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**CONTENTS**

**INHOUD**

**IZIQULATHO**

**PROVINCIAL NOTICE**

**PROVINSIALE KENNISGEWING**

**ISAZISO SEPHONDO**

The following Bill is hereby published for general information:

Die volgende Wetsontwerp word hierby vir algemene inligting gepubliseer:

Lo Mthetho uSayilwayo ulandelayo upapashwa apha ukunika ulwazi ngokubanzi:

Western Cape Liquor Bill [B 2—2008]

Wes-Kaapse Drankwetsontwerp [W 2—2008]

UMthetho oSayilwayo woTywala weNtshona Koloni [B 8—2008]

P.N. 103/2008 14 March 2008

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Any person or organization wishing to comment on the said Bill is requested to lodge such comment in writing before or on 16 April 2008:

Enige persoon of organisasie wat kommentaar oor die genoemde Wetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 16 April 2008:

Nabani na okanye nawuphi na umbutho onqwenela ukuphawula ngalo Mthetho uSayilwayo kuthethwa ngawo uyacelwa ukuba afake izimvo zakhe phambi okanye ngomhla wama-16 Aprili 2008:

- (a) by posting it to:  
The Secretary:  
Western Cape Provincial Parliament  
(Attention: Ms N Manjezi)  
P.O. Box 648  
Cape Town  
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*Secretary to Parliament*

P. G. Williams  
*Sekretaris van die Parlement*

P. G. Williams  
*UNabhala wePalamente*



# WESTERN CAPE LIQUOR BILL

**To provide for the licensing for the retail sale and the micro-manufacture of liquor in the Western Cape Province; and to provide for incidental matters.**

**B**E IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

## CHAPTER 1

### INTERPRETATION

- |    |             |   |
|----|-------------|---|
| 1. | Definitions | 5 |
|----|-------------|---|

## CHAPTER 2

### WESTERN CAPE LIQUOR BOARD

- |     |  |    |
|-----|--|----|
| 2.  | Establishment of Western Cape Liquor Board                       |    |
| 3.  | Composition of Board   |    |
| 4.  | Eligibility for appointment as member or employee of Board       | 10 |
| 5.  | Disqualification from appointment as member or employee of Board |    |
| 6.  | Term of office   |    |
| 7.  | Termination of membership of Board                               |    |
| 8.  | Vacancies  |    |
| 9.  | Powers and functions of Board                                    | 15 |
| 10. | Delegation   |    |
| 11. | Co-opting of persons   |    |
| 12. | Confidentiality  |    |
| 13. | Meetings of Board  |    |
| 14. | Minutes  | 20 |

## CHAPTER 3

### WESTERN CAPE LIQUOR LICENSING TRIBUNAL AND APPEAL TRIBUNAL

- |     |   |    |
|-----|---|----|
| 15. | Establishment of Liquor Licensing Tribunal  |    |
| 16. | Composition of Liquor Licensing Tribunal, and nomination and appointment of Liquor Licensing Tribunal members | 25 |
| 17. | Disqualification for appointment as member of Liquor Licensing Tribunal                                       |    |
| 18. | Term of office  |    |
| 19. | Termination of membership of Liquor Licensing Tribunal  |    |
| 20. | Powers and functions of Liquor Licensing Tribunal   |    |
| 21. | Meetings and decisions of Liquor Licensing Tribunal   | 30 |
| 22. | Recusal of member with conflicting interest.  |    |
| 23. | Proceedings of Liquor Licensing Tribunal  |    |
| 24. | Committees of Liquor Licensing Tribunal   |    |
| 25. | Appeal Tribunal   |    |

## CHAPTER 4

## ADMINISTRATION, REMUNERATION AND FINANCIAL MANAGEMENT

- |     |  |   |
|-----|--|---|
| 26. | Administration of Board, Liquor Licensing Tribunal and Appeal Tribunal                                   |   |
| 27. | Remuneration of Chief Executive Officer, members of Board, Liquor Licensing Tribunal and Appeal Tribunal | 5 |
| 28. | Funding and financial management of Board  |   |
| 29. | Audit and annual reports   |   |
| 30. | Revenue accruing to Provincial Revenue Fund, Board or municipalities                                     |   |

## CHAPTER 5

## ESTABLISHMENT OF SOCIAL AND EDUCATION FUND 10

- |     |                       |  |
|-----|-----------------------|--|
| 31. | Establishment of fund |  |
|-----|-----------------------|--|

## CHAPTER 6

## LICENSING

- |     |   |    |
|-----|---|----|
| 32. | Licences  |    |
| 33. | Categories of licences                                      | 15 |
| 34. | Criteria for granting licences                              |    |
| 35. | Disqualification of applicants                              |    |
| 36. | Application procedure                                       |    |
| 37. | Notice of application                                       |    |
| 38. | Applications lying for inspection at Board                  | 20 |
| 39. | Representations   |    |
| 40. | Forwarding of documents                                     |    |
| 41. | Consideration of applications                               |    |
| 42. | Conditional granting of licence                             |    |
| 43. | Right to use premises                                       | 25 |
| 44. | Incomplete premises   |    |
| 45. | Education and training                                      |    |
| 46. | Issuing of licence  |    |
| 47. | Death or incapacity of applicant                            |    |
| 48. | Temporary liquor licences and special event liquor licences | 30 |

## CHAPTER 7

## CONDITIONS FOR LICENCES

- |     |   |    |
|-----|---|----|
| 49. | Standard licence conditions                           |    |
| 50. | Deliveries  |    |
| 51. | Financial interests and letting of licensed premises  | 35 |
| 52. | Management  |    |
| 53. | Alteration of licensed premises or nature of business |    |
| 54. | Children  |    |
| 55. | Employers and employees                               |    |
| 56. | Access to licensed premises                           | 40 |
| 57. | Storing of liquor                                     |    |
| 58. | Place of sale   |    |
| 59. | Trading hours   |    |
| 60. | Quantity of liquor sold and keeping of records        |    |
| 61. | Prohibited substances                                 | 45 |

## CHAPTER 8

## VALIDITY AND RENEWAL OF LICENCES

- |     |                               |  |
|-----|-------------------------------|--|
| 62. | Validity of licences          |  |
| 63. | Automatic renewal of licences |  |

64. Applications for renewal of licences

CHAPTER 9

ALIENATION, TRANSFER AND REMOVAL OF LICENCES

65. Alienation and transfer of licences  
 66. Removal of licences 5  
 67. Abandonment of premises and death or incapacity of licensee

CHAPTER 10

APPEALS AND REVIEWS

68. Appeals and reviews to Appeal Tribunal

CHAPTER 11 10

COMPLIANCE

69. Compliance notices  
 70. Closing of licensed premises  
 71. Interim orders  
 72. Suspension, cancellation and lapsing of licences 15

CHAPTER 12

LAW ENFORCEMENT

73. Designation and functions of designated liquor officers and inspectors  
 74. Powers of designated liquor officers and inspectors  
 75. Exercise of powers to enter and search or inspect premises 20  
 76. General offences  
 77. Offences regarding information  
 78. Offences regarding meetings of Liquor Licensing Tribunal and Appeal Tribunal  
 79. Offences regarding designated liquor officers and inspectors 25  
 80. Offences regarding motor vehicles  
 81. Offence regarding service stations  
 82. Failure to comply with order of Liquor Licensing Tribunal  
 83. Vicarious responsibility  
 84. Exemptions 30  
 85. Evidence  
 86. Notices  
 87. Penalties and forfeiture

CHAPTER 13

REGULATIONS, TRANSITIONAL PROVISIONS AND SHORT TITLE 35

88. Regulations  
 89. Transitional provisions  
 90. Repeal provision  
 91. Short title and commencement

## CHAPTER 1

## INTERPRETATION

## Definitions

1. In this Act, unless the context indicates otherwise—
- “**Appeal Tribunal**” means an Appeal Tribunal established in terms of section 25(1); 5
- “**Board**” means the Western Cape Liquor Board established by section 2(1);
- “**Chairperson**” means the person designated as Chairperson of the Board in terms of section 3(6) or a person who temporarily acts as Chairperson in his or her absence in terms of section 3(7); 10
- “**Chief Executive Officer**” means the person appointed as Chief Executive Officer of the Board in terms of section 26(1)(a);
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**co-operative**” means a co-operative as defined in the Co-operatives Act, 2005 (Act 14 of 2005); 15
- “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act 51 of 1977);
- “**date of issue**”, in relation to a licence, means the date upon which the licence is first issued;
- “**Department**” means the department responsible for economic affairs in the Province; 20
- “**Deputy Chairperson**” means the person designated as Deputy Chairperson of the Board in terms of section 3(6);
- “**Deputy Presiding Officer**” means the person appointed as Deputy Presiding Officer of the Liquor Licensing Tribunal in terms of section 16(1)(b); 25
- “**designated liquor officer**” means a person designated as such in terms of section 73(1);
- “**drugs**” means any dependence-producing substance, any dangerous dependence-producing substance or any undesirable dependence-producing substance as defined in the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992); 30
- “**family member**” means a person’s spouse, life partner, child, parent, brother or sister, whether or not the relationship results from birth, marriage or adoption;
- “**financial interest**”, in relation to any business or undertaking, means any interest which enables the holder thereof to share in the fortunes or the turnover of the business or undertaking, including the ownership of the shares of a company, the membership shares in a co-operative, the member’s interest of a close corporation, the beneficiaries of a trust, or an interest in a partnership; 35
- “**financial year**” means a year ending 31 March;
- “**impotable substance**” means any substance that is unsafe for human consumption; 40
- “**inspector**” means a person appointed as such in terms of section 73(4);
- “**issue**”, with regard to a licence, includes the delivery or dispatch of the licence to the person to whom it has been granted or to his or her agent;
- “**licence**” means a licence referred to in section 33, or deemed to be such a licence in terms of section 89; 45
- “**licensed business**” means the business that may be conducted on licensed premises as authorised by the Board;
- “**licensed premises**” means the premises upon which liquor may be micro-manufactured, sold, consumed or stored in terms of a licence under this Act;
- “**licensee**” means the person to whom a licence has been issued in terms of section 46 or transferred in terms of section 65 or who is deemed to be a licensee in terms of section 89; 50
- “**liquor**” means any liquid or substance containing more than 1% of alcohol by volume or mass, but excluding—
- (a) methylated spirits; 55
- (b) medicine which is subject to registration in terms of the Medicines and Related Substances Act, 1965 (Act 101 of 1965); and
- (c) products which are not intended for human consumption;
- “**Liquor Act**” means the national Liquor Act, 2003 (Act 59 of 2003);

- “Liquor Licensing Tribunal”** means the Western Cape Liquor Licensing Tribunal established by section 15(1);
- “manager”** means a person whose appointment as manager is approved in terms of section 52(1);
- “manufacture”** means to produce or bottle liquor with the intention of selling it; 5
- “manufacturer”** means a person registered as such in terms of the Liquor Act;
- “member”** means a member of the Board or the Liquor Licensing Tribunal, as the case may be;
- “methylated spirits”** means—
- (a) a spirits denatured in accordance with any law on the denaturation or 10  
 methylation of spirits;
- (b) any other denatured spirits, including—
- (i) a medicated spirits; or
- (ii) a denatured spirits declared to be a methylated spirits in terms of the 15  
 Liquor Act;
- “micro-manufacture”** means to manufacture liquor at or below the prescribed threshold volume in terms of section 4 of the Liquor Act and micro-manufacturer has a corresponding meaning;
- “Minister”** means the provincial Minister responsible for economic affairs in the 20  
 Province;
- “motor vehicle”** means a vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity, including a trailer or an agricultural or other implement designed or adapted to be drawn by such vehicle;
- “municipality”** means a municipality established under the Local Government: 25  
 Municipal Structures Act, 1998 (Act 117 of 1998);
- “organ of state”** means an organ of state as defined in section 239 of the Constitution;
- “peace officer”** means any police officer 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; 30
- “person”** includes—
- (a) any organ of state;
- (b) any company or close corporation incorporated or registered as such under any law;
- (c) any body of persons corporate or unincorporate; and 35
- (d) any trust;
- “premises”** means a place, land, building, part of a building, vehicle which is mainly used for the conveyance of tourists, vessel, or aircraft;
- “Presiding Officer”** means the person appointed as Presiding Officer of the Liquor Licensing Tribunal in terms of section 16(1)(a); 40
- “prescribe”** means prescribe by regulation in terms of this Act;
- “Province”** means the Province of the Western Cape;
- “Provincial Cabinet”** means the Provincial Cabinet of the government of the Western Cape;
- “public road”** has the meaning assigned to it in the National Road Traffic Act, 45  
 1996 (Act 93 of 1996);
- “renewal fee”** means a fee payable annually in respect of a licence, excluding a temporary liquor licence, in order to ensure the continued validity of the licence;
- “retail food store”** means a business retailing mainly in groceries and foodstuffs;
- “sell”** includes supply, exchange, offer for sale, display for the purpose of sale or 50  
 authorise, direct or allow a sale, supply, exchange, offer for sale or display for sale;
- “special event”** means a fundraising event in aid of an educational or welfare organisation, any exhibition, sports meeting, cultural gathering, or artistic performance;
- “standing committee”** means the committee of the Provincial Parliament 55  
 responsible for economic affairs;
- “supply”**, in relation to liquor, means to place a person in possession or control thereof;
- “table wine”** means wine as defined in section 1 of the Liquor Products Act, 1989  
 (Act 60 of 1989); 60
- “this Act”** includes regulations made in terms of section 88.

## CHAPTER 2

## WESTERN CAPE LIQUOR BOARD

**Establishment of Western Cape Liquor Board**

2. (1) There is hereby established an independent juristic person, to be known as the Western Cape Liquor Board. 5

(2) The Board has the right and capacity to conduct and participate in legal proceedings and conduct all its business in its own name.

**Composition of Board**

3. (1) The Board consists of seven members appointed on a part-time basis by the Provincial Cabinet in accordance with the prescribed procedure, which must provide for public participation in the nomination of candidates for appointment. 10

(2) The standing committee must evaluate all candidates as to their suitability for appointment and make recommendations to the Minister on the candidates.

(3) The Provincial Cabinet must appoint the members of the Board, after considering the recommendations of the standing committee. 15

(4) A member of the Board must be an eligible person who has appropriate knowledge or experience of systems and processes for ensuring proper accountability, probity and openness in the conduct of an organisation's business.

(5) The appointments to the Board must be made with sensitivity to race and gender.

(6) The Minister must designate one of the members as Chairperson and another as Deputy Chairperson of the Board. 20

(7) The Deputy Chairperson acts as Chairperson of the Board when the Chairperson is absent or unable to act as Chairperson, and when both the Chairperson and Deputy Chairperson are absent or unable to act as Chairperson, the members present at the meeting must elect one of their number by majority vote to act as Chairperson at such meeting. 25

(8) Before being appointed a member of the Board, the candidate must submit an affidavit to the Minister in which such candidate declares that he or she—

(a) is eligible for such appointment; and 30

(b) is not disqualified from such appointment.

(9) The Provincial Cabinet or the Minister may, in consultation with the standing committee, at any time call for proof to its, or his or her satisfaction of the continued eligibility of any member or prospective member of the Board, or to undertake or cause to be undertaken any investigation or enquiry in that regard.

(10) In addition to the members referred to in subsection (1), the Chief Executive Officer serves as an *ex officio* member of the Board, without any voting power. 35

**Eligibility for appointment as member or employee of Board**

4. In order to be eligible for appointment as a member or an employee of the Board, a person must—

(a) in the case of a member of the Board, have attained the age of twenty-five (25) years or, in the case of an employee of the Board, the age of eighteen (18) years; 40

(b) be a citizen of the Republic of South Africa and permanently resident in the Province; and

(c) not be disqualified under section 5. 45

**Disqualification from appointment as member or employee of Board**

5. (1) The following persons are disqualified from being appointed, continuing or acting as members or employees of the Board—

(a) anyone who has in the preceding ten (10) years been convicted of an offence in terms of this Act or any similar law; 50

(b) anyone who in the preceding ten (10) years, whether in the Republic or elsewhere, has been convicted of theft, fraud, forgery, the uttering of a forged document, perjury or any offence under the Corruption Act, 1992 (Act 94 of



1992) or the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) or any offence of which dishonesty is an element;

- (c) an unrehabilitated insolvent or anyone who is subject to any legal disability;
- (d) anyone who has in the preceding ten (10) years been removed from any office of trust on account of misconduct or dishonesty; 5
- (e) any political office bearer; and
- (f) anyone who, whether personally or through his or her spouse, family member, partner or associate—
  - (i) has or acquires a direct or an indirect financial interest in any liquor business or establishment; or 10
  - (ii) has any interest in any business or enterprise that may conflict or interfere with the proper performance of his or her duties as a member or an employee of the Board or in any licence issued under this Act.

(2) For the purposes of this section, an indirect financial interest does not include an indirect interest held through any fund or investment if the person holding such interest has no control over the investment decisions made in respect of that fund or investment. 15

#### **Term of office**

6. A member of the Board holds office for such period, not exceeding four years, as the Provincial Cabinet may determine at the time of his or her appointment to the Board, and a member of the Board is eligible for reappointment at the termination of his or her term of office. 20

#### **Termination of membership of Board**

7. (1) A vacancy in the office of a member of the Board occurs when—
- (a) such member's written resignation is received by the Minister: Provided that the resignation is effective as of the date stated in the written resignation or such other date as is agreed upon between the Minister and the member concerned; 25
  - (b) such member becomes disqualified from remaining a member of the Board;
  - (c) such member is absent from two consecutive meetings of the Board without the prior written leave of the Chairperson, or where applicable, the Deputy Chairperson; 30
  - (d) such member's term of office has expired;
  - (e) such member's term of office is terminated by the Provincial Cabinet: Provided that the Provincial Cabinet may not terminate a member's term of office unless it considers this to be in the public interest or in the interest of the proper administration of this Act; and 35
  - (f) such member is no longer resident in the Province.

#### **Vacancies**

8. In the event of a vacancy contemplated by section 7, the Provincial Cabinet must appoint a new member to the Board, in terms of sections 3(1), 4, 5 and 6. 40

#### **Powers and functions of Board**

9. The Board has the following powers and functions—
- (a) to administer liquor regulation in the Province;
  - (b) to receive applications for liquor licences or exemptions in terms of this Act and to transmit the applications to the Liquor Licensing Tribunal; 45
  - (c) to issue licences in those cases where the Liquor Licensing Tribunal has granted licences;
  - (d) to acquire, hold, hire, let and alienate intellectual, movable and immovable property;
  - (e) to open and maintain bank accounts; 50
  - (f) to appoint and dismiss staff and do all things incidental thereto;
  - (g) to conclude and perform contracts;
  - (h) to make and enforce rules for the conduct of its meetings;
  - (i) to receive, expend and generally administer funds;



- (j) to collect and administer in accordance with the provisions of this Act, fees and penalties imposed in terms of this Act;
- (k) to enter into agreements with or obtain the assistance of any department or organ of state, including the South African Police Service, to conduct or assist it in conducting its investigations; 5
- (l) to obtain information from licensees and other persons and agencies;
- (m) to conduct an ongoing study of and investigation into retail liquor trade and micro-manufacturing of liquor throughout the Province and elsewhere in order to ascertain whether there are any deficiencies in this Act and to discover any abuses or violations of the procedures contained in this Act; 10
- (n) to determine minimum internal control systems for the Board and for licensees, including accounting and reporting procedures and any other procedures or systems, whether computerised or not;
- (o) to determine fees and charges in respect of hearings, investigations, enquiries and any other function performed by the Board; 15
- (p) to establish field or branch offices;
- (q) to establish and administer funds for the proper administration of this Act;
- (r) to consult with any person or employ consultants regarding any matter relevant to the performance of its functions on such terms and conditions as the Board may determine; 20
- (s) to delegate any of its powers in accordance with section 10;
- (t) to appoint committees consisting of members of the Board;
- (u) generally to exercise the powers and perform the functions and duties specified in this Act or assigned to it by any other law; and
- (v) to advise the Minister on any matter which the Minister has referred to it. 25

### Delegation

**10.** (1) The Board may delegate any power or function to the Chief Executive Officer to exercise or perform on its behalf.

(2) Any delegation referred to in subsection (1) may be made subject to such terms, conditions and restrictions as the Board may determine. 30

(3) The Board will not be divested of any power delegated by it.

