forthwith, or upon a date and time stipulated by the designated liquor officer, peace officer or inspector, produce to him or her any licence, record or other document which is or is believed to be in the possession, custody or control of that person or any other person on his or her behalf;
- (c) inspect any document referred to in paragraph (b), make copies thereof or extracts therefrom, and request from the person contemplated in the said paragraph an explanation of any part thereof;
- (d) seize and remove anything if in his or her opinion it may constitute evidence of an offence in terms of this Act, or of a transgression of any condition of a licence;
- (e) question the licensee or his or her employees, an applicant, or any person who is upon licensed premises if he or she suspects that the licensee, employee, applicant or person has in his or her possession or under his or her control any document which may be relevant to a matter which he or she is investigating; and
- (f) order that any licensee or his or her employee, appear before him or her at a time and place to be stated by him or her to answer questions regarding a matter which is under investigation.

(2) Any person who is in charge of premises contemplated in subsection (1) must render such assistance as the designated liquor officer, peace officer or inspector may reasonably request.

(3) Any person who is questioned by a designated liquor officer, peace officer or inspector in terms of this Act must first be informed of his or her constitutional rights before any questioning commences and any answer thereafter by that person must be truthful and to the best of his or her ability.

(4) An answer or explanation given to a designated liquor officer, peace officer or **[an]** inspector may not be used or admitted in criminal proceedings against the person who provides it, except in proceedings against that person on a charge relating to—

- (a) the administration or taking of an oath or affirmation;
- (b) the making of false statements; or
- (c) the failure to answer a lawful question fully and satisfactorily.”

Amendment of section 75 of Act 4 of 2008

25. Section 75 of the principal Act is amended—

- (a) by the substitution for subsection (1) of the following subsection:
“(1) A designated liquor officer, peace officer or **[an]** inspector may exercise a power referred to in section 74 relating to the entry, search or inspection of premises, if authorised by a warrant issued by a magistrate in accordance with subsection (3).”;
- (b) by the deletion of subsection (2);
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
“A magistrate may issue a warrant to enter, search and inspect any premises referred to in section 74(1)(a), if, on the basis of information provided in writing and under oath or affirmation, the magistrate has reason to believe that—”;
- (d) by the substitution for subsection (4) of the following subsection:
“(4) A designated liquor officer, peace officer or **[an]** inspector may exercise the powers referred to in subsection (1) without a warrant—
(a) with the consent of the owner or the person in control of the premises concerned;
(b) if there is an outstanding compliance notice issued in terms of section 69, for the purposes of determining whether the notice has been complied with; or
(c) if the designated liquor officer, peace officer or inspector on reasonable grounds believes that—
(i) a warrant will be issued in terms of subsection (3) if he or she applies for it; and
(ii) the delay in obtaining the warrant would defeat the objects of the search or inspection.”;
- (e) by the insertion after subsection (4) of the following subsection:
“(4A) A designated liquor officer, peace officer or inspector may exercise the powers referred to in subsection (1) without a warrant in respect of licensed premises if the inspection is conducted to check compliance with this Act or with the conditions of a licence.”;
- (f) by the substitution for subsection (5) of the following subsection:
“(5) When entering premises in terms of this section, the designated liquor officer, peace officer or inspector must—
(a) identify himself or herself to the person in charge of the premises;
(b) exhibit to that person the warrant, if any;
(c) explain the authority in terms of which the inspection is being conducted; and
(d) in the case of licensed premises, conduct the inspection with the least possible inconvenience to the licensee or his or her customers and with the least possible disruption of the licensed business.”;
- (g) by the substitution for subsection (6) of the following subsection:
“(6) A designated liquor officer, peace officer or inspector must, when seizing anything in terms of this section, issue to the person from whom the article has been seized, a receipt describing the article or articles seized and explaining the reasons for the seizure.”; and
- (h) by the substitution for subsection (7) of the following subsection:

“(7) Sections 30 to 34 of the Criminal Procedure Act apply, with the necessary changes, to anything seized in terms of this section.”.

Substitution of section 79 of Act 4 of 2008

26. The following section is substituted for section 79 of the principal Act:

“Offences regarding designated liquor officers, peace officers and inspectors

79. A person who—

- (a) misrepresents himself or herself as being a designated liquor officer, peace officer or inspector;
- (b) hinders a designated liquor officer, peace officer or inspector in the execution of his or her duties in terms of this Act;
- (c) refuses or fails to obey a lawful instruction given by a designated liquor officer, peace officer or inspector;
- (d) when questioned by a designated liquor officer, peace officer or inspector, knowingly gives a false or misleading answer; or
- (e) fails to comply with a reasonable request from a designated liquor officer, peace officer or inspector in terms of section 74,

is guilty of an offence.”.

Repeal of section 81 of Act 4 of 2008

27. Section 81 of the principal Act is repealed.

Amendment of section 84 of Act 4 of 2008, as substituted by section 57 of Act 10 of 2010

28. Section 84 of the principal Act is amended—

- (a) by the insertion in subsection (1) after paragraph (k) of the following paragraph:

“(kA) an auctioneer registered with a recognised professional body and acting on behalf of a municipality or the South African Police Services, in the performance of his or her functions as such;”;
- (b) by the substitution for paragraph (d) of subsection (2) of the following paragraph:

“(d) on behalf of the principal of an educational institution, excluding a school as defined in the South African Schools Act, 1996 (Act 84 of 1996), in a restaurant used for the training of persons in catering services on premises occupied, controlled or maintained by the institution concerned, for consumption in that restaurant;”;
- (c) by the substitution for paragraph (e) of subsection (2) of the following paragraph:

“(e) if that person is a *bona fide* collector of wine and that liquor consists of his or her collection of wine or any part thereof; or”; and
- (d) by the substitution for paragraph (f) of subsection (2) of the following paragraph:

“(f) if that person is [a licensed] an auctioneer registered with a recognised professional body and acting on behalf of a *bona fide* cultural or welfare organisation, an educational institution, excluding a school as defined in the South African Schools Act, 1996, or an insurer.”.

Amendment of section 85 of Act 4 of 2008

29. Section 85 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) If in any criminal proceedings or at a meeting of the Liquor Licensing Tribunal evidence is adduced that a person who is not licensed or permitted to sell liquor in terms of this or any other Act—

- (a) had on or near his or her premises a sign or notice purporting that liquor is for sale there or that he or she holds a valid licence to sell liquor;
- (b) occupied or was in control of premises fitted out in a manner to induce a reasonable conclusion that liquor is for sale there;
- (c) had on his or her premises or under his or her control more liquor than **[the maximum volume referred to in section 60 without the prior consent required by that section]** was reasonably required for himself or herself, his or her family or his or her guests, unless that person is a bona fide collector of wine and that liquor consists of his or her collection of wine or a part thereof; or
- (d) bought or procured more liquor than **[the maximum volume referred to in section 60 without the prior consent required by that section]** was reasonably required for himself or herself, his or her family or his or her guests, unless that person is a bona fide collector of wine and that liquor consists of his or her collection of wine or a part thereof,

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

Amendment of section 87 of Act 4 of 2008, as amended by section 58 of Act 10 of 2010

30. Section 87 of the principal Act is amended—

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) section 49(7), 50(2), 51(9), 53(4), 58(3), 59(8), 76(e), 76(f)[,] or 76(i) [or 81(4)] is liable on conviction to a fine not exceeding R500 000,00 or to imprisonment for a period not exceeding two-and-a-half years or to both such fine and such period of imprisonment.”;
- (b) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) section 23(13), 48(13), 56(5), 70(5), 76(a), 76(d), 77, 78(1), 78(3), 79, 80(1) or 86(2) is liable on conviction to a fine not exceeding R50 000,00 or to imprisonment for a period not exceeding three months or to both such fine and such period of imprisonment.”;
- (c) by the insertion after subsection (1) of the following subsection:

“(2) A person who is convicted of an offence in terms of this Act and who, after having been charged with that offence or after having been so convicted, as the case may be, persisted or persists in the act or omission that constituted the offence commits a continuing offence and is liable on conviction to a fine not exceeding R2000,00 or to imprisonment for a period not exceeding 30 days, or to both such fine and such imprisonment, in respect of each day that person persists with that act or omission.”;
- (d) by the deletion of subsection (3); and
- (e) by the substitution for subsection (4) of the following subsection:

“(4) (a) Any liquor that is forfeited to the State in terms of the Criminal Procedure Act in respect of an offence in terms of this Act may, subject to the provisions of that Act, be disposed of by sale at a public auction by—

- (i) the South African Police Service, if the prosecution of the offence was initiated by that Service; or
- (ii) the relevant municipality, if the prosecution of the offence was initiated by the municipal police service of that municipality.

(b) The net proceeds of any sale contemplated in paragraph (a) must be paid into the National Revenue Fund or the relevant bank account of the municipality, as the case may be.”.

Amendment of section 88 of Act 4 of 2008

31. Section 88 of the principal Act is amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) the sale of forfeited liquor by public auction as contemplated in section 87(4); or”.

Amendment of index to Act 4 of 2008, as amended by section 1 of Act 10 of 2010

32. The index before section 1 of the principal Act is amended—

- (a) by the substitution for the reference to the heading to section 17 of the following item:

“17. Disqualification for appointment as member or substitute member of Liquor Licensing Tribunal”;
- (b) by the substitution for the reference to the heading to section 48 of the following item:

“48. Temporary liquor licences and **[special]** event liquor licences”;
- (c) by the substitution for the reference to the heading to section 74 of the following item:

“74. Powers of designated liquor officers, peace officers and inspectors”;
- (d) by the substitution for the reference to the heading to section 79 of the following item:

“79. Offences regarding designated liquor officers, peace officers and inspectors”;

and
- (e) by the deletion of the reference to section 81.

Short title and commencement

33. This Act is called the Western Cape Liquor Amendment Act, 2014, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

MEMORANDUM ON THE OBJECTS OF THE DRAFT WESTERN CAPE LIQUOR AMENDMENT BILL, 2014

1. BACKGROUND

- 1.1 Since the coming into operation of the Western Cape Liquor Act, 2008 (Act 4 of 2008), and the Western Cape Liquor Amendment Act, 2010 (Act of 2010), a number of practical challenges have been experienced in the implementation of the legislation.
- 1.2 These challenges include:
 - (a) issues of interpretation in respect of sections 59, 81 and 89;
 - (b) the practical challenges of members of the Liquor Licensing Tribunal being unavailable to attend meetings and form a quorum;
 - (c) the limitations on the Presiding Officer and the Liquor Licensing Tribunal to delegate more of their powers to other functionaries; and
 - (d) the limitation that law enforcement officials are not allowed to conduct routine inspections of licensed premises without a warrant.
- 1.3 In the course of effecting amendments to the principal Act in order to address the difficulties as stated above, proposals were received from other stakeholders in liquor regulation in the Province, in particular the South African Police Service and the City of Cape Town.
- 1.4 Pursuant to the receipt of these proposals, provisions to empower peace officers to enforce the principal Act were included in this draft Bill. In addition, the draft Bill includes a provision enabling a municipality and the South African Police Service to dispose of seized liquor by public auction should they elect to do so.

2. OBJECTS OF THE BILL

- 2.1 The draft Bill seeks to address a number of practical challenges currently being experienced by the role-players implementing the principal Act.
- 2.2 The amendments are mainly aimed at capacitating the Western Cape Liquor Authority to conduct its core functions without encountering dilatory practical problems. This will streamline the process of liquor licensing in the Province.

3. CONTENTS OF THE BILL

The aims and objectives of the various clauses are set out below.

- 3.1 **Clause 1** provides new definitions for “Commissioner”, “municipal police service” and “substitute member”. It also amends the definition of “event” and inserts a new definition for “event liquor licence”, in keeping with the amendments made to provisions in the principal Act relating to “special event licences”. The clause further amends the reference in the definition of “manager”, amends the definition for “Deputy Presiding Officer” and extends the definition of “peace officer” to include a member of the South African Police Service or a member of a municipal police service.

- 3.2 **Clause 2** amends section 16 of the principal Act by making provision for the *ad hoc* appointment of substitute members. It also extends the ability of the Presiding Officer to delegate any of his or her powers or functions. It further allows for the appointment of up to three Deputy Presiding Officers.
- 3.3 **Clause 3** substitutes section 17 of the principal Act and is a consequential amendment to the amendments regarding the appointment of substitute members.
- 3.4 **Clause 4** amends section 18 of the principal Act and aligns the Act with the changes to the names of various ranks presently used in the South African Police Service.
- 3.5 **Clause 5** amends section 19 of the principal Act as a consequential amendment to the amendments regarding the increase in the number of Deputy Presiding Officers.
- 3.6 **Clause 6** amends section 20 of the principal Act by deleting the obsolete reference to section 65(9).
- 3.7 **Clause 7** amends section 21 of the principal Act by providing that the Presiding Officer may request a substitute member to attend any of the meetings of the Liquor Licensing Tribunal where any other member is unavailable to attend. The aim of this amendment is to prevent the lack of a quorum at meetings of the Liquor Licensing Tribunal due to the unavailability of members.
- 3.8 **Clause 8** amends section 22 of the principal Act as a consequential amendment to the amendment regarding the appointment of substitute members.
- 3.9 **Clause 9** amends section 24 of the principal Act by providing that the Presiding Officer may request a substitute member to attend any of the meetings of a committee of the Liquor Licensing Tribunal if any other member of that committee is unavailable to attend. The aim of this amendment is to prevent the lack of a quorum at meetings of the Liquor Licensing Tribunal due to the unavailability of a member. This clause further enables the Liquor Licensing Tribunal to delegate more of its functions to a committee.
- 3.10 **Clause 10** amends section 27 of the principal Act and is a consequential amendment to the appointment of substitute members.
- 3.11 **Clause 11** amends section 30 of the principal Act. While it is a consequential amendment to the extension of the various offences under the Act, it also serves to allocate the funds generated by the operation of the Act.
- 3.12 **Clause 12** amends section 33 of the principal Act as a consequential amendment to the amendments in respect of event liquor licences in clause 15 of the draft Bill.
- 3.13 **Clause 13** amends section 41 of the principal Act. This amendment extends the factors that the Liquor Licensing Tribunal may take cognisance of when considering an application for a liquor licence.

- 3.14 **Clause 14** amends section 42 of the principal Act to enable the Liquor Licensing Authority to revoke the conditional granting of a licence. It also empowers the Presiding Officer to determine whether the applicant has complied with the conditions set in the conditional licence.
- 3.15 **Clause 15** amends section 48 of the principal Act to do away with special event licences, which are substituted by event licences. It further regulates the granting of temporary licences.
- 3.16 **Clause 16** amends section 52 of the principal Act. It amends the process for the appointment of a manager and allows the Presiding Officer and committees established in terms of section 24 to make appointments under specific circumstances.
- 3.17 **Clause 17** amends section 56 of the principal Act so that persons under the age of 18 years are not allowed into the restricted areas of premises licenced to sell liquor for consumption on the premises.
- 3.18 **Clause 18** amends section 59 of the principal Act. It simplifies and clarifies the provisions regarding trading days and hours in instances where a municipality has not determined the trading days and hours for the sale of liquor for consumption on and off licenced premises.
- 3.19 **Clause 19** amends section 60 by repealing the provision that prohibits unlicensed persons to have more than a prescribed quantity of liquor in their possession.
- 3.20 **Clause 20** amends section 63 to provide that the trading hours of all licences existing prior to the commencement of the principal Act are aligned with the trading hours in the Act despite an automatic renewal of licence conditions.
- 3.21 **Clause 21** amends section 66 of the principal Act and is a consequential amendment to the amendments regarding special event liquor licences.
- 3.22 **Clause 22** amends section 70 of the principal Act to allow an order of closure to stay intact until revoked, and introduces a new ground for the closure of premises.
- 3.23 **Clause 23** amends section 73 of the principal Act and is a consequential amendment to the alignment of the Act with the naming of ranks of the South African Police Service.
- 3.24 **Clause 24** substitutes section 74 of the principal Act. It makes provision for the enforcement of the Act by peace officers.
- 3.25 **Clause 25** amends section 75 of the principal Act as a consequential amendment to amendments regarding the inclusion of peace officers in the enforcement of the Act. It also makes further provision for the search, entry and inspection of licensed premises without the requirement of a warrant.
- 3.26 **Clause 26** substitutes section 79 of the principal Act as a consequential amendment to the inclusion of peace officers in the enforcement of the Act.
- 3.27 **Clause 27** repeals section 81 of the principal Act.

- 3.28 **Clause 28** amends section 84 of the principal Act by extending the exemptions provided for in this provision to auctioneers acting on behalf of the South African Police Service or a municipality.
- 3.29 **Clause 29** amends section 85 of the principal Act as a consequential amendment to the repeal of the prohibition against the possession of more than a certain quantity of liquor by unlicensed persons.
- 3.30 **Clause 30** amends section 87 of the principal Act by extending the offences in terms of the principal Act, and by making provision for recurring offences and for the sale of seized liquor by public auction.
- 3.31 **Clause 31** amends section 88 of the principal Act as a consequential amendment to the new provisions regarding the sale of seized liquor by public auction.
- 3.32 **Clause 32** amends the index to the principal Act in order to align it with the amendments contained in the draft Bill.
- 3.33 **Clause 33** provides for the short title of the Act and its commencement.

4. LEGISLATIVE COMPETENCE

The Provincial Minister responsible for economic development and tourism is satisfied that the provisions of the Bill fall within the legislative competence of the Province.

5. CONSULTATION

Department of the Premier: Legal Services
City of Cape Town
Western Cape Liquor Authority
South African Police Service
Provincial Treasury

6. FINANCIAL IMPLICATIONS

The Liquor Authority may appoint substitute members. The costs of their remuneration will have to be budgeted for.

7. PERSONNEL IMPLICATIONS

It is envisaged that there will be additional administration in respect of appointed substitute members. Additional personnel may have to be employed and budgeted for.

P.K. 112/2014

17 April 2014

PROVINSIALE KENNISGEWING

Die volgende Konsepwetsontwerp op die Wes-Kaapse Drankwet, 2014, word vir kommentaar gepubliseer. Enige persoon of organisasie wat kommentaar wil lewer op die vermelde wetsontwerp word versoek om die kommentaar voor of op 23 Mei 2014 skriftelik in te dien—

- (a) deur dit te pos aan:
Hoofdirekteur: Toerisme, Kuns en Vermaak
Aandag: Madeleine Mitchell.
Departement van Ekonomiese Ontwikkeling en Toerisme
Posbus 979, Kaapstad 8000;
- (b) deur dit per hand af te lewer aan:
Hoofdirekteur: Toerisme, Kuns en Vermaak
Aandag: Madeleine Mitchell.
Departement van Ekonomiese Ontwikkeling en Toerisme
10de Vloer, St George-wandellaan 80
NBS Waldorf-gebou, h/v Kasteel- en Burgstraat
Kaapstad 8001;
- (c) deur dit per e-pos te stuur na:
Madeleine.Mitchell@westerncape.gov.za; of
- (d) deur dit te faks na:
021 483 8776
Aandag: Madeleine Mitchell.

Vir navrae, kontak Adv. Sanet Botha by 084 620 0088.