(4) A delegation in terms of this section may authorise the Chief Executive Officer to sub-delegate all or any of the delegated powers or functions.

(5) Any person aggrieved by a decision taken in terms of a delegated power or function referred to in subsection (1) has a right of appeal to the Board against such decision in the manner and within the time prescribed. 35

(6) The Board may amend or withdraw any delegation.

(7) The Board may not delegate any power or function referred to in section 9(h), (o), (p) and (s).

### Co-opting of persons

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**11.** (1) The Board may co-opt any person who is eligible as contemplated in section 4, and, in the opinion of the Board, is able to assist the Board or a committee of the Board in the consideration of a particular matter.

(2) A person co-opted in terms of subsection (1) is not entitled to vote at any meeting of the Board. 45

(3) The remuneration of any person co-opted in terms of this section will be determined by the Board.

### Confidentiality

**12.** (1) No member or employee of the Board, including any co-opted person or consultant employed by the Board, may disclose any information that has come to that person's knowledge by reason of his or her appointment to, co-option on or employment by the Board and which relates to the business or affairs of the Board, an applicant for a licence or a licensee, save as set out in this section and section 36(2)(b) and (c). 50

(2) The above prohibition against disclosure does not apply in respect of—

- (a) disclosures to a court in relation to legal proceedings before it; 55
- (b) disclosures in accordance with an order of a court;

- (c) disclosures regarding liquor regulation in general which do not refer to the business or affairs of any particular applicant for a licence or licensee;
- (d) disclosure of information to the Commissioner of the South African Revenue Service;
- (e) disclosure to the Minister; and 5
- (f) disclosure to any person who requires it for the performance of his or her functions under this Act.

### Meetings of Board

- 13.** (1) (a) The Board must meet at least four times in every year in the manner and on such dates and at such times and places as the Chairperson may determine. 10
- (b) The Chairperson of the Board may at any time convene a special meeting of the Board to be held at a time and place determined by him or her and must, upon a written request signed by at least three members of the Board, convene a special meeting of the Board to be held within two weeks after the date of receipt of such request, at a time and place determined by him or her. 15
- (2) The Minister must prescribe the procedure to be followed at a meeting of the Board.
- (3) The procedure at a meeting of the Board must, in so far as it has not been prescribed, be determined by the Chairperson.
- (4) The quorum for a meeting of the Board is five members. 20
- (5) Any meeting may be adjourned for such time, to such venue and for such reasons as the Chairperson may deem necessary.
- (6) A decision of the Board is taken by a majority of the votes of the members present at its meetings, and in the event of an equality of votes on any matter, the Chairperson must cast the deciding vote. 25
- (7) No decision of the Board is invalid merely by reason of a vacancy on the Board or the fact that any person who is not entitled to sit as a member of the Board sat as such a member when the decision was taken: Provided that the decision was taken by the required majority of the members of the Board then present and entitled to sit as members of the Board. 30

### Minutes

- 14.** (1) The proceedings of the Board must be recorded in such manner as the Chairperson may determine and must, in the event of a vote, reflect each member's vote.
- (2) Minutes must be kept of meetings of the Board and must be retained at the offices of the Board. 35

## CHAPTER 3

### WESTERN CAPE LIQUOR LICENSING TRIBUNAL AND APPEAL TRIBUNAL

#### Establishment of Liquor Licensing Tribunal

- 15.** (1) The Western Cape Liquor Licensing Tribunal is hereby established.
- (2) The Liquor Licensing Tribunal must exercise its functions according to the provisions of this Act, impartially and without fear, favour or prejudice. 40
- (3) The Board must maintain oversight over the administration of the Liquor Licensing Tribunal but may not revoke or alter any decision of the Tribunal taken in the exercise or performance of any of its powers or functions in terms of section 20.

#### Composition of Liquor Licensing Tribunal, and nomination and appointment of Liquor Licensing Tribunal members 45

- 16.** (1) The Liquor Licensing Tribunal consists of—
- (a) one member with legal qualifications equivalent to those required for admission as an attorney, or an advocate of the High Court of South Africa, and with experience in the administration of justice, and who is appointed by the Board as Presiding Officer; 50
  - (b) one member with the qualifications stated in paragraph (a) appointed by the Board as Deputy Presiding Officer;

- (c) one member representing organised local government, appointed by the Board after consultation with the Minister responsible for local government in the Province;
  - (d) one member who is a police officer of the rank of Superintendent 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 5
  - (e) two citizens of the Republic, who are permanently resident in the Province.
- (2) The members are appointed in accordance with the prescribed procedure, which must provide for public participation in the nomination of the candidates referred to in subsection (1)(a), (b) and (e). 10
- (3) If the Presiding Officer is not available to perform his or her functions or the office of Presiding Officer is vacant, the Deputy Presiding 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. 15
- (4) Before being appointed a member of the Liquor Licensing Tribunal the candidate must submit an affidavit to the Board in which such candidate declares that he or she is not disqualified in terms of section 17.
- (5) The Board, in consultation with the Minister, may at any time call for proof to its satisfaction of the continued eligibility of any member or prospective member of the Liquor Licensing Tribunal, or undertake or cause to be undertaken any investigation or enquiry in that regard. 20

#### **Disqualification for appointment as member of Liquor Licensing Tribunal**

- 17.** The following persons are disqualified from being appointed, continuing or acting as members of the Liquor Licensing Tribunal— 25
- (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; 30
  - (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; 35
  - (d) anyone less than twenty-one (21) 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 in the liquor trade does not imply that the person is unsuitable to hold office; 40
  - (g) anyone who is disqualified in terms of section 35 to hold a liquor licence; or
  - (h) who is not resident in the Province.

#### **Term of office**

- 18.** (1) A member of the Liquor Licensing Tribunal is appointed for a term of not more than five years, and is eligible for reappointment, for not more than one more term, at the expiry of his or her term of office. 45
- (2) A vacancy on the Liquor Licensing Tribunal must be filled by the appointment of another member by the Board.

#### **Termination of membership of Liquor Licensing Tribunal** 50

- 19.** A vacancy in the office of a member of the Liquor Licensing Tribunal occurs when—
- (a) such member's written resignation is received by the Board: Provided that the resignation is effective as of the date stated in the written resignation or such other date as is agreed upon between the Board and the member concerned; 55
  - (b) such member becomes disqualified from remaining a member of the Liquor Licensing Tribunal;

- (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 Deputy Presiding Officer;
- (d) such member's term of office has expired;
- (e) such member's term of office is terminated by the Board: Provided that the Board may not terminate a member's term of office unless it considers this to be in the public interest or in the interest of the proper administration of this Act; and 5
- (f) such member is no longer resident in the Province.

#### **Powers and functions of Liquor Licensing Tribunal** 10

**20.** (1) The Liquor Licensing Tribunal may consider any of the following matters at its meetings—

- (a) any application for a licence referred to in section 33 or 48 or on exemption referred to in section 89(14);
- (b) any application for the transfer of a licence in terms of section 65(9); 15
- (c) representations for or against the granting of applications;
- (d) any report submitted to it by a designated liquor officer, an inspector or a municipal official;
- (e) any complaint lodged with it regarding the conduct of a licensed business;
- (f) representations by a licensee or other interested person regarding the rescission of the suspension of a licence or the removal or amendment of any condition imposed upon a licence; or 20
- (g) any other matter referred to it by the Chief Executive Officer or which it may or must consider in terms of this Act.

(2) Except in respect of matters referred to in subsection (1)(a), (b), (c), (f) and (g), the Presiding Officer has a discretion to decline to convene a meeting of the Liquor Licensing Tribunal if in his or her opinion such a meeting is not warranted by the information placed before him or her. 25

(3) The Liquor Licensing Tribunal may, after consideration by it of any matter contemplated in— 30

- (a) subsection (1)(a), (b), or (c), refuse or grant the application subject to such conditions as it may deem appropriate;
- (b) subsection (1)(d) or (e)—
  - (i) dismiss the report or complaint, as the case may be;
  - (ii) revoke the licence concerned; 35
  - (iii) suspend the licence in the prescribed manner as a punitive or corrective measure;
  - (iv) impose such conditions upon the licence as it deems appropriate;
  - (v) order the licensee to pay such fine as it may deem appropriate, subject to the prescribed limit; or 40
  - (vi) take such other action as it may deem appropriate;
- (c) subsection (1)(f), dismiss the representations or rescind the suspension of the licence, or remove or amend the condition or conditions concerned; or
- (d) subsection (1)(g), consider the matter and take such action as it may deem appropriate. 45

(4) The Liquor Licensing Tribunal may at any time, upon application by a licensee, suspend, revoke or amend any condition imposed by it with regard to the licence concerned.

(5) The Liquor Licensing Tribunal may co-opt, in respect of any matter and for such period as it deems necessary, any person to serve on it whom it deems able to assist it in considering the matter concerned, subject to section 17. 50

(6) A person so co-opted does not have the right to vote.

(7) The remuneration of any person co-opted in terms of subsection (5) must be determined by the Board.

#### **Meetings and decisions of Liquor Licensing Tribunal** 55

**21.** (1) The Presiding Officer must determine the time and place for the holding of meetings of the Liquor Licensing Tribunal and may adjourn and reconvene meetings at such times and places as he or she may decide.

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

(3) A decision of the Liquor Licensing Tribunal is taken by a majority of the votes of the members present at its meetings, and in the event of an equality of votes on any matter, the Presiding Officer must cast the deciding vote. 5

#### **Recusal of member with conflicting interest**

**22.** (1) A 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; 10
- (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 15
- (c) he or she has any interest which precludes him or her from performing his or her functions as a member of the Liquor Licensing Tribunal in a fair, unbiased and proper manner. 20

(2) If at any stage it appears that a 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 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 to discuss the matter and determine whether that member is precluded from participating in the proceedings at such meeting or hearing by reason of a conflict of interest; and 25
- (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. 30

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

#### **Proceedings of Liquor Licensing Tribunal**

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**23.** (1) The Presiding Officer must, subject to the provisions of this Act, determine the procedure to be followed at meetings of the Liquor Licensing Tribunal.

(2) The Presiding Officer may notify, in the prescribed manner, any person who may be adversely affected in the consideration of a matter by the Liquor Licensing Tribunal, to be present at the meeting where the matter is to be considered. 40

(3) A person who has been notified in terms of subsection (2) may—

- (a) attend the meeting, in person or be represented thereat by an attorney, advocate or any other person appearing on his or her behalf; or
- (b) elect not to attend or be represented.

(4) If the Presiding Officer is satisfied that a person has been duly notified to appear at a meeting of the Liquor Licensing Tribunal but is not present thereat, the Presiding Officer may direct that the meeting proceed in the absence of that person or may take such other action as he or she deems fair and just in the circumstances. 45

(5) The Presiding Officer may cause any person to be summonsed in the prescribed manner to be present at a meeting of the Liquor Licensing Tribunal to give evidence or produce a document or anything which is in his or her possession or custody or under his or her control. 50

(6) The Presiding Officer may order any person present at a meeting of the Liquor Licensing Tribunal to give evidence or to produce a document or anything which is in his or her possession or custody or under his or her control, and to be questioned by the Liquor Licensing Tribunal. 55

(7) The Liquor Licensing Tribunal may inspect, and retain for such period as is reasonably necessary, any document or article produced to it.



- (8) A person giving evidence at a meeting of the Liquor Licensing Tribunal must do so under oath or affirmation.
- (9) In considering a matter the Liquor Licensing Tribunal may, of its own accord, take notice of any relevant fact or circumstance, which in its opinion may influence the decision of the Liquor Licensing Tribunal. 5
- (10) If any party requests a postponement to enable it to prepare argument with regard to a matter, the Presiding Officer may postpone that matter for this purpose.
- (11) All meetings of the Liquor Licensing Tribunal are accessible to the public except that the Presiding Officer may, on reasonable grounds, direct that any person whose presence at the meeting is not desirable, may not attend or must leave the meeting. 10
- (12) The deliberations and voting of the Liquor Licensing Tribunal are not accessible to the public.
- (13) Failure to attend a meeting after having been summonsed in terms of subsection (5) is an offence.

#### **Committees of Liquor Licensing Tribunal** 15

- 24.** (1) The Presiding Officer may appoint one or more committees consisting of him or herself or the Deputy Presiding Officer and any member or any person co-opted in terms of section 20(5).
- (2) A committee must consist of at least three persons.
- (3) The Liquor Licensing Tribunal may delegate to a committee the functions of the Liquor Licensing Tribunal set out in sections 64, 65, 71 and 89(14)(b). 20
- (4) The Liquor Licensing Tribunal may issue guidelines to a committee regarding the exercise of a power or the performance of a function it has delegated to the committee.
- (5) A committee must in the exercise of a delegated power or the performance of a delegated function, comply with the guidelines referred to in subsection (4). 25
- (6) In appointing members of a committee, the Presiding Officer must have due regard to the knowledge, expertise and experience required for the matter to be considered.
- (7) A committee of the Liquor Licensing Tribunal is governed by the same rules of procedure as those pertaining to the Liquor Licensing Tribunal.

#### **Appeal Tribunal** 30

- 25.** (1) The Minister must, for such term as he or she may determine, appoint a person with legal qualifications equivalent to those required for admission as an attorney, or an advocate of the High Court of South Africa, and with experience in the administration of justice, to act as an Appeal Tribunal to adjudicate upon appeals against or applications for the review of the decisions of the Liquor Licensing Tribunal in terms of this Act. 35
- (2) The Minister must prescribe the procedure to be followed by the Appeal Tribunal.

### CHAPTER 4

#### ADMINISTRATION, REMUNERATION AND FINANCIAL MANAGEMENT

#### **Administration of Board, Liquor Licensing Tribunal and Appeal Tribunal**

- 26.** (1) The Board must appoint— 40
- (a) a suitably qualified and experienced person as Chief Executive Officer for the purpose of assisting the Board in the performance of all financial and administrative responsibilities of the Board, the Liquor Licensing Tribunal and the Appeal Tribunal, and who is in respect thereof accountable to the Board; 45
- (b) a secretary of the Liquor Licensing Tribunal, who will be responsible for—
- (i) the preparation of agendas;
- (ii) the recording of proceedings;
- (iii) the keeping of minutes of the Liquor Licensing Tribunal; and
- (iv) such other duties as the Presiding Officer may determine; and 50
- (c) such other staff as may be necessary to enable the Board, the Liquor Licensing Tribunal and the Appeal Tribunal to perform their functions.
- (2) The staff of the Board, Liquor Licensing Tribunal and Appeal Tribunal must—
- (a) be appointed on such terms and conditions as the Board may determine and must be remunerated by the Board; and 55

- (b) perform their functions and duties subject to the directions and control of the Board.
- (3) The Board, in consultation with the Minister and the Minister responsible for finance in the Province—
- (a) must determine a human resources policy for the Board, Liquor Licensing Tribunal, the Appeal Tribunal and its staff; and 5
- (b) must determine the remuneration of its staff, excluding those members of staff who have been seconded in terms of subsection (5).
- (4) The Board must, upon the recommendation of the Chief Executive Officer, determine a code of conduct, applicable to all members of staff of the Board, Liquor Licensing Tribunal and the Appeal Tribunal to ensure— 10
- (a) compliance with applicable law;
- (b) the effective, efficient and economical use of the Board's funds and resources;
- (c) the promotion and maintenance of a high standard of ethics;
- (d) the prevention of conflicts of interest; 15
- (e) the protection of confidential information held by the Board, Liquor Licensing Tribunal and the Appeal Tribunal; and
- (f) professional, honest, impartial, fair, ethical and equitable service.
- (5) The Board may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 20
- (6) The Chief Executive Officer may enter into such financial transactions as may be required for the operation of a public entity, including but not limited to, entering into partnerships with other organs of state and to engage the services of contractors and service providers. 25
- (7) The Chief Executive Officer may refer to a meeting of the Board or Liquor Licensing Tribunal, as the case may be, any matter which falls within the powers and functions of the Board in terms of section 9 or the Liquor Licensing Tribunal in terms of section 20.
- (8) Minutes of proceedings of the Board, Liquor Licensing Tribunal and the Appeal Tribunal must be kept and retained at the offices of the Board and are available to any person for the purpose of perusing or copying, subject to the payment of the prescribed fee and the provisions of the Promotion of Access to Information Act, 2000 (Act 2 of 2000). 30
- (9) The Presiding Officer may, subject to the provisions of the Promotion of Access to Information Act, 2000, and on good cause shown, direct that a portion or the whole of a record of the proceedings of the Liquor Licensing Tribunal may not be made public, in which event such record or portion thereof may not be perused or copied by any person without the prior consent of the Presiding Officer. 35

#### **Remuneration of Chief Executive Officer, members of Board, Liquor Licensing Tribunal and Appeal Tribunal 40**

27. The Chief Executive Officer, members of the Board and Liquor Licensing Tribunal, and the person appointed to act as the Appeal Tribunal are entitled to receive reasonable remuneration as determined by the Minister, in consultation with the Minister responsible for finance in the Province. 45

#### **Funding and financial management of Board**

28. (1) The funds of the Board consist of—
- (a) money appropriated by the Provincial Parliament; and
- (b) money accruing to the Board from any other source approved by the Minister, after consultation with the Minister responsible for finance in the Province, including fees accruing in terms of this Act. 50
- (2) The Chief Executive Officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.
- (3) The Chief Executive Officer must ensure that the Board's annual budgets, business plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act 1 of 1999). 55
- (4) The Chief Executive Officer must, at least six months, or another period determined by the Minister, before the start of the Board's financial year, submit to the Minister for approval—



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

(5) In any financial year the Chief Executive Officer must, if applicable, submit to the Minister for approval supplementary statements of the Board's projected income and expenditure for that financial year. 5

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

#### **Audit and annual reports**

**29.** (1) The Auditor-General must audit the financial statements of the Board. 10

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

(3) The report must—

- (a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General; 15
- (b) state the measurable objectives as set out in the business plan referred to in section 28(4)(a) during the financial year concerned; and
- (c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan. 20

#### **Revenue accruing to Provincial Revenue Fund, Board or municipalities**

**30.** (1) The fees, penalties, fines and proceeds from the sale of forfeited items referred to in sections 20(3)(b)(v), 63(2) and (4), 64(1), 65(16), 82(2)(b), and 87(4) must be paid into the Provincial Revenue Fund, except the percentage of each renewal fee referred to in section 31(3). 25

(2) The fees referred to in sections 26(8), 36(1)(e), 38, 46, 48, 65(9) and 84(2) must be paid to the Board.

(3) The fees referred to in sections 36(5)(a)(i) and (b)(i) must be paid to the municipality concerned. 30

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

### **CHAPTER 5**

#### **ESTABLISHMENT OF SOCIAL AND EDUCATION FUND**

##### **Establishment of fund**

**31.** (1) The Chief Executive Officer must establish a fund for the purpose of— 35

- (a) combating the negative social consequences of the abuse of liquor;
- (b) educating persons engaged in the sale and supply of liquor; and
- (c) educating the general public in the responsible sale, supply and consumption of liquor.

(2) The Chief Executive Officer must, after consultation with the Board and in consultation with the Minister, provide for the terms of reference for and administer the fund referred to in subsection (1). 40

(3) The Minister, in consultation with the Minister responsible for finance in the Province, must determine the percentage of each renewal fee which must be allocated to the fund referred to in subsection (1). 45

(4) The Chief Executive Officer must, in consultation with the Board, the Minister and the Minister responsible for finance in the Province—

- (a) open an account for the fund in the name of the Board with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990); and
- (b) deposit therein all money allocated in terms of subsection (3). 50

## CHAPTER 6

## LICENSING

**Licences**

**32.** (1) A person may not micro-manufacture or sell liquor unless authorised to do so in terms of a licence issued in terms of this Act, the Liquor Act or the Liquor Act, 1989 (Act 27 of 1989). 5

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

(3) A person who, without being exempted in terms of section 89(14), micro-manufactures or sells liquor in contravention of subsection (1) or (2) is guilty of an offence. 10

**Categories of licences**

**33.** The Liquor Licensing Tribunal may grant the following licences—

- (a) a licence for the micro-manufacture and sale of liquor for consumption both on and off the premises where the liquor is sold; 15
- (b) a licence for the sale of liquor for consumption on the premises where the liquor is sold;
- (c) a licence for the sale of liquor for consumption off the premises where the liquor is sold;
- (d) in exceptional circumstances, a licence for the sale of liquor for consumption both on and off the premises where the liquor is sold; and 20
- (e) a licence for the sale of liquor for consumption on or off the premises upon which liquor is sold at special events.

**Criteria for granting licences**

**34.** The Liquor Licensing Tribunal may not grant a licence, unless it is satisfied on a balance of probabilities that— 25

- (a) the granting thereof is in the public interest;
- (b) the applicant is of good character, and not disqualified from holding a licence in terms of section 35;
- (c) the premises on which the sale or consumption of liquor will take place are or will upon completion be suitable for use by the applicant for the purposes of the licence; 30
- (d) the applicant has the right to occupy the proposed licensed premises; and
- (e) the granting of the application does not prejudice— 35
  - (i) the residents of a residential area;
  - (ii) the resident of an institution for the aged or frail;
  - (iii) the learners of an educational institution who are under the age of eighteen (18) years;
  - (iv) the patients of an institution for drug or alcohol related dependencies; or
  - (v) the congregants of a religious institution located in the vicinity of the proposed licensed premises. 40

**Disqualification of applicants**

**35.** (1) The following persons are disqualified from holding liquor licences—

- (a) anyone who has, within sixty (60) months prior to the lodgement of the application, been sentenced to imprisonment without the option of paying a fine; 45
- (b) anyone who has, within sixty (60) months prior to the lodgement of the application, been declared to be unfit to hold a registration by the National Liquor Authority or a licence by any provincial liquor board or authority;
- (c) anyone who is an unrehabilitated insolvent; 50
- (d) anyone who is a minor upon the date of consideration of the application;
- (e) anyone who was the holder of a licence which was cancelled in terms of the provisions of this Act, or an Act regulating liquor licences in any other

province, within a period of twelve (12) months prior to the lodgement of the application;

- (f) anyone who is the spouse or life partner of a person described in (a), (b) or (e) above; and
- (g) anyone who is mentally ill as defined in the Mental Health Care Act, 2002 (Act 17 of 2002). 5

(2) If a person is disqualified in terms of subsection (1)(a) to (e) or (g), any company, close corporation or co-operative in which he or she has a shareholding, member's interest or a membership share, any trust of which he or she is a trustee or beneficiary and any partnership of which he or she is a partner, is similarly disqualified. 10

(3) The Liquor Licensing Tribunal may, in exceptional circumstances and on good cause shown, determine that a person who is disqualified in terms of subsection (1) or (2) is deemed to be qualified for the purposes of a particular application or licence.

### Application procedure

**36.** (1) An application for a licence of a category referred to in section 33 must be made to the Board by submitting on or before the prescribed date— 15

- (a) the prescribed application form properly completed;
- (b) a zoning certificate;
- (c) where necessary, a copy of a planning application submitted to the municipality concerned in terms of applicable planning legislation; 20
- (d) other information that may be required by the Liquor Licensing Tribunal to enable it to determine whether or not the applicant meets the criteria for the granting of a licence; and
- (e) the prescribed fee which must be paid in the prescribed manner.

(2) By submitting an application for a licence, the applicant consents that the Liquor Licensing Tribunal or any member or authorised employee of the Board may— 25

- (a) conduct any hearing, investigation or enquiry pertaining to the integrity, character, reputation, prior conduct, habits, associations, financial standing and ability, criminal record, competence, experience and suitability of—
  - (i) the applicant or, if the licence has been granted, the licensee; 30
  - (ii) any director or shareholder, member, trustee or beneficiary, or person holding a membership share, where the applicant is a company, close corporation, trust or co-operative; and
  - (iii) any person directly or indirectly involved in the affairs of any applicant or, if the licence has been granted, the licensee; 35
- (b) disclose any document or information submitted as part of or together with an application to any person in connection with such hearing, investigation or enquiry; and
- (c) obtain from and disclose to any law enforcement or regulatory agency or body anywhere in the world information of and concerning the applicant for purposes of any hearing, investigation or enquiry. 40

(3) A staff member of the Board must, within the prescribed period from the date of receipt of an application, examine the application in order to determine whether it complies with the requirements of subsection (1).

(4) If the staff member referred to in subsection (3) determines that the application is incomplete or defective, he or she must, within the prescribed period from the date of receipt of the application, issue a notice of incomplete or defective filing as prescribed, calling on the applicant to supplement, or remedy the defect in, the application within the prescribed period from the date of request. 45

(5) The Board must, within the prescribed period after finding that an application complies with subsection (1)— 50

- (a) where subsection (1)(c) applies, forward the application to the municipality concerned in order for it to—
  - (i) allow the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application; 55
  - (ii) obtain the comment of the ward councillor;
  - (iii) comment on the application; and
  - (iv) allow for the consideration of the planning application in relation to the application for a liquor licence.
- (b) where subsection (1)(c) does not apply, forward the application to the municipality concerned in order for it to— 60

- (i) allow the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application;
- (ii) obtain comment of the ward councillor; and
- (iii) comment on the application.

### Notice of application

5

37. (1) The Board must, in the prescribed form, publish notices, in the three official languages of the Province in the *Provincial Gazette* and in at least two of the official languages in a community newspaper circulating in the area in which the proposed licensed premises are located, and where there is no such community newspaper, in at least one other newspaper circulating in the area where the premises concerned are located. 10

(2) The applicant must display a notice, as prescribed, in the three official languages of the Province in a prominent place at the proposed licensed premises so that it is visible to passers-by: Provided that the Liquor Licensing Tribunal may condone the non-compliance with this provision on good cause shown. 15

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

(4) The Board must, within the prescribed period from the date of lodgement of an application, serve notice of the application in the prescribed form on each of the following— 20

- (a) the designated liquor officer in whose area of jurisdiction the proposed licensed premises are located, who must, within the prescribed time, give notice of the application to—
  - (i) neighbouring residents or such persons who in his or her judgement may be affected by, or have an interest in, the granting or refusal of the application; and 25
  - (ii) the community policing forum, if any, of the area in which the premises concerned are located; and
- (b) the municipality in whose area of jurisdiction the proposed licensed premises are located, which must, within the prescribed time, give notice of the application to the ward councillor, if any, designated for the ward in which the premises concerned are located. 30

(5) Notwithstanding subsection (1), where an applicant has to comply with section 36(1)(c), the notification done in terms of the applicable planning legislation is deemed to be in compliance with the notification requirements in terms of this section: Provided that the Liquor Licensing Tribunal may require such additional notification as it may deem appropriate. 35

### Applications lying for inspection at Board

38. The Board must, within the prescribed period of finding that an application complies with section 36(1), enable the public to have access to, inspect or, upon payment of the prescribed fee, obtain a copy of the application and any documents lodged in connection therewith, at the offices of the Board until the date upon which the application is considered by the Liquor Licensing Tribunal. 40

### Representations

39. (1) A person who has an interest in the granting or refusal of an application may, within the prescribed period, make written representations to the Liquor Licensing Tribunal for or against the granting or refusal of that application. 45

(2) The representations must be lodged either with the Board or the municipality concerned.

(3) A copy of the representations must be served by the person making the representations, on the applicant or his or her representative and the designated liquor officer. 50

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

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

- (a) his or her full name and address; 55
- (b) his or her identity number or, if a company or close corporation, its registration number;

- (c) if applicable, the name and address of his or her representative;
  - (d) the nature of his or her interest in the granting or refusal of the application; and
  - (e) comprehensive grounds for the objection or support.
- (6) The applicant may lodge a response to representations against the application within the prescribed period. 5

### Forwarding of documents

40. The municipality must, within the prescribed period, forward to the Board the following—
- (a) its decision in respect of the planning application referred to in section 36(1)(c); 10
  - (b) information regarding the extent of the public participation process that was followed in respect of that application;
  - (c) the comments of the ward councillor;
  - (d) its comments, if any, on the application for a liquor licence; and
  - (e) any other document or article lodged with it in connection with the application for a liquor licence. 15

### Consideration of applications

41. (1) If an applicant fails to comply adequately with the notice referred to in section 36(4) within the time stipulated, the Liquor Licensing Tribunal may—
- (a) decline to consider the application; 20
  - (b) postpone the consideration of the application pending compliance with the notice; or
  - (c) refuse the application.
- (2) The Liquor Licensing Tribunal may, when considering an application, take cognisance of the following— 25
- (a) the application and any report lodged in response thereto;
  - (b) representations in support of or against the application, any response to representations against applications and any other document or article lodged in relation to the application; and
  - (c) subject to section 23(9), any matter which, in the opinion of the Liquor Licensing Tribunal, should be taken into consideration. 30
- (3) If an application, a document accompanying it, representations or a report is defective in any respect or if any person fails to lodge any document or adhere to a reasonable time period or time limit, the Liquor Licensing Tribunal may condone the defect or failure if there has been substantial compliance with this Act and if such condonation is not likely to prejudice any person. 35

### Conditional granting of licence

42. (1) The Liquor Licensing Tribunal may conditionally grant a licence.
- (2) A licence granted by the Liquor Licensing Tribunal in terms of subsection (1) may not be issued until the applicant complies with the conditions imposed at the time of granting. 40
- (3) The Liquor Licensing Tribunal must, when conditionally granting a licence, stipulate a period within which the applicant must comply with the conditions referred to in subsection (2).
- (4) The Liquor Licensing Tribunal may at any time, upon application by the applicant amend or withdraw the conditions. 45
- (5) The Presiding Officer may at any time, upon application by the applicant—
- (a) extend the time period stipulated; or
  - (b) approve an amendment of the plan of the premises.
- (6) If the applicant fails to comply with the conditions referred to in subsection (2) within the period referred to in subsection (3) or extended in terms of section (5), the granting of the licence lapses and the licence is deemed not to have been granted. 50
- (7) When the applicant complies with the conditions imposed by the Liquor Licensing Tribunal, the Board must issue the licence as prescribed, subject to section 46.

### Right to use premises

43. The Liquor Licensing Tribunal may conditionally grant a licence and direct that the licence may not be issued unless it is satisfied that the applicant has the right to use the premises concerned for the purpose to be authorised in the licence.

### Incomplete premises

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44. The Liquor Licensing Tribunal may conditionally grant a licence in respect of premises not yet erected, or premises requiring any structural alteration, addition or reconstruction to be effected so as to make such premises suitable for the purposes for which they will be used under the licence and direct that the licence may not be issued until the applicant complies with the conditions it has imposed relating to the completion of the premises. 10

### Education and training

45. The Liquor Licensing Tribunal may conditionally grant a licence and direct that the licence may not be issued until the applicant or an employee or employees of the applicant have undergone such training and education as the Liquor Licensing Tribunal may require. 15

### Issuing of licence

46. (1) The Board must, within the prescribed period after the Liquor Licensing Tribunal has granted an application made in terms of section 36, notify the applicant in writing that the application has been granted. 20

(2) The applicant must pay the prescribed fee within sixty (60) days of the issuing of the notice contemplated in subsection (1).

(3) The Board must within the prescribed period after the payment of the prescribed fee referred to in subsection (2), and subject to sections 42, 43, 44, and 45, issue a licence to the applicant in the prescribed form, setting out the conditions of the licence as imposed by the Liquor Licensing Tribunal. 25

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

(5) If the applicant fails to pay the fee referred to in subsection (2), the granting of the application will lapse, subject to subsection (6). 30

(6) The applicant may, within a period of sixty (60) days after the expiry of the period referred to in subsection (2), apply in writing to the Chief Executive Officer for condonation of the failure to pay the prescribed fee referred to in subsection (2) and the Chief Executive Officer may condone the failure and allow the late payment of the said fee by a date to be determined by the Chief Executive Officer, subject to the payment of a penalty of 100 % of that fee. 35

### Death or incapacity of applicant

47. If an applicant for a licence—

(a) dies; 40

(b) is sequestered;

(c) is declared incapable of handling his or her own affairs by a court; or

(d) being a company, close corporation, trust or co-operative, is liquidated, prior to the date of consideration of the application, the executor, trustee, curator or liquidator appointed may exercise all the powers and rights which the applicant would have had save for such death, sequestration, declaration or liquidation. 45

### Temporary liquor licences and special event liquor licences

48. (1) The Presiding Officer may upon application by a licensee referred to in section 33(b) or (d), and upon the payment of the prescribed fee, grant a temporary liquor licence for the use by that licensee only: Provided that in the case of section 33(d), the temporary liquor licence is limited to the sale and consumption of liquor on the premises where the liquor is sold. 50



- (2) The Presiding Officer may not grant a temporary liquor licence under subsection (1) to a particular person for a period longer than eight 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. 5
- (4) The Presiding Officer may upon application by—
- (a) an educational institution;
  - (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,
- in the prescribed manner and upon the payment of the prescribed fee, grant a special event liquor licence for the sale of liquor for consumption on or off the premises on which liquor is sold at a special event. 15
- (5) An application for a special event liquor licence must be made at least fourteen (14) days prior to the date of the special event.
- (6) A special event liquor licence may not be granted for a period exceeding the duration of the special event concerned.
- (7) A special event liquor licence is subject to the conditions referred to in section 49, where applicable, and such other conditions and restrictions as the Liquor Licensing Tribunal may impose. 20

## CHAPTER 7

### CONDITIONS FOR LICENCES

#### **Standard licence conditions** 25

- 49.** (1) It must be a condition of every licence for the consumption of liquor on the premises where the liquor is sold, that all liquor sold must be consumed on the licensed premises only and that no liquor sold may be removed from the licensed premises.
- (2) It must be a condition of every licence for consumption of liquor off the licensed premises that no container containing liquor may be opened and no liquor may be consumed on the licensed premises except for tasting purposes as approved by the Liquor Licensing Tribunal or the Presiding Officer, as the case may be. 30
- (3) If premises are licensed for the consumption of liquor both on and off the licensed premises, subsections (1) and (2) do not apply to such premises.
- (4) The licensee of premises upon which the business of a retail food store is carried on, may not sell liquor other than table wine. 35
- (5) A retail food store as referred to in subsection (4) must sell its liquor from a designated area, which must be locked in such a manner as to render it inaccessible to the public at all times when liquor may not be sold.
- (6) The area from which liquor is sold in terms of a liquor licence for consumption on the premises where the liquor is sold must be locked in such a manner as to render it inaccessible to the public at all times when liquor may not be sold. 40
- (7) The Presiding Officer may at any time after the issue of a licence under section 46, upon application by the licensee or any other interested party, by a notice delivered or tendered to the licensee concerned— 45
- (a) declare the licence to be subject to such conditions or further conditions set out in the notice as he or she may in his or her discretion impose; or
  - (b) suspend, revoke or amend any condition or declaration imposed or made by him or her or the Liquor Licensing Tribunal.
- (8) A contravention of or failure to comply with the conditions set out in subsection (1), (2), (4), (5) or (6) is an offence. 50

#### **Deliveries**

- 50.** (1) It must be a condition of every licence issued for the consumption of liquor off the licensed premises that—
- (a) liquor may not be delivered from any vehicle unless the liquor was ordered from the licensed premises before the dispatch of the liquor and an invoice



was issued in the prescribed manner, the original of which was retained on the licensed premises;

- (b) liquor may be delivered only to the address shown on the invoice described in paragraph (a); and
- (c) a legible copy of the invoice described in paragraph (a) must be retained in the delivery vehicle from the time of dispatch to the time of delivery of the liquor, when it must be handed to the person accepting delivery. 5

(2) Failure by the licensee to comply with a condition contemplated in subsection (1) is an offence.

(3) Accepting delivery of liquor purchased from a supplier unaccompanied by an invoice describing the name, address and licence number of the supplier as well as the nature, quantity and purchase price of the liquor supplied, is an offence. 10

### **Financial interests and letting of licensed premises**

**51.** (1) A licensee may not, without the prior written consent of the Presiding Officer, transfer a financial interest of more than 5% in the licensed business to any other person. 15

(2) A licensee who wishes to transfer a financial interest of more than 5% in the licensed business to any other person must apply, in the prescribed manner, to the Presiding Officer for permission to do so.

(3) The Presiding Officer may not grant consent in terms of subsection (2) if the person to whom the financial interest is intended to be transferred— 20

- (a) is disqualified in terms of section 35 from holding a licence; or
- (b) is not of good character.

(4) The Board must, in the manner prescribed, notify the designated liquor officer of the application, and request from him or her a report regarding the qualification and fitness of a person to whom the financial interest is intended to be transferred. 25

(5) The designated liquor officer must, within the prescribed period, lodge a report as required by subsection (4), and may include therein any other matter which the designated liquor officer may deem relevant to the application.

(6) The Presiding Officer must, within the prescribed period, either refuse the application or grant it. 30

(7) A licensee may not let the licence to another person or allow another person to carry on business in terms of the licence: Provided that a licensee in respect of licence which includes the right to micro-manufacture may apply to the Liquor Licensing Tribunal to let the licensed premises concerned or part thereof to another person for the purposes of micro-manufacturing by lodging with the Board an application in the prescribed manner and form, and against payment of the prescribed fee. 35

(8) The Presiding Officer may not grant an application for letting unless he or she is satisfied that the person to whom the licensed premises or part thereof is intended to be let—

- (a) is not disqualified from holding a licence in terms of section 35; 40
- (b) is of good character; or
- (c) is or will be suitably educated and trained, or will have in his or her employ one or more employees who are or will be suitably educated and trained to manage the licensed business.

(9) A contravention of or failure to comply with subsection (1) or (7) is an offence. 45

### **Management**

**52.** (1) The Liquor Licensing Tribunal must, unless the applicant is a natural person, when granting a licence, approve the appointment of a natural person nominated by the applicant, and who is resident in the Province, as manager of the licensed business.

(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 may approve such person's appointment as manager. 50

(3) The designated liquor officer must, within the prescribed period, furnish a report on the suitability of the nominated person. 55

(4) The Liquor Licensing Tribunal 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.

(5) The Liquor Licensing Tribunal 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.

(6) A manager whose appointment has been approved in terms of this section is responsible for the management of the business and is subject to the same duties, obligations and liabilities as the licensee. 5

(7) The approval of the appointment of a manager in terms of this section does not release the licensee from any duty, obligation or liability imposed upon it by this Act or in terms of the conditions of the licence.

(8) The approval of the appointment of a manager in terms of subsection (1) or (2) remains valid until the appointment of a new manager. 10

(9) If a person, whose appointment as a manager has been approved in terms of subsection (1) 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. 15

(10) If a licensee fails to comply with subsection (9), its licence may be suspended in terms of section 20(3)(b)(iii).

### **Alteration of licensed premises or nature of business**

**53.** (1) Except with the prior written consent of the Presiding Officer granted upon application in the prescribed manner, a licensee may not— 20

- (a) carry out any structural alteration, addition, reconstruction or extension of or to the licensed premises;
- (b) materially change the nature of the business in respect of which a licence was granted from that described in the application considered by the Liquor Licensing Tribunal when granting the licence; or 25
- (c) conduct his, her or its business under the licence on premises on which any other business, including a business to which any other licence relates, or any trade or occupation is carried on or pursued.

(2) Two or more premises under the same roof are deemed to be one for the purposes of subsection (1)(c), if those premises are not completely separated from each other by a wall or walls in which there is no door, window or other aperture, unless the Liquor Licensing Tribunal, at any time when the matter may in its opinion rightly be raised, determines otherwise in a particular case. 30

(3) A consent in terms of subsection (1)(a) must not be issued until the applicant, within the prescribed period, submits proof to the satisfaction of the Presiding Officer that he or she has the right to alter the premises concerned for the purpose as contemplated in the application. 35

(4) A contravention of or failure to comply with subsection (1) is an offence.

### **Children**

**54.** (1) No person may sell liquor to a person under the age of eighteen (18) years. 40

(2) No person may give or supply liquor to a person under the age of eighteen (18) years or allow such a person to consume liquor, except in negligible quantities in the presence of such a person's parent or guardian.

(3) A licensee or a manager, as the case may be, may not allow a person under the age of eighteen (18) years to consume liquor on the licensed premises. 45

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

(5) A person under the age of eighteen (18) years may not obtain or consume liquor in contravention of this Act or mislead any person regarding his or her age in order to obtain or consume liquor or gain access to parts of licensed premises which such a person may not enter. 50

(6) Any contravention of or failure to comply with subsection (1), (2), (3), (4) or (5) is an offence.