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vetdruk tussen vierkantige hakies dui skrappings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.
-

KONSEPWETSONTWERP

Ten einde die Wes-Kaapse Drankwet, 2008, ten opsigte van sekere omskrywings te wysig; om vir die aanstelling van hoogstens drie Adjunk-Voorsittende Beampes in die Dranklisensiëringstribunaal voorsiening te maak; om die Voorsittende Beampte van die Dranklisensiëringstribunaal in staat te stel om sy of haar bevoegdhe en funksies te delegeer; om vir die aanstelling van vervangende lede van die Dranklisensiëringstribunaal voorsiening te maak; om die funksies van die Dranklisensiëringstribunaal wat aan 'n komitee gedelegeer mag word uit te brei; om 'n verdere faktor te vermeld waarvan die Dranklisensiëringstribunaal of Voorsittende Beampte kennis mag neem by die oorweging van 'n aansoek vir 'n lisensie; om die voorwaardelike toestaan van lisensies verder te reguleer; om weg te doen met dranklisensies vir 'n spesiale geleentheid en in plaas daarvan vir dranklisensies vir 'n geleentheid voorsiening te maak; om verder voorsiening te maak rakende tydelike dranklisensies en dranklisensies vir 'n geleentheid; om die aanstelling van bestuurders vir gelisensieerde besighede verder te reguleer; om anders voorsiening te maak rakende toegang van persone onder die ouderdom van 18 jaar tot beperkte gebiede op gelisensieerde persele; om anders voorsiening te maak rakende die handelsdae en -ure van gelisensieerde besighede; om die bepaling te herroep wat ongelisensieerde persone verbied om meer as 'n vermelde hoeveelheid drank in hul besit te hê; om verder voorsiening te maak rakende die sluiting van gelisensieerde persele; om bepalings rakende die funksies van sekere lede van die Suid-Afrikaanse Polisie diens ingevolge die Wet te wysig; om te bepaal dat lede van munisipale polisie diens by die toepassing van die Wet vredesbeampes is en om die bevoegdhe van vredesbeampes ingevolge die Wet uit te brei; om verder voorsiening te maak vir die betreding, deursoeking en ondersoek van sekere persele; om die bepaling te herroep wat die verkoop, voorsiening of verbruik van drank verbied op 'n erf waarop die besigheid van 'n diensstasie bedryf word wat petrol, diesel of ander petroleumprodukte aan die publiek verkoop; om verdere bewys te vermeld wat neerkom op *prima facie*-bewys van die verkoop van drank; om verder voorsiening te maak rakende misdrywe en strawwe; om voorsiening te maak vir die verkoop per openbare veiling van sekere items wat aan die Staat verbeur word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 4 van 2008, soos gewysig by artikel 2 van Wet 10 van 2010

1. Artikel 1 van die Wes-Kaapse Drankwet, 2008 (die Hoofwet), word gewysig—
 - (a) deur die omskrywing van “Adjunk-Voorsittende Beampte” deur die volgende omskrywing te vervang:

- “ **‘Adjunk-Voorsittende Beampte’ [die]** ’n persoon ingevolge artikel 16(1)(b) as Adjunk-Voorsittende Beampte van die Dranklisensiëringstribunaal aangestel;”;
- (b) deur die omskrywing van “bestuurder” deur die volgende omskrywing te vervang:
“ **‘bestuurder’** ’n persoon wie se aanstelling as bestuurder goedgekeur word ingevolge artikel **[52(1)] 52;**”;
- (c) deur die volgende omskrywings na die omskrywing van “gefortifiseerde wyn” in te voeg:
“ **‘geleentheid’** ook ’n uitstalling, sport- of ander byeenkoms, opvoering of funksie: **‘dranklisensie vir ’n geleentheid’** ’n lisensie bedoel in artikel 33(2)(a);”;
- (d) deur die volgende omskrywing na die omskrywing van “kleinhandelvoedselwinkel” in te voeg:
“ **‘Kommissaris’**, behalwe in artikel 12, die Nasionale Kommissaris van die Suid-Afrikaanse Polisie soos bedoel in die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet 68 van 1995);”;
- (e) deur die volgende omskrywing na die omskrywing van “motorvoertuig” in te voeg:
“ **‘munisipale polisie’** ’n munisipale polisie ingestel kragtens artikel 64A van die Wet op die Suid-Afrikaanse Polisie, 1995;”;
- (f) deur die omskrywing van “spesiale geleentheid” te skrap;
- (g) deur die volgende omskrywing na die omskrywing van “vervaardiger” in te voeg:
“ **‘vervangende lid’** ’n persoon aangestel as ’n vervangende lid ingevolge artikel 16(3A);” en
- (h) deur die omskrywing van “vredesbeampte” deur die volgende omskrywing te vervang:
“ **‘vredesbeampte’** enige **[polisiebeampte]** lid van die Suid-Afrikaanse Polisie of ’n munisipale polisie en, met betrekking tot enige gebied, misdryf, klas van misdrywe of bevoegdheid bedoel in ’n kennisgewing uitgereik kragtens artikel 334(1) van die Strafproseswet, enige persoon wat ’n vredesbeampte kragtens daardie artikel is[.]”.

Wysiging van artikel 16 van Wet 4 van 2008

2. Artikel 16 van die Hoofwet word gewysig—

- (a) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
“(b) **[een lid]** hoogstens drie lede met die kwalifikasies in paragraaf (a) vermeld, wat deur die Raad as Adjunk-Voorsittende **[Beampte]** Beamptes aangestel word;”;
- (b) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:
“(d) een lid wat ’n polisiebeampte met die rang van **[Superintendent]** Luitenant-Kolonel of hoër is, deur die Raad aangestel in oorleg met die **[Provinsiale]** Kommissaris **[van die Suid-Afrikaanse Polisie]** en die Minister verantwoordelik vir gemeenskapsveiligheid in die Provinsie; en”;
- (c) deur die volgende subartikel na subartikel (2) in te voeg:
“(2A) (a) Die Voorsittende Beampte mag enige bevoegdheid of funksie van die Voorsittende Beampte skriftelik aan ’n Adjunk-Voorsittende Beampte deleger om namens hom of haar uit te oefen of te verrig.
(b) Die bepalings van artikel 10(2), (3) en (6) is van toepassing, met die nodige veranderinge, op ’n delegering ingevolge paragraaf (a).”;
- (d) deur subartikel (3) deur die volgende subartikel te vervang:
“(3) Indien die Voorsittende Beampte nie beskikbaar is om sy of haar funksies te verrig nie of indien die amp van Voorsittende Beampte vakant is, moet **[die]** ’n

Adjunk-Voorsittende Beampte aangewys deur die Hoof-Uitvoerende Beampte, terwyl die Voorsittende Beampte nie beskikbaar is nie of totdat 'n Voorsittende Beampte aangestel word, waarnaem as Voorsittende Beampte en al die funksies verrig wat deur hierdie Wet aan die Voorsittende Beampte opgedra word.”; en

(e) deur die volgende subartikel na subartikel (3) in te voeg:

“(3A) (a) Ondanks subartikels (1) en (2), mag die Raad in oorleg met die Minister te eniger tyd hoogstens vier geskikte persone as vervangende lede aanstel, om as lede van die Dranklisensiëringstribunaal of 'n komitee daarvan waar te neem op versoek van die Voorsittende Beampte in die omstandighede beoog in artikel 21(4) of 24(2A).

(b) 'n Vervangende lid beklee die amp vir die tydperk, van nie langer as twee jaar nie, wat die Raad tydens sy of haar aanstelling mag bepaal.”.

Vervanging van artikel 17 van Wet 4 van 2008

3. Artikel 17 van die Hoofwet word deur die volgende artikel vervang:

“Diskwalifisering vir aanstelling as lid of vervangende lid van Dranklisensiëringstribunaal

17. Die volgende persone kwalifiseer nie om aangestel te word, voort te gaan of op te tree as lede of vervangende lede van die Dranklisensiëringstribunaal nie—

- (a) iemand wat in die voorafgaande tien (10) jaar skuldig bevind is aan 'n misdryf en gevonnissen is tot gevangenisstraf sonder die keuse van 'n boete, tensy die Raad van mening is dat die misdryf van so 'n aard was dat dit nie impliseer dat die persoon ongeskik is om die amp te beklee nie;
- (b) iemand wat in die voorafgaande tien (10) jaar skuldig bevind is aan 'n misdryf ingevolge hierdie Wet, die Drankwet of die Drankwet, 1989 (Wet 27 van 1989), tensy die Raad van mening is dat die misdryf van so 'n aard was dat dit nie impliseer dat die persoon ongeskik is om die amp te beklee nie;
- (c) 'n ongerehabiliteerde insolvent of iemand wat onderhewig is aan enige handelingsonbevoegdheid;
- (d) iemand wat jonger as vyf-en-twintig (25) jaar oud is;
- (e) iemand wat 'n regstreekse belang in die drankhandel het;
- (f) iemand wat die familielid, vennoot of besigheidsdeelgenoot van 'n persoon is met 'n regstreekse belang in die drankhandel, tensy die Raad van mening is dat die belang van die familielid, vennoot of besigheidsdeelgenoot in die drankhandel nie impliseer dat die persoon ongeskik is om die amp te beklee nie;
- (g) iemand wat ingevolge artikel 35 gediskwalifiseer word om 'n dranklisensie te hou; of
- (h) iemand wat nie in die Provinsie woonagtig is nie.”.

Wysiging van artikel 18 van Wet 4 van 2008, soos gewysig by artikel 18 van Wet 10 van 2010

4. Artikel 18 van die Hoofwet word gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Die heraanstelling van ’n lid bedoel in artikel 16(1)(c) [en] of (d) mag slegs geskied na oorleg met onderskeidelik die Minister verantwoordelik vir plaaslike regering in die Provinsie, of die [Provinsiale] Kommissaris [van die Suid-Afrikaanse Polisiediens] en die Minister verantwoordelik vir gemeenskapsveiligheid in die Provinsie.”.

Wysiging van artikel 19 van Wet 4 van 2008, soos gewysig by artikel 19 van Wet 10 van 2010

5. Artikel 19 van die Hoofwet word gewysig deur paragraaf (c) deur die volgende paragraaf te vervang:

“(c) sodanige lid van drie opeenvolgende vergaderings van die Dranklisensiëringstribunaal afwesig is sonder die voorafverkreë skriftelike verlof van die Voorsittende Beampte of, waar van toepassing, [die] ’n Adjunk-Voorsittende Beampte;”.

Wysiging van artikel 20 van Wet 4 van 2008, soos gewysig by artikel 20 van Wet 10 van 2010

6. Artikel 20 van die Hoofwet word gewysig deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

“(b) ’n aansoek vir die oordrag van ’n lisensie ingevolge artikel [65(9)] 65(1);”.

Wysiging van artikel 21 van Wet 4 van 2008

7. Artikel 21 van die Hoofwet word gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) ’n Kworum vir ’n vergadering van die Dranklisensiëringstribunaal is vier lede, met inbegrip van die Voorsittende Beampte of [die] ’n Adjunk-Voorsittende Beampte [of hulle albei].”; en

(b) deur die volgende subartikel by te voeg:

“(4) (a) Indien ’n lid van die Dranklisensiëringstribunaal, behalwe die Voorsittende Beampte, afwesig is van ’n vergadering van die Dranklisensiëringstribunaal of onbesikbaar is om die vergadering by te woon, mag die Voorsittende Beampte ’n vervangende lid versoek om as ’n lid in die plek van die lid wat afwesig is, waar te neem.

(b) ’n Vervangende lid wat aldus as ’n lid waarneem, het die bevoegdhede en pligte van ’n lid.”.

Vervanging van artikel 22 van Wet 4 van 2008

8. Artikel 22 van die Hoofwet word deur die volgende artikel vervang:

“Onttrekking van lid met botsende belang

22. (1) ’n Lid of vervangende lid van die Dranklisensiëringstribunaal mag op geen vergadering of verhoor van die Tribunaal stem of dit bywoon of op enige wyse aan die verrigtinge daarvan deelneem nie en die Voorsittende Beampte mag nie ’n aangeleentheid oorweeg nie indien, met betrekking tot daardie aangeleentheid—

- (a) hy of sy 'n familielid, vennoot of besigheidsdeelgenoot is van die aansoeker vir 'n lisensie of sertifisering, of enige ander reg of voorreg wat die Dranklisensieringstribunaal of die Voorsittende Beampte, na gelang van die geval, staan te verleen;
 - (b) hy of sy of sy of haar familielid, vennoot of besigheidsdeelgenoot 'n direkteur, lid of vennoot is van, of 'n finansiële belang of ander belang het in, die besigheid van die aansoeker vir 'n lisensie, sertifisering of enige ander reg of voorreg wat die Dranklisensieringstribunaal of die Voorsittende Beampte, na gelang van die geval, staan te verleen; of
 - (c) hy of sy enige belang het wat hom of haar verhinder om sy of haar funksies as lid of vervangende lid van die Dranklisensieringstribunaal op 'n billike, onbevooroordeelde en behoorlike wyse te verrig.
- (2) Indien dit in enige stadium blyk dat 'n lid, 'n vervangende lid of die Voorsittende Beampte, na gelang van die geval, enige belang in subartikel (1) beoog, het of mag hê—
- (a) met betrekking tot 'n aangeleentheid wat deur die Dranklisensieringstribunaal oorweeg moet word, moet daardie lid of vervangende lid die aard van sy of haar belang onverwyld en volledig openbaar en die vergadering of verhoor verlaat ten einde die oorblywende lede of vervangende lede in staat te stel om die aangeleentheid te bespreek en te bepaal of daardie lid of vervangende lid uitgesluit moet word van deelname aan die verrigtinge op sodanige vergadering of verhoor as gevolg van 'n botsing van belange; en
 - (b) met betrekking tot 'n aangeleentheid wat deur die Voorsittende Beampte oorweeg moet word, moet hy of sy die aard van sy of haar belang onverwyld en volledig openbaar aan die Dranklisensieringstribunaal, in welke geval die Tribunaal die aangeleentheid moet oorweeg.
- (3) Die openbaring en besluit geneem deur die oorblywende lede of vervangende lede van die Dranklisensieringstribunaal in subartikel (2)(a) bedoel, moet in die notule van die betrokke verrigtinge aangeteken word.”.

Wysiging van artikel 24 van Wet 4 van 2008

9. Artikel 24 van die Hoofwet word gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Voorsittende Beampte mag een of meer komitees aanstel wat bestaan uit die Voorsittende Beampte self of [die] 'n Adjunk-Voorsittende Beampte en enige lid of enige persoon wat ingevolge artikel 20(5) gekoöpteer is.”;
- (b) deur die volgende subartikel na subartikel (2) in te voeg:

“(2A) (a) Indien 'n lid van 'n komitee afwesig is van 'n vergadering van die komitee of onbeskikbaar is om die vergadering by te woon, mag die Voorsittende Beampte 'n vervangende lid versoek om as 'n lid van die komitee in die plek van die lid wat afwesig is, waar te neem.

(b) 'n Vervangende lid wat aldus as 'n lid van 'n komitee waarneem, het die bevoegdhede en pligte van 'n lid van die komitee.”; en
- (c) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Die Dranklisensieringstribunaal mag die funksies van die Dranklisensieringstribunaal wat in artikels 52, 64, 65, 66 en 71 uiteengesit word, aan 'n komitee delegeer.”.

Wysiging van artikel 27 van Wet 4 van 2008, soos vervang by artikel 23 van Wet 10 van 2010

10. Artikel 27 van die Hoofwet word gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die lede van die Raad en die Dranklisensiëringstribunaal, die persoon wat aangestel word om as die Appèltribunaal op te tree, vervangende lede en persone wat ingevolge artikel 11(1) of 20(5) gekoöpteer is, is geregtig om redelike besoldiging en toelaes te ontvang soos deur die Minister, in oorleg met die Minister verantwoordelik vir finansies in die Provinsie, bepaal.”.

Vervanging van artikel 30 van Wet 4 van 2008, soos gewysig by artikel 26 van Wet 10 van 2010

11. Artikel 30 van die Hoofwet word deur die volgende artikel vervang:

“Inkomste wat aan Provinsiale Inkomstefonds, Owerheid of munisipaliteite toeval

30. (1) Die fooie bedoel in [artikels] artikel [46(2), 48(1) en (4),] 63(2) [en 65(16)] moet in die Provinsiale Inkomstefonds gestort word.

(2) Die volgende geld moet aan die Owerheid betaal word—

- (a) boetes bedoel in artikels 20(3)(b)(v) en 82(2)(b);
- (b) die [strafgelde] boetes bedoel in [artikel] artikels 46(6), 48(12), 62(3), 63(4), 64(4), 65(19) en 66(8); [en]
- (c) fooie bedoel in artikels [26(8),] 36(1)(e), [38,] 46(2), 48(1), 48(4), 53(1), 59(7), 64(1), 65(4), [en 65(9)] 65(16), 66(2) en 66(6); en
- (d) fooie bedoel in artikels 26(8) en (38).

(3) Die fooie bedoel in artikel 37(4)(a)(i) en (b)(i) moet aan die betrokke munisipaliteit betaal word.

(4) Geen bedrag in hierdie artikel beoog is terugbetaalbaar nie.”.

Wysiging van artikel 33 van Wet 4 van 2008, soos gewysig by artikel 29 van Wet 10 van 2010

12. Artikel 33 van die Hoofwet word gewysig deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:

“(a) ’n lisensie vir die verkoop van drank vir gebruik op of buite, of beide op of buite, die perseel waar drank by [spesiale] geleenthede verkoop word; en”.

Wysiging van artikel 41 van Wet 4 van 2008

13. Artikel 41 van die Hoofwet word gewysig—

(a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Die Dranklisensiëringstribunaal of Voorsittende Beampte mag by die oorweging van ’n aansoek kennis neem van—”; en

(b) deur paragraaf (c) van subartikel (1) deur die volgende paragraaf te vervang:

“(c) behoudens artikel 23(9)[,]—

- (i) die nabyheid van die voorgestelde gelisensieerde perseel aan 'n onderneming wat die besigheid van 'n diensstasie bedryf wat petrol, diesel of ander petroleumprodukte aan die publiek verkoop; en
- (ii) enige ander aangeleentheid wat na die Dranklisensieringstribunaal of Voorsittende Beampte se mening in aanmerking geneem moet word."

Wysiging van artikel 42 van Wet 4 van 2008, soos gewysig by artikel 36 van Wet 10 van 2010

14. Artikel 42 van die Hoofwet word gewysig—

(a) deur die volgende subartikel na subartikel (4) in te voeg:

"(4A) Die Dranklisensieringstribunaal mag by aanvoering van goeie redes die voorwaardelike toestaan van 'n lisensie te eniger tyd intrek."; en

(b) deur subartikel (7) deur die volgende subartikel te vervang:

"(7) Wanneer die Voorsittende Beampte tevrede is dat die aansoeker voldoen het aan die voorwaardes wat deur die Dranklisensieringstribunaal opgelê is, moet die Owerheid die lisensie uitreik soos voorgeskryf, behoudens artikel 46."

Vervanging van artikel 48 van Wet 4 van 2008, soos gewysig by artikel 38 van Wet 10 van 2010

15. Artikel 48 van die Hoofwet word deur die volgende artikel vervang:

"Tydelike dranklisensies en dranklisensies vir [spesiale] geleenthede

48. (1) Die Voorsittende Beampte mag op versoek deur 'n lisensiehouer in artikel **[33(1)(b) of (d)] 33(1)** bedoel en teen betaling van die voorgeskrewe fooi 'n tydelike dranklisensie vir die gebruik van net daardie lisensiehouer toestaan.

(1A) 'n Aansoek vir 'n tydelike **[lisensie] dranklisensie** moet gedoen word minstens **[veertien (14)] een-en-twintig (21)** dae vóór die eerste dag van die tydperk bedoel in subartikel (2).