### **Employers and employees** 55

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

- (a) of or above the age of sixteen (16) years;
  - (b) undergoing training in catering services; and
  - (c) apprenticed to the licensee.
- (2) An employer may not—
- (a) supply liquor to a person as an inducement to secure his or her employment; 5
  - (b) supply liquor to an employee instead of wages;
  - (c) deduct from an employee's wages the cost of liquor supplied to the employee or any other person on his or her behalf; or
  - (d) withhold payment of the wages of an employee in lieu of a debt in respect of the sale or supply of liquor. 10
- (3) Any contravention of or failure to comply with subsection (1) or (2) is an offence.

#### **Access to licensed premises**

- 56.** (1) Except as provided for in section 55(1) and subsection (3) of this section, a licensee may not permit a person under the age of eighteen (18) years to enter a restricted area. 15
- (2) A restricted area is—
- (a) a room or any place on licensed premises where liquor is sold over a counter, except when meals are being served to diners seated at tables in such a room or place;
  - (b) a room or place which the Liquor Licensing Tribunal has demarcated as an area in which persons under the age of eighteen (18) years are not allowed to be; and 20
  - (c) premises, not being a retail food store, licensed only for the sale of liquor for consumption off the licensed premises.
- (3) A person under the age of eighteen (18) years may have access to a restricted area if accompanied either by a parent or a guardian or by an adult with the consent of a parent or a guardian. 25
- (4) Every restricted area must be indicated as such in a manner as prescribed.
- (5) Any contravention of or failure to comply with subsection (1) or (4) is an offence.

#### **Storing of liquor** 30

- 57.** (1) A licensee must store his, her or its liquor on the licensed premises or in such other or additional place within the Province as may be approved by the Liquor Licensing Tribunal when granting a licence or by the Presiding Officer, on application, at any time thereafter.
- (2) A licensee may not sell, supply or allow the consumption of liquor in or from such other or additional place of storage. 35
- (3) Any contravention of or failure to comply with subsection (1) or (2) is an offence.

#### **Place of sale**

- 58.** (1) A licensee may not sell or supply liquor from any place other than the licensed premises. 40
- (2) Notwithstanding the provisions of this section, a licensee may advertise the sale of liquor and solicit and receive orders for the purchase of liquor elsewhere than on the licensed premises.
- (3) Any contravention of or failure to comply with subsection (1) is an offence.

#### **Trading hours** 45

- 59.** (1) Subject to conditions imposed by the Liquor Licensing Tribunal when granting a licence or after a meeting in terms of section 20, a licensee may sell liquor on such days and during such trading hours as the Liquor Licensing Tribunal may determine for licensed businesses.
- (2) (a) Subject to conditions imposed by the Liquor Licensing Tribunal, a licensee of premises on which liquor may be sold for consumption off the licensed premises may sell liquor on any day between 08:00 and 20:00. 50
- (b) Subject to conditions imposed by the Liquor Licensing Tribunal, a licensee of premises on which liquor may be sold for consumption on the licensed premises may sell liquor on any day between 08:00 and 04:00 the next day. 55

(c) If the licensee has a licence for consumption of liquor both off and on the licensed premises, paragraph (a) applies in as far as the sale of liquor is for consumption off the licensed premises and paragraph (b) applies in as far as the sale is for consumption on the licensed premises.

(3) 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 by the licence, is guilty of an offence. 5

#### **Quantity of liquor sold and keeping of records**

**60.** (1) A licensee must keep, in the prescribed manner, a record of all liquor sold for consumption off the licensed premises. 10

(2) No person, other than a licensee, may purchase, and a licensee may not sell to one person, in a single day for consumption off the licensed premises, more liquor than a quantity, which the Minister may prescribe, without the prior written consent of the Presiding Officer.

(3) A person who is not licensed or authorised to sell liquor may not at any time have in his or her possession or under his or her control more liquor than the quantity prescribed in terms of subsection (2), except with the consent provided for in that subsection. 15

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

#### **Prohibited substances** 20

**61.** (1) A person may not micro-manufacture, sell or supply any substance under the name of any liquor, if that substance is not liquor as defined in this Act.

(2) A person may not micro-manufacture, sell or supply as liquor any impotable substance, add an impotable substance to liquor, or sell or supply any liquor to which an impotable substance has been added. 25

(3) A contravention of or failure to comply with subsection (1) or (2) is an offence.

### CHAPTER 8

#### VALIDITY AND RENEWAL OF LICENCES

##### **Validity of licences**

**62.** (1) A licence is valid from the date upon which it is issued. 30

(2) A licence lapses—

- (a) on the date on which the licensee abandons it in writing;
- (b) on 1 January of the year in respect of which the applicable fees prescribed are not paid on or before 31 December of the preceding year;
- (c) on the date determined by the Liquor Licensing Tribunal when it revokes the licence; 35
- (d) where the licence has already acquired validity, on the date on which a court sets aside the decision to grant or issue the licence; or
- (e) on the date on which it is converted into another licence in terms of section 89.

(3) A licence which has lapsed, and the rights, privileges, obligations and liabilities which were attached thereto immediately before the date on which it lapsed, become valid again on the date on which— 40

- (a) where the licence has lapsed under the circumstances contemplated in subsection (2)(b), the fees so contemplated— 45
  - (i) plus a penalty of 50% are paid on or before 31 January; or
  - (ii) plus a penalty of 100% are paid between the first and the last day of February of the year in respect of which those fees should have been paid;
- (b) where the licence has lapsed under the circumstances contemplated in subsection (2)(c), the decision by the Liquor Licensing Tribunal to revoke that licence is set aside by a court; or 50
- (c) where the licence has lapsed under the circumstances contemplated in subsection (2)(d), the decision by the court to set aside the decision to grant or issue that licence is set aside on appeal.

(4) The Presiding Officer may, upon receipt of a report that the licensee has abandoned the licensed premises, suspend the licence in the prescribed manner with immediate effect.

(5) The suspension of a licence in terms of subsection (4) lapses upon the receipt by the Presiding Officer of proof that the licensed premises have not been abandoned by the licensee or are again in use by the same licensee. 5

#### **Automatic renewal of licences**

**63.** (1) The Board must issue an annual renewal notice, in the prescribed form, not later than 31 October of the year preceding the year in respect of which the prescribed renewal fees should be paid. 10

(2) Upon payment of the prescribed renewal fee, the licence is automatically renewed until 31 December of the year in respect of which those fees have been paid.

(3) The licensee is not absolved from his, her or its obligation to pay the prescribed renewal fee timeously if the notice was not sent to or received by him, her or it.

(4) A licensee who has failed to pay the prescribed renewal fee on or before the last day in February of the year in respect of which the renewal fee should have been paid, may, on or before 31 March of that year, apply in writing to the Chief Executive Officer for condonation of such failure, and the Chief Executive Officer may condone the failure and allow the late payment of the prescribed renewal fee by a date to be determined by the Board, subject to the payment of the renewal fee plus a penalty of 150%. 15 20

(5) If the Chief Executive Officer has in terms of subsection (4) granted condonation and the prescribed renewal fee and penalty have been paid, the licence is deemed to have been renewed from 31 December of the year preceding the year in respect of which the renewal fees should be paid.

(6) If the licensee fails to pay the prescribed renewal fee and penalty imposed in terms of subsection (4), the licence will be deemed to have lapsed on 1 January of the year in respect of which the prescribed renewal fee should have been paid. 25

#### **Applications for renewal of licences**

**64.** (1) If a licensee has since the date of issue of the licence or, if the licence has been renewed, since the last renewal of the licence— 30

- (a) become disqualified in terms of section 35 to hold a licence;
- (b) been declared unfit to hold a liquor licence by the Liquor Licensing Tribunal;
- (c) failed to comply with a compliance notice issued in terms of this Act; or
- (d) been the subject of a report in terms of section 73(7)(c) or (d),

the licence is not capable of automatic renewal in terms of section 63, but may be renewed by the Board upon application by the licensee in the prescribed manner and upon payment of the prescribed fee. 35

(2) The Board must, before 31 July of the year in which a renewal notice should be issued, serve a notice upon a licensee referred to in subsection (1)—

- (a) informing the licensee that the licence will not be automatically renewed; and 40
- (b) calling upon the licensee to make application in the prescribed form for the renewal of the licence by not later than 30 September of that year.

(3) If the licensee fails to comply with the notice contemplated in subsection (2), the licence will lapse on 31 December of that year, subject to subsection (4).

(4) If the licensee makes an application as contemplated in subsection (2)(b) after 30 September but before 31 December of the year in which the renewal notice should be issued, the licensee may apply in writing to the Liquor Licensing Tribunal for condonation of such failure, and the Liquor Licensing Tribunal may condone the failure and allow the late payment of the prescribed renewal fee by a date to be determined by the Liquor Licensing Tribunal, subject to the payment of a penalty of 150% of that fee. 45 50

(5) If the licensee complies with the notice, the licence remains valid until the Liquor Licensing Tribunal has completed its consideration of the application for renewal.

(6) When considering an application for renewal, the Liquor Licensing Tribunal has the same duties and powers which it has when considering an application for a new licence, including the right to refuse the application or to grant it, subject to such conditions as it may deem appropriate. 55

(7) If the Liquor Licensing Tribunal grants an application for the renewal of the licence, the licence is deemed to have been renewed in terms of section 63(2).



(8) If the Liquor Licensing Tribunal refuses an application for the renewal of a licence, the licence lapses immediately or upon such date as the Liquor Licensing Tribunal determines.

## CHAPTER 9

### ALIENATION, TRANSFER AND REMOVAL OF LICENCES 5

#### **Alienation and transfer of licences**

- 65.** (1) A licensee who alienates the licensed business must, within thirty (30) days from the date of alienation, notify the Board in writing and in the prescribed manner of the date and nature of alienation.
- (2) Failure to notify the Board of such alienation is an offence. 10
- (3) A person who has purchased a licensed business may apply to the Presiding Officer for consent to operate and conduct the licensed business pending the transfer of the licence to such person.
- (4) An application in terms of subsection (3) must be made by the lodgement thereof in the prescribed form with the Presiding Officer. 15
- (5) The Presiding Officer may grant consent authorising the purchaser of the business to conduct the business for his or her own account for a specified period, which period may not be more than six months from the date on which consent was granted.
- (6) The Presiding Officer may at any time revoke or upon application by the purchaser extend a consent granted in terms of subsection (5). 20
- (7) A person to whom consent in terms of subsection (5) has been granted, may operate and conduct the licensed business in terms of the licence, for his or her own account, and has the same rights and is subject to the same duties as the licensee.
- (8) The granting of consent in terms of subsection (5) does not relieve the licensee from any of his, her or its duties and obligations in respect of the licence. 25
- (9) A licensee may apply for the transfer of the licence to another person by lodging with the Board an application, in the prescribed manner and form, and upon payment of the prescribed fee.
- (10) The Board must, in the prescribed manner, notify the designated liquor officer of the application, and request from him or her a report regarding the qualification and fitness of the proposed licensee to hold the licence. 30
- (11) The designated liquor officer must, within the prescribed period, lodge a report as required by subsection (10), and may include in such report any other matter which the designated liquor officer may deem relevant to the application.
- (12) The Liquor Licensing Tribunal must, within the prescribed period, either refuse the application or grant it. 35
- (13) The Liquor Licensing Tribunal may not grant an application for transfer unless it is satisfied that the proposed licensee—
- (a) is not disqualified from holding a licence in terms of section 35;
  - (b) is of good character; and 40
  - (c) is or will be suitably educated and trained, or will have in his or her employ one or more employees who are or will be suitably educated and trained to manage the licensed business.
- (14) The Liquor Licensing Tribunal may, when granting an application for transfer, direct that the proposed licensee, or one or more employees of such a person, must undergo such education and training as the Liquor Licensing Tribunal may direct. 45
- (15) The Board must notify the proposed licensee, within the prescribed period after the Liquor Licensing Tribunal has granted an application for transfer of a licence, in writing that the application has been granted.
- (16) The proposed licensee must pay the prescribed fee within sixty (60) days of the issuing of the notice contemplated in subsection (15). 50
- (17) The Board must, within the prescribed period after the payment of the prescribed fee referred to in subsection (9), and subject to sections 42 to 45 and 53(1) and (2), issue a certificate of transfer to the proposed licensee in the prescribed form, setting out the conditions of the licence as imposed by the Liquor Licensing Tribunal. 55
- (18) If the proposed licensee fails to pay the fee referred to in subsection (16), the granting of the application will lapse, subject to subsection (19).
- (19) The proposed licensee may, within a period of sixty (60) days after the expiry of the period referred to in subsection (16), apply in writing to the Chief Executive Officer

for condonation of the failure to pay the prescribed fee referred to in subsection (16) and the Chief Executive Officer may condone the failure and allow the late payment of the said fee by a date to be determined by the Chief Executive Officer, subject to the payment of a penalty of 100 % of that fee.

(20) If the proposed licensee dies, becomes insolvent or is declared incapable of handling his or her own affairs by a court, or being a company, trust, co-operative or close corporation, is liquidated before the date upon which the application for transfer is considered, the executor, trustee, curator or liquidator, as the case may be, may exercise all the powers and rights which such person, company, trust, co-operative or close corporation would have had save for such death, insolvency, declaration or liquidation. 5

(21) The Liquor Licensing Tribunal may, in its discretion, grant an application for transfer in favour of an executor, trustee, curator or liquidator or to such other person as the Liquor Licensing Tribunal may deem appropriate. 10

### Removal of licences

66. (1) A temporary liquor licence or special event liquor licence is not removable from the licensed premises concerned to other premises. 15

(2) A licensee, excluding the holder of a temporary liquor licence and special event liquor licence, may at any time apply for the removal, whether permanently or temporarily, of the licence from the licensed premises concerned to any other premises situated in the Province. 20

(3) The Board must, in the prescribed manner, notify the designated liquor officer in whose area of jurisdiction the licence is currently located, of the application and request a report, as prescribed, from him or her and where the granting of the application will have the effect of removing the licence to the area of jurisdiction of another designated liquor officer, the Board must also, in the prescribed manner, notify the designated liquor officer to whose area of jurisdiction the licence will be removed, of the application and request a report, as prescribed, from him or her. 25

(4) The Liquor Licensing Tribunal must consider each application for the removal of a licence and may—

- (a) refuse the application; or 30
- (b) grant the application.

(5) The Board must, within the prescribed period after the Liquor Licensing Tribunal has granted an application for the removal of a licence, but subject to subsection (10), notify the applicant in writing that the application has been granted.

(6) The Board must, subject to the payment of the prescribed fee within sixty (60) days of the issuing of the notice contemplated in subsection (5), issue a certificate of removal to the licensee in the prescribed form. 35

(7) If the licensee fails to pay the fee referred to in subsection (6), the granting of the application will lapse, subject to subsection (8).

(8) The licensee may, within a period of sixty (60) days after the expiry of the period referred to in subsection (6), apply in writing to the Chief Executive Officer for condonation of the failure to pay the prescribed fee referred to in subsection (6) and the Chief Executive Officer may condone the failure and allow the late payment of the said fee by a date to be determined by the Chief Executive Officer, subject to the payment of a penalty of 100 % of that fee. 40

(9) A certificate of removal is subject to such conditions set out in the certificate as the Presiding Officer or the Liquor Licensing Tribunal, as the case may be, may in his or her or its discretion impose. 45

(10) The Presiding Officer may at any time after the issue of a certificate of removal, by a notice delivered or tendered to the licensee concerned, revoke or amend any condition imposed by him or her or the Liquor Licensing Tribunal under subsection (9). 50

(11) The effect of the issuing of a certificate of removal will be that the licensee may either permanently or for the period determined by the Presiding Officer or the Liquor Licensing Tribunal, as the case may be, and mentioned in the certificate, conduct the business to which the licence relates, on the premises, the plan of which has been approved by the Presiding Officer or the Liquor Licensing Tribunal, as the case may be, but which premises may not for the purposes of the licence in respect of which the application concerned was made, include such place or places thereon as he or she or it has in his or her or its discretion specifically excluded therefrom. 55



- (12) Where a certificate of removal permits the removal of a licence for a determined period, the Presiding Officer may at any time before the expiration of that period, on application by the licensee concerned—
- (a) extend that period; or
  - (b) revoke the certificate. 5
- (13) If an application for the removal of a licence is granted by the Liquor Licensing Tribunal in respect of premises not yet erected, or premises requiring any structural alteration, addition or reconstruction to be effected so as to make them suitable for the purposes for which they will be used under the licence, the Board must, in the notice contemplated in subsection (5), order the licensee to comply with such conditions or requirements, referred to in the notice, with regard to those premises as the Presiding Officer may determine, within such period as the Presiding Officer may determine. 10
- (14) The Presiding Officer may at any time after the issue of such a notice, on application by the applicant concerned—
- (a) revoke or amend any condition or requirement determined under subsection (13); 15
  - (b) extend the period determined under subsection (13);
  - (c) extend the period so determined and extended under paragraph (b) in respect of premises not yet erected at the time of the issue of the notice, if he or she is satisfied that a substantial part of the premises has since been erected; or 20
  - (d) approve an amended plan in respect of the premises.
- (15) The period determined under subsection (13) or the period so determined and extended under subsection (14)(b), as the case may be, may not be longer than twenty-four (24) months, and the period extended or further extended under subsection (14)(c), as the case may be, may not be longer than a further twelve (12) months. 25
- (16) When the Presiding Officer is satisfied that the premises in respect of which a notice has been issued under subsection (13), have been completed in accordance with the plan thereof approved by the Presiding Officer or the Liquor Licensing Tribunal, as the case may be, the conditions and requirements determined by the Presiding Officer have been complied with and the premises are suitable for the purposes for which they will be used under the licence concerned, the Board must issue the certificate of removal in accordance with subsection (6). 30
- (17) If the certificate of removal is not issued before the expiration of the period determined under subsection (13) or extended under subsection (14)(b) or further extended under subsection (14)(c), as the case may be, the notice concerned lapses and the application for the removal of the licence is deemed not to have been granted. 35

#### **Abandonment of premises and death or incapacity of licensee**

- 67.** (1) The Liquor Licensing Tribunal may, if satisfied that—
- (a) a licensed business has been abandoned by the licensee; or
  - (b) the licensee is a person described in subsection (3), and an executor, administrator, trustee, curator or liquidator has not been appointed, 40
- appoint a person to hold the licence and conduct the licensed business until the appointment of an executor, administrator, trustee, curator or liquidator, or in the case of an abandoned business, a manager.
- (2) A person appointed in terms of subsection (1)(b) is deemed to be the licensee. 45
- (3) If a licensee dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs by a court, or being a company, trust, co-operative or close corporation, is liquidated—
- (a) the licence vests in the executor of the deceased estate, administrator of the insolvent estate, judicial manager, curator or liquidator, as the case may be, from the date of appointment; 50
  - (b) the executor of the deceased estate, administrator of the insolvent estate, judicial manager, curator or liquidator may conduct the licensed business in the same manner and subject to the same conditions as the licensee would have save for his or her death, insolvency, such declaration or its liquidation; 55
  - and
  - (c) the executor of the deceased estate, administrator of the insolvent estate, judicial manager, curator or liquidator may make application for the transfer of the licence in terms of section 65 and is for purposes of such application deemed to be the licensee. 60

## CHAPTER 10

## APPEALS AND REVIEWS

**Appeals and reviews to Appeal Tribunal**

**68.** (1) The Appeal Tribunal must consider any appeal against, or an application for the review of, a decision of the Liquor Licensing Tribunal in terms of section 20(3). 5

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

(3) An applicant or interested party who is aggrieved by a decision of the Liquor Licensing Tribunal may, within the prescribed period after receiving reasons for a decision of the Liquor Licensing Tribunal, lodge with the Liquor Licensing Tribunal a notice of appeal or review as prescribed. 10

(4) The appeal or review must be heard as if it were an appeal to the High Court against the judgment of a magistrate's court in a civil matter and any rule applicable to such civil appeal applies, with the necessary changes. 15

(5) Except where the applicant or interested party has been exempted from the payment of security in terms of subsection (6), a person who is aggrieved by a decision of the Liquor Licensing Tribunal must simultaneously with the lodgement of the notice of appeal or review in terms of subsection (3), pay an amount prescribed as security for the anticipated costs of the Liquor Licensing Tribunal or an opposing party. 20

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

(7) Money paid as security in terms of this section must be paid to the Chief Executive Officer, who must deposit it in a separate banking account pending the outcome of the appeal or review, when he or she makes payment thereof in accordance with the order of the Appeal Tribunal. 25

(8) The Appeal Tribunal may make such order as to the payment of the costs of the parties to the proceedings or of the Liquor Licensing Tribunal as it may deem appropriate in the circumstances. 30

(9) An applicant or interested party who is aggrieved by the decision of the Liquor Licensing Tribunal may appear in person before the Appeal Tribunal or may be represented thereat by an advocate, an attorney or any other person appearing on his or her behalf.