(2) Die Voorsittende Beampte mag nie 'n tydelike dranklisensie kragtens subartikel (1) aan 'n bepaalde **[persoon] lisensiehouer** vir 'n tydperk langer as veertien (14) opeenvolgende dae en vir meer as 'n totaal van dertig (30) dae per jaar beginnende op 1 Januarie toestaan nie.

(3) 'n Tydelike dranklisensie moet onderworpe gemaak word aan die voorgeskrewe voorwaardes en die ander voorwaardes en beperkings wat die Voorsittende Beampte oplê.

(4) Die Voorsittende Beampte mag op aansoek deur[—

- (a) 'n opvoedkundige instelling, uitgesonderd 'n skool soos omskryf in artikel 1 van die Suid-Afrikaanse Skolewet, 1996 (Wet 84 van 1996);
- (b) 'n welsyns- of kultuurorganisasie;
- (c) die organiseerder van 'n uitstalling;
- (d) die sekretaris, bestuurder of hoofbaanbeampte van 'n *bona fide*-wedren of -sportbyeenkoms of soortgelyke geleentheid; of
- (e) die organiseerder van 'n kunsuitvoering,]

'n persoon op die voorgeskrewe wyse en teen betaling van die voorgeskrewe fooi 'n dranklisensie vir 'n **[spesiale] geleentheid** toestaan vir die verkoop van drank vir verbruik op of buite, of beide op en buite, die perseel waarop drank by 'n **[spesiale] geleentheid** verkoop word.

(5) 'n Aansoek om 'n dranklisensie vir 'n **[spesiale]** geleentheid moet minstens **[veertien (14)] een-en-twintig (21)** dae vóór die **[datum]** eerste dag van die **[spesiale]** geleentheid gedoen word.

(6) 'n Dranklisensie vir 'n **[spesiale]** geleentheid mag nie toegestaan word vir 'n tydperk wat die duur van die betrokke **[spesiale]** geleentheid oorskry nie.

(7) 'n Dranklisensie vir 'n **[spesiale]** geleentheid **[is]** moet onderworpe gemaak word aan die voorgeskrewe voorwaardes **[in artikel 49 bedoel, waar van toepassing,]** en die ander voorwaardes en beperkings wat deur die **[Dranklisiëringstribunaal]** Voorsittende Beampte opgelê word.

(8) Drank mag kragtens 'n dranklisensie vir 'n geleentheid verkoop word slegs by die geleentheid waarvoor die lisensie toegestaan is en slegs op die goedgekeurde perseel ingevolge die lisensie.

(9) Die Voorsittende Beampte mag enige bykomende inligting van die aansoeker om 'n tydelike dranklisensie of dranklisensie vir 'n geleentheid versoek met die doel om die aansoek te oorweeg.

(10) Die Voorsittende Beampte mag nie 'n tydelike dranklisensie of dranklisensie vir 'n geleentheid toestaan tensy 'n bestuurder aangestel is vir die betrokke gelisensieerde besigheid en die aanstelling goedgekeur is ingevolge artikel 52 nie.

(11) Die Voorsittende Beampte mag te eniger tyd, by aanvoering van goeie redes, by 'n kennisgewing wat afgelewer of aangebied word aan die houer van 'n tydelike dranklisensie of 'n dranklisensie vir 'n geleentheid—

(a) die lisensie onderworpe verklaar aan die voorwaardes of beperkings, of die verdere voorwaardes of beperkings, wat hy of sy na goëddunke mag oplê en wat uiteengesit word in die kennisgewing;

(b) enige voorwaarde of beperking wat ten opsigte van die lisensie opgelê is, opskort, intrek of wysig; of

(c) die lisensie opskort of intrek.

(12) Die Voorsittende Beampte mag die laat indiening van 'n aansoek om 'n tydelike dranklisensie of 'n dranklisensie vir 'n geleentheid kondoneer by aanvoering van goeie redes en by betaling van 'n boete van 100% van die voorgeskrewe aansoekfooi vir elke dag wat die aansoek laat ingedien word.

(13) 'n Oortreding van enige voorwaarde of beperking bedoel in subartikel (3) of (7), of 'n versuim om daaraan te voldoen, is 'n misdryf.''

Wysiging van artikel 52 van Wet 4 van 2008

16. Artikel 52 van die Hoofwet word gewysig—

(a) deur die volgende subartikel na subartikel (1) in te voeg:

“(1A) Die Voorsittende Beampte mag, wanneer hy of sy—

(a) 'n tydelike dranklisensie kragtens artikel 48(1) toestaan;

(b) 'n dranklisensie vir 'n geleentheid kragtens artikel 48(4) toestaan;

(c) kragtens artikel 49(6) optree;

(d) kragtens artikel 53(1) optree; of

(e) toestemming ingevolge artikel 65(5) verleen,

die aanstelling van 'n natuurlike persoon wat benoem word deur die aansoeker vir die lisensie, die lisensiehouer of die voorgestelde lisensiehouer, na gelang van die geval, as bestuurder van die gelisensieerde besigheid goedkeur.''

(b) deur subartikel (2) deur die volgende subartikel te vervang:

- “(2) ’n Lisensiehouer wat nie ’n natuurlike persoon is nie, mag te eniger tyd en op die voorgeskrewe wyse ’n natuurlike persoon wat in die Provinsie woon, benoem om die bestuurder van die gelisensieerde besigheid te wees, en in so ’n geval mag die Dranklisensieringstribunaal of die Voorsittende Beampte, na gelang van die geval, daardie persoon se aanstelling as bestuurder goedkeur.”;
- (c) deur subartikel (4) deur die volgende subartikel te vervang:
“(4) Die Dranklisensieringstribunaal of die Voorsittende Beampte, na gelang van die geval, mag nie goedkeuring verleen dat ’n persoon wat ingevolge artikel 35 gediskwalifiseer word om ’n dranklisensie te hou of wat nie van goeie karakter is nie, as bestuurder aangestel word nie.”;
- (d) deur subartikel (5) deur die volgende subartikel te vervang:
“(5) Die Dranklisensieringstribunaal of die Voorsittende Beampte, na gelang van die geval, mag gelas dat die voorgestelde bestuurder die opleiding en onderrig wat die Dranklisensieringstribunaal spesifiseer, moet ontvang as ’n voorvereiste vir die goedkeuring van sodanige aanstelling.”;
- (e) deur subartikel (8) deur die volgende subartikel te vervang:
“(8) Die goedkeuring van die aanstelling van ’n bestuurder ingevolge subartikel (1), (1A) of (2) bly geldig tot die aanstelling van ’n nuwe bestuurder of die verstryking van die tydperk waarvoor die lisensie toegestaan of toestemming verleen is, na gelang van die geval.”;
- (f) deur subartikel (9) deur die volgende subartikel te vervang:
“(9) Indien ’n persoon wie se aanstelling as bestuurder ingevolge subartikel (1), (1A) of (2) goedgekeur is, ophou om die gelisensieerde besigheid te bestuur of gediskwalifiseer word om dit te doen, moet die lisensiehouer binne dertig (30) dae vanaf daardie gebeurtenis, ingevolge subartikel (2) aansoek doen vir goedkeuring van die aanstelling van ’n bestuurder in sy of haar plek.”;
- (g) deur subartikel (10) deur die volgende subartikel te vervang:
“(10) Indien ’n lisensiehouer versuim om aan subartikel (9) te voldoen, mag [sy] die lisensie ingevolge artikel 20(3)(b)(ii) ingetrek of ingevolge artikel 20(3)(b)(iii) opgeskort word.”; en
- (h) deur die volgende subartikel by te voeg:
“(11) In hierdie artikel beteken “lisensiehouer” ook die houer van ’n dranklisensie vir ’n geleentheid.”.

Wysiging van artikel 56 van Wet 4 van 2008

17. Artikel 56 van die Hoofwet word gewysig—

- (a) deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:
“(b) ’n kamer of plek wat die Dranklisensieringstribunaal of die Voorsittende Beampte afgebaken het as ’n gebied waarin persone onder die ouderdom van agtien (18) jaar nie toegelaat word nie; en”;
- (b) deur subartikel (3) deur die volgende subartikel te vervang:
“(3) ’n Persoon onder die ouderdom van agtien (18) jaar mag toegang tot ’n beperkte gebied hê op ’n gelisensieerde perseel waar drank verkoop word slegs vir verbruik buite die gelisensieerde perseel indien vergesel óf deur ’n ouer of voog óf deur ’n volwassene met die toestemming van ’n ouer of voog.”.

Wysiging van artikel 59 van Wet 4 van 2008, soos gewysig by artikel 43 van Wet 10 van 2010

18. Artikel 59 van die Hoofwet word gewysig—

(a) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Indien ’n munisipaliteit nie die handelsdae en -ure bepaal het vir gelisensieerde besighede wat drank verkoop vir verbruik op of buite die gelisensieerde perseel nie, is die handelsdae en -ure vir so ’n besigheid dié wat te eniger tyd deur die Dranklisensieringstribunaal of die Voorsittende Beampte, na gelang van die geval, as ’n deel van die voorwaardes van die betrokke lisensie goedgekeur word.”;

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Indien ’n munisipaliteit nie die handelsdae en -ure bepaal het vir gelisensieerde besighede wat drank verkoop vir verbruik op of buite die gelisensieerde perseel nie, mag die Voorsittende Beampte te eniger tyd by aansoek deur die lisensiehouer van so ’n besigheid, by ’n kennisgewing wat afgelewer of aangebied word aan die lisensiehouer, die handelsdae en -ure vir daardie besigheid verleng.”;

(c) deur die volgende subartikel na subartikel (4) in te voeg:

“(4A) Die handelsdae en -ure vir ’n gelisensieerde besigheid mag nie goedgekeur word of verleng word ingevolge subartikel (3) of (4) tot ’n tyd later as 20:00 ten opsigte van ’n lisensie vir die verkoop van drank vir verbruik buite die gelisensieerde perseel en later as 02:00 die volgende dag ten opsigte van ’n lisensie vir die verkoop van drank vir verbruik op die gelisensieerde perseel nie.”;

(d) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) Die Voorsittende Beampte moet die maatstawwe bedoel in artikel 34(1)(a) en (e) in ag neem by die oorweging van ’n aansoek ingevolge subartikel (4).”;

(e) deur subartikel (6) deur die volgende subartikel te vervang:

“(6) Die [Raad] Owerheid moet, binne die voorgeskrewe tydperk ná die toestaan of weiering van ’n aansoek ingevolge subartikel (4) gedoen, die aansoeker in kennis stel van die besluit van die [Dranklisensieringstribunaal] Voorsittende Beampte.”;
en

(f) deur subartikel (8) deur die volgende subartikel te vervang:

“(8) Behoudens artikel 89(10), is ’n lisensiehouer wat drank op die gelisensieerde perseel verkoop of verskaf, of die verbruik van drank daarop toelaat, op ’n tyd wanneer die verkoop van drank nie ingevolge subartikel (1) [of], (3) of (4) toegelaat word nie, skuldig aan ’n misdryf.”.

Wysiging van artikel 60 van Wet 4 van 2008

19. Artikel 60 van die Hoofwet word gewysig—

(a) deur subartikel (3) te skrap; en

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“[(4)] (3) ’n Oortreding van, of versuim om te voldoen aan, subartikel (1)[,] of (2) [of (3)] is ’n misdryf.”.

Wysiging van artikel 63 van Wet 4 van 2008, soos gewysig by artikel 45 van Wet 10 van 2010

20. Artikel 63 van die Hoofwet word gewysig deur die volgende subartikel na subartikel (2) in te voeg:

“(2A) Waar ’n lisensie beoog in artikel 89(10) outomaties hernu word ingevolge subartikel (2) en indien die betrokke munisipaliteit nie die handelsdae en -ure bepaal het nie vir gelisensieerde besighede wat drank verkoop vir verbruik op of buite die gelisensieerde perseel, na gelang van die geval, is die handelsure op enige dag waarop die lisensiehouer toegelaat word om drank ingevolge die betrokke lisensie te verkoop, beperk tot—

- (a) in die geval van ’n lisensie vir die verkoop van drank vir verbruik buite die gelisensieerde perseel, nie later as 20:00 op daardie dag nie; en
- (b) in die geval van ’n lisensie vir die verkoop van drank vir gebruik op die gelisensieerde perseel, nie later as 02:00 op die daaropvolgende dag nie.”.

Wysiging van artikel 66 van Wet 4 van 2008, soos gewysig by artikel 50 van Wet 10 van 2010

21. Artikel 66 van die Hoofwet word gewysig deur die woord “spesiale”, waar dit ook al voorkom, te skrap.

Vervanging van artikel 70 van Wet 4 van 2008

22. Artikel 70 van die Hoofwet word deur die volgende artikel vervang:

“Sluiting van gelisensieerde perseel

70. (1) ’n Inspekteur, aangewese drankbeampte, vredesbeampte of enige polisiebeampte met of bo die rang van [inspekteur] Adjudant-Offisier mag, indien—

- (a) ’n openbare rusverstoring, wanorde of openbare geweld op ’n gelisensieerde perseel ontstaan of dreig;
- (b) daar ’n onmiddellike en identifiseerbare bedreiging vir die gesondheid, welsyn of veiligheid van die publiek, ’n persoon of eiendom op of naby ’n gelisensieerde perseel is; of
- (c) die lisensiehouer of enige persoon in beheer van ’n gelisensieerde perseel herhaaldelik en op ’n wesenlike wyse die lisensievoorwaardes of die bepalinge van hierdie Wet oortree het,

die lisensiehouer of ’n persoon in beheer van die gelisensieerde perseel beveel om die betrokke perseel [vir ’n tydperk van hoogstens die oorblywende handelsure vir daardie dag] te sluit totdat die sluitingsbevel ingevolge subartikel (3) ingetrek word.

(2) Die lisensiehouer of ’n persoon in beheer van ’n gelisensieerde perseel moet by ontvangs van ’n bevel kragtens subartikel (1) onverwyld daaraan voldoen, en indien hy of sy versuim om dit te doen, mag die persoon wat die bevel gegee het, die stappe doen [en die geweld gebruik of laat gebruik] of laat doen wat hy of sy in [na gelang van] die omstandighede [nodig is] dienstig ag om die perseel te sluit.

(3) ’n Bevel kragtens subartikel (1) gegee, mag te eniger tyd ingetrek word—

- (a) deur die [aangewese drankbeampte, die inspekteur of die polisiebeampte] persoon wat die bevel gegee het;

- (b) waar [so 'n] die bevel deur 'n polisiebeampte gegee is, deur 'n polisiebeampte met 'n meer senior rang; [of]
 - (c) waar die bevel deur 'n aangewese drankbeampte gegee is, deur die [Dranklisensiëringstribunaal] Hoof-Uitvoerende Beampte of iemand wat deur hom of haar gedelegeer word; of
 - (d) deur 'n besluit van die Dranklisensiëringstribunaal by aansoek deur die lisensiehouer op die voorgeskrewe wyse.
- (4) 'n Persoon wat 'n bevel ingevolge subartikel (3) intrek, mag dit behoudens die voorwaardes doen wat hy of sy mag bepaal.
- (5) 'n Persoon wat weier of versuim om aan 'n bevel ingevolge subartikel (1) of voorwaardes wat ingevolge subartikel (4) opgelê is, te voldoen, is skuldig aan 'n misdryf.”.

Wysiging van artikel 73 van Wet 4 van 2008, soos gewysig by artikel 54 van Wet 10 van 2010

23. Artikel 73 van die Hoofwet word gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die [Wes-Kaapse Provinsiale] Kommissaris [van die Suid-Afrikaanse Polisie] mag ten opsigte van elke polisiekantoor 'n polisiebeampte [met of bo die rang van Inspekteur] aanwys om die funksies van 'n aangewese drankbeampte ingevolge hierdie Wet te verrig.”;
- (b) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Die [Wes-Kaapse Provinsiale] Kommissaris [van die Suid-Afrikaanse Polisie] mag 'n aanstelling ingevolge subartikel (1) gemaak of geag gemaak te wees, te eniger tyd beëindig.”; en
- (c) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) Die Kommissaris moet by die aanwysing van 'n drankbeampte ingevolge subartikel (1), en die [Raad] Owerheid moet by die aanstelling van 'n inspekteur ingevolge subartikel (4), 'n sertifikaat van aanwysing of brief van aanstelling uitreik, onderteken deur die Kommissaris of die Hoof-Uitvoerende Beampte namens die [Raad] Owerheid, na gelang van die geval.”.

Vervanging van artikel 74 van Wet 4 van 2008

24. Artikel 74 van die Hoofwet word deur die volgende artikel vervang:

“Bevoegdhede van aangewese drankbeamptes, vredesbeamptes en inspekteurs

74. (1) Behoudens artikel 75 mag 'n aangewese drankbeampte, vredesbeampte of ['n] inspekteur by die verrigting van sy of haar funksies—

- (a) te alle redelike tye—
 - (i) enige gelisensieerde perseel;
 - (ii) enige perseel ten opsigte waarvan 'n aansoek ingevolge hierdie Wet gedoen is; en
 - (iii) enige perseel of voertuig waarop of waarin hy of sy op redelike gronde vermoed drank geberg, vervoer of verkoop word strydig met die bepalinge van hierdie Wet,

betree en mag die ondersoek instel, navrae rig of inspeksies doen wat hy of sy nodig ag;

- (b) op enige tyd en plek enige persoon versoek om onverwyld of op 'n datum en tyd wat deur die aangewese drankbeampte, vredesbeampte of inspekteur bepaal word, enige lisensie, rekord of ander dokument wat in die besit, bewaring of beheer van daardie persoon of enige ander persoon namens hom of haar is of vermoedelik is, aan hom of haar voor te lê;
- (c) insae hê in enige dokument in paragraaf (b) bedoel, afskrifte daarvan of uittreksels daaruit maak, en van die persoon in genoemde paragraaf beoog 'n verklaring vereis van enige deel daarvan;
- (d) op enigiets beslag lê en dit verwyder indien dit na sy of haar mening getuienis mag uitmaak of bewys kan lewer van 'n misdryf ingevolge hierdie Wet, of van 'n oortreding van enige voorwaarde van 'n lisensie;
- (e) die lisensiehouer of sy of haar werknemers, 'n aansoeker of enige persoon wat op 'n gelisensieerde perseel is, ondervra indien hy of sy vermoed dat die lisensiehouer, werknemer, aansoeker of persoon enige dokument in sy of haar besit of onder sy of haar beheer het wat tersaaklik mag wees vir 'n aangeleentheid wat hy of sy ondersoek; en
- (f) gelas dat enige lisensiehouer of sy of haar werknemer voor hom of haar verskyn op 'n tyd en plek wat deur hom of haar vermeld moet word, om te antwoord op vrae oor 'n aangeleentheid wat ondersoek word.

(2) Enige persoon wat in beheer is van 'n perseel in subartikel (1) beoog, moet die bystand verleen wat die aangewese drankbeampte, vredesbeampte of inspekteur redelikerwys versoek.

(3) Enige persoon wat deur 'n aangewese drankbeampte, vredesbeampte of inspekteur ondervra word ingevolge hierdie Wet moet eers ingelig word oor sy of haar grondwetlike regte voordat enige ondervraging begin, en enige antwoord daarna deur daardie persoon moet waar wees en na sy of haar beste vermoë wees.

(4) 'n Antwoord of verduideliking wat aan 'n aangewese drankbeampte, vredesbeampte of [**n**] inspekteur gegee word, mag nie gebruik of toegelaat word in strafverrigtinge teen die persoon wat dit verskaf nie, behalwe in verrigtinge teen daardie persoon op 'n klag met betrekking tot—

- (a) die afneem of aflê van 'n eed of plegtige verklaring;
- (b) die aflê van vals verklarings; of
- (c) versuim om 'n wettige vraag volledig en bevredigend te beantwoord.”.