(10) If a person, having been duly notified to be present at a meeting of the Appeal Tribunal, fails to attend such meeting or absents himself or herself therefrom without the consent of the Appeal Tribunal, the meeting may be continued in the absence of such person or the Appeal Tribunal may take such other action as it deems fair and just in the circumstances. 35

(11) A decision of the Appeal Tribunal regarding the merits of a matter is final. 40

## CHAPTER 11

## COMPLIANCE

**Compliance notices**

**69.** (1) An inspector may issue and serve a compliance notice upon a licensee or any person in control of licensed premises, calling upon such person to comply with the provisions of this Act or a condition of a licence. 45

(2) A compliance notice must stipulate—

- (a) the provisions of this Act or the conditions of the licence which must be complied with;
- (b) the act or omission constituting non-compliance; 50
- (c) the measures which must be taken to comply;
- (d) the date by which compliance must be completed; and
- (e) the possible consequences of non-compliance.

(3) A designated liquor officer may, in the absence of an inspector or where an inspector is not readily available, issue and serve a notice referred to in subsection (1) 55

and must notify the Chief Executive Officer of the issuing or service of that notice on or before the prescribed date.

(4) The inspector or designated liquor officer, as the case may be, may, at the request of the person served with a compliance notice, extend the period for compliance, upon good cause shown, by issuing an amended compliance notice. 5

(5) A compliance notice remains in force until the date for compliance or any extension thereof, or the issue by the inspector or designated liquor officer, as the case may be, of a certificate of compliance, whichever is the earlier.

(6) If the person served with a compliance notice has complied therewith, the inspector or designated liquor officer, as the case may be, must issue a certificate of compliance. 10

(7) A person served with a compliance notice may lodge, in the prescribed manner, with the inspector or designated liquor officer, as the case may be, a statement disputing the notice and stating the grounds upon which it is disputed.

(8) An inspector or designated liquor officer, as the case may be, receiving a statement in terms of subsection (7) must, within the prescribed period, submit the compliance notice, the statement in terms of subsection (7) and any other document which he or she deems relevant, to the Chief Executive Officer who must decide whether or not the act or omission referred to subsection (2)(b) justified the issuing of the compliance notice. 15

(9) The Chief Executive Officer may, if he or she decides that the issuing of the compliance notice was unjustified, set it aside or, if he or she finds it to be justified, order that the compliance notice be complied with by the date by which compliance must be completed as contemplated in subsection (2)(d) or by such later date as he or she may determine. 20

(10) The Chief Executive Officer may delegate the function referred to in subsection (9) to an employee of the Board. 25

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

(12) Proof of non-compliance with a compliance notice, at a meeting of the Liquor Licensing Tribunal, constitutes *prima facie* proof of the commission of an offence or a transgression of the licence conditions stipulated in the compliance notice. 30

### Closing of licensed premises

**70.** (1) An inspector, a designated liquor officer, or any police officer of or above the rank of inspector may, if a public disturbance, disorder or public violence is occurring or threatening upon licensed premises, order the licensee or any person in control of licensed premises, to close the premises concerned for a period not longer than the remainder of the trading hours for that day. 35

(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 such steps and use or cause to be used such force as the circumstances require to close the premises. 40

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

(a) by the designated liquor officer, inspector or police officer who gave such an order;

(b) where such an order was given by a police officer, by a police officer of more senior rank; or 45

(c) by the Liquor Licensing Tribunal.

### Interim orders

**71.** (1) The Liquor Licensing Tribunal may grant an interim order suspending a licence upon application by an inspector or a designated liquor officer if there is an imminent threat to the health, well being or safety of the public. 50

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

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

(b) proof is submitted that the application and supporting affidavits have been served upon the licensee at least forty-eight (48) hours prior to the lodgement of the application; and 55

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

(3) An order granted in terms of subsection (1) must be served upon the licensee in the manner ordered by the Liquor Licensing Tribunal and comes into effect upon the date and at the time of service thereof.

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

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

(6) A licensee may at any time prior to the date stipulated in terms of subsection (4) apply to the Presiding Officer to set the matter down for hearing upon an earlier date, and must simultaneously serve a copy of such application on the inspector or designated liquor officer referred to in subsection (1). 10

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

(8) Upon the date of the hearing of the application the Liquor Licensing Tribunal may discharge the interim order or confirm it, subject to such amendments as it may deem appropriate. 15

### **Suspension, cancellation and lapsing of licences**

**72.** (1) A licence which has been suspended in terms of any provision of this Act remains valid in all respects, except that the licensee may not sell liquor in terms thereof during the period of suspension. 20

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

(3) A licence which has lapsed in terms of section 62, 63 or 64 is void from the date upon which it lapses. 25

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

## CHAPTER 12

### LAW ENFORCEMENT

#### **Designation and functions of designated liquor officers and inspectors**

**73.** (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. 35

(2) A police officer who has in terms of section 139 of the Liquor Act, 1989 (Act 27 of 1989) been appointed as a designated police officer, becomes a designated liquor officer in terms of this Act and is deemed to have been appointed in terms of subsection (1). 40

(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).

(4) The Board may appoint any person in the employ of the Board as an inspector for the purpose of this Act. 45

(5) The Commissioner must, when designating a liquor officer in terms of subsection (1), and the Board must, when appointing an inspector in terms of subsection (4), issue a certificate of appointment or designation signed by the Commissioner or the Chief Executive Officer on behalf of the Board, as the case may be. 50

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

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

(a) in respect of every application made in terms of this Act, report to the Liquor Licensing Tribunal on such matters as may be prescribed or which should, in 55

- the opinion of the officer or inspector, be taken into account when considering the application;
- (b) at the request of the Liquor Licensing Tribunal, report on or furnish such information in connection with a matter as the Liquor Licensing Tribunal may require; 5
  - (c) as soon as the fact comes to his or her notice, report to the Chief Executive Officer the failure by a licensee to comply with the conditions of his or her licence, a compliance notice or the provisions of this Act;
  - (d) report the fact that a licensee has become disqualified or unfit to hold a licence to the Chief Executive Officer; 10
  - (e) if he or she is of the opinion that the licensed premises have been abandoned or become unfit to be used for the purpose of the licensed business, report this fact to the Chief Executive Officer; and
  - (f) if the licensee has been convicted of a criminal offence, report the nature and circumstances of the offence and conviction to the Chief Executive Officer. 15

#### **Powers of designated liquor officers and inspectors**

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

- (a) at all reasonable times enter—
  - (i) any licensed premises; 20
  - (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 or sold contrary to the provisions of this Act, 25
 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 or inspector, produce to him or her any licence, record or other document which is in the possession, custody or control of that person or any other person on his or her behalf; 30
- (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; 35
- (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 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 40
- (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. 45

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

(3) Any person who is questioned by a designated liquor 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. 50

(4) An answer or explanation given to a designated liquor 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— 55

- (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.



### Exercise of powers to enter and search or inspect premises

- 75.** (1) A designated liquor 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).
- (2) An inspector or a designated liquor officer may, in exercising and performing any power or function as contemplated in subsection (1), be accompanied by a peace officer or peace officers. 5
- (3) A magistrate may issue a warrant to enter and inspect any premises, if, on the basis of information provided in writing and under oath or affirmation, the magistrate has reason to believe that— 10
- (a) this Act is not being complied with; and
  - (b) the entry and inspection are necessary, in the interest of the public, to obtain information—
    - (i) that is related to the alleged failure to comply with this Act; and
    - (ii) that cannot be obtained without entering those premises. 15
- (4) A designated liquor 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 20
  - (c) if the designated liquor 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 25
    - (ii) the delay in obtaining the warrant would defeat the objects of the search or inspection.
- (5) When entering premises in terms of this section, the designated liquor officer or inspector must—
- (a) identify himself or herself to the person in charge of the premises; 30
  - (b) exhibit to that person the warrant, if any;
  - (c) explain the authority in terms of which the inspection is being conducted; and
  - (d) conduct the inspection with the least possible inconvenience to the licensee or his or her customers and with the least possible disruption of the licensed business. 35
- (6) A designated liquor 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.
- (7) Anything seized in terms of this section must be retained and preserved until a court has made an order regarding the disposal thereof. 40
- (8) Unless the licensee or a person in his or her employ for whom he or she is responsible in terms of this Act is charged with a criminal offence in a court or is summoned to appear at a meeting of the Liquor Licensing Tribunal within thirty (30) days from the date of the seizure, the article seized must be returned to the person from whom it was seized. 45

### General offences

- 76.** A person who—
- (a) (i) is drunk and disorderly in or on any premises on which liquor is sold; or (ii) is drunk in any place to which the public has access;
  - (b) sells or supplies liquor to a drunk person or, being a licensee or a person in charge of licensed premises, allows a drunk and disorderly person to remain upon those premises; 50
  - (c) sells or supplies liquor in a container which does not conform to the standards and specifications which the Minister has, by notice in the *Provincial Gazette*, prescribed; 55
  - (d) purchases liquor from any person knowing, or having reasonable grounds to suspect, that such person is not licensed or permitted to sell liquor in terms of this Act;



- (e) sells liquor to a person, knowing or having reasonable grounds to suspect, that such person will resell the liquor otherwise than is permitted in terms of this Act;
  - (f) being a licensee, permits the licensed premises to be used as a brothel or frequented by prostitutes; 5
  - (g) being a licensee, allows a supplier of unlawful drugs to remain on the licensed premises;
  - (h) being a licensee, allows the sale, use or possession of drugs upon the premises in contravention of any law dealing with such sale, use or possession; or
  - (i) being a licensee, or a person on his or her behalf, receives or holds any document or movable property as security or in pledge for the payment of a debt relating to the sale of liquor, 10
- is guilty of an offence.

#### **Offences regarding information**

77. A person who, regarding an application, objection or representations— 15
- (a) submits or provides information which he or she knows to be false or misleading, or which he or she does not know to be true, or submits a forged document or one which purports to be but is not a true copy of the original;
  - (b) replies to any objection or representations or complaint in a way he or she knows to be false or misleading, or which he or she does not know to be true; 20
  - or
  - (c) in response to a question by a designated liquor officer, an inspector, a peace officer, a municipal official or the Liquor Licensing Tribunal submits or provides information which he or she knows to be false or misleading, or which he or she does not know to be true or submits a forged document or one 25
- which purports to be, but is not, a true copy of the original,  
is guilty of an offence.

#### **Offences regarding meetings of Liquor Licensing Tribunal and Appeal Tribunal**

78. (1) A person who—
- (a) having been duly notified to appear before the Liquor Licensing Tribunal, fails to do so either in person or represented by any other person, attorney or advocate; 30
  - (b) appears before the Liquor Licensing Tribunal, but without the leave of the Presiding Officer, absents himself or herself from the meeting before the conclusion thereof; 35
  - (c) having at a meeting been notified by the Presiding Officer to attend a meeting upon a date to which the meeting has been postponed, fails to be present thereat;
  - (d) having been called upon by the Presiding Officer to give evidence or to produce a document, refuses or fails to do so; 40
  - (e) had the oath or affirmation administered to him or her and refuses or fails to take the oath or to affirm;
  - (f) having taken the oath or having affirmed, fails to reply to the best of his or her knowledge to questions put to him or her or gives false or misleading evidence, knowing such evidence to be false or misleading; 45
  - (g) wilfully disrupts the proceedings of the Liquor Licensing Tribunal; or
  - (h) refuses to leave the meeting when ordered to do so by the Presiding Officer,
- is guilty of an offence.
- (2) A person who was duly notified to appear before the Liquor Licensing Tribunal must— 50
- (a) notify the Presiding Officer in writing five working days before the date of the appearance if he or she is unable to appear on such date; and
  - (b) include the reasons for his or her failure to appear on such date.
- (3) A contravention of or failure to comply with subsection (2) is an offence.
- (4) The provisions of subsections (1) and (2) apply, with the necessary changes, to meetings of the Appeal Tribunal. 55

### Offences regarding designated liquor officers and inspectors

**79.** A person who—

- (a) misrepresents himself or herself as being a designated liquor officer or inspector; 5
- (b) hinders a designated liquor officer or inspector in the execution of his or her duties; 5
- (c) refuses or fails to obey a lawful instruction given by a designated liquor officer or inspector; 5
- (d) when questioned by a designated liquor officer or inspector, knowingly gives a false or misleading answer; or 10
- (e) fails to comply with a reasonable request from a designated liquor officer or inspector in terms of section 74, 10

is guilty of an offence.

### Offences regarding motor vehicles

**80.** (1) A person who— 15

- (a) consumes liquor in a motor vehicle driven or parked on a public road; 15
- (b) allows the consumption of liquor in a motor vehicle of which he or she is the driver or which is under his or her control while it is being driven on a public road; or 15
- (c) allows liquor contained in an open container to be in a motor vehicle while it is being driven on a public road, 20

is guilty of an offence.

(2) Subsection (1) does not apply to the consumption of liquor in a motor vehicle which is licensed for the sale and consumption of liquor.

### Offence regarding service stations 25

**81.** (1) No liquor may be sold, supplied or consumed on an erf upon which the business of a service station selling petrol, diesel and other petroleum products to the public is conducted.

(2) Subsection (1) does not apply to premises already licensed.

(3) Except in exceptional circumstances, the Liquor Licensing Tribunal may not grant a licence in respect of premises as contemplated in subsection (1). 30

(4) A contravention of or failure to comply with subsection (1) is an offence.

### Failure to comply with order of Liquor Licensing Tribunal

**82.** (1) Failure by a licensee to comply with an order of the Liquor Licensing Tribunal in connection with the licence or licensed premises concerned is an offence. 35

(2) If a person fails to comply with an order of the Liquor Licensing Tribunal, the Liquor Licensing Tribunal may, after proper enquiry—

- (a) suspend the licence pending compliance with the order; 40
- (b) impose a fine, the payment of which may be suspended pending compliance with the order; 40
- (c) refer the matter to the South African Police Service for the prosecution of the offender; or 40
- (d) cancel the licence. 40

### Vicarious responsibility

**83.** (1) If the manager, agent or employee of a licensee does or omits to do anything, which, if it were done or omitted by the licensee, would be an offence in terms of this Act, the licensee is deemed to have done or omitted to do that act, except where— 45

- (a) the licensee neither connived at, permitted or allowed the act or omission; 45
- (b) the licensee took such steps as he or she was reasonably able to take in order to prevent the act or omission; and 50
- (c) the act or omission did not fall within the scope of the employment or authority of the manager, agent or employee. 50

(2) The fact that a licensee has issued instructions prohibiting an act or omission is not in itself sufficient to prove that he or she took the steps required by subsection (1)(b).

(3) When a licensee is liable for an act or omission of another person in terms of subsection (1) such other person is also liable therefor as if he or she was the licensee.

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

5

### Exemptions

**84.** (1) The following persons are exempt from the operation of this Act—

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

(2) The Liquor Licensing Tribunal may, on application and upon the payment of the prescribed fee and if circumstances so warrant, declare that this Act, excluding such provisions as it may determine, does not apply to—

- (a) a collector of liquor; and 20
- (b) a person manufacturing or selling spirituous or distilled perfumery.

(3) The Liquor Licensing Tribunal or the Presiding Officer may at any time after the issue of a declaration under subsection (2), by a notice delivered or tendered to the person named in the declaration concerned—

- (a) in its or his or her discretion, impose such conditions or further conditions as may be set out in the notice, to which the declaration shall be subject; 25
- (b) revoke or amend any condition imposed by it or him or her under this section; or
- (c) revoke or amend the declaration.

### Evidence

30

**85.** (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; 35
- (b) occupied 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; or 40
- (d) bought or procured more liquor than the maximum volume referred to in section 60 without the prior consent required by that section,

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

(2) If in any criminal proceedings or at a meeting of the Liquor Licensing Tribunal—

- (a) there is produced as evidence a sealed container containing a liquid, upon which container there is a label or other device indicating the alcohol content of the liquid, it is *prima facie* proof that the liquid contains the alcohol stated and, if the alcohol content stated is more than 1% of alcohol by volume, that the liquid is liquor; 45
- (b) there is produced as evidence more than one container, each of which forms part of a stock or batch of liquor found at the same place at the same time, and it is proven that one or more of such containers contain liquor, it is *prima facie* proof that all the containers contain liquor; 50
- (c) there is produced as evidence a document which purports to be a copy of a licence, it is on its mere production *prima facie* proof of the licence or permit and any condition or endorsement thereon or attached thereto is deemed to be a condition or endorsement imposed in terms of this Act; 55
- (d) there is produced as evidence a statement or certificate purporting to be signed by an analyst or chemist in the employ of the Government of the Republic, or

in the employ of a university or of a medical research institute, who has made an analysis of a liquid or substance which is the object of the criminal proceedings or meeting, such statement or certificate is *prima facie* proof of the contents of the statement or certificate; or

- (e) evidence is produced that a licensee who is accused of a contravention of section 54 failed to obtain from a person under the age of eighteen (18) years either— 5
- (i) his or her valid identity document;
  - (ii) his or her valid drivers' licence; or
  - (iii) his or her valid passport, 10
- such evidence is *prima facie* proof of the fact that the licensee had knowledge of the fact that such person was under the age of eighteen (18) years.

### Notices

- 86.** (1) The Minister may, subject to section 41 of the Liquor Act, prescribe— 15
- (a) the content of public notices which must be displayed; and
  - (b) the manner in which such notices must be displayed,
- on licensed premises.
- (2) Failure to display a notice referred to in subsection (1) is an offence.

### Penalties and forfeiture

- 87.** (1) A person who is charged with an offence referred to in— 20
- (a) sections 32(3), 54, 55, 76(g) or 76(h) is liable on conviction to a fine not exceeding R1 000 000,00 or to imprisonment for a period not exceeding five years or to both such fine or such period of imprisonment;
  - (b) section 49(8), 50(2), 51(9), 53(4), 58(3), 59(3), 76(e), 76(f), 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 or such period of imprisonment; 25
  - (c) section 50(3), 57(3), 60(4), 65(2), 69(11), 76(b), 76(c) or 82(1) is liable on conviction to a fine not exceeding R100 000,00 or to imprisonment for a period not exceeding six months or to both such fine or such period of imprisonment; or 30
  - (d) section 23(12), 56(5), 76(a), 76(d), 77, 78(1), 78(3), 79 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 or such period of imprisonment. 35
- (2) A court that has convicted a person of an offence referred to in subsection (1), must, in respect of an offence referred to in paragraph (a) of that subsection and may, in respect of an offence referred to in paragraphs (b), (c) or (d) of that subsection, in addition to imposing a penalty, order the forfeiture to the State of any item seized in terms of the Criminal Procedure Act. 40
- (3) Upon payment by a person of an admission of guilt fine in terms of section 57 of the Criminal Procedure Act, the court—
- (a) must, where the payment relates to a charge of a contravention of section 32(1), 54(1) to (4), 55(1), 55(2), 76(h) or 76(i) of this Act, order that any item which was seized in terms of this Act or the Criminal Procedure Act be forfeited to the State; or 45
  - (b) may, where the payment relates to a charge of a contravention of section 49(4) to (6), 50(1), 51(1), 51(7), 52(9), 56(1), 56(4), 57(1), 57(2), 58(1), 59, 60(1) to (3), 65(1), 69, 75, 77, 78(1), 78(2), 79, 80(1), 81(1), 82(1) or 86(2) of this Act, order that any item which was seized in terms of this Act or the Criminal Procedure Act be forfeited to the State, 50
- whereupon section 35 of the Criminal Procedure Act applies, with the necessary changes, to anything forfeited in terms of this section.
- (4) Any liquor that is forfeited to the State in terms of this section must be disposed of in the prescribed manner. 55

## CHAPTER 13

## REGULATIONS, TRANSITIONAL PROVISIONS AND SHORT TITLE

**Regulations**

- 88.** (1) The Minister must make regulations regarding matters that must be prescribed in terms of this Act, and may make regulations regarding— 5
- (a) any matter that may be prescribed in terms of this Act;
  - (b) the retail sale and micro-manufacture of methylated spirits;
  - (c) the determination of the percentage of each renewal fee which must be allocated to the fund in terms of section 31(3);
  - (d) the disposal of liquor forfeited to the State in terms of section 87(2); or 10
  - (e) any matter which the Minister considers necessary or expedient to make in order to achieve the objects of this Act.
- (2) A regulation made in terms of this section in respect of fees or money to be paid must be made in consultation with the Minister responsible for finance for the Province.

**Transitional provisions** 15

- 89.** (1) The Liquor Board instituted for the Province by section 5 of the Liquor Act, 1989 (Act 27 of 1989), continues to exist and function under the name Western Cape Liquor Licensing Tribunal, in accordance with the provisions of this Act, as if it were established in terms of section 15(1) of this Act.
- (2) Any licence of the kind listed hereunder which was in force immediately before the date of commencement of this Act is deemed to be a licence for the sale of liquor for consumption on the licensed premises— 20
- (a) hotel liquor licence;
  - (b) restaurant liquor licence;
  - (c) wine-house licence; 25
  - (d) sorghum beer licence for on-consumption;
  - (e) theatre liquor licence;
  - (f) club liquor licence; and
  - (g) special liquor licence for on-consumption.
- (3) A licence of the kind listed hereunder which was in force immediately before the date of commencement of this Act is deemed to be a licence for the sale of liquor for consumption off the licensed premises— 30
- (a) liquor store licence;
  - (b) grocer's wine licence;
  - (c) sorghum beer licence for off consumption; 35
  - (d) wine farmer's licence;
  - (e) special liquor licence for off-consumption which does not include the right to micro-manufacture liquor; and
  - (f) wholesale liquor licence (public), approved under the Liquor Act, 1977 (Act 87 of 1977). 40
- (4) A licence listed hereunder which was in force immediately before the date of commencement of this Act and in respect of which the volume of liquor manufactured in the preceding twelve (12) months did not exceed the threshold limit prescribed in terms of section 4(10) of the Liquor Act, is deemed to be a licence for the micro-manufacture and sale of liquor for consumption off the licensed premises— 45
- (a) wholesale liquor licence;
  - (b) producer's licence;
  - (c) brewer's licence;
  - (d) sorghum beer brewer's licence; and
  - (e) special liquor licence for off-consumption, which includes the right to 50 micro-manufacture liquor.
- (5) A licence listed hereunder, which gives the holder thereof the right to sell liquor for consumption off the licensed premises, has been converted in terms of the Liquor Act, and which was in force immediately before the date of commencement of this Act may on application by the licensee be converted to a licence for the sale of liquor for consumption off the licensed premises— 55
- (a) wholesale liquor licence;
  - (b) producer's licence;

- (c) brewer's licence; and
- (d) sorghum beer brewer's licence.

(6) A notice issued in terms of section 33 of the Liquor Act, 1989 (Act 27 of 1989), and in force immediately prior to the commencement of this Act, is deemed to be conditions set out in writing in terms of section 44 of this Act. 5

(7) Notwithstanding the repeal of any law by this Act, any application made prior to the commencement of this Act must be considered and disposed of in accordance with the provisions of the law in terms of which it was lodged.

(8) The provisions of subsections (2) and (3) also apply to licences granted in terms of the provisions of the Liquor Act, 1989, subsequent to the date of commencement of this Act. 10

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

(10) Any licence issued prior to the commencement of this Act for premises on which liquor may be sold for consumption either on or off the licensed premises which authorises trading beyond the trading hours stated in section 59(2) is after twelve (12) months from the date of commencement of this Act subject to section 59. 20

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

(12) Any condition imposed upon a licence in terms of the provisions of the Liquor Act or any Act repealed thereby, which is not inconsistent with the provisions of this Act, is deemed to be a condition imposed in terms of this Act. 25

(13) A licensee of premises licensed before the commencement of this Act and referred to in section 49(5) and (6) must within eighteen (18) months from the date of commencement of this Act comply with the conditions referred to in said subsections.

(14) (a) The Liquor Licensing Tribunal may, upon application, made within twelve (12) months from the date of commencement of this Act, by a person who has applied for a licence declare that the person and premises are exempt from the application of section 32 of this Act, if it is satisfied on the information before it that— 30

- (i) an application has been made for a licence in terms of section 36 for the premises and person in question; 35
- (ii) the application referred to in subparagraph (i), complies with the formal requirements;
- (iii) the person has traded without a liquor licence at the date of the commencement of this Act;
- (iv) the proposed licensed premises are located in an area that— 40
  - (aa) was designated as a non-white area in terms of the Black Communities Development Act, 1984 (Act 4 of 1984) or the Group Areas Act, 1950 (Act 41 of 1950); or
  - (bb) is subject to the Less Formal Township Establishment Act, 1991 (Act 113 of 1991); 45
- (v) the person is a member of a community to which such Acts applied;
- (vi) the person resides upon the erf concerned;
- (vii) the dominant use of the premises concerned will be residential;
- (viii) the person was previously disadvantaged due to the legislation referred to in subparagraph (iii); 50
- (ix) the person does not have the necessary approval from the municipality to use the premises concerned for the purpose to be authorised by the licence; and
- (x) there is nothing else that would preclude the granting of a licence to that person.

(b) An exemption in terms of paragraph (a) may be made subject to such conditions and restrictions as the Liquor Licensing Tribunal may impose. 55

(c) An exemption in terms of paragraph (a)—

- (i) takes effect on the date specified in the exemption certificate issued by the Board; and
- (ii) ceases to have effect— 60
  - (aa) at the expiry of the period of twenty-four (24) months from the date referred to in subparagraph (i);



(bb) on the issuing of the licence, the rejection of the application referred to in paragraph (a)(i), or on the date contemplated in sections 42(6) and 46(5) in respect of the premises to which the certificate relates; or

(cc) on the surrender or cancellation of the exemption, whichever happens first. 5

(d) This Act applies to the holder of an exemption in terms of paragraph (a) as if that person were the holder of a licence in terms of section 31.

(e) The Liquor Licensing Tribunal may at any time amend or revoke the exemption in terms of paragraph (a) or amend the conditions or restrictions imposed in terms of paragraph (b). 10

### **Repeal provision**

**90.** The Liquor Act, 1989 (Act 27 of 1989) is repealed in so far as it applies in the Province.

### **Short title and commencement**

**91.** This Act is called the Western Cape Liquor Act, 2008 and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*. 15

## EXPLANATORY MEMORANDUM

### (i) Introduction and reasons for the Bill

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

The Liquor Act repealed the Liquor Act, 1989 (Act 27 of 1989) (“the Liquor Act, 1989”) that had until its repeal regulated all three tiers of the industry, but stipulates that that Act remains in force in provinces which have not promulgated their own provincial liquor legislation, until they do so.

It has been generally accepted that it is necessary to regulate the liquor industry due to the potentially harmful nature of the product. Various regulatory measures have been imposed on the industry in the past in accordance with the social and political requirements of the government of the day. However a large part of the retail liquor industry is unregulated due to historical reasons, particularly the exclusion of historically disadvantaged persons from the formal liquor trade. This has led to the establishment of a large number of unlicensed outlets in traditionally non-white residential areas. These outlets do not comply with spatial planning and other regulatory requirements. Liquor is further associated with the occurrence of crime, both in the regulated and unregulated sector of the industry, and past measures to deal with this have met with only a modicum of success.

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

At this juncture, it would be useful to provide a brief overview of the legislative history of the Bill to date.

The Western Cape provincial government set about drafting provincial liquor legislation in 2003 with the issuing of a Green Paper on liquor. This culminated in the adoption by the Provincial Executive in 2005 of the policy document “A Liquor Policy for the Western Cape” (the Liquor White Paper).

The Western Cape Liquor Bill, 2005 [B 8—2005] was published for comment on 3 February 2006. Sixteen sets of written comments, extending to more than 550 pages, were received before the end of the comment period on 31 March 2006. The responsible standing committee was briefed extensively on these comments and decided to hear oral evidence during a series of public hearings, which were held during January to March 2007. The Bill was duly introduced in the Legislature and approved by it on 27 March 2007.

Item 2(2) of Schedule 1 to the Liquor Act, 2003, stipulates that a consultation process (on the compliance of the Bill with certain criteria set out in the national legislation) is to take place between the Premier and the (national) Minister of Trade and Industry after the provincial legislation had been enacted (i.e., passed by the Legislature and assented to and signed by the Premier).

During 2006, the Department of Trade and Industry, realising that the aforementioned provision was problematic, proposed in letters to the provincial governments that the consultation process be commenced and completed before approval of the legislation.

In this instance, the consultation process could only be commenced after the passing of the Bill, due to the fact that the Bill was certified on 14 March 2007 and immediately thereafter submitted by the standing committee for its approval by the Legislature which, as stated before, happened on 27 March 2007.

The consultation process took longer than anticipated, due to certain aspects of the legislation requiring substantial negotiation in order to be settled. In respect of others, amendments had to be effected.

It was therefore not possible to conclude the said processes within the 45 days within which the Premier must, in terms of section 31(2) of the Western Cape Constitution, assent to and sign a Bill approved by the Legislature. It is for this reason that the

proposed legislation is now being introduced again as the Western Cape Liquor Bill, 2008, with the necessary changes having been made.

Probably the biggest single amendment to the Bill relates to the structure of the Liquor Board. Whereas the previous Bill made provision for a Board which would have and discharge both corporate management powers and functions on the one hand and juristic adjudication powers on the other, this Bill makes provision for a part-time Board which will, in conjunction with the Chief Executive Officer, execute the first-mentioned powers and functions, whilst the newly created Liquor Licensing Tribunal will be exclusively responsible for considering applications for liquor licences and other related applications.

Other amendments relate to the refinement and streamlining of procedures which relate to the notification of members of the public, particularly interested parties, of the fact that an application for a liquor licence had been lodged with the Liquor Board.

#### **(ii) Social impact of the Bill**

The Bill provides for the Western Cape Liquor Board as an independent statutory body in accordance with the provisions of the Public Finance Management Act, 1999 (Act 1 of 1999) with adequate resources to ensure the administration of a licensing system, the enforcement and monitoring of licensed establishments and mandatory training of sellers of liquor, as well as other educational measures to limit the negative impact of the liquor trade. The Bill further provides for increased public awareness and participation in the licensing process and measures to deal with complaints regarding licensed outlets. Provision is made for the participation of local government in the licensing process: The Liquor Board (“the Board”) will in terms of this legislation have to notify the municipality concerned of any application for a liquor licence lodged in respect of premises in its area, affording it an opportunity to comment on the application and zoning aspects, and obtaining the comments of the ward councillor for the area where the premises are located. Provision is further made for an Appeal Tribunal to consider reviews of and appeals against decisions of the Liquor Licensing Tribunal. The enforcement and administration of the Liquor Bill is ensured by the continuance of the existing system of designated police officers (renamed designated liquor officers in the Bill), appointed within the ranks of the South African Police Service in the Western Cape, with enhanced functions and powers. Improved enforcement measures, offences and penalties have been included to better regulate the licensed industry and combat activities in contravention of the Bill.

The Bill also provides for a reduced number of categories of licences. These include licences for micro-manufacture and sale for consumption on and off the premises where the liquor is sold (“the premises”); sale for consumption on the premises; sale for consumption off the premises; in exceptional circumstances, sale for consumption both on and off the premises, and special events liquor licences. The right of retail food stores to trade in table wine only is retained. Provision is made for standard licence conditions as well as the imposition of conditions to address specific requirements of each licensed entity. Assessment criteria for the consideration of applications by the Liquor Board are provided and include land use rights as a prerequisite for the issuing of licenses.

Measures for the mandatory training of liquor retailers seek to ensure that they act responsibly. Provision is made for the raising of public awareness of the dangers posed by the abuse of liquor by way of compulsory notices and awareness campaigns. The Bill makes provision for the establishment of a dedicated fund to combat the negative social consequences of the abuse of liquor and to educate sellers and consumers of liquor in this regard.

Mandatory training programmes will be accredited with the South African Qualifications Authority and the appropriate sectoral training authority.

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

The Bill provides for the determination of application fees, licence fees, renewal fees and penalties by the Minister. The current fees were last reviewed in 1992. The income generated through the licensing system will accrue to the Provincial Revenue Fund. The public entity created by the Bill and its structures and functions will be funded by money appropriated by the Provincial Parliament and any other money accruing to the Board from any other source approved by the responsible Minister, after consultation with the Minister responsible for finance in the Province.

The fund for combating negative social consequences of the sale and consumption of liquor referred to above will be funded by way of a percentage (to be determined by the responsible Minister in consultation with the Minister responsible for finance) of each renewal fee which must be allocated to the fund.

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

CONTENTS

CHAPTER 1

INTERPRETATION

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

CHAPTER 2

WESTERN CAPE LIQUOR BOARD

- Clause 2 Establishment of Western Cape Liquor Board — This clause provides for the establishment of the Western Cape Liquor Board as a juristic person
- Clause 3 Composition of Board—The number of members of the Board, the roles of the Provincial Cabinet, standing committee and the Minister in their appointment, the designation of the Chairperson and Deputy Chairperson and, the eligibility of the members and the position of the Chief Executive Officer as an *ex officio* member are provided for in this clause.
- Clause 4 Eligibility for appointment as member or employee of Board—This clause determines the minimum eligibility criteria for appointment as a member or employee of the Board.
- Clause 5 Disqualification from appointment as member or employee of Board—This clause sets out the grounds upon which persons are disqualified from being appointed, continuing or acting as members or employees of the Board.
- Clause 6 Term of office—The term of office of members of the Board is four years with eligibility for reappointment at the termination of his or her term of office.
- Clause 7 Termination of membership of Board—This clause sets out the instances in which membership of the Board is terminated.
- Clause 8 Vacancies—Stipulates that the Provincial Cabinet must appoint a new member to the Board when a vacancy occurs.
- Clause 9 Powers and functions of Board—This clause sets out all the powers and functions of the Board, including the power to delegate some of those powers. The Board's powers include, amongst others, those relating to the receipt and processing of licence applications and the issuing of licences after granting the applications by the Liquor Licensing Tribunal, and corporate management functions such as acquiring, holding, hiring, letting and alienation of property; opening and maintaining bank accounts; appointment and dismissal of staff; receipt, expenditure and general administration of funds; entering into agreements, and determining fees and charges.
- Clause 10 Delegation—This clause authorises the Board to delegate any of its powers, excluding those specified in sub-clause (7), to the Chief Executive Officer. It further provides that the Board may make such delegation subject to terms, conditions and restrictions as the Board may determine, and for the Chief Executive Officer to sub-delegate any of the powers or functions delegated to him or her.
- Clause 11 Co-opting of persons—The Board may co-opt eligible persons, who will not be entitled to vote at its meetings, and whose remuneration will be determined by the Board.
- Clause 12 Confidentiality—This clause enjoins members and employees of the Board not to disclose any information which has come to his or her knowledge by reason of his or her appointment to or employment by the Board, except in the instances set out in sub-clause (2) and clause 36(2).

- Clause 13 Meetings of Board—This clause determines the minimum number of times the Board must meet per year; makes provision for the Chairperson to convene special meetings and for the Minister to prescribe procedure for Board meetings; determines the quorum and regulates the decision-making processes in Board meetings.
- Clause 14 Minutes—Minutes must be recorded and retained at the offices of the Board.

### CHAPTER 3

#### WESTERN CAPE LIQUOR LICENSING TRIBUNAL AND APPEAL TRIBUNAL

- Clause 15 Establishment of Liquor Licensing Tribunal—This clause establishes the Liquor Licensing Tribunal (“Tribunal” in this Memorandum, except in headings) and determines that the Board will maintain oversight over the Tribunal, but that it may not revoke or alter any decision of the Tribunal taken in exercise of the Tribunal’s powers in terms of clause 20.
- Clause 16 Composition of Liquor Licensing Tribunal, and nomination and appointment of Liquor Licensing Tribunal members—The composition of the Tribunal and the qualifications required of members of the Tribunal are stipulated in this clause. It further provides that members of the Tribunal must declare under oath or affirmation that he or she is not disqualified from serving as a member and that the Board, in consultation with the Minister, may at any time call for proof that a Tribunal member is still eligible.
- Clause 17 Disqualification for appointment as member of the Liquor Licensing Tribunal—This clause sets out which persons are disqualified from being appointed, continuing or acting as members of the Liquor Licensing Tribunal.
- Clause 18 Term of office—Members of the Tribunal are appointed for a period of five years, and the Board must fill any vacancy that may occur.
- Clause 19 Termination of membership of Liquor Licensing Tribunal—This clause sets out when a vacancy occurs on the Liquor Licensing Tribunal: resignation by a member; a member becoming disqualified or absenting him or herself from three consecutive meetings without the prior consent of the Presiding Officer; the expiry of a member’s term; termination of a member’s term by the Provincial Cabinet or where a member no longer resides in the Province.
- Clause 20 Powers and functions of Liquor Licensing Tribunal—This clause sets out the matters which the Tribunal may consider at its meetings and the actions it may take in regard to the matters it has considered at these meetings. It further authorises the Tribunal to co-opt persons, who will not have the right to vote and whose remuneration will be determined by the Board.
- Clause 21 Meetings and decisions of Liquor Licensing Tribunal—This clause stipulates that the Presiding Officer must determine the time and place for meetings of the Liquor Licensing Tribunal, and determines that its quorum is four members, including the Presiding officer or Deputy Presiding Officer, and that the Presiding Officer must cast a deciding vote in the event of an equality of votes.
- Clause 22 Recusal of member with conflicting interest—The grounds on which a Board member must recuse him or herself, or be recused by the Presiding Officer are set out in this clause.
- Clause 23 Proceedings of Liquor Licensing Tribunal—This clause provides for the Presiding Officer to determine procedure at meetings of the Tribunal and notify persons who may be adversely affected in the consideration of an application before it. It also contains provisions relating to the adducing of evidence before the Tribunal and the accessibility of the Tribunal’s proceedings to members of the public, and renders non-attendance of the proceedings by a person duly summonsed to do so a criminal offence.
- Clause 24 Committees of Liquor Licensing Tribunal—The appointment of committees of the Tribunal by the Presiding Officer, their size, procedures and ability to exercise delegated powers are provided for.
- Clause 25 Appeal Tribunal—An Appeal Tribunal is established and the qualifications required for the member’s appointment are determined.

## CHAPTER 4

## ADMINISTRATION, REMUNERATION AND FINANCIAL MANAGEMENT

- Clause 26 Administration of Board, Liquor Licensing Tribunal and Appeal Tribunal—This clause determines that the Board must appoint a Chief Executive Officer, a secretary of the Liquor Licensing Tribunal and staff of the Board. It enjoins the Board to determine a human resources policy and remuneration for staff members, as well as a code of conduct applicable to all members of the Board, the Liquor Licensing Tribunal and the Appeal Tribunal. It also provides for the keeping and retention of minutes of proceedings of the Tribunal and for the Presiding Officer to direct that a portion or the whole of a record of proceedings of the Tribunal not be made public, subject to the provisions of the Promotion of Access to Information Act, 2000.
- Clause 27 Remuneration of Chief Executive Officer, members of Board, Liquor Licensing Tribunal and Appeal Tribunal—The Minister, in consultation with the Minister responsible for finance in the province, determines the remuneration of these persons.
- Clause 28 Funding and financial management of Board—This clause determines which moneys will accrue to the Board and provides for the processes required to ensure accountability.
- Clause 29 Audit and Annual reports—This clause stipulates that the Auditor-General must audit the financial statements of the Board, and that the Board must submit an annual report, the minimum contents of which are set out.
- Clause 30 Revenue accruing to Provincial Revenue Fund, Board or municipalities—This clause determines that certain fees, penalties, fines and proceeds from the sale of forfeited items accrue to the Provincial Revenue Fund, and certain fees to the Board and municipalities respectively.

## CHAPTER 5

## ESTABLISHMENT OF SOCIAL AND EDUCATION FUND

- Clause 31 Establishment of fund—This clause enjoins the Chief Executive Officer to establish a fund for combating the negative social consequences of the abuse of liquor and to educate both members of the public and persons engaged in the sale and supply of liquor in the responsible sale, supply and consumption thereof.