Wysiging van artikel 75 van Wet 4 van 2008

25. Artikel 75 van die Hoofwet word gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Aangewese drankbeampte, vredesbeampte of [**n**] inspekteur mag 'n bevoegdheid in artikel 74 bedoel, uitoefen met betrekking tot die betreding, deursoeking en inspeksie van 'n perseel indien gemagtig deur 'n lasbrief uitgereik deur 'n landdros in ooreenstemming met subartikel (3).”;

(b) deur subartikel (2) te skrap;

(c) deur in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

- “’n Landdros mag ’n lasbrief uitreik om enige perseel bedoel in artikel 74(1)(a) te betree en te inspekteer indien, op grond van inligting wat skriftelik en onder eed of plegtige verklaring verstrekkend is, die landdros rede het om te glo dat—”;
- (d) deur subartikel (4) deur die volgende subartikel te vervang:
- “(4) ’n Aangewese drankbeampte, vredesbeampte of [**n**] inspekteur mag die bevoegdhede in subartikel (1) bedoel sonder ’n lasbrief uitoefen—
- (a) met die toestemming van die eienaar of die persoon in beheer van die betrokke perseel;
- (b) indien daar ’n uitstaande voldoeningskennisgewing is wat uitgereik is ingevolge artikel 69, met die doel om vas te stel of daar aan die kennisgewing voldoen is; of
- (c) indien die aangewese drankbeampte, vredesbeampte of inspekteur op redelike gronde glo dat—
- (i) ’n lasbrief ingevolge subartikel (3) uitgereik sal word indien hy of sy daarvoor aansoek doen; en
- (ii) ’n vertraging in die verkryging van ’n lasbrief die oogmerke van die deursoeking of inspeksie sou verydel.”;
- (e) deur die volgende subartikel na subartikel (4) in te voeg:
- “(4A) ’n Aangewese drankbeampte, vredesbeampte of inspekteur mag die bevoegdhede bedoel in subartikel (1) uitoefen sonder ’n lasbrief ten opsigte van ’n gelisensieerde perseel indien die inspeksie gedoen word om voldoening aan hierdie Wet of aan die lisensievoorwaardes te kontroleer.”;
- (f) deur subartikel (5) deur die volgende subartikel te vervang:
- “(5) By betreding van ’n perseel ingevolge hierdie artikel moet die aangewese drankbeampte, vredesbeampte of inspekteur—
- (a) hom- of haarself identifiseer aan die persoon in beheer van die perseel;
- (b) die lasbrief, as daar een is, aan daardie persoon toon;
- (c) die gesag ingevolge waarvan die inspeksie gedoen word, verklaar; en
- (d) in die geval van ’n gelisensieerde perseel, die inspeksie doen met die mins moontlike ongerief vir die lisensiehouer of sy of haar kliënte en met die mins moontlike ontwrigting van die gelisensieerde besigheid.”;
- (g) deur subartikel (6) deur die volgende subartikel te vervang:
- “(6) ’n Aangewese drankbeampte, vredesbeampte of inspekteur moet by die beslaglegging op enigiets ingevolge hierdie artikel, ’n kwitansie aan die persoon van wie daar op die artikel beslag gelê is, uitreik waarin die artikels waarop beslag gelê is, beskryf word en die redes vir die beslaglegging verduidelik word.”; en
- (h) deur subartikel (7) deur die volgende subartikel te vervang:
- “(7) Artikels 30 tot 34 van die Strafproseswet is van toepassing, met die nodige veranderinge, op enigiets waarop daar ingevolge hierdie artikel beslag gelê is.”.

Vervanging van artikel 79 van Wet 4 van 2008

26. Artikel 79 van die Hoofwet word deur die volgende artikel vervang:

“**Misdrywe betreffende aangewese drankbeamptes, vredesbeamptes en inspekteurs**

79. ’n Persoon wat—

- (a) hom of haar valslik as 'n aangewese drankbeampte, vredesbeampte of inspekteur voordoën;
- (b) 'n aangewese drankbeampte, vredesbeampte of inspekteur by die uitvoering van sy of haar pligte ingevolge hierdie Wet verhinder;
- (c) weier of versuim om 'n wettige opdrag van 'n aangewese drankbeampte, vredesbeampte of inspekteur te gehoorsaam;
- (d) wanneer hy of sy deur 'n aangewese **[beampte]** drankbeampte, vredesbeampte of inspekteur ondervra word, wetend 'n vals of misleidende antwoord gee; of
- (e) versuim om te voldoen aan 'n redelike versoek deur 'n aangewese drankbeampte, vredesbeampte of **[’n]** inspekteur ingevolge artikel 74, is skuldig aan 'n misdryf.”.

Herroeping van artikel 81 van Wet 4 van 2008

27. Artikel 81 van die Hoofwet word herroep.

Wysiging van artikel 84 van Wet 4 van 2008, soos vervang by artikel 57 van Wet 10 van 2010

28. Artikel 84 van die Hoofwet word gewysig—

- (a) deur in subartikel (1) die volgende paragraaf na paragraaf (k) in te voeg:

“(kA) 'n afslaer wat geregistreer is by 'n erkende professionele liggaam en namens 'n munisipaliteit of die Suid-Afrikaanse Polisiediens optree, in die verrigting van sy of haar funksies as sodanig;”;
- (b) deur paragraaf (d) van subartikel (2) deur die volgende paragraaf te vervang:

“(d) namens die hoof van 'n opvoedkundige instelling, uitsluitend 'n skool soos omskryf in die Suid-Afrikaanse Skolewet, 1996 (Wet 84 van 1996), in 'n restaurant gebruik vir die opleiding van personeel in spyseniersdienste op persele beset, beheer of onderhou deur die betrokke instelling, vir gebruik in daardie restaurant;”;
- (c) deur paragraaf (e) van subartikel (2) deur die volgende paragraaf te vervang:

“(e) as daardie persoon 'n **[versamelaar]** bona fide-versamelaar is van wyn en daardie drank bestaan uit sy of haar versameling of enige deel daarvan; of”; en
- (d) deur paragraaf (f) van subartikel (2) deur die volgende paragraaf te vervang:

“(f) as daardie persoon 'n **[gelisensieerde]** afslaer is wat geregistreer is by 'n erkende professionele liggaam en optree namens 'n bona fide- kulturele of liefdadigheidsorganisasie, 'n opvoedkundige instelling, uitsluitend 'n skool soos omskryf in die Suid-Afrikaanse Skolewet, 1996, of 'n versekeraar.”.

Wysiging van artikel 85 van Wet 4 van 2008

29. Artikel 85 van die Hoofwet word gewysig deur subartikel (1) deur die volgende subartikel te vervang:

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

- (a) op of naby sy of haar perseel 'n teken of kennisgewing gehad het wat te kenne gee dat drank daar te koop is of dat hy of sy 'n geldige lisensie hou om drank te verkoop;
- (b) 'n perseel beset of onder sy of haar beheer gehad het wat toegerus was op 'n wyse wat tot die redelike afleiding lei dat drank daar te koop was;
- (c) meer drank **[as die maksimum volume in artikel 60 bedoel,]** op sy of haar perseel of onder sy of haar beheer gehad het **[sonder die voorafverkreë toestemming wat by daardie artikel vereis word]** as wat redelik nodig was vir hom- of haarself, sy of haar gesin of sy of haar gaste, tensy daardie persoon 'n bona fide-versamelaar van wyn is en daardie drank bestaan uit sy of haar versameling wyn of 'n deel daarvan; of
- (d) meer drank **[as die maksimum volume in artikel 60 bedoel,]** gekoop of verkry het **[sonder die voorafverkreë toestemming wat by daardie artikel vereis word]** as wat redelik nodig was vir hom- of haarself, sy of haar gesin of sy of haar gaste, tensy daardie persoon 'n bona fide-versamelaar van wyn is en daardie drank bestaan uit sy of haar versameling wyn of 'n deel daarvan, is dit *prima facie*-bewys van die verkoop van drank.”.

Wysiging van artikel 87 van Wet 4 van 2008, soos gewysig by artikel 58 van Wet 10 van 2010

30. Artikel 87 van die Hoofwet word gewysig—

- (a) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
 - “(b) artikels 49(7), 50(2), 51(9), 53(4), 58(3), 59(8), 76(e), 76(f)[,] of 76(i) [of 81(4)] is by skuldigbevinding strafbaar met 'n boete van hoogstens R500 000,00 of met gevangenisstraf vir 'n tydperk van hoogstens twee en 'n half jaar, of met sowel sodanige boete en sodanige gevangenisstraf;”;
- (b) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:
 - “(d) artikels 23(13), 48(13), 56(5), 70(5), 76(a), 76(d), 77, 78(1), 78(3), 79, 80(1) of 86(2) is met skuldigbevinding strafbaar met 'n boete van hoogstens R50 000,00 of met gevangenisstraf vir 'n tydperk van hoogstens drie maande, of met sowel sodanige boete en sodanige gevangenisstraf;”;
- (c) deur die volgende subartikel na subartikel (1) in te voeg:
 - “(2) 'n Persoon wat skuldig bevind word aan 'n misdryf ingevolge hierdie Wet en wat, nadat hy of sy van daardie misdryf aangekla is of nadat hy of sy aldus skuldig bevind is, na gelang van die geval, volgehou het of volhou met die handeling of versuim wat die misdryf uitgemaak het, pleeg 'n voortgesette misdryf en is by skuldigbevinding strafbaar met 'n boete van hoogstens R2000,00 of met gevangenisstraf vir 'n tydperk van hoogstens 30 dae, of met sowel sodanige boete en sodanige gevangenisstraf, ten opsigte van elke dag wat daardie persoon volhou met daardie handeling of versuim.”;
- (d) deur subartikel (3) te skrap; en
- (e) deur subartikel (4) deur die volgende subartikel te vervang:
 - “(4) (a) Enige drank wat ingevolge die Strafproseswet aan die Staat verbeur word ten opsigte van 'n misdryf ingevolge hierdie Wet mag, behoudens die bepalinge van daardie Wet, oor beskik word deur die verkoop daarvan by 'n openbare veiling deur—
 - (i) die Suid-Afrikaanse Polisie, indien die vervolging van die misdryf deur daardie Diens aan die gang gesit is; of

(ii) die tersaaklike munisipaliteit, indien die vervolging van die misdryf deur die munisipale polisdienste van daardie munisipaliteit aan die gang gesit is.

(b) Die netto opbrengs van enige verkoop beoog in paragraaf (a) moet in die Nasionale Inkomstefonds of die tersaaklike bankrekening van die munisipaliteit gestort word, na gelang van die geval.”.

Wysiging van artikel 88 van Wet 4 van 2008

31. Artikel 88 van die Hoofwet word gewysig deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:

“(d) die verkoop van drank per openbare veiling soos beoog in artikel 87(4); of”.

Wysiging van inhoudsopgawe van Wet 4 van 2008, soos gewysig by artikel 1 van Wet 10 van 2010

32. Die inhoudsopgawe voor artikel 1 van die Hoofwet word gewysig—

(a) deur die verwysing na die opskrif van artikel 17 deur die volgende item te vervang:

“17. Diskwalifisering vir aanstelling as lid of vervangende lid van Dranklisensiëringstribunaal”;

(b) deur die verwysing na die opskrif van artikel 48 deur die volgende item te vervang:

“48. Tydelike dranklisensies en dranklisensies vir [**spesiale**] geleentheid”;

(c) deur die verwysing na die opskrif van artikel 74 deur die volgende item te vervang:

“74. Bevoegdhede van aangewese drankbeamptes, vredesbeamptes en inspekteurs”;

(d) deur die verwysing na die opskrif van artikel 79 deur die volgende item te vervang:

“79. Misdrywe betreffende aangewese drankbeamptes, vredesbeamptes en inspekteurs”; en

(e) deur die verwysing na artikel 81 te skrap.

Kort titel en inwerkingtreding

33. Hierdie Wet heet die Wes-Kaapse Drankwysigingswet, 2014, en tree in werking op ’n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

MEMORANDUM OOR DIE OOGMERKE VAN DIE KONSEPWYSIGINGSWETSONTWERP OP DIE WES-KAAPSE DRANKWET, 2014

1. AGTERGROND

- 1.1 Sedert die inwerkingtreeding van die Wes-Kaapse Drankwet, 2008 (Wet 4 van 2008), en die Wes-Kaapse Wysigingsdrankwet, 2010 (Wet 10 van 2010), is talle praktiese uitdagings met die implementering van die wetgewing ondervind.
- 1.2 Hierdie uitdagings sluit die volgende in:
- (a) kwessies van interpretasie ten opsigte van artikels 59, 81 en 89;
 - (b) die praktiese uitdagings van lede van die Dranklisensiëringstribunaal wat onbeskikbaar is om vergaderings by te woon en 'n kworum te vorm;
 - (c) die beperkings op die Voorsittende Beampte en die Dranklisensiëringstribunaal om meer van hul magte aan ander amptenare te delegeer; en
 - (d) die beperking dat wetstoepassingsbeamptes nie toegelaat word om sonder 'n lasbrief roetine-inspeksies van gelisensieerde eiendomme uit te voer nie.
- 1.3 Met die aanbring van die wysigings tot die Hoofwet om die bovermelde probleme aan te spreek, is voorstelle van ander insethouers in drankregulering in die Provinsie ontvang, in die besonder van die Suid-Afrikaanse Polisie diens en die Stad Kaapstad.
- 1.4 Na aanleiding van die ontvangs van hierdie voorstelle is bepalings wat vredesbeamptes die bevoegdheid verleen om die Hoofwet af te dwing by die Konsepwetsontwerp ingesluit. Hierbenewens sluit die Konsepwetsontwerp 'n bepaling in wat 'n munisipaliteit en die Suid-Afrikaanse Polisie diens in staat stel om drank waarop beslag gelê is per openbare veiling te verkoop, sou hulle kies om dit te doen.

2. DOEL VAN WETSONTWERP

- 2.1 Die Konsepwetsontwerp het ten doel om talle praktiese uitdagings wat die rolspelers by die implementering van die Hoofwet ondervind, die hoof te bied.
- 2.2 Die wysigings is hoofsaaklik daarop gemik om die Wes-Kaapse Dranklisensiëringstribunaal in staat te stel om sy kernfunksies te verrig sonder om tydrowende praktiese probleme teë te kom. Dit sal die dranklisensiëringproses in die Provinsie meer vaartbelyn maak.

3. INHOUD VAN WETSONTWERP

Die doele en oogmerke van die verskeie klousules word vervolgens uiteengesit.

- 3.1 **Klousule 1** bepaal nuwe omskrywings vir “Kommissaris”, “munisipale polisie diens” en “vervangende lid”. Dit wysig ook die omskrywing van “geleentheid” en voeg 'n nuwe omskrywing van “dranklisensie vir 'n geleentheid” in, in ooreenstemming met die wysigings aan bepalings in die Hoofwet rakende “lisensies vir 'n spesiale geleentheid”. Die klousule wysig voorts die verwysing in die omskrywing van “bestuurder”, wysig die omskrywing van

“Voorsittende Beampte” en brei die omskrywing van “vredesbeampte” uit om ’n lid van die Suid-Afrikaanse Polisie diens of ’n lid van ’n munisipale polisie diens in te sluit.

- 3.2 **Klousule 2** wysig artikel 16 van die Hoofwet deur voorsiening te maak vir die *ad hoc*-aanstelling van vervangende lede. Dit brei ook die vermoë van die Voorsittende Beampte uit om enige van sy of haar bevoegdhede of funksies te delegeer. Dit maak ook die aanstelling van tot drie Adjunk-Voorsittende Beamptes moontlik.
- 3.4 **Klousule 3** vervang artikel 17 van die Hoofwet en is ’n gevolglike wysiging van die wysigings rakende die aanstelling van vervangende lede.
- 3.4 **Klousule 4** wysig artikel 18 van die Hoofwet en bring die Wet in ooreenstemming met die veranderinge in die rangbenamings wat tans in die Suid-Afrikaanse Polisie diens gebruik word.
- 3.5 **Klousule 5** wysig artikel 19 van die Hoofwet as ’n gevolglike wysiging van die wysigings rakende die toename in die getal Adjunk-Voorsittende Beamptes.
- 3.6 **Klousule 6** wysig artikel 20 van die Hoofwet deur die uitgediende verwysing na artikel 65(9) te skrap.
- 3.7 **Klousule 7** wysig artikel 21 van die Hoofwet deur te bepaal dat die Voorsittende Beampte ’n vervangende lid mag versoek om enige van die vergaderings van die Dranklisensieringstribunaal by te woon waar enige lid onbeskikbaar is om dit by te woon. Die doel van hierdie wysiging is om die gebrek aan ’n kworum weens die onbeskikbaarheid van lede by vergaderings van die Dranklisensieringstribunaal te voorkom.
- 3.8 **Klousule 8** wysig artikel 22 van die Hoofwet as ’n gevolglike wysiging van die wysigings rakende die aanstelling van vervangende lede.
- 3.9 **Klousule 9** wysig artikel 24 van die Hoofwet deur te bepaal dat die Voorsittende Beampte ’n vervangende lid kan versoek om enige van die vergaderings van ’n komitee van die Dranklisensieringstribunaal by te woon indien enige ander lid van daardie komitee onbeskikbaar is om dit by te woon. Die doel van hierdie wysiging is om die gebrek aan ’n kworum weens die onbeskikbaarheid van lede by vergaderings van die Dranklisensieringstribunaal te voorkom. Voorts stel die klousule die Dranklisensieringstribunaal in staat om meer van sy funksies aan ’n komitee te delegeer.
- 3.10 **Klousule 10** wysig artikel 27 van die Hoofwet en is ’n gevolglike wysiging van die aanstelling van vervangende lede.
- 3.11 **Klousule 11** wysig artikel 30 van die Hoofwet. Terwyl dit ’n gevolglike wysiging tot die uitbreiding van die verskeie oortredings ingevolge die Wet is, ken dit ook fondse toe wat deur die werking van die Wet gegenereer word.
- 3.12 **Klousule 12** wysig artikel 33 van die Hoofwet as ’n gevolglike wysiging van die wysigings ten opsigte van dranklisensies vir spesiale geleenthede in klousule 15 van die Konsepwetsontwerp.

- 3.13 **Klousule 13** wysig artikel 41 van die Hoofwet. Hierdie wysiging brei die faktore uit waarvan die Dranklisensiëringstribunaal kennis kan neem by die oorweging van 'n aansoek om 'n dranklisensie.
- 3.14 **Klousule 14** wysig artikel 42 van die Hoofwet ten einde die Dranklisensiëringstribunaal in staat te stel om die voorwaardelike toestaan van 'n lisensie in te trek. Dit verleen aan die Voorsittende Beampte die bevoegdheid om te bepaal of die aansoeker aan die voorwaardes voldoen wat in die voorwaardelike lisensie gestel is.
- 3.15 **Klousule 15** wysig artikel 48 van die Hoofwet om weg te doen met lisensies vir spesiale geleenthede en dit met lisensies vir 'n geleentheid te vervang. Voorts reguleer dit die toestaan van tydelike lisensies.
- 3.16 **Klousule 16** wysig artikel 52 van die Hoofwet. Dit wysig die proses vir die aanstelling van 'n bestuurder en stel die Voorsittende Beampte en die komitees wat ingevolge artikel 24 ingestel word in staat om in spesifieke omstandighede aanstellings te maak.
- 3.17 **Klousule 17** wysig artikel 56 van die Hoofwet sodat persone onder die ouderdom van 18 jaar nie toegelaat word in beperkte gebiede van 'n perseel wat gelisensieer is vir die verbruik van alkohol op die perseel nie.
- 3.18 **Klousule 18** wysig artikel 59 van die Hoofwet. Dit vereenvoudig en klaar die bepalings rakende handelsdae en -ure op in gevalle waar 'n munisipaliteit nie die handelsdae en -ure vir gelisensieerde persele vir die verkoop van drank vir verbruik op en buite die perseel bepaal het nie.
- 3.19 **Klousule 19** wysig artikel 60 deur die bepaling te herroep wat ongelisensieerde persone verbied om meer as die voorgeskrewe hoeveelheid drank in hul besit te hê.
- 3.20 **Klousule 20** wysig artikel 63 om daarvoor voorsiening te maak dat die handelsdae en -ure vir alle lisensies wat bestaan voor die inwerkingtreding van die Hoofwet ooreenstem met die handelsdae en -ure in die Hoofwet, ondanks 'n outomatiese hernuwing van lisensievoorwaardes.
- 3.21 **Klousule 21** wysig artikel 66 van die Hoofwet en is 'n gevolglike wysiging tot die wysigings rakende dranklisensies vir 'n spesiale geleentheid.
- 3.22 **Klousule 22** wysig artikel 70 van die Hoofwet om toe te laat dat 'n sluitingsbevel van krag bly totdat dit ingetrek word, en skep 'n nuwe grond vir die sluiting van 'n perseel.
- 3.23 **Klousule 23** wysig artikel 73 van die Hoofwet en is 'n gevolglike wysiging van die ooreenstemming van die Wet tot die rangbenamings van die Suid-Afrikaanse Polisieagents.
- 3.24 **Klousule 24** vervang artikel 74 van die Hoofwet. Dit maak voorsiening vir die afdwinging van die Wet deur vredesbeamptes.
- 3.25 **Klousule 25** wysig artikel 75 van die Hoofwet as 'n gevolglike wysiging van die wysigings rakende die insluiting van vredesbeamptes by die afdwinging van die Wet. Dit maak voorts

verdere voorsiening vir die deursoeking, betreding en inspeksie van 'n gelisensieerde perseel sonder die vereiste van 'n lasbrief.

- 3.26 **Klousule 26** vervang artikel 79 van die Hoofwet en is 'n gevolglike wysiging van die wysigings rakende die insluiting van vredesbeamptes by die afdwinging van die Wet.
- 3.27 **Klousule 27** herroep artikel 81 van die Hoofwet.
- 3.28 **Klousule 28** wysig artikel 84 van die Hoofwet deur die vrystellings waarvoor daar in hierdie artikel voorsiening gemaak word, uit te brei ter insluiting van afslaaers wat namens die Suid-Afrikaanse Polisie diens of 'n munisipaliteit optree.
- 3.29 **Klousule 29** wysig artikel 85 van die Hoofwet as 'n gevolglike wysiging van die herroeping van die verbod teen die besit van meer as 'n sekere hoeveelheid drank deur ongelisensieerde persone.
- 3.30 **Klousule 30** Hierdie klousule wysig artikel 87 van die Hoofwet deur die misdrywe ingevolge die Hoofwet uit te brei, en deur voorsiening te maak vir voortgesette misdrywe en vir die verkoop per openbare veiling van drank waarop beslag gelê is.
- 3.31 **Klousule 31** wysig artikel 88 van die Hoofwet as 'n gevolglike wysiging van die nuwe bepalings rakende die verkoop per openbare veiling van drank waarop beslag gelê is.
- 3.32 **Klousule 32** wysig die inhoudsopgawe tot die Hoofwet ten einde dit in ooreenstemming te bring met die wysigings wat in die Konsepwetsontwerp vervat word.
- 3.33 **Klousule 33** bepaal die kort titel van die Wet en die inwerkingtreding daarvan.

4. WETGEWENDE BEVOEGDHEID

Die Provinsiale Minister verantwoordelik vir ekonomiese ontwikkeling en toerisme is oortuig dat die bepalings van die Wetsontwerp binne die wetgewende bevoegdheid van die Provinsie ressorteer.

5. OORLEGPLEGING

Departement van die Premier: Regsdienste
Stad Kaapstad
Wes-Kaapse Drankowerheid
Suid-Afrikaanse Polisie diens
Provinsiale Tesourie

6. FINANSIËLE IMPLIKASIES

Die Drankowerheid kan vervangende lede aanstel en daar sal vir die koste van hul vergoeding begroot moet word.

7. **PERSONEELIMPLIKASIES**

Dit word beoog dat daar bykomende administrasie ten opsigte van die vervangende lede sal wees. Bykomende personeel sal moontlik aangestel en voor begroot moet word.

I.S. 112/2014

17 kwekaTshazimpuzi 2014

ISAZISO SEPHONDO

Olu Qulunqo loMthetho weziLungiso oSayilwayo woTywala weNtshona Koloni, 2014 upapashelwa ukufumana izimvo. Nawuphi na umntu okanye umbutho onqwenela ukunika izimvo kolu qulunqo loMthetho weziLungiso oSayilwayo uyacela ukuba afake izimvo zakhe ngembalelwano phambi okanye ngomhla wama-23 kwekaCanzibe 2014—

- (a) Ngokuziposela:
kuMlawuli oYintloko: UKhenketho, ubuGcisa noLonwabo
Zinikwe: uMadeleine Mitchell.
ISEbe loPhuhliso lwezoQoqosho noKhenketho
PO Box 979, Cape Town 8000;
- (b) Ngokuzizisa ngokwakho:
kuMlawuli oYintloko: UKhenketho, ubuGcisa noLonwabo
Zinikwe: uMadeleine Mitchell.
ISEbe loPhuhliso lwezoQoqosho noKhenketho
10th floor, 80 St George's Mall
NBS Waldorf Building, c/o Castle and Burg Street
Cape Town 8001;
- (c) Ngokuzi imeyilela ku-:
Madeleine.Mitchell@westerncape.gov.za; okanye
- (d) Ngokuzifeksela ku-:
021 483 8776
Zinikwe: uMadeleine Mitchell.

Malunga nemibuzo, qhagamshelana noAdv. Sanet Botha ku-084 620 0088.

INGCACISWANA NGOKUBANZI:

[] Amagama abhalwe ngqindilili kwizibiyeli ezisikwere abonakalisa oko kuye kwasuswa kwimithetho esele iphunyeziwe.

_____ Amagama akrwelelwe umgca ongqindilili ngaphantsi abonakalisa oko kufakelweyo kuMthetho osele uphunyeziwe.

UMTHETHO OSAYILWAYO

Owenza izilungiso kuMthetho woTywala weNtshona Koloni,ka-2008, ngokubhekiselele kwiingcaciso ezithile; olungiselela ukonyulwa kwamaSekela-gosa eLongameyo angekho ngaphezu kwesithathu eSiGqeba seLayisenisi yezoTywala; ovumela iGosa eLongameleyo leSiGqeba seLayisenisi yezoTywala ukuba linikezele amagunya nomsebenzi walo; olungiselela ukonyulwa kwamalungu angena endaweni yamalungu angekhoyo kwiSiGqeba seLayisenisi yezoTywala; owandisa imisebenzi yeSiGqeba seLayisenisi yezoTywala engagunyaziselwa ukuba yenziwe yikomiti; oxela esinye isizathu sokuba iSiGqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo lithathele ingqalelo xa siqwalasela isicelo sephepha-mvume; olawula ukunikezelwa kwamaphepha-mvume ngokwemibandela; otshitshisa amaphepha-mvume otywala esiganeko esisodwa afake endaweni yawo amaphepha-mvume otywala esiganeko; owenza eminye imigaqo ngokuphathelele namaphepha-mvume otywala ethutyana nawesiganeko; olawula ukonyulwa kwabaphathi bamashishini anelayisenisi; owenza imigaqo eyahlukileyo ngokuphathelele kwimvume yokungena kwabantu abangaphantsi kweminyaka eli-18 kwiindawo ezithintelweyo kwizakhiwo ezinelayisenisi; owenza imigaqo eyahlukileyo ngokuphathelele kwiintsuku neeyure zokurhweba zamashishini anelayisenisi; otshitshisa umgaqo ongavumeli abantu abangenalayisenisi ukuba babenotywala obungaphaya komlinganiselo oxeliweyo kubunini babo; owenza eminye imigaqo ngokuphathelele nokuvalwa kwezakhiwo ezinelayisenisi; olungisa imigaqo ngokuphathelele nemisebenzi yamalungu athile eNkonzo zaMapolisa aseMzantsi Afrika ngokwemiqathango yoMthetho oxeliweyo; olungiselela ukuba amalungu eenkonzo zamapolisa kamasipala abengamagosa oxolo ngokwenjongo zoMthetho; kanaanjala owandisa amagunya amagosa oxolo ngokwemiqathango yoMthetho; owenza eminye imigaqo yokungena, yokuhlola nokuphanda kwizakhiwo ezithile; otshitshisa umgaqo ongavumeli ukuthengiswa; ukukhutshwa nokuselwa kotywala kwisiza apho kuqhutywa ishishini leenkonzo ezithengisela abantu ipetroli, idizili nezinye iimveliso zamafutha; oxela obunye ubungqina obocacileyo bokuba uyabuthengisa utywala; owenza eminye imigaqo ngokuphathelele nokuthengiswa efandesini kwezinto ezithile ezithathwe nguRhulumente; nolungiselela eminye imiba ehamba noko.

NNGOKO KE iPalamente yePhondo leNtshona Koloni IPHUMEZA UMTHETHO ngolu hlobo lulandelayo:—

Ukwenziwa kwezilungiso kwicandelo 1 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 2 loMthetho 10 ka-2010

1. Icandelo 1 loMthetho woTywala weNtshona Koloni, ka-2008 (uMthetho), uyalungiswa—

- (a) ngokufakela le nkcazo ilandelayo emva kwenkcazo “yeGosa eliLawulayo eliyiNtloko”:
 “‘Umkomishinala’, ngaphandle kwakwicandelo 12, uthetha uMkomishina weSizwe kwiNkonzo yaMapolisa aseMzantsi Afrika njengoko kuxeliwe kuMthetho weNkonzo zaMapolisa aseMzantsi Afrika, 1995 (uMthetho 68 ka-1995);”;
- (b) ngokufakela le nkcazo ilandelayo endaweni yenkcazo “yeSekela-gosa eLongameleyo”:
 “‘ISekela-gosa eLongameleyo’ lithetha umntu onyulwe njengeSekela-gosa eLongameleyo leSiGqeba seLayisenisi yezoTywala ngokwecandelo 16(1)(b);”;
- (c) ngokufakela ezi nkcazo zilandelayo emva kwenkcazo “yeziyobisi”:
 “‘isiganeko’ siquka umboniso, intlanganiso yezemidlalo, indibano, imidlalo okanye itheko;
‘iphepha-mvume lotywala lesiganeko’ lithetha ngephepha-mvume ekubhekiselelwe kulo kwicandelo 33(2)(a);”;
- (d) ngokufakela le nkcazo ilandelayo endaweni yenkcazo “yomphathi”:
 “‘umphathi’ uthetha umntu okunyulwa kwakhe njengomphathi kuvunywe ngokwemigaqo yecandelo [52(1)] 52;”;
- (e) ngokufakela le nkcazo ilandelayo emva kwenkcazo “kamasipala”:
 “‘inkonzo yamapolisa kamasipala’ ithetha inkonzo yamapolisa kamasipala emiselwe phantsi kwecandelo 64A loMthetho weNkonzo yaMapolisa yaseMzantsi Afrika, ka-1995;”;
- (f) ngokufakela le nkcazo ilandelayo endaweni yenkcazo “yegosa loxolo”:
 “‘igosa loxolo’ lithetha naliphi na [igosa lasebupoliseni] ilungu leeNkonzo zaMapolisa aseMzantsi Afrika okanye lenkonzo yamapolisa kamasipala kunye, nasekujongeni nayiphi na indawo, ulwaphulo-mthetho, uhlobo lolwaphulo mthetho okanye igunya ekuthethwe ngalo kwisaziso esikhutshwe phantsi kwecandelo 334(1) loMthetho weNkqubo yolwaphulo-mthetho, nawuphi na umntu oligosa loxolo ngaphantsi kwelo candelo;”;
- (g) ngokususa inkcazo “yesiganeko esisodwa”; kananjalo
- (h) ngokufakela le nkcazo ilandelayo emva kwenkcazo “yekomiti esisigxina”:
 “‘ilungu elingena endaweni yelungu elingekhoyo’ lithetha umntu onyulwe njengelungu elingena endaweni yelungu ongekho ngokwecandelo 16(3A);”.

Ukwenziwa kwezilungiso kwicandelo 16 loMthetho 4 ka-2008

2. Icandelo 16 loMthetho lenziwa izilungiso—

- (a) ngokufakela lo mhlathi ulandelayo endaweni yomhlathi (b) wecandelwana (1):
 “(b) [nelungu elinye] namalungu angekho ngaphezulu kwesithathu aneziqisekiso ezixelwe kumhlathi (a) linyulwa yiBhodi njengamaSekela [Sekela] eGosa eLongameleyo;”;
- (b) ngokufakela lo mhlathi ulandelayo endaweni yomhlathi (d) wecandelwana (1):

- “(d) nelungu elinye elilipolisa elikwisikhundla [**sobuPhathi**] sobuLeftenent Kolonel nangaphezulu, linyulwa yiBhodi yokubonisana nomKomishinala [**weeNkonzo zaMapolisa aseMzantsi Afrika kwiPhondo**] kwakunye noMphathiswa ojongene nokhuseleko loluntu kwiPhondo; kunye”;
- (c) ngokufakela eli candelwana lilandelayo emva kwecandelwana (2):
- “(2A) (a) IGosa eLongameleyo linganikeza likwenza oko ngokubhala phantsi ngamagunya okanye umsebenzi weGosa eLongameleyo kuSekela-gosa eLongameleyo ukuba liwenze endaweni yakhe.
- (b) Amagatya akwicandelo 10(2), (3) and (6) ayasebenza , ngotshintsho olufanelekileyo, kugunyaziso ngokomhlathi (a).”;
- (d) ngokufakela eli candelwana lilandelayo endaweni yecandelo (3):
- “(3) Ukuba ngaba iGosa eLongameleyo alikwazi ukwenza imisebenzi yalo okanye ukuba ngaba isikhundla seGosa eLongameleyo asinamntu, kufuneka iSekela leGosa eLongameleyo elonyulwe liGosa eliLawulayo eliyiNtloko ngethuba lingekho iGosa eLongameleyo okanye de kufikelele kwixesha apho iGosa eLongameleyo linyulwa khona, lenze umsebenzi weGosa eLongameleyo kwaye liwenze njengoko usitsho lo Mthetho.”; kanaanjalo
- (e) ngokufakela eli candelwana lilandelayo emva kwecandelwana (3):
- “(3A) (a) Nangona kuxeliwe kumacandelwana (1) no (2), iBhodi ithethene noMphathiswa, ingonyula nangaliphi na ixesha abantu abafanelekileyo abangekho ngaphezu kwesine njengamalungu angena endaweni yamalungu angekhoyo asebenza njengamalungu eSiGqeba seLayisenisi yezoTywala okanye ikomiti efunwe liGosa eLongameleyo, kwimeko ezikhankanywa kwicandelo 21(4) okanye 24(2A).
- (b) Ilungu elingene endaweni yelungu elingekhoyo libamba isikhundla isithuba esingadlulanga kwiminyaka emibini, njengoko iBhodi ibilimisele ngexesha lokonyulwa kwalo.”.

Ukwenziwa kwezilungiso kwicandelo 17 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 17 loMthetho 10 ka-2010

3. Eli candelo lilandelayo lifakwe endaweni yecandelo 17:

“Ukuthintelwa ukunyulwa njengelungu okanye ilungu elingene endaweni yelungu elingekhoyo leSiGqeba seLayisenisi yezoTywala

17. Aba bantu balandelayo bayathintelwa ukuba banganyulwa, bangaqhubeka okanye bangasebenza njengamalungu okanye amalungu angene endaweni yamalungu angekhoyo eSiGqeba seLayisenisi yezoTywala—

- (a) nabani na kule minyaka ilishumi (10) ingaphambili othe wagwetyelwa ulwaphulo-mthetho kunye nokugwetyelwa entolongweni ngaphandle kwentlawulo, ngaphandle kokuba iBhodi ibona ukuba olo lwaphulo-mthetho alumenzi loo mntu abe ngumntu ongafanelekanga ukubamba isikhundla eso;
- (b) nabani na kule minyaka ilishumi (10) ingaphambili othe wagwetyelwa ulwaphulo-mthetho ngokwalo Mthetho, uMthetho woTywala okanye uMthetho woTywala, 1989 (uMthetho wa-27 ka-1989), ngaphandle kokuba iBhodi ibona ukuba olo lwaphulo-mthetho alumenzi loo mntu abe ngumntu ongafanelekanga ukubamba isikhundla eso;

- (c) umntu otshonileyo ongenakubuyiselwa kwimeko abe kuyo, okanye nabani ojongene nokungabinako okusemthethweni;
- (d) nabani na ongaphantsi kobudala obuyiminyaka engamashumi amabini anesihlanu (25);
- (e) nabani na onenzuzo ayifumanayo kwishishini lotywala;
- (f) nabani na, olilungu losapho, umlingane okanye iqabane kwezoshishino lomntu onenzuzo ngqo kurhwebo lotywala, ngaphandle kokuba iBhodi ibona ukuba inzuzo yelungu losapho, umlingane okanye iqabane kwezoshishino kurhwebo lotywala ayitsho ukuba akanakulunga ukuba angabamba isikhundla;
- (g) nabani na othinteleka ngokwecandelo 35 ukuba abe nephepha-mvume lotywala; okanye
- (h) nabani na ongengomhlali wePhondo.”.

Ukwenziwa kwezilungiso kwicandelo 18 loMthetho 4 ka-2008 , njengoko ulungisiwe licandelo 18 loMthetho 10 ka-2010

4. Icandelo 18 loMthetho lenziwa izilungiso ngokufakela eli candelwana lilandelayo endaweni yecandelwana (3):

“(3) Ukunyulwa kwakhona kwelungu okuxelwe kwicandelo 16(1)(c) **[no] okanye (d)** kungenziwa emva kokubonisana noMphathiswa ojongene noburhulumente basekhaya kwiPhondo, okanye umKomishinala **[weeNkonzo zamaPolisa aseMzantsi Afrika]** kwakunye noMphathiswa ojongene nokhuseleko loluntu kwiPhondo, ngokulandelelanayo.”.

Ukwenziwa kwezilungiso kwicandelo 19 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 19 loMthetho 10 ka-2010

5. Icandelo 19 loMthetho lenziwa izilungiso ngokufakela lo mhlathi ulandelayo endaweni yomhlathi (c):

“(c) elo lungu liye alabikho kwiintlanganisano zade zantathu zilandelelana zeSiGqeba seLayisenisi yezoTywala ngaphandle kwemvume ebhaliweyo yeGosa eLongameleyo, okanye iSekela leGosa eLongameleyo xa kuyimfuneko;”.

Ukwenziwa kwezilungiso kwicandelo 20 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 20 loMthetho 10 ka-2010

6. Icandelo 20 loMthetho lenziwa izilungiso ngokufakela lo mhlathi ulandelayo endaweni yomhlathi (b) wecandelwana (1):

“(b) nasiphi na isicelo sokudluliselwa kwephepha-mvume ngokwemigaqo yecandelo **[65(9)] 65(1);**”.