## CHAPTER 6

## LICENSING

- Clause 32 Licences—This clause determines that no-one may micro-manufacture or sell liquor unless authorised to do so in terms of a licence issued in terms of this Act or the Liquor Act, 1989.
- Clause 33 Categories of licences—This clause provides for five categories of liquor licences.
- Clause 34 Criteria for granting licences—This clause provides for the criteria to be considered in the consideration of liquor licences.
- Clause 35 Disqualification of applicants—The grounds for disqualification of applicants for licences are provided for in this clause.
- Clause 36 Application procedure—This clause determines that applications for liquor licences must be lodged with the Board, and which documents need to be submitted in support thereof. It further obliges the Board to notify the applicant of incomplete or defective applications and to forward compliant applications to the municipality concerned.
- Clause 37 Notice of application—This clause stipulates that the Board must publish notice of the application in the *Provincial Gazette* and community newspapers, and serve notice of the application on the designated liquor officer and the municipality concerned. It further sets out whom the designated liquor officer and the municipality is to notify of the application.



- Clause 38 Applications lying for inspection at Board—This clause enjoins the Board to allow access to, and, upon payment of a fee, provide copies of, an application during a certain period after its lodgement with the Board.
- Clause 39 Representations—Provision is made for the lodgement of representations regarding licence applications by interested persons and the required procedure relating thereto.
- Clause 40 Forwarding of documents—The forwarding of licence applications and related documents by the municipality to the Board is provided for.
- Clause 41 Consideration of applications—This clause provides for the consideration of applications by the Liquor Licensing Tribunal and procedure relating thereto.
- Clause 42 Conditional granting of licence—This clause makes provision for the Tribunal to conditionally grant a licence, subject to compliance with certain conditions within a period of time imposed at the time of the conditional granting. It further provides for the extension of the aforementioned period upon application to the Presiding Officer.
- Clause 43 Right to use premises—This clause enables the Tribunal to direct that a licence which was conditionally granted may not be issued until the applicant has the right to use the premises concerned for the purpose to be authorised in the licence.
- Clause 44 Incomplete premises—This clause enables the Tribunal to conditionally grant a licence in respect of premises not yet erected, or premises requiring structural alteration, addition or reconstruction to make them suitable for the purpose for which they will be used under the licence.
- Clause 45 Education and training—The Tribunal may conditionally grant a licence and direct that it may not be issued until the applicant or an employee or employees of the applicant have undergone training as required by the Tribunal.
- Clause 46 Issuing of licences—This clause enjoins the Board to notify applicants that their applications have been granted, notifying them to pay the relevant licence fee within sixty days, and affording them a grace period of sixty days within which to apply for condonation of the non-payment of the licence fee, and upon granting of the latter application, allowing them to pay the fee subject to a penalty of 100%.
- Clause 47 Death or incapacity of applicant—This clause provides for the continuance of the application upon death, sequestration or incapacity of the applicant, or where the applicant is a company, close corporation, trust or co-operative, is liquidated, prior to the final consideration of the application.
- Clause 48 Temporary liquor licences and special event liquor licences—This clause authorises the Presiding Officer, upon application by a licensee, to grant a temporary licence for use by that licensee only, and only in respect of licences for sale and consumption of liquor on the licensed premises. It further authorises the Presiding Officer, upon application by a member of a defined list of applicants, to grant a special event liquor licence for a period not exceeding the duration of the special event.

## CHAPTER 7

### CONDITIONS FOR LICENCES

- Clause 49 Standard licence conditions—This clause requires that liquor may only be sold for consumption on or off the licensed premises in accordance with the respective applicable licence category and provides for the right of retail food stores to sell table wine for consumption off the licensed premises. It also stipulates that in a retail food store. Liquor may only be sold from a designated area which must be capable of being locked at times when wine may not be sold. This requirement also applies to the area from which liquor is sold on premises licensed for sale and consumption on the licenced premises.
- Clause 50 Deliveries—The requirements for the delivery of liquor are stipulated in this clause.
- Clause 51 Financial interests and letting of licensed premises—This clause stipulates that a licensee may not, without the prior consent of the Presiding Officer,

- transfer a financial interest of more than 5% in a licensed business. A licensee may also not let the licence to another person, except a licence which includes the right to micro-manufacture.
- Clause 52 Management—The clause prescribes the procedure and requirements to ensure satisfactory management of licensed premises by natural persons who meet prescribed criteria.
- Clause 53 Alteration of licensed premises or nature of business—Alterations to the licensed premises or the nature of the business require the consent of the Presiding Officer.
- Clause 54 Children—This clause stipulates that liquor may not be sold to a child (a person under the age of 18 years) and given or supplied to a child, except in negligible quantities under specified circumstances, nor may a child be allowed in a restricted part of licensed premises or mislead any person as to his or her age in order to obtain liquor or gain access to a restricted part of licensed premises.
- Clause 55 Employers and employees—The relationship between employer and employee regarding the supply of liquor to the employee is regulated in this clause.
- Clause 56 Access to licensed premises—This clause regulates the access of persons under the age of eighteen years to licensed premises.
- Clause 57 Storing of liquor—This clause regulates the storage of liquor by licensees.
- Clause 58 Place of sale—This clause regulates the place of sale of liquor by licensees.
- Clause 59 Trading Hours—This clause stipulates that liquor may only be sold on such days and during such trading hours as determined by the Liquor Licensing Tribunal and sets out the maximum trading hours.
- Clause 60 Quantity of liquor and keeping of records—This clause prescribes the records of sale of liquor to be kept by a licensee, allows for the determination of a maximum quantity of liquor that may be sold to one person by a licensee in a single day and prohibits the possession of more liquor than the prescribed quantity by an unlicensed person.
- Clause 61 Prohibited substances—This clause stipulates that a person may not micro-manufacture, sell or supply any substance as liquor if that substance is not liquor as defined in the Bill, or is impotable, or to which an impotable substance has been added.

## CHAPTER 8

### VALIDITY AND RENEWAL OF LICENCES

- Clause 62 Validity of licences and permits—The period of validity of licences is provided for in this clause. It further provides for the validation of lapsed licences subject to the payment of stipulated penalties, and for the suspension of licences relating to abandoned premises.
- Clause 63 Automatic renewal of licences—This clause provides for the automatic renewal of licences and the procedure relating thereto, as well as for a condonation procedure in cases where the licence has lapsed due to non-renewal.
- Clause 64 Applications for renewal of licences—This clause provides for instances where automatic renewal of licences does not occur and provides for an application procedure for renewal of such licences.

## CHAPTER 9

### ALIENATION, TRANSFER AND REMOVAL OF LICENCES

- Clause 65 Alienation and transfer of licences—This clause requires a licensee who has alienated his nor her licensed business to notify the Board within 30 days and for the purchaser of a licensed business to apply to the Presiding Officer to operate the business for a maximum, but extendable, period of 6 months pending transfer of the licence to that purchaser. It proceeds to set out the procedure for applying for and dealing with applications for transfer.

- Clause 66 Removal of licences—This clause sets out the procedure for applying for and dealing with applications for the removal of licences from the licensed premises to any other premises situated in the Province.
- Clause 67 Abandonment of premises and death or incapacity of licensee—This clause provides for measures to ensure control over licensed premises upon abandonment of premises by, or upon the death, incapacity or insolvency of a licensee.

## CHAPTER 10

### APPEALS AND REVIEWS

- Clause 68 Appeals and reviews to Appeal Tribunal—The procedure for appeals and reviews to the Appeal Tribunal is provided for.

## CHAPTER 11

### COMPLIANCE

- Clause 69 Compliance notices—This clause provides for the issue of compliance notices to a licensee by a liquor licence inspector or, in the absence or upon non-availability of a liquor inspector, a designated liquor officer, and the process in regards thereto.
- Clause 70 Closing of licensed premises—The clause authorises an inspector, designated liquor officer or any police officer of or above the rank of inspector to close licensed premises in certain circumstances for a period not longer than the remaining trading hours for that day and provides for the procedure relating to such closure and its revocation.
- Clause 71 Interim orders—This clause allows for procedure for the Liquor Licensing Tribunal to issue interim orders to ensure regulatory compliance by licensees where justified complaints have been received pending, consideration by the Liquor Licensing Tribunal of final measures.
- Clause 72 Suspension, cancellation and lapsing of licences—This clause deals with suspended, cancelled and lapsed licences and allows the licensee in respect of such a licence to sell by public auction any liquor which was on the premises on the date of suspension, cancellation or lapsing.

## CHAPTER 12

### LAW ENFORCEMENT

- Clause 73 Designation and functions of designated liquor officers and inspectors—This clause provides for the appointment of designated liquor officers in the South African Police Services by the Provincial Police Commissioner and of liquor licence inspectors by the Board. It also requires them to provide proof of their appointment when exercising their function and sets out their duties under the legislation.
- Clause 74 Powers of designated liquor officers and inspectors—This clause provides for the powers of the designated liquor officers and inspectors regarding enforcement of legal provisions applicable to licensees.
- Clause 75 Exercise of powers to enter and search or inspect premises—This clause regulates the designated liquor officers' and inspectors' powers of entry, search, inspection and seizure of or upon premises, as the case may be.
- Clause 76 General offences—This clause provide for general offences regarding the sale, supply or consumption of liquor not contained in other sections of the Bill.
- Clause 77 Offences regarding information—The offences created by this clause deal with the provision of information during applications in terms of the Bill and to law enforcement agents by licensees and/or their employees.
- Clause 78 Offences regarding meetings of Liquor Licensing Tribunal and Appeal Tribunal—The offences created by this clause relate to the orderly conduct of proceedings of the Liquor Licensing Tribunal and the Appeal Tribunal.

- Clause 79 Offences regarding designated liquor officers and inspectors—The offences created by this clause relate to obstruction of, and interference in the execution of duties by, the said law enforcement agents.
- Clause 80 Offences regarding motor vehicles—This clause creates offences regarding the consumption or possession of liquor in motor vehicles being driven or parked on public roads.
- Clause 81 Offences regarding service stations—This clause regulates the sale, supply or consumption of liquor on erven where service stations are located.
- Clause 82 Failure to comply with order of Liquor Licensing Tribunal—This clause ensures the compliance with orders of the Liquor Licensing Tribunal.
- Clause 83 Vicarious responsibility—This clause ensures that licensees remain responsible for the unlawful conduct of their managers, agents or employees on licensed premises.
- Clause 84 Exemptions—This clause lists persons exempted from the Bill and allows for the Liquor Licensing Tribunal to declare collectors of liquor and manufacturers and sellers of spirituous or distilled perfumery exempt.
- Clause 85 Evidence—This clause establishes measures to simplify the submission of evidence before the Liquor Licensing Tribunal and during court proceedings.
- Clause 86 Notices—This clause provides for the mandatory display of approved information regarding health aspects at points of sale or supply of liquor.
- Clause 87 Penalties—This clause determines appropriate penalties for offences created by the Bill.

#### CHAPTER 13 REGULATIONS, TRANSITIONAL PROVISIONS, REPEAL OF LAWS AND SHORT TITLE

- Clause 88 Regulations—This clause provides the responsible minister with the power to issue regulations relating to the Bill.
- Clause 89 Transitional provisions—This clause ensures continuity in the liquor industry from the provisions of the Liquor Act, 1989 (Act 27 of 1989), and makes provision for exemption from the application of the Bill of persons and premises which were subject to and or prejudiced by apartheid era legislation
- Clause 90 Repeal provisions—This provision repeals the Liquor Act, 1989, (Act No 27 of 1989).
- Clause 91 Short title—This clause provides the short title of the Bill and for promulgation of the Bill.

# WES-KAAPSE DRANKWETSONTWERP

**Om voorsiening te maak vir die lisensiëring van die kleinhandelverkope en die mikrovervaardiging van drank in die Provinsie Wes-Kaap, en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**

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

## HOOFSTUK 1

### UITLEG

- |    |                  |   |
|----|------------------|---|
| 1. | Woordomskrywings | 5 |
|----|------------------|---|

## HOOFSTUK 2

### WES-KAAPSE DRANKRAAD

- |     |   |    |
|-----|---|----|
| 2.  | Instelling van Wes-Kaapse Drankraad                           |    |
| 3.  | Samestelling van Raad   |    |
| 4.  | Geskiktheid vir aanstelling as lid of werknemer van Raad      | 10 |
| 5.  | Diskwalifisering van aanstelling as lid of werknemer van Raad |    |
| 6.  | Ampstermyn  |    |
| 7.  | Beëindiging van lidmaatskap van Raad                          |    |
| 8.  | Vakatures   |    |
| 9.  | Bevoegdhede en funksies van Raad                              | 15 |
| 10. | Delegasie   |    |
| 11. | Koöptering van persone  |    |
| 12. | Vertroulikheid  |    |
| 13. | Vergaderings van Raad   |    |
| 14. | Notule  | 20 |

## HOOFSTUK 3

### WES-KAAPSE DRANKLISENSIËRINGSTRIBUNAAL EN APPËLTRIBUNAAL

- |     |  |    |
|-----|--|----|
| 15. | Instelling van Dranklisensiëringstribunaal   |    |
| 16. | Samestelling van Dranklisensiëringstribunaal, en benoeming en aanstelling van lede van Dranklisensiëringstribunaal | 25 |
| 17. | Diskwalifisering van aanstelling as lid van Dranklisensiëringstribunaal  |    |
| 18. | Ampstermyn   |    |
| 19. | Beëindiging van lidmaatskap van Dranklisensiëringstribunaal  |    |
| 20. | Bevoegdhede en funksies van Dranklisensiëringstribunaal  |    |
| 21. | Vergaderings en besluite van Dranklisensiëringstribunaal   | 30 |
| 22. | Onttrekking van lid met botsende belang  |    |
| 23. | Verrigtinge van Dranklisensiëringstribunaal  |    |
| 24. | Komitees van Dranklisensiëringstribunaal   |    |
| 25. | Appèltribunaal   |    |

## HOOFSTUK 4

## ADMINISTRASIE, BESOLDIGING EN FINANSIËLE BESTUUR

- |     |   |   |
|-----|---|---|
| 26. | Administrasie van Raad, Dranklisensieringstribunaal en Appèltribunaal                                       |   |
| 27. | Besoldiging van Hoof Uitvoerende Beampte, lede van Raad, Drank-<br>lisensieringstribunaal en Appèltribunaal | 5 |
| 28. | Befondsing en finansiële bestuur van Raad   |   |
| 29. | Oudit en jaarverslae  |   |
| 30. | Inkomste wat aan Provinsiale Inkomstefonds, Raad of munisipaliteite toeval                                  |   |

## HOOFSTUK 5

## INSTELLING VAN MAATSKAPLIKE EN OPVOEDINGSFONDS 10

- |     |                      |  |
|-----|----------------------|--|
| 31. | Instelling van fonds |  |
|-----|----------------------|--|

## HOOFSTUK 6

## LISENSIËRING

- |     |   |    |
|-----|---|----|
| 32. | Lisensies   |    |
| 33. | Kategorieë van lisensies  | 15 |
| 34. | Maatstawwe vir toestaan van lisensies                             |    |
| 35. | Diskwalifisering van aansoekers                                   |    |
| 36. | Aansoekprosedure  |    |
| 37. | Kennisgewing van aansoek  |    |
| 38. | Aansoeke ter insae by Raad  | 20 |
| 39. | Verhoë  |    |
| 40. | Aanstuur van dokumente  |    |
| 41. | Oorweging van aansoeke  |    |
| 42. | Voorwaardelike toestaan van lisensie                              |    |
| 43. | Reg om perseel te gebruik   | 25 |
| 44. | Onvolledige perseel   |    |
| 45. | Onderrig en opleiding   |    |
| 46. | Uitreiking van lisensie   |    |
| 47. | Dood of onbevoegdheid van aansoeker                               |    |
| 48. | Tydlike dranklisensies en dranklisensies vir spesiale geleenthede | 30 |

## HOOFSTUK 7

## VOORWAARDES VIR LISENSIES

- |     |   |    |
|-----|---|----|
| 49. | Standaardlisensievoorwaardes                                  |    |
| 50. | Aflewering  |    |
| 51. | Finansiële belang en verhuring van gelisensieerde persele     | 35 |
| 52. | Bestuur   |    |
| 53. | Veranderings aan gelisensieerde persele of aard van besigheid |    |
| 54. | Kinders   |    |
| 55. | Werkgewers en werknemers                                      |    |
| 56. | Toegang tot gelisensieerde persele                            | 40 |
| 57. | Berging van drank   |    |
| 58. | Plek van verkoop  |    |
| 59. | Handelsure  |    |
| 60. | Hoeveelheid drank verkoop en hou van rekords                  |    |
| 61. | Verbode middels   | 45 |

## HOOFSTUK 8

## GELDIGHEID EN HERNUWING VAN LISENSIES

- |     |                                     |  |
|-----|-------------------------------------|--|
| 62. | Geldigheid van lisensies            |  |
| 63. | Outomatiese hernuwing van lisensies |  |



64. Aansoeke om hernuwing van lisensies

#### HOOFSTUK 9

##### VERVREEMDING, OORDRAG EN VERWYDERING VAN LISENSIES

65. Vervreemding en oordrag van lisensies  
 66. Verwydering van lisensies 5  
 67. Abandonering van perseel en dood of onbevoegdheid van lisensiehouer

#### HOOFSTUK 10

##### APPÈLLE EN HERSIENINGS

68. Appèlle en hersienings na Appèltribunaal

#### HOOFSTUK 11 10

##### VOLDOENING

69. Voldoeningskennisgewings  
 70. Sluiting van gelisensieerde persele  
 71. Tussentydse bevele  
 72. Opskorting, intrekking en verval van lisensies 15

#### HOOFSTUK 12

##### WETSTOEPASSING

73. Aanwysing en funksies van aangewese drankbeampes en inspekteurs  
 74. Bevoegdhede van aangewese drankbeampes en inspekteurs  
 75. Uitoefening van bevoegdhede om persele te betree en te deursoek of te 20  
 inspekteer  
 76. Algemene misdrywe  
 77. Misdrywe betreffende inligting  
 78. Misdrywe betreffende vergaderings van Dranklisensiëringstribunaal en 25  
 Appèltribunaal  
 79. Misdrywe betreffende aangewese drankbeampes en inspekteurs  
 80. Misdrywe betreffende motorvoertuie  
 81. Misdryf betreffende diensstasies  
 82. Versuim om aan bevel van Dranklisensiëringstribunaal te voldoen  
 83. Middellike verantwoordelikheid 30  
 84. Vrystellings  
 85. Bewys  
 86. Kennisgewings  
 87. Strawwe en verbeurdverklaring