Ukwenziwa kwezilungiso kwicandelo 21 loMthetho 4 ka-2008

7. Icandelo 21 loMthetho lenziwa izilungiso—

- (a) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (2):

“(2) Inani elisemthethweni lokubamba intlanganiso yeSiGqeba seLayisenisi yezoTywala sisine samalungu kuquka neGosa eLongameleyo okanye iSekela leGosa eLongameleyo **[okanye bobabini]**.”; kananjalo

(b) ngokongeza elicandelwana lilandelayo:

“(4) (a) Ukuba ilungu leSiGqeba seLayisenisi yezoTywala, ngaphandle kweGosa eLongameleyo, alikho kwiintlanganiso yeSiGqeba seLayisenisi yezoTywala okanye alifumanekanga ukuba lizimase intlangaiso, iGosa eLongameleyo lingacela ilungu elingena endaweni yelungu elingekhoyo ukuba libambe njengelungu endaweni yelungu elingekhoyo.

(b) ilungu elingene endaweni yelungu elingekhoyo linamagunya kwaye lingenza nemisebenzi yelungu.”.

Ukwenziwa kwezilungiso kwicandelo 22 loMthetho 4 ka-2008

8. Eli candelo lilandelayo lifakwe endaweni yecandelo 22:

“Ukuzikhwebula kwelungu elinomdla onembambano

22. (1) Ilungu okanye ilungu elingena endaweni yelungu elingekhoyo leSiGqeba seLayisenisi yezoTywala alinako ukuvota, ukubakho kwintlanganiso okanye nangayiphi na indlela alinako ukuthatha inxaxheba kwinkqubo zazo naziphi na iintlanganiso okanye amatyala kananjalo iGosa eLongameleyo alinako ukuqwalasela nawo nawuphi na umba ukuba, lo mba—

(a) ngowelungu losapho, iqabane okanye umlingane kwezorhwebo womenzi wesicelo-mvume, ukuqinisekiswa, okanye nalo naliphi na ilungelo elinokunikwa siSiGqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo, nanjengoko imeko inokutsho;

(b) ngowelungu okanye ilungu losapho, iqabane okanye umlingane kwezorhwebo ungumlawuli, ilungu okanye iqabane linomdla weziMali okanye ongomnye kwishishini lomenzi wesicelo sephepha-mvume, ukuqinisekiswa, okanye nalo naliphi na ilungelo elinikwe yiSiGqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo, nanjengoko imeko inokutsho, okanye

(c) ilungu linomdla onokuthi ube nomthelela ekwenzeni kwalo imisebenzi njengelungu okanye ilungu elingena endaweni yelungu elingekhoyo leSiGqeba seLayisenisi yezoTywala, kumba ongenzeleliyo nokwathe ngqo.

(2) Ukuba kuthe nangaliphi na ixesha kwafumaniseka ukuba ilungu okanye ilungu elingena endaweni yelungu elingekhoyo okanye iGosa eLongameleyo nanjengoko imeko inokutsho, linawo nawuphi na umdla ekuthethwe ngawo kwicandelwana (1)—

(a) ngokubhekiselele kumba onokuqwalaselwa siSiGqeba seLayisenisi yezoTywala, ukuba ilungu okanye ilungu elingena endaweni yelungu elingekhoyo kufuneka ngaphandle kokulibazisa lichaze ngokuzelelo ubume bomdla walo kwaye liyishiye intlanganiso okanye ityala ukuvumela amalungu okanye amalungu angena endaweni yangekhoyo aseleyo ukuba axoxe ngomba kwaye agqibe ukuba ilungu okanye ilungu elingena endaweni yelungu elingekhoyo liyathintelwa ekuthatheni inxaxheba kwiinkqubo zalo ntlanganiso okanye ityala ngenxa yesizathu sokuba nomdla onembambano; kunye

(b) nokubhekiselele kumba oza kuqwalaselwa liGosa eLongameleyo, kufuneka ilungu ngaphandle kokulibazisa lichaze ngokuzeleyo umdla walo kwiSiGqeba seLayisenisi yezoTywala apho kufuneka siqwalasele umba.

(3) Ukuxela kwanesigqibo esithathwe ngamalungu okanye amalungu angena endaweni yangekhoyo aseleyo eSiGqeba seLayisenisi yezoTywala, okuxelwe kwicandelwana (2)(a) kufuneka kubhalwe kwimizuzu yenkqubo ekuthethwe ngayo.”

Ukwenziwa kwezilungiso kwicandelo 24 loMthetho 4 ka-2008

9. Icandelo 24 loMthetho lenziwa izilungiso—

(a) ngokufakela kwinguqulelo lesiNgesi eli candelwana lilandelayo endaweni yecandelwana (1):

“(1) The Presiding Officer may appoint one or more committees consisting of him or herself or [the] a Deputy Presiding Officer and any member or any person co-opted in terms of section 20(5).”;

(b) ngokufakela eli candelwana lilandelayo emva kwecandelwana (2):

“(2A) (a) Ukuba ilungu lekomiti alikho kwiintlanganiso yekomiti okanye alifumanekanga ukuba lizimase intlanganiso, iGosa eLongameleyo lingacela ilungu elingena endaweni yelungu elingekhoyo ukuba libambe njengelungu endaweni yelungu elingekhoyo.

(b) ilungu elingene endaweni yelungu lekomiti elingekhoyo linamagunya kwaye lingenza nemisebenzi yelungu lekomiti.”; kananjalo

(c) ngokufakela eli candelwana lilandelayo endaweni yecandelo (3):

“(3) ISiGqeba seLayisenisi yezoTywala singanikezela kwikomiti imisebenzi yaso njengoko kutshiwo kumacandelo 52, 64, 65, 66 no 71.”.

Ukwenziwa kwezilungiso kwicandelo 27 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 23 loMthetho 10 ka-2010

10. Icandelo 27 loMthetho lenziwa izilungiso ngokufakela eli candelwana lilandelayo endaweni yecandelwana (1)

“(1) Amalungu eBhodi nesiGqeba seLayisenisi yezoTywala, umntu onyulelwe ukuba kwiNkundla yaMatyala yeZibheni, okanye amalungu angena endaweni yangekhoyo nabantu abathe bafakwa phantsi kwecandelo 11(1) okanye 20(5) baselungelweni lokuhlawula nokunikwa izithabathaba ezibekwe nguMphathiswa ngokudlana iindlebe noMphathiswa owongamele ezemali kwiPhondo eli.”.

Ukwenziwa kwezilungiso kwicandelo 30 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 26 loMthetho 10 ka-2010.

11. Eli candelo lilandelayo lifakelwe endaweni yecandelo 30 loMthetho:

“Ingeniso eyongezelelekileyo kwiNgxowa-mali yeNgeniso kwiPhondo, kwiBhodi okanye koomasipala

30. (1) Iintlawulo ezixelwe [kumacandelo] kwicandelo [46(2), 48(1) kunye (4)], 63(2) [kunye 65(16)] kufuneka zihlawulwe kwiNgxowa-mali yeNgeniso yePhondo.

- (2) Ezi mali zilandelayo zimali ezongezelekileyo kwiBhodi—
- (a) izohlwayo ezixelwe kumacandelo 20(3)(b)(v) kunye 82(2)(b);
 - (b) **[isohlwayo]** izohlwayo ezixelwe kumacandelo 46(6), 48(12), 62(3), 63(4), 64(4), 65(19) and 66(8); **[kunye]**
 - (c) iintlawulo ezixelwe kumacandelo **[26(8),]** 36(1)(e), **[38,]** 46(2), 48(1), 48(4), 53(1), 59(7), 64(1), 65(4), **[no 65(9)]** 65(16), 66(2) no 66(6); kunye
 - (d) Iintlawulo ezixelwe kumacandelo 26(8) no (38).
- (3) Iintlawulo ezixelwe kumacandelo 36(5)(a)(i) no (b)(i) ezongezelekileyo kulo masipala.
- (4) Akukho mali ixeliweyo apha kweli candelo ebuyiselwa emva.”.

Ukwenziwa kwezilungiso kwicandelo 33 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 29 loMthetho 10 ka-2010

12. Icandelo 33 loMthetho lenziwa izilungiso ngokufakela lo mhlathi ulandelayo endaweni yomhlathi (a) wecandelwana (2):

“(a) iphepha-mvume lokuthengiswa kotywala obuya kuselelwa ngaphakathi okanye ngaphandle, okanye zombini ngaphakathi nangaphandle kwendawo obuthengiswa kuyo kwimisitho **[ethile]**; kananjalo”.

Ukwenziwa kwezilungiso kwicandelo 41 loMthetho 4 ka-2008

13. Icandelo 41 loMthetho liyalungiswa—

- (a) ngokufakela lamagama alandelayo endaweni yamagama alandela umhlathi (a) kwicandelo (1):

“ISiGqeba seLayisenisi yezoTywala singathi xa siqwalasela isicelo sithathele oku kulandelayo ingqalelo—”; kananjalo

- (b) ngokufakela lo mhlathi ulandelayo endaweni yomhlathi (c) wecandelo (1):

“(c) ngokwecandelo 23(9),]—

(i) ukuba kufutshane kwezakhiwo ezinelayisenisi ezicwangcisiweyo kwindawo ekuqhutywa ishishini leenkonziso ezithengisela abantu ipetroli, idizili nezinye iimveliso zamafutha; kunye

(ii) nawo nawuphina na omnye umba ekuboneni kwesiGqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo kufuneka uqwalaselwe.”.

Ukwenziwa kwezilungiso kwicandelo 42 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 36 loMthetho 10 ka-2010

14. Icandelo 42 loMthetho liyalungiswa—

- (a) ngokufakela eli candelwana lilandelayo emva kwecandelwana (4):

“(4A) IsiGqeba seLayisenisi yezoTywala singathi nangaliphi na ixesha xa kufanelekile sikurhoxise ukunikeza iphepha-mvume ngokwemiqathango.”; kananjalo

- (b) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (7):

“(7) Xa iGosa eLongameleyo lisoneliseka kukuba umfaki-sicelo eyithobebe imiqathango ebekwa siSigqeba seLayisenisi yezoTywala, iSigqeba esiGunyazisiweyo kufuneka silikhuphe iphepha-mvume njengoko kumiselwe, ngokwecandelo 46.”.

Ukwenziwa kwezilungiso kwicandelo 48 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 38 loMthetho 10 ka-2010

15. Eli candelo lilandeyo lifakwa endaweni yecandelo 48 loMthetho:

“Amaphepha-mvume otywala ethutyana kunye namaphepha-mvume otywala [amatheko] awodwa

48. (1) IGosa eLongameleyo lingathi kwakuba kwenziwe isicelo ngumnini wephepha-mvume esixelwe kwicandelo [33(1)(b) okanye (d),] 33(1) naxa kuhlawulwe intlawulo emiselweyo, linike iphepha-mvume lotywala lethutyana ukuba lisetyenziswe ngumnini wephepha-mvume kuphela.

(1A) Isicelo semvume otywala yethutyana kufuneka senziwe ubuncinane phambi kweentsuku [ezilishumi elinesine (14)] ezingamashumi amabini ananye (21) phambi kosuku lokuqala lesithuba ekubhekiswe kuso kwicandelwana (2).

(2) IGosa eLongameleyo alinako ukunika [umntu] umnini-mvume iphepha-mvume lotywala lethutyana ngaphantsi kwecandelwana (1) ixesha elibude bungaphezulu kweentsuku ezilishumi elinesine (14) ezilandelelanayo kunye ngaphezulu kweentsuku ezingamashumi amathathu (30) ngonyaka ukuqala ngomhla woku-1 ngeyoMqungu.

(3) Iphepha-mvume lotywala lethutyana kufuneka lenziwe ngokwemimiselo emiselweyo kunye neminye imimiselo nezithintelo ezinokubekwa liGosa eLongameleyo.

(4) IGosa eLongameleyo lingathi kwakwenziwa isicelo—

(a) **liziko lemfundo; ngaphandle kwesikolo njengoko sichaziwe kwicandelo 1 lomthetho weZikolo zoMzantsi Afrika, 1996 (uMthetho 84 ka-1996)**

(b) **liziko lezentlalontle okanye lezenkcubeko;**

(c) **ngumququzeleli womboniso;**

(d) **ngunobhala,umphathi okanye umququzeleli oyintloko wogqatso olusemthethweni okanye intlanganiso yezemidlalo okanye isiganeko esifanayo; kunye**

(e) **nomququzeleli womdlalo wobugcisa** [umntu ngendlela emiselweyo nasemva kokuhlawulwa kwentlawulo emiselweyo, linike iphepha-mvume [elilodwa] lotywala lesiganeko eso ukuba buthengiselwe utywala ukuselwa ngaphakathi okanye ngaphandle, okanye zombini ngaphakathi nangaphandle kwezakhiwo apho buthengiswa khona kwisiganeko [esisodwa].

(5) Isicelo sephepha-mvume lotywala lesiganeko [esisodwa] kufuneka lenziwe ubuncinane iintsuku [ezilishumi elinesine (14)] ezingamashumi amabini ananye (21) phambi [komhla] komhla wokuqala wesiganeko [esisodwa].

(6) Iphepha-mvume lotywala lesiganeko [esisodwa] alinako ukunikwa ixesha eledlula elo lesiganeko [esisodwa].

(7) Iphepha-mvume lotywala lesiganeko [esisodwa] malenziwe [lingaphantsi] ngokwemiqathango emiselweyo [exelwe kwicandelo 49, xa kunokwenzeka,] neminye imiqathango kunye nezithintelo ezinokubekwa [siSiGqeba seLayisenisi yezoTywala] liGosa eLongameleyo.

(8) Utywala bungathengiswa phantsi kwephepha-mvume lokuthengisa utywala kwisiganeko kuphela kwisiganeko apho iphepha-mvume linikeziweyo nakwizakhiwo ezinemvume yothengisa.

(9) IGosa eLongameyo lingafuna naziphina iinkcukacha ezongezelelweyo kumfakisicelo ukuze enzelwe iphepha-mvume lethutyana okanye iphepha-mvume lokuthengisa utywala kwisiganeko ngeenjongo zokuthathela ingqalelo isicelo sakhe.

(10) IGosa eLongameleyo linganganikezeli ngephepha-mvume lethutyana okanye iphepha-mvume lokuthengisa utywala kwisiganeko ngaphandle kokuba konyulwe umlawuli welo shishini linemvume kwaye ulonyulo olo luvunyiwe ngokwemiqathango yecandelo 52.

(11) IGosa eLongameleyo linokuthi nangaliphi na ixesha, xa kufanelekile, ngesazisi esinikezelwe umnini phepha-mvume elo lethutyana okanye wephepha-mvume lotywala lesiganeko—

(a) libhengeze ukuba iphepha-mvume linalo mibandela okanye izithintelo okanye eminye imibandela okanye izithintelo ezixelwe kwisaziso nanjengoko linokuyibeka xa kufanelekekile;

(b) lirhoxise okanye lihlomele nawuphi na umbandela okanye isithintelo nanjengoko linokuyibeka kwiphepha-mvume elo; okanye

(c) lirhoxise iphepha-mvume lotywala.

(12) IGosa eLongameleyo lingakuxolela ukufakwa emva kwexesha kwesicelo sephepha-mvume lethutyana okanye iphepha-mvume lotywala lesiganeko xa kubonakaliswe isizathu esibalulekileyo kunye nesohlwayo sentlawulo esimiselweyo sesicelo esingu100% sayo yonke imihla esithe isicelo safakwa emva kwexesha elimiselweyo

(13) Ukwaphula okanye ukwahluleka ukuhambiselana nayo nayiphi na imibandela okanye isithintelo esixelwe kwicandelwana (3) okanye (7) kuba lulwaphulo-mthetho.”.

Ukwenziwa kwezilungiso kwicandelo 52 loMthetho 4 ka-2010

16. Icandelo 52 loMthetho liyalungiswa—

(a) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (1):

“(1A) IGosa eLongameleyo linokuthi, xa—

(a) likhupha iphepha-mvume lotywala lethutyana phantsi kwecandelo 48(1);

(b) likhupha iphepha-mvume lotywala lesiganeko phantsi kwecandelo 48(4);

(c) lisebenza phantsi kwecandelo 49(6);

(d) lisebenza phantsi kwecandelo 53(1); okanye

(e) likhupha imvume phantsi kwemiqathango yecandelo 65(5),

livume ukutyunjwa komntu wendalo otyunjwe ngumenzi-sicelo wephepha-mvume okanye umnini phepha-mvume okanye umnini phepha-mvume ocetywayo, nokuba ngowuphi na, njengomphathi weshishini elilayisenisiweyo.”;

(b) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (2):

“(2) Umnini-layisenisi ongenguye umntu wendalo unako nanini na, ngendlela emiselweyo ukutyumba umntu wendalo ohlala kwiPhondo ukuba abe ngumphathi weshishini elilayisenisiweyo, apho iSiGqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo, nokuba ngowuphi na, inakho ukuvuma ukutyunjwa kwaloo mntu njengomphathi.”;

(c) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (4):

“(4) ISiGqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo, nokuba ngowuphi na, sisenokungakuvumi ukutyunjwa njengomphathi kwaloo mntu

ungavumelekanga ukuba abe nelayisenisi ngokwecandelo 35 okanye isimilo esingancomekiyo.”;

- (d) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (5):
 “(5) ISiGqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo, nokuba ngowuphi na, sisenakho ukuyalela ukuba umphathi ocetywayo makayokuqeqeshwa kananjalo ayokufundiswa njengoko kuchazwe yiNkundla yemiCimbi yoTywala njengomqathango wokuqala phambi kokuvunywa kolo tyumbo.”;
- (e) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (8):
 “(8) Ukuvunywa kokutyunjwa komphathi ngokwecandelwana (1), (1A) okanye (2) kuya kuhlala kusebenza kude kutyunjwe umphathi omtsha okanye kude kuphele ithuba ebelikhutshwele lona iphepha-mvume okanye imvume, nokuba yeyiphi na kuzo.”;
- (f) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (9):
 “(9) Ukuba umntu[,] okutyunjwa kwakhe njengomphathi kuvunyiweyo ngokwecandelwana (1), (1A) okanye (2)[,] uyayeka ukuphatha ishishini elilayisenisiweyo okanye uba kwimo yokungavumeleki ukuba enze njalo, umnini-layisenisi kufuneka, kwiintsuku ezingamashumi amathathu (30) ukususela kumhla wokwenzeka koku, acele ngokwecandelwana (1) okanye (2) ukuba kuvunywe ukutyunjwa komphathi endaweni yakhe.”;
- (g) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (10):
 “(10) Ukuba umnini-layisenisi uyasilela ekuthobeleni icandelwana (9), ilayisenisi yakhe ingarhoxiswa ngokwecandelo 20(3)(b)(ii) okanye ilayisenisi yakhe inganqunyanyiswa ngokwecandelo 20(3)(b)(iii).”; kananjalo
- (h) ngokongeza eli candelwana lilandelayo:
 “(11) Kweli candelo “umnini-layisenisi” uquka umnini phepha-mvume lotywala lesiganeko.”.

Ukwenziwa kwezilungiso kwicandelo 56 loMthetho 4 ka-2008

17. Icandelo 56 loMthetho liyalungiswa—

- (a) ngokufakela lo mhlathi ulandelayo endaweni yomhlathi (b):
 “(b) igumbi okanye indawo iSiGqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo eyichonge njengendawo apho abantu abaminyaka ingaphantsi kweshumi elinesibhozo (18) bengavumelekanga khona; kunye”; kananjalo
- (b) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (3):
 “(3) Umntu ominyaka ingaphantsi kwelishumi elinesibhozo (18) angangena kwindawo ekungangenwayo kwizakhiwo ezilayisenisiweyo apho utywala buthengiselwa ukuba buselelwe kuphela ngaphandle kwezakhiwo ezilayisenisiweyo kuyo xa ephelekwa ngumzali okanye ngumgadi wakhe okanye ngumntu omkhulu ngemvume yomzali okanye yomgadi wakhe.”.

Ukwenziwa kwezilungiso kwicandelo 59 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 43 loMthetho 10 ka-2010

18. Icandelo 59 loMthetho liyalungiswa—

- (a) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (3):
 “(3) Ukuba umasipala akaziqingqanga iintsuku neeyure zeshishini elilayisenisiweyo elithengisa utywala ngeenjongo yokuba buselelwe ngaphandle

okanye ngaphakathi kwizakhiwo ezinemvume, iintsuku neeyure zokurhweba kwelo shishini zezo zivunyiweyo nangaliphi na ixesha sisiGqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo, nokuba ngowuphi na kubo, ngokwemiqathango yephepha-mvume elo.”;

(b) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (4):

“(4) Ukuba umasipala akaziqingqanga iintsuku neeyure zeshishini elilayisenisiweyo elithengisa utywala ngeenjongo yokuba buselelwe ngaphandle okanye ngaphakathi kwizakhiwo ezinemvume, iGosa eLongameleyo linokuthi nangaliphi na ixesha ngokufakwa kwesicelo ngumnini-mvume weshishini elo, andise iintsuku neeyure zokurhweba zelo shishini.”;

(c) ngokufakela eli candelwana lilandelayo emva kwecandelwana (4):

“(4A) Iiyure zokurhweba zingangavunywa okanye zingandiswa ngokwecandelo (3) okanye (4) ukuba zidlule kwintsimbi yesi-20:00 ngokubhekiselele kwiphepha-mvume lokuthengisa utywala ngeenjongo zokuba buselelwe ngaphandle kwezakhiwo ezinemvume kunye ngentsimbi ye-02:00 kusuku olulandelayo ngokubhekiselele kwiphepha mvume lokuthengisa utywala ngeenjongo zokuba buselelwe ngaphakathi kwizakhiwo ezinemvume.”;

(d) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (5):

“(5) IGosa eLongameleyo kufuneka lithathele ingqalelo iinkqubo zokukhupha amaphepha-mvume ekubhekiselelwe kuzo kwicandelo 34(1)(a) no (e) xa eqwalasele isicelo ngokwecandelo (4).”;

(e) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (6):

“(6) [IBhodi] UGunyaziwe kufuneka, ngexesha elimiselweyo emva ngokuvunywa okanye kokwaliwa kwesicelo esenziweyo ngokwecandelwana (4), yazise umfakisicelo ngesigqibo [sesiGqeba seLayisenisi yezoTywala] seGosa eLongameleyo.”;
kanjalo

(f) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (8):

“(8) Ngokuxhomekeke kwicandelo 89(10), umnini-layisenisi othengisa okanye obonelela ngotywala, okanye ovumela ukuselwa kotywala kwindawo elayisenisiweyo ngexesha ukuthengiswa kotywala kungavunyelwanga yilayisenisi ngokwecandelo (1) [okanye], (3) okanye (4), uyakuba netyala lokwaphula umthetho.”.

Ukwenziwa kwezilungiso kwicandelo 60 loMthetho 4 ka-2008

19. Icandelo 60 loMthetho liyalungiswa—

(a) ngokususa icandelwana (3); kananjalo

(b) ngokufaka eli candelwana lilandelayo endaweni yecandelwana (4):

“[(4)] (3) Nakuphi na ukwaphula okanye ukusilela ukuthobela icandelwana (1), okanye (2) [okanye 3] kukwaphula umthetho.”.

Ukwenziwa kwezilungiso kwicandelo 63 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 45 loMthetho 10 ka-2010

20. Icandelo 63 loMthetho lenziwa izilungiso ngokufaka elicandelwana liandelayo emva kwecandelo (2):

“(2A) Apho iphepha-mvume elixelwa kwicandelo 89(10) lihlaziyekile ngokwemiqathango yecandelo (2), kananjalo ukuba umasipala lowo uchaphazelekayo akakazimiseli iintsuku neeyure zorhwebo kumashishini alayisenisiweyo athengisa

utywala ngenjongo zokuba buselelwe ngaphandle nangaphakathi kwizakhiwo ezinemvume, nokuba yeyiphi na, iiyure zokurhweba zelo phepha-mvume nangaluphi na usuku apho umnini phepha-mvume avumelekileyo ukuba athengise utywala ngokwemiqathango yephepha mvume angakwenza kuphela oko—

- (a) kwimeko apho iliphepha-mvume lokuthengisa utywala ngenjongo zokuba buselelwe ngaphandle kwizakhiwo ezinemvume, ingadlulanga intsimbi ye-20:00; kananjalo
- (b) kwimeko apho iliphepha-mvume lokuthengisa utywala ngenjongo zokuba buselelwe ngaphakathi kwizakhiwo ezinemvume, ingadlulanga intsimbi yesibini ngosuku olulandelayo.”.

Ukwenziwa kwezilungiso kwicandelo 66 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 50 loMthetho 10 ka-2010

21. Icandelo 66 loMthetho liyalungiswa ngokususa igama “akhethekileyo” naphi na apho avela khona.

Ukwenziwa kwezilungiso kwicandelo 70 loMthetho 4 ka-2008

22. Eli candelo lilandelayo liyafakelwa endaweni yecandelo 70 kuMthetho:

“Ukuvalwa kwamasango elayisenisi yotywala

70. (1) Umhloli okanye igosa lotywala elimiselweyo, igosa loxolo okanye naliphi na ipolisa elikwinqanaba [**lomhloli**] likaWarrant Ofisa okanye ngentla kwalo, lisenokuthi—

- (a) xa kuthe kwenzeka okanye kwangathi kuza kwenzeka ubudlova basesidlangalaleni apha kumasango anelayisenisi;
- (b) ukuba kukho umngcipheko wempilo, kwintlalontle okanye kukhuseleko loluntu ekuhlaleni, kumntu okanye kwizakhiwo okanye kufutshane namasango anelayisenisi; okanye
- (c) umnini welayisenisi kanye lowo ulawula loo masango anelayisenisi umane ephinda-phinda kwaye ngendlela ebonakalayo ephazamisana nemiqathango yephepha-mvume okanye imigaqo yalo Mthetho,

liyalele umnini welayisenisi okanye nawuphi na umntu olawula la masango anelayisenisi, ukuba awavale loo masango [**isithuba esingadlulanga kweso siseleyo kwixesha lokuvula ngaloo mini**] kude kurhoxiswe umyalelo wokuvala ngokwemiqathango yecandelwana (3).

(2) Umnini welayisenisi okanye lowo ulawula loo masango anelayisenisi, kufuneka athi asakuba efumene lo myalelo ukwicandelwana (1), akhawuleze awuthobeke, kwayeke ukuba ngaba uyasilela ukukwenza oko, lowo mntu ebenike loo myalelo usenokuthi athathe okanye enze ukuba kuthathwe nawuphi na amanyathelo [**okanye asebenzise okanye ayalele ukuba makusetyenziswe naluphi na unyanzeliso**] lawo acinga alungele [olufanele] imeko leyo lokuba avalwe lamasango.

(3) Nawuphi na umyalelo othe wanikwa phantsi kwecandelwana (1), usenokuthi nanini na urhoxiswe—

- (a) [**ligosa lotywala elimiselweyo, ngumhloli okanye lipolisa**] ngumntu othe wanika [**lo**] umyalelo;

- (b) xa **[loo myalelo]** umyalelo ubunikwe lipolisa okanye lipolisa elikwinqanaba eliphezulu; **[okanye]**
- (c) apho umyalelo ubunikwe ligosa lotywala elimiselweyo, [siSigqeba seeLayisenisi zoTywala] liGosa eliLawulayo eliyiNtloko okanye umntu ogunyaziswe lilo; okanye
- (d) ngesisombululo sesiGqeba seLayisenisi zotywala kwisicelo esifakwe ngumnini welayisenisi ngendlela emiselweyo.

(4) Umntu orhoxisa umyalelo ngokwemiqathango yecandelwana (3) angakwenza oko elandela loo miqathango njengoko eyamkela.

(5) Umntu othi ale okanye asilele ukuthobela umyalelo ngokwecandelwana (1) okanye ngokwemiqathango ebekwe kwicandelo (4) waphula umthetho.”.

Ukwenziwa kwezilungiso kwicandelo 73 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 54 loMthetho 10 ka-2010

23. Icandelo 73 loMthetho liyalungiswa—

- (a) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (1):

“(1) **UMkhomishinala [waMapolisa wePhondo leNtshona Koloni]** usenokuthi, ngokuphathelele kwisikhululo samapolisa ngasinye, amisele naliphi na ipolisa elikwinqanaba lobuhloli **[okanye ngaphezulu]**, ukuba lenze imisebenzi yegosa lotywala elimiselweyo ngokwemigaqo yalo Mthetho.”;

- (b) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (3):

“(3) **UMkhomishinala [waMapolisa wePhondo leNtshona Koloni]** usenokuthi nanini na akutshitshise oku kubekwa kwenziwe okanye kuthathwa ukuba kwenziwe ngokwecandelwana (1).”; kananjalo

- (c) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (5):

“(5) **UMkhomishinala** kufuneka ukuba xa emisela igosa lotywala elimiselweyo Ngokwecandelwana (1) kunye noGunyaziwe kufuneka ukuba xa ibeka umhloli ngokwecandelwana (4), ikhuphe isiqinisekiso sokubekwa okanye ileta yokumiselwa esisayinwe nguMkhomishinala okanye liGosa eliLawulayo eliyiNtloko egameni likaGunyaziwe, ngokwaloo mntu uphethe lo mcimbi.”.

Ukwenziwa kwezilungiso kwicandelo 74 loMthetho 4 ka-2008

24. Eli candelo lilandelayo lifakelwa endaweni yecandelo 74 loMthetho:

“Amagunya amagosa otywala amiselweyo, amagosa oxolo nabahloli

74. (1) Ngokuthathela ingqalelo icandelo 75, igosa lotywala elimiselweyo, amagosa oxolo okanye umhloli usenokuthi xa esenza umsebenzi wakhe—

- (a) ngawo nawaphi na amaxesha afanelekileyo angene—

- (i) kuwo nawaphi na amasango anelayisenisi;
- (ii) kuwo nawaphi na amasango enzelwe isicelo ngokwemigaqo yalo Mthetho; kunye
- (iii) nakuwo nawaphi na amasango okanye kuso nasiphi na isithuthi xa enesizathu esimkrokrisa ukuba kungenzeka ukuba kuthi kanti kugcinwa, kuthuthwa okanye kuthengiswa utywala kuwo okanye kuyo ngendlela ehamba nxaanye nemigaqo yalo Mthetho,

aze ke enze naluphi na uphando, abuze nayiphi na imibuzo okanye enze naluphi na uhlolo, ngokokubona kwakhe kufanelekile;

- (b) nanini na, naphi na acele nawuphi na umntu ukuba ambonise ilayisenisi yakhe kwangoko okanye ngaloo mhla lithe igosa lotywala, igosa loxolo okanye umhloli wawubeka, okanye amarekhodi okanye ezinye iimpepha nje anazo okanye ekukholeleka ukuba ziselugcinweni lwakhe okanye eziphantsi kolawulo lwakhe umntu lowo okanye ke omnye umntu osebenza egameni laloo mntu;
- (c) ahlole naziphi na iimpepha ezikhankanywe kumhlathi (b), enze iikopi zazo okanye acaphule kuzo, aze ke acele lo mntu kuthethwa ngaye kulo mhlathi ukuba anike inkcazelo ngayo nayiphi indawo kuzo;
- (d) athathe asuse nantoni na ukuba ngaba ngokokubona kwakhe isenokuba bubungqina betyala ngokwalo Mthetho, okanye botyeshelo lwawo nawuphi na umqathango welayisenisi;
- (e) abuze umnini welayisenisi okanye abaqeshwa bakhe, umfaki-sicelo, okanye nawuphi omnye umntu olapha kula masango anelayisenisi ukuba ngaba ukrokrela ukuba umnini welayisenisi, umqeshwa lo, umfaki-sicelo okanye umntu lo unalo naliphi na iphepha okanye unolawulo lwalo naliphi na iphepha elinokufuneka kulo mcimbi awuphandayo; kwaye
- (f) ayalele ukuba nawuphi na umnini welayisenisi okanye umqeshwa wakhe aye kuvela phambi kwakhe ngexesha athe walibeka nakwindawo athe wayixela aze kuphendula imibuzo ngomcimbi lowo uphandwayo.

(2) Nawuphi na umntu owongamele la masango kuthethwa ngawo kwicandelwana (1) kufuneka anike naluphi na uncedo olungenabunzima olunokuthi lucelwe ligosa lotywala elimiselweyo, igosa loxolo okanye ngumhloli.

(3) Nawuphi na umntu obuzwa imibuzo ligosa lotywala elimiselweyo, igosa loxolo okanye ngumhloli ngokwemigaqo yalo Mthetho kufuneka ukuba aqale axelwe ngamalungelo akhe awanikwa ngumgaqo-siseko phambi kokuba kuqaliswe ngemibuzo, kwaye nayiphi na impendulo enikwa nguloo mntu kufuneka ibe yinyani, ayinike kangangokoekwazi.

(4) Impendulo okanye inkcazo enikwa igosa lotywala elimiselweyo, igosa loxolo okanye umhloli isenokungasetyenziswa okanye isenokungamkelwa xa kuxoxwa ityala lalowo ubeyinikile, ngaphandle kokuba kuxoxwa ityala lomntu eliphathelele kwizityholo esimalunga—

- (a) nokuthathwa kwenkcazo efunyelweyo okanye koqinisekiso;
- (b) nokunikwa kwenkcazo ebubuxoki; okanye
- (c) nokusilela ukuphendula umbuzo osemthethweni ngokupheleleyo nangokwanelisayo.”.

Ukwenziwa kwezilungiso kwicandelo 75 loMthetho 4 ka-2008

25. Icandelo 75 loMthetho liyalungiswa—

- (a) ngokufaka eli candelwana lilandelayo endaweni yecandelwana (1):

“(1) Igosa lotywala elimiselweyo, igosa loxolo okanye umhloli usenokuthi asebenzise ilungelo elikhankanywe kwicandelo 74 malunga nokungena nokusetsha okanye nokuhlola amasango, ukuba ngaba ugunyaziswa liphepha lesigunyazo elikhutshwe ngumantyi ngokwecandelwana (3).”;

- (b) ngokususa icandelwana (2);

- (c) ngokufaka la magama alandelayo endaweni yamagama andulela umhlathi (a) kwicandelo (3):
 “Umantyi usenokuthi akhuphe iphepha logunyaziso lokungena, lokuphanda nokuhlola nawaphi na amasango ekubhekiselelwe kuwo kwicandelo 74(1)(a), ukuba, ngaba ngokwengcaciso ebhaliweyo nefungelweyo okanye eyenzelwe uqinisekiso, unaso isizathu sokukholelwa ukuba—”;
- (d) ngokufaka eli candelwana lilandelayo endaweni yecandelwana (4):
 “(4) Igosa lotywala elimiselweyo, igosa loxolo okanye umhloli usenokuwasebenzisa la magunya akhankanywa kwicandelwana (1) nangaphandle kwephepha logunyaziso—
 (a) ngemvume yomnini okanye yomntu olawula loo masango;
 (b) ukuba kukho isaziso sothotyelo esingekafezekiswa nesisikhutshwe ngokwemigaqo yecandelo 69, ngeenjongo zokuqinisekisa ukuba ngaba isaziso eso sithotyelwe na; okanye
 (c) ukuba ngaba igosa lotywala elimiselweyo, igosa loxolo okanye umhloli unezizathuezi bonakalayo zokukholelwa ukuba—
 (i) iphepha logunyaziso liya kukhutshwa ngokwemiqathango Yecandelwana (3) ukuba unokuthi enze isicelo salo; nokuba
 (ii) ulibaziseko ekufumaneni iphepha logunyaziso lungazidobalalisa iinjongo zoko kusetsha okanye zoko kuhlola.”;
- (e) ngokufaka eli candelwana lilandelayo emva kwecandelwana (4):
 “(4A) Igosa lotywala elimiselweyo, igosa loxolo okanye umhloli usenokuwasebenzisa la magunya akhankanywa kwicandelwana (1) nangaphandle kwephepha logunyaziso kwizakhiwo ezinelayisenisi ukuba uhlolo lwenziwe ukuqinisekisa ukuba uthotyelwe lo Mthetho imiqathango okanye yephepha-mvume.”;
- (f) ngokufaka eli candelwana lilandelayo emva kwecandelwana (5):
 “(5) Xa lingena kumasango ngokweli candelo, igosa lotywala elimiselweyo, igosa loxolo okanye umhloli kufuneka—
 (a) azazise kulo mntu uphethe la masango;
 (b) ambonise loo mntu iphepha logunyaziso, ukuba likhona;
 (c) acacise igunya eluqhutywa phantsi kwalo uhlolo olo; kwaye
 (d) kwizakhiwo ezinelayisenisi, aluqhube uhlolo olo ngendlela eya kuthi ingabi naluphazamiso lungakokumnini welayisenisi nakubathengi/nakubaxhasi bakhe nakwishishini eli linelayisenisi.”;
- (g) ngokufaka eli candelwana lilandelayo emva kwecandelwana (6):
 “(6) Igosa lotywala elimiselweyo, igosa loxolo okanye umhloli, xa ethatha nantoni ngokwemigaqo yeli candelo, kufuneka ukuba amnike irisithi loo mntu amthathela into okanye izinto ezichazwa kuyo izinto ezo zithathiweyo, amcacisele nesizathu sokuzithatha izinto ezo.”; kanaanjalalo
- (h) ngokufaka eli candelwana lilandelayo emva kwecandelwana (7):
 “(7) Amacandelo 30 ukuya ku-34 oMthetho weNkqubo yolwaphulo-mthetho ayasebenza, enziwe utshitsho olufanelekileyo, kuyo nayiphi na into ebithe yathathwa ngokwemiqathango yeli candelo.”.

Ukwenziwa kwezilungiso kwicandelo 7 loMthetho 4 ka-2008

26. Eli candelo lilandelayo lifakwa endaweni yecandelo 79 kuMthetho:

“Amatyala amalunga namagosa otywala amiselweyo, igosa loxolo nabahloli

79. Umntu othi—

- (a) aphosise ngokuthi uligosa elimiselweyo lotywala, igosa loxolo okanye athi ungumhloli;
- (b) ophazamisana negosa lotywala, igosa loxolo okanye umhloli ekwenzeni umsebenzi wakhe ngokwemiqathango yalo Mthetho;
- (c) owalayo okanye angakwazi ukuthobela umyalelo osemthethweni onikwe ligosa lotywala, igosa loxolo okanye umhloli;
- (d) xa ebuzwa ligosa elimiselweyo lotywala, igosa loxolo okanye umhloli, anike impendulo engeyiyo esazi ukuba uyaphosisa; okanye
- (e) angakwazi ukuthobela isicelo esinokuthobeleka esisuka kwigosa elimiselweyo lotywala, igosa loxolo okanye umhloli phantsi kwecandelo 74, unetyala.”.

Ukurhoxiswa kwecandelo 81 loMthetho 4 ka-2008

27. Icandelo 81 lo Mthetho liyarhoxiswa.

Ukwenziwa kwezilungiso kwicandelo 84 loMthetho 4 ka-2008, njengoko ulungisiwe kwicandelo 57 loMthetho 10 ka-2010

28. Icandelo 84 loMthetho liyalungiswa—

- (a) ngokufaka lo mhlathi ulandelayo emva komhlathi (k) wecandelwana (1):
 - “(kA) unofandesi obhalise kwiqumrhu elisemthethweni nelaziwayo, egameni likamasipala okanye yeeNkonzo zaMapolisa aseMzantsi Afrika, ekwenzeni lowo umsebenzi wakhe;”; kananjalo
- (b) ngokufaka lomhlathi ulandelayo endaweni yomhlathi (d) wecandelwana (2) kwinguqulelo yesiNgesi:
 - “(d) on behalf of the principal of an educational institution, excluding a school as defined in the South African Schools Act, 1996 (Act 84 of 1996), in a restaurant used for the training of persons in catering services on premises occupied, controlled or maintained by the institution concerned, for consumption in that restaurant;”;
- (c) ngokufaka lo mhlathi ulandelayo endaweni yomhlathi (e) wecandelwana (2):
 - “(e) xa umntu eqokelela iiwayini enyanisekile yaye obo tywala bube buyinxalenye yengqokelela yeewayini zakhe okanye inxalenye yazo; okanye”; kananjalo
- (d) ngokufaka lo mhlathi ulandelayo emva komhlathi (f) wecandelo (2):
 - “(f) ukuba loo mntu ngunofandesi [**onemvume**] obhalise kwiqumrhu elisemthethweni nelaziwayo, egameni lombutho wezentlalontl, yeziko lezeMfundo, ngaphandle kwesikolo esichazwe kuMthetho weZikolo woMzantsi Afrika, 1996, okanye umntu weinshorensi.”.

Ukwenziwa kwezilungiso kwicandelo 85 loMthetho 4 ka-2008

29. Icandelo 85 loMthetho liyalungiswa ngokufaka eli candelwana lilandelayo endaweni yecandelo (1):

“(1) Ukuba kwathi ekuxoxweni kwetyala okanye kwintlanganiso yeSigqeba seeLayisenisi zoTywala kwafunyaniswa kukho ubungqina bokuba umntu ongenayo ilayisenisi okanye ongavunyelwanga ukuba athengise utywala ngokwemigaqo yalo Mthetho okanye yawo nawuphi na omnye uMthetho—

- (a) unomqondiso okanye isaziso anaso kumasango akhe okanye kufutshane nawo esixela ukuba kukho utywala obuthengiswayo kuwo okanye ukuba unephepha-mvume lokuthengisa utywala;
- (b) ukumasango okanye wayelawula amasango amiswe ngendlela ebonisa ngaphandle kwamathandabuzo ukuba kuthengiswa utywala kuwo;
- (c) apha kumasango akhe okanye aphantsi kolawulo lwakhe unotywala obungaphaya **[komthamo ekungenakudlulwa kuwo ngokwemigaqo yecandelo 60 engakhange ayifumane imvume efunwa leli candelo]** komlinganiselo wokuba bufuneka kuye, kusapho lwakhe okanye kumandwendwe akhe, ngaphandle kokuba umntu lowo ungumqokeleli weewayini osemthethweni kwaye ubutywala obo yingqokelela yeewayiyini okanye obunye babo; okanye
- (d) uthenge okanye ufumene utywala obungaphaya **[kwalo mthamo kungenakudlulwa kuwo ngokwemigaqo yecandelo 60 engakhange ayifumane imvume efunwa leli]** komlinganiselo wokuba bufuneka kuye, kusapho lwakhe okanye kumandwendwe akhe, ngaphandle kokuba umntu lowo ungumqokeleli weewayini osemthethweni kwaye ubutywala obo yingqokelela yeewayini okanye obunye babo,

obo bubungqina obucacileyo bokuba uyabuthengisa utywala.”.

Ukwenziwa kwezilungiso kwicandelo 87 loMthetho 4 ka-2008, njengoko ulungisiwe licandelo 58 loMthetho 10 ka-2010

30. Icandelo 87 liyalungiswa nguMthetho—

- (a) ngokufaka lo mhlathi ulandelayo endaweni yomhlathi (b) wecandelo (1):
 - “(b) kwicandelo 49(7), 50(2), 51(9), 53(4), 58(3), 59(8), 76(e), 76(f)[,] okanye 76(i) [okanye 81(4)] usenokugwetywa ifayini engadlulanga kuma-R500 000,00 okanye avalelwe entolongweni isithuba esingadlulanga kwiminyaka emibini enesiqingatha okanye azinikwe zozibini ezi zigwebo.”;
- (b) ngokufakela lo mhlathi ulandelayo endaweni yomhlathi (d) wecandelo (1):
 - “(d) kwicandelo 23(13), 48(13), 56(5), 70(5), 76(a), 76(d), 77, 78(1), 78(3), 79, 80(1) okanye 86(2) usenokugwetywa ifayini engadlulanga kuma-R50 000,00 okanye avalelwe entolongweni isithuba esingadlulanga kwiinyanga ezintathu okanye azinikwe zozibini ezi zigwebo.”;
- (c) ngokufakela eli candelwana lilandelayo emva kwecandelwana (1):
 - “(2) Umntu ogwetywe ngokwemiqathango yalo Mthetho, emva kokuba ebekwe ityala okanye emva kokugwetywa, nokuba wenziwe eyiphi na, uqhubebekile okanye uyaqhubeka neso senzo okanye impazamo embangele ukuba abekwe ityala unetyala eliqhubekayo kwaye usenokugwetywa ifayini engadlulanga kwi-R2000.00 okanye avalelwe entolongweni isithuba esingadlulanga kwiintsuku ezi-30, okanye azinikwe zozibini ezi zigwebo, ngosuku ngalunye umntu eqhubeka neso senzo okanye loo.”;
- (d) ngokususa icandelwana (3); kananjalo
- (e) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (4):

“(4) (a) Nabuphi na utywala obuthe bathathwa nguRhulumente ngokwemiqathango yoMthetho iCriminal Procedure Act ngenxa yokwaphula umthetho ngokwao Mthetho bungathi, kuxhomekeke kwiimfuno zalo Mthetho, buchithwe ngokuthi buthengiswe efandesini yi—

- (i) Nkonzo yaMapolisa yaseMzantsi Afrika, ukuba ityala elo beliqalwe yile Nkonzo; okanye
- (ii) umasipala onxulumene noko, ukuba ityala beliqalwe yinkonzo yamapolisa kamasipala yaloo masipala.

(b) Intsalela yengeniso yotywala obuthengisiweyo obuxelwe kumhlathi (a) mayifakwe kwiNgxowa yeNgeniso-mali yeSizwe okanye kwiakhawunti yebhanki kamasipala onxulumene noko, nokuba yeyiphi na.”.

Ukwenziwa kwezilungiso kwicandelo 88 loMthetho 4 ka-2008

31. Icandelo 88 loMthetho liyalungiswa ngokufakela lo mhlathi ulandelayo endaweni yomhlathi (d) wecandelo (1):

“(d) ukuthengiswa kotywala obuthathiweyo efandesini njengoko kuxeliwe kwicandelo 87(4); okanye”.

Ukwenziwa kwezilungiso kwisalathisi soMthetho 4 ka-2008 njengoko ulungisiwe licandelo 1 loMthetho 10 ka-2010

32. Isalathisi phambi kwecandelo (1) loMthetho senziwa izilungiso—

- (a) ngokufakela eli gama lilandelayo kwisihloko 17 ngolu hlobo lulandelayo:
“17. Ukuthintelwa ukunyulwa njengelungu okanye ilungu elingena endaweni yelungu elingekhoyo lesiGqeba seLayisenisi yoTywala”;
- (b) ngokususa igama kufakwe elinye endaweni yalo kwisihloko 48 ngolu hlobo lulandelayo:
“48. Amaphepha-mvume otywala ethutyana kunye namaphepha-mvume otywala amatheko [**awodwa**]”;
- (c) ngokufakela eli gama lilandelayo kwisihloko 74 ngolu hlobo lulandelayo:
“74. Amagunya amagosa otywala amiselweyo, amagosa oxolo nabahloli”
- (d) ngokufakela eli gama lilandelayo kwisihloko 79 ngolu hlobo lulandelayo:
“79. Amatyala amalunga namagosa otywala amiselweyo, amagosa oxolo nabahloli”;
- (e) ngokususa isihloko 81.

Isihlokwana esifutshane nokuqalisa kwawo

33. Lo Mthetho waziwa ngokuba nguMthetho weziLungiso woTywala weNtshona Koloni ka-2014 kwaye uqalisa ukusebenza ngaloo mhla uya kuthi ubekwe yiNkulumbuso yePhondo ngompoposho kwiGazethi yePhondo.

IMEMORANDAM YEENJONGO ZESIQULUNQO LOMTHETHO WOLUNGISO OYILWAYO WENTSHONA KOLONI, 2014

1. IMVELAPHI

- 1.1 Emva kokusebenza koMthetho woTywala weNtshona Koloni,(uMthetho 4 ka-2008) kunye noMthetho woLungiso woTywala weNtshona Koloni, kuye kwabakho uninzi lwemingeni ehamba nokusetyenziswa koMthetho.
- 1.2 Le mingeni iquka:
- (a) Imiba yenkcazo ngokwecandelo 59, 81 no 89;
 - (b) Imingeni yamalungu eSiGqeba seLayisenisi yoTywala angafumanekiyo ukuba azimase iintlanganiso kwaye enze inani elifunekayo labantu abanokusingatha imicimbi yentlanganiso;
 - (c) Izithintelo zokuba iGosa eLongameleyo neSiGqeba seLayisenisi yoTywala sinikeze ngamagunya aso neminye imisebenzi; kananjalo
 - (d) Izithintelo zokuba amagosa aqinisekise ngokuthotyelwa komthetho awavumelekanga ukuba enze uhlolo kwizakhiwo ezinelayisenisi ngaphandle kwephepha eliqinisekisa isigunyaziso.
- 1.3 Ngeli thuba kusenziwa ezi zilungiso ukuze kujongwane nobu bunzima bukhankanywe ngentla,sifumene iingcebiso kumanye amahlakani akulawulo lwezotywala kwiPhondo, ngokukodwa iNkonzo zamaPolisa aseMzantsi Afrika neSixeko seKapa.
- 1.4 Emva kokufumana iingcebiso, imiqathango yokuphuhlisa amagosa oxolo ukuqinisekisa ukusebenza koMthetho ifakiwe kwesi siqulunqo soMthetho oYilwayo. Ukongeza, isiqulunqo soMthetho oyilwayo siquka imiqathango evumela umasipala neeNkonzo zaMapolisa aseMzantsi Afrika athengise utyalwa obuthathwe nguRhulumente eFandisini ukuba bamiselwe ukwenza njalo.

2. IINJONGO ZOMTHETHO OYILWAYO

- 2.1 Isiqulunqo soMthetho oYilwayo sinika inani lemingeni efunyenweyo kubathathi nxaxheba ekusebenzeni koMthetho.
- 2.2 Zonke izilungiso zijolise ekuphuhliseni uGunyaziwe woTywala weNtshona Koloni ukuze akwazi ukwenza imisebenzi ebalulekileyo ngaphandle kokujongana neengxaki ezilibazisayo, ukuze afezekise inkqubo yamaphepha-mvume otywala kwiPhondo.

3. OKUQULATHWE NGUMTHETHO OYILWAYO

Iinjongo nokujoliswe kuko kumagatya ahlukeneyo ziyavela apha ngezantsi:

- 3.1 **Igatya 1** libonelela ngeenkcazo ezintsha “zoMkomishinala”, “inkonzo yamapolisa kamasipala” kunye “nelungu elingena endaweni yelungu elingekhoyo”. Likwalungisa nenkcazo “esisodwa” kwaye lifakele inkcazo entsha “yephepha-mvume lotywala lesiganeko” ngokugcina izilungiso ezenziwe kwimigaqo yoMthetho ephathelele “namaphepha-mvume awodwa esiganeko”. Eli gatya likwalungisa isalathisi senkcazo “yomphathi”, lenza izilungiso kwinkcazo “yeSekela-

gosa eLongameleyo” kwaye landisa nenkcazo “yegosa loxolo” ngokuquka ilungu leNkonzo yaMapolisa aseMzantsi Afrika okanye ilungu lamapolisa kamasipala .

- 3.2 **Igaty 2** lenza izilungiso kwicandelo 16 loMthetho ngokuthi lenze imiqathango ngolonyulo olwenzelwa iinjongo ezithile lwamalungu angena endaweni yamalungu angekhoyo kwaye landisa nokubanakho kweGosa eLongameleyo ukunikezela ngamagunya nemisebenzi yalo. Likwavumela ukonyulwa kooSekela-gosa eLongameleyo abangadlulanga kwesithathu.
- 3.6 **Igaty 3** lifakela endaweni yecandelo 17 kuMthetho kwaye lilandela izilungiso kulonyulo lwamalungu angena endaweni yamalungu angekhoyo.
- 3.4 **Igaty 4** lenza izilungiso kwicandelo 18 kuMthetho lilungelelanisa uMthetho notshintsho kwisigama esisetyenziswa kwiiNkonzo zaMapolisa aseMzantsi Afrika.
- 3.7 **Igaty 5** lenza izilungiso kwicandelo 19 loMthetho kwaye zizilungiso ezibalulekileyo ekonyusweni kwenani looSekela-gosa eLongameleyo.
- 3.6 **Igaty 6** lenza izilungiso kwicandelo 20 loMthetho ngokususa isalathisi esiphelelwe lixesha kwicandelo 65(9).
- 3.7 **Igaty 7** lenza izilungiso kwicandelo 21 loMthetho ngokuthi linike umqathango wokuba iGosa eLongameleyo licele ilungu elingena endaweni yelungu elingekhoyo ukuba lizimase naziphina iintlanganiso zalo apho naliphi na ilungu leSiGqeba seLayisenisi yezoTywala lingafumanekiyo ukuba lizimase intlanganiso. Injongo yesi silungiso kukuthintela ukungoneli kwenani elifunekayo labantu abanokusingatha imicimbi yentlanganiso ezintlanganisweni ngenxa yokungabikho kwamalungu.
- 3.8 **Igaty 8** lenza izilungiso kwicandelo 22 loMthetho kwaye lilandela izilungiso ngokonyulwa kwamalungu angena endaweni yamalungu angekhoyo.
- 3.9 **Igaty 9** lenza izilungiso kwicandelo 24 loMthetho ngokuthi linike umqathango wokuba iGosa eLongameleyo licele ilungu elingena endaweni yelungu elingekhoyo ukuba lizimase naziphina iintlanganiso zalo apho naliphi na ilungu leSiGqeba seLayisenisi yezoTywala lingafumanekiyo ukuba lizimase. Injongo yesi silungiso kukuthintela ukungadibani kwenani elifunekayo labantu abanokusingatha imicimbi yentlanganiso zeSiGqeba seLayisenisi yezoTywala ngenxa yokungabikho kwamalungu. Eli gaty lenza izilungiso kwicandelo 30 loMthetho kwaye ngeli xesha lisisilungiso esilandela ukwandiswa kwamatyala awahlukeneyo phantsi koMthetho likwasetyenziswa kulwabiwo lwengeniso-mali eyenziwe ngokusebenza.
- 3.10 **Igaty 10** lenza izilungiso kwicandelo 27 kwaye zizilungiso ezilandela ukonyulwa kwamalungu angena endaweni yamalungu angekhoyo.
- 3.11 **Igaty 11** lenza izilungiso kwicandelo 30 loMthetho kwaye ngeli xesha lisisilungiso esilandela ukwandiswa kwamatyala awahlukeneyo phantsi koMthetho likwasetyenziswa kulwabiwo lwengeniso-mali eyenziwe ngokusebenza.

- 3.12 **Igaty 12** lenza izilungiso kwicandelo 33 loMthetho kwaye zizilungiso ezilandela ukwenziwa kwezilungiso kumaphepha-mvume otywala eziganeko kwigaty 15 lwesiqulunqo soMthetho oYilwayo.
- 3.13 **Igaty 13** lenza izilungiso kwicandelo 41 loMthetho. Ezi zilungiso zandisa isizathu zokuba iSiGqeba seLayisenisi yezoTywala sithathele ingqalelo xa siqwalasela isicelo sephepha-mvume lotywala.
- 3.14 **Igaty 14** lenza izilungiso kwicandelo 42 loMthetho. Ezi zilungiso zinika imvume isiGqeba esinguGunyaziwe seLayisenisi yezoTywala ukuba sirhoxise ukunikezwa kwephepha-mvume ngokwemibandela kwaye lixhobisa iGosa eLongameleyo ukuba liqinisekise ukuba umfaki sicelo uyithobele imiqathango echazwe kwiphepha-mvume ngokwemibandela.
- 3.15 **Igaty 15** lenza izilungiso kwicandelo 48 loMthetho. Ezi zilungiso zitshitshisa amaphepha-mvume otywala esiganeko esisodwa kufakwe endaweni yawo amaphepha-mvume otywala esiganeko. Lilawulwa nokunikezelwa kwamaphepha-mvume ethutyana..
- 3.16 **Igaty 16** lenza izilungiso kwicandelo 52 loMthetho. Lilungisa ngendlela eyiyo inkqubo yokonyula umphathi livumela iGosa eLongameleyo neekomiti ezimiselwe ngokwemiqathango yecandelo 24, ukuba lonyule phantsi kweemeko ezithile.
- 3.17 **Igaty 17** lenza izilungiso kwicandelo 56 loMthetho ukuze abantu abangaphantsi kweminyaka eli-18 bangavunyelwa kwindawo ezithintelweyo kwizakhiwo ezilanelayisenisi ezithengisa utywala ngenjongo yokuba buselelwe ngaphakathi kwizakhiwo ezo.
- 3.18 **Igaty 18** lenza izilungiso kwicandelo 59 loMthetho. Lenza lula kwaye licacisa imiqathango ngokuphathelele neentsuku neeyure zokurhweba kwimeko apho umasipala angazichazanga iiyure zokurhweba kwizakhiwo ezinelayisenisi ezithengisa utywala ngenjongo yokuba buselelwe ngaphakathi okanye ngaphandle kwizakhiwo ezo.
- 3.19 **Igaty 19** lenza izilungiso kwicandelo 60 ngokutshitshisa umgaqo othintela umntu ongenalayisenisi ukuba abenomlinganiselo ongaphaya wobunini botywala.
- 3.20 **Igaty 20** Igaty lenza izilungiso kwicandelo 63 kwaye lenza umqathango wokuba iintsuku neeyure zokurhweba zawo onke amaphepha-mvume afunyenwe phambi kokuqalisa kokusebenza koMthetho ahambelana neentsuku neeyure zokurhweba ezikuMthetho nangona imiqathango yephepha-mvume ihlaziyekile.
- 3.21 **Igaty 21** lenza izilungiso kwicandelo 66 loMthetho kwaye lilandela ukwenziwa kwezilungiso ngokuphathelele kumaphepha-mvume otywala esiganeko.
- 3.22 **Igaty 22** lenza izilungiso kwicandelo 70 loMthetho ezivumela umyalelo wokuvala ukuba uhlale ukhona ude urhoxiswe kwaye kuxelwe umyalelo omtsha wokuvalwa kwezakhiwo.
- 3.23 **Igaty 23** lenza izilungiso kwicandelo 73 loMthetho kwaye zizilungiso ezilandela ukuhambelana koMthetho nesigama esisetyenziswa kwiiNkonzo zaMapolisa aseMzantsi Afrika.