#### HOOFSTUK 13 35

##### REGULASIES, OORGANGSBEPALINGS EN KORT TITEL

88. Regulasies  
 89. Oorgangsbepalings  
 90. Herroepingsbepaling  
 91. Kort titel en inwerkingtreeding 40

## HOOFSTUK 1

## UITLEG

## Woordomsrywings

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
- “**aangewese drankbeampte**” ’n persoon kragtens artikel 73(1) as sodanig 5  
aangewys;
- “**Adjunk Voorsittende Beampte**” die persoon wat kragtens artikel 16(1)(b) as  
Adjunk Voorsittende Beampte van die Dranklisensieringstribunaal aangestel word;
- “**Appèltribunaal**” ’n Appèltribunaal kragtens artikel 25(1) ingestel;
- “**bestuurder**” ’n persoon wie se aanstelling as bestuurder goedgekeur word 10  
kragtens artikel 52(1) ;
- “**brandspiritus**”—
- (a) ’n spiritus gedenatureer in ooreenstemming met enige wet oor die  
denaturering of metilering van spiritus;
- (b) enige ander gedenatureerde spiritus, insluitende— 15  
(i) ’n medisinale spiritus; of  
(ii) ’n gedenatureerde spiritus wat kragtens die Drankwet as brandspiritus  
verklaar is;
- “**datum van uitreiking**”, met betrekking tot ’n lisensie, die datum waarop die  
lisensie die eerste keer uitgereik word; 20
- “**Departement**” die departement verantwoordelik vir ekonomiese sake in die  
Provinsie;
- “**drank**” enige vloeistof of stof wat meer as 1% alkohol per volume of massa  
bevat, maar sluit die volgende uit:
- (a) brandspiritus; 25  
(b) medisyne wat onderhewig is aan registrasie kragtens die Wet op Medisyne en  
Verwante Stowwe, 1965 (Wet 101 van 1965); en  
(c) produkte wat nie vir menslike gebruik bedoel is nie;
- “**Dranklisensieringstribunaal**” die Wes-Kaapse Dranklisensieringstribunaal wat  
deur artikel 15(1) ingestel word; 30
- “**Drankwet**” die nasionale Drankwet, 2003 (Wet 59 van 2003);
- “**dwelmmiddels**” enige afhanklikheidsvormende stof, enige gevaarlike  
afhanklikheidsvormende stof of enige ongewenste afhanklikheidsvormende stof  
soos omskryf in die Wet op Dwelmmiddels en Dwelmsmokkelary, 1992 (Wet 140  
van 1992); 35
- “**familielid**” ’n persoon se gade, lewensmaat, kind, ouer, broer of suster, ongeag of  
die verhouding die gevolg is van geboorte, huwelik of aanneming;
- “**finansiële belang**”, met betrekking tot enige besigheid of onderneming, enige  
belang wat die houer daarvan in staat stel om in die voorspoed of die omset van die  
besigheid of onderneming te deel, insluitende die eienaarskap van die aandele van 40  
’n maatskappy, die lede-aandele in ’n koöperasie, die lid se belang in ’n beslote  
korporasie, die bevoordeeldes van ’n trust, of ’n belang in ’n vennootskap;
- “**finansiële jaar**” ’n jaar wat op 31 Maart eindig;
- “**gelisensieerde besigheid**” die besigheid wat op die gelisensieerde perseel bedryf  
mag word soos deur die Raad gemagtig; 45
- “**gelisensieerde perseel**” die perseel waarop drank kragtens ’n lisensie onder  
hierdie Wet mikrovervaardig, verkoop, gebruik of geberg mag word;
- “**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;
- “**hernuwingsfooi**” fooi wat jaarliks betaalbaar is ten opsigte van ’n lisensie,  
uitgesluit ’n tydelike dranklisensie, ten einde die voortgesette geldigheid van die 50  
lisensie te verseker;
- “**hierdie Wet**” ook regulasies kragtens artikel 88 uitgevaardig;
- “**Hoof Uitvoerende Beampte**” die persoon wat kragtens artikel 26(1)(a) as Hoof  
Uitvoerende Beampte van die Raad aangestel word;
- “**inspekteur**” ’n persoon wat kragtens artikel 73(4) sodanig aangestel word; 55
- “**kleinhandelvoedselwinkel**” ’n besigheid wat hoofsaaklik kruidentiersware en  
voedselware in die kleinhandel verkoop;
- “**koöperasie**” ’n koöperasie soos omskryf in die Koöperasiewet, 2005 (Wet 14 van  
2005);

- “**lid**” ’n lid van die Raad of die Dranklisensieringstribunaal, na gelang van die geval;
- “**lisensie**” ’n lisensie in artikel 33 bedoel, of geag word so ’n lisensie kragtens artikel 89 te wees;
- “**lisensiehouer**” die persoon aan wie ’n lisensie kragtens artikel 46 uitgereik is of kragtens artikel 65 oorgedra is of wat kragtens artikel 89 as ’n lisensiehouer geag word; 5
- “**mikrovervaardig**” om drank te vervaardig op of onder die voorgeskrewe drempelvolumen kragtens artikel 4 van die Drankwet, en het mikrovervaardiger ’n ooreenstemmende betekenis; 10
- “**Minister**” die provinsiale Minister verantwoordelik vir ekonomiese sake in die Provinsie;
- “**motorvoertuig**” ’n voertuig wat ontwerp of aangepas is om op ’n pad aangedryf of gesleep te word deur middel van brandstof, gas of elektrisiteit, insluitende ’n sleepwa of ’n landbou- of ander implement wat ontwerp of aangepas is om deur sodanige voertuig gesleep te word; 15
- “**munisipaliteit**” ’n munisipaliteit soos ingestel deur die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet 117 van 1998);
- “**ondrinkbare middel**” enige middel wat onveilig is vir menslike verbruik;
- “**openbare pad**” die betekenis daaraan geheg in die Nasionale Padverkeerswet, 1996 (Wet 93 van 1996); 20
- “**perseel**” ’n plek, grond, gebou, deel van ’n gebou, voertuig wat hoofsaaklik vir die vervoer van toeriste gebruik word, vaartuig of vliegtuig;
- “**persoon**” ook— 25
- (a) enige staatsorgaan;
- (b) enige maatskappy of beslote korporasie as sodanig kragtens enige wet geïnkorporeer of geregistreer;
- (c) enige liggaam met of sonder regs persoonlikheid; en
- (d) enige trust;
- “**Provinsiale Kabinet**” die Provinsiale Kabinet van die regering van die Wes-Kaap; 30
- “**Provinsie**” die Provinsie Wes-Kaap;
- “**Raad**” die Wes-Kaapse Drankraad wat deur artikel 2(1) ingestel word;
- “**uitreiking**”, met betrekking tot ’n lisensie, ook die lewering of versending van die lisensie aan die persoon aan wie dit verleen is of aan sy of haar agent; 35
- “**Ondervoorsitter**” die persoon wat kragtens artikel 3(6) as Ondervoorsitter van die Raad aangewys word;
- “**spesiale geleentheid**” ’n fondsinsamelingsgeleentheid ten bate van ’n opvoedkundige of welsynsorganisasie, enige uitstalling, sportbyeenkoms, kultuurbyeenkoms of kunsuitvoering; 40
- “**staande komitee**” die komitee van die Provinsiale Parlement verantwoordelik vir ekonomiese sake;
- “**staatsorgaan**” ’n staatsorgaan soos omskryf in artikel 239 van die Grondwet;
- “**Strafproseswet**” die Strafproseswet, 1977 (Wet 51 van 1977);
- “**tafelwyn**” wyn soos omskryf in artikel 1 van die Wet op Drankprodukte, 1989 (Wet 60 van 1989); 45
- “**verkoop**” ook verskaf, verruil, te koop aanbied, vertoon met die doel om te verkoop of om ’n verkoop, verskaffing, uitruiling, aanbod of vertoning te magtig, te gelas of toe te laat;
- “**verskaf**”, met betrekking tot drank, om ’n persoon in besit of beheer daarvan te stel; 50
- “**vervaardig**” om drank te produseer of te botteler met die bedoeling om dit te verkoop;
- “**vervaardiger**” ’n persoon wat as sodanig geregistreer is kragtens die Drankwet;
- “**Voorsittende Beampte**” die persoon kragtens artikel 16(1)(a) as voorsittende beampte van die Dranklisensieringstribunaal aangestel; 55
- “**Voorsitter**” die persoon aangewys as Voorsitter van die Raad kragtens artikel 3(6) of ’n persoon wat tydelik as Voorsitter in sy of haar afwesigheid waarneem kragtens artikel 3(7);
- “**voorskrif**” om by regulasie kragtens hierdie Wet voor te skryf; 60

“vredesbeampte” enige polisiebeampte en, met betrekking tot enige gebied, misdryf, klas misdryf of bevoegdheid bedoel in ’n kennisgewing uitgereik kragtens artikel 334(1) van die Strafproseswet, enige persoon wat ’n vredesbeampte kragtens daardie artikel is.

## HOOFSTUK 2

5

### WES-KAAPSE DRANKRAAD

#### Instelling van Wes-Kaapse Drankraad

2. (1) ’n Onafhanklike regspersoon, wat as die Wes-Kaapse Drankraad bekend staan, word hierby ingestel.
- (2) Die Raad het die reg en bevoegdheid om regsdinge in te stel en daaraan deel te neem en om al sy werksaamhede in sy eie naam te verrig. 10

#### Samestelling van Raad

3. (1) Die Raad bestaan uit sewe lede wat op ’n deelydse grondslag deur die Provinsiale Kabinet aangestel word ooreenkomstig die voorgeskrewe prosedure, wat voorsiening moet maak vir openbare deelname in die benoeming van kandidate vir aanstelling. 15
- (2) Die staande komitee moet al die kandidate evalueer met betrekking tot hulle geskiktheid vir aanstelling en moet aanbevelings aan die Minister doen oor die kandidate.
- (3) Die Provinsiale Kabinet moet die lede van die Raad aanstel na oorweging van die aanbevelings van die staande komitee. 20
- (4) ’n Lid van die Raad moet ’n geskikte persoon wees wat oor toepaslike kennis of ondervinding beskik van stelsels en prosesse ten einde behoorlike verantwoordingspligtigheid, eerlikheid en openheid in die verrigting van ’n organisasie se werksaamhede te verseker. 25
- (5) Die aanstellings in die Raad moet met sensitiwiteit vir geslag gedoen word.
- (6) Die Minister moet een lid as Voorsitter en ’n ander as Ondervoorsitter van die Raad aanwys.
- (7) Die Ondervoorsitter neem waar as Voorsitter van die Raad wanneer die Voorsitter afwesig is of nie as Voorsitter kan optree nie, en wanneer sowel die Voorsitter as die Ondervoorsitter afwesig is of nie as Voorsitter kan optree nie, moet die lede wat by die vergadering teenwoordig is iemand uit hulle geledere deur ’n meerderheidstem verkies om as Voorsitter by sodanige vergadering waar te neem. 30
- (8) Voordat die kandidaat as lid van die Raad aangestel word, moet hy of sy ’n beëdigde verklaring aan die Minister voorlê waarin sodanige kandidaat verklaar dat hy of sy— 35
- (a) geskik is vir sodanige aanstelling; en
- (b) nie onbevoeg is vir sodanige aanstelling nie.
- (9) Die Provinsiale Kabinet of die Minister mag, in oorleg met die staande komitee, te eniger tyd vra vir bewyse tot sy of haar bevrediging van die voortgesette geskiktheid van ’n lid of voorgename lid van die Raad, of enige ondersoek of navraag in daardie verband doen of laat doen. 40
- (10) Benewens die lede in subartikel (1) bedoel, dien die Hoof Uitvoerende Beampte as ’n *ex officio* lid van die Raad, sonder enige stemreg.

#### Geskiktheid vir aanstelling as lid of werknemer van Raad

45

4. Ten einde geskik te wees vir aanstelling as lid of werknemer van die Raad, moet ’n persoon—
- (a) in die geval van ’n lid van die Raad, die ouderdom van vyf-en-twintig (25) of, in die geval van ’n werknemer van die Raad, die ouderdom van agtien (18) jaar bereik het; 50
- (b) ’n burger van die Republiek van Suid-Afrika wees en permanent in die Provinsie woonagtig wees; en
- (c) nie kragtens artikel 5 gediskwalifiseer word nie.

### Diskwalifisering van aanstelling as lid of werknemer van Raad

5. (1) Die volgende persone kwalifiseer nie om as lede of werknemers van die Raad aangestel te word, voort te gaan of op te tree nie—
- (a) iemand wat in die voorafgaande tien (10) jaar skuldig bevind is aan 'n misdryf kragtens hierdie Wet of enige soortgelyke wet; 5
  - (b) iemand wat in die voorafgaande tien (10) jaar, hetsy in die Republiek of elders, skuldig bevind is aan diefstal, bedrog, vervalsing, die uitgee van 'n vervalste dokument, meened of enige misdryf kragtens die Wet op Korrupsie 1992 (Wet 94 van 1992) of die Wet op die Voorkoming en Bestryding van Korrupte Bedrywighede, 2004 (Wet 12 van 2004) of enige misdryf waarvan oneerlikheid 'n element is; 10
  - (c) 'n ongerehabiliteerde insolvent of iemand wat onderhewig is aan enige handelingsonbevoegdheid;
  - (d) iemand wat in die voorafgaande tien (10) jaar uit 'n vertrouensamp ontslaan is weens wangedrag of oneerlikheid; 15
  - (e) enige politieke ampsbekleër; en
  - (f) iemand wat, hetsy persoonlik of deur sy of haar gade, familielid, vennoot of besigheidsdeelgenoot—
    - (i) 'n regstreekse of 'n onregstreekse finansiële belang in enige drankbesigheid of -instelling het of verkry; of 20
    - (ii) 'n belang het in enige besigheid of onderneming wat in stryd kan wees of kan inmeng met die behoorlike verrigting van sy of haar pligte as lid of werknemer van die Raad of ten opsigte van enige lisensie kragtens hierdie Wet uitgereik.
- (2) By die toepassing van hierdie artikel sluit 'n onregstreekse finansiële belang nie 'n onregstreekse belang in wat gehou word deur middel van enige fonds of belegging indien die persoon wat sodanige belang hou geen beheer het oor die beleggingsbesluite wat ten opsigte van daardie fonds of belegging gedoen word nie. 25

### Ampstermyn

6. 'n Lid van die Raad beklee die amp vir die tydperk, van hoogstens vier jaar, wat die Provinsiale Kabinet bepaal ten tyde van sy of haar aanstelling in die Raad, en 'n lid van die Raad kan by verstryking van sy of haar ampstermyn heraangestel word. 30

### Beëindiging van lidmaatskap van Raad

7. 'n Vakature in die amp van 'n lid van die Raad ontstaan wanneer—
- (a) sodanige lid se skriftelike bedanking deur die Minister ontvang word: Met dien verstande dat die bedanking van krag word vanaf die datum wat in die skriftelike bedanking vermeld word of die ander datum waarop deur die Minister en die betrokke lid ooreengekom word; 35
  - (b) sodanige lid gediskwalifiseer raak om lid van die Raad te bly;
  - (c) sodanige lid van twee opeenvolgende vergaderings van die Raad afwesig is sonder die vooraf skriftelike verlof van die Voorsitter of, waar van toepassing, die Ondervoorsitter; 40
  - (d) sodanige lid se ampstermyn verstryk het;
  - (e) sodanige lid se ampstermyn deur die Provinsiale Kabinet beëindig word: Met dien verstande dat die Provinsiale Kabinet nie 'n lid se ampstermyn mag beëindig tensy daar geag word dat dit in die openbare belang of in die belang van die behoorlike toepassing van hierdie Wet is nie; en 45
  - (f) sodanige lid nie meer in die Provinsie woonagtig is nie.

### Vakatures

8. In die geval van 'n vakature in artikel 7 beoog, moet die Provinsiale Kabinet 'n nuwe lid op die Raad aanstel kragtens artikels 3(1), 4, 5 en 6. 50

### Bevoegdhede en funksies van Raad

9. Die Raad het die volgende bevoegdhede en funksies—
- (a) om die regulering van drank in die Provinsie te behartig;

- (b) om aansoeke vir dranklisensies of vrystellings kragtens hierdie Wet te ontvang en om die aansoeke na die Dranklisensieringstribunaal deur te stuur;
- (c) om lisensies uit te reik in gevalle waar die Dranklisensieringstribunaal lisensies verleen het;
- (d) om intellektuele, roerende en onroerende eiendom te verkry, te hou, te huur, te verhuur en te vervreem; 5
- (e) om bankrekenings te open en in stand te hou;
- (f) om personeel aan te stel en te ontslaan en om alles te doen wat daarmee in verband staan;
- (g) om kontrakte te sluit en uit te voer; 10
- (h) om reëls vir die hou van sy vergaderings te maak en toe te pas;
- (i) om fondse te ontvang, te bestee en in die algemeen te administreer;
- (j) om ooreenkomstig die bepalings van hierdie Wet fooie en boetes wat kragtens hierdie Wet opgelê word, in te vorder en te administreer;
- (k) om ooreenkomste aan te gaan met of die bystand te verkry van enige departement of staatsorgaan, insluitende die Suid-Afrikaanse Polisiediens, om die ondersoeke van die Raad te doen of om die Raad in die doen van sy ondersoeke by te staan; 15
- (l) om inligting te verkry van lisensiehouers en ander persone en agentskappe;
- (m) om 'n voortgesette studie van en ondersoek na die kleinhandel drankhandel en mikrovervaardiging van drank oor die hele Provinsie heen en elders te onderneem ten einde te bepaal of daar enige leemtes in hierdie Wet is en om enige misbruike of oortredings van die prosedures wat in hierdie Wet vervat word, bloot te lê; 20
- (n) om minimum interne kontrolestelsels te bepaal vir die Raad en vir lisensiehouers, insluitende rekeningkundige en verslagdoeningsprosedures en enige ander prosedures of stelsels, hetsy gerekenariseerd of nie; 25
- (o) om fooie en heffings te bepaal ten opsigte van verhore, ondersoeke, navrae en enige ander funksie wat deur die Raad verrig word;
- (p) om veld- of takkantore in te stel; 30
- (q) om fondse vir die behoorlike toepassing van hierdie Wet in te stel en te administreer;
- (r) om met enige persoon oorleg te pleeg of konsultante in diens te neem betreffende enige aangeleentheid wat betrekking het op die verrigting van sy funksies op die bedinge en voorwaardes wat die Raad bepaal; 35
- (s) om enige van sy bevoegdhede ooreenkomstig artikel 10 te delegeer;
- (t) om komitees aan te stel wat uit lede van die Raad bestaan;
- (u) om in die algemeen die bevoegdhede uit te oefen en funksies en pligte te verrig wat in hierdie Wet vermeld word of deur enige ander wet aan die Raad opgedra word; en 40
- (v) om die Minister oor enige aangeleentheid te adviseer wat die Minister na die Raad verwys het.

## Delegasie

- 10. (1) Die Raad kan enige bevoegdheid of funksie aan die Hoof Uitvoerende Beampte delegeer om namens die Raad uit te oefen of te verrig. 45
- (2) Enige delegasie in subartikel (1) bedoel kan onderhewig gemaak word aan die bedinge, voorwaardes en beperkings wat die Raad bepaal.
- (3) Die Raad word nie ontdoen van enige bevoegdheid wat deur die Raad gedelegeer is nie.
- (4) 'n Delegasie kragtens hierdie artikel kan die Hoof Uitvoerende Beampte magtig om al die gedelegeerde bevoegdhede of funksies of enige daarvan te subdelegeer. 50
- (5) Enige persoon benadeel deur 'n besluit geneem kragtens 'n gedelegeerde bevoegdheid of funksie bedoel in subartikel (1) het die reg tot appèl na die Raad teen sodanige besluit op die wyse en binne die tyd voorgeskryf.
- (6) Die Raad mag enige delegasie wysig of terugtrek. 55
- (7) Die Raad mag nie enige bevoegdheid of funksie bedoel in artikel 9(h), (o), (p) en (s) delegeer nie.



### Koöptering van persone

**11.** (1) Die Raad mag enige persoon koöpteer wat geskik is soos beoog in artikel 4 en, na die mening van die Raad, in staat is om die Raad of 'n komitee van die Raad by te staan in die oorweging van 'n bepaalde aangeleentheid.

(2) 'n Persoon wat kragtens subartikel (1) gekoöpteer is, is nie geregtig om by enige vergadering van die Raad te stem nie. 5

(3) Die vergoeding van enige persoon wat kragtens hierdie artikel gekoöpteer word, word deur die Raad bepaal.

### Vertroulikheid

**12.** (1) Geen lid of werknemer van die Raad, insluitende enige gekoöpteerde persoon of konsultant wat deur die Raad in diens geneem is, mag enige inligting openbaar maak wat tot daardie persoon se kennis gekom het op grond van sy of haar aanstelling of koöptering op of indienseneming deur die Raad en wat met die werksaamhede of sake van die Raad, 'n aansoeker vir 'n lisensie of 'n lisensiehouer verband hou nie, behalwe soos bepaal in hierdie artikel en artikel 36(2)(b) en (c). 15

(2) Bogenoemde verbod op openbaarmaking is nie van toepassing nie ten opsigte van—

- (a) openbaarmakings aan 'n hof met betrekking tot regsgedinge voor die hof;
- (b) openbaarmakings ooreenkomstig 'n hofbevel;
- (c) openbaarmakings betreffende drankregulering in die algemeen wat nie verwys na die werksaamhede of sake van 'n bepaalde aansoeker vir 'n lisensie of 'n lisensiehouer nie; 20
- (d) openbaarmaking van inligting aan die Kommissaris van die Suid-Afrikaanse Inkomstediens;
- (e) openbaarmaking aan die Minister; en 25
- (f) openbaarmaking aan enige persoon wat dit nodig het vir die verrigting van sy of haar funksies kragtens hierdie Wet.

### Vergaderings van Raad

**13.** (1) (a) Die Raad moet elke jaar minstens vier maal vergader op die wyse, datums, tye en plekke soos deur die Voorsitter bepaal. 30

(b) Die Voorsitter van die Raad mag te eniger tyd 'n spesiale vergadering van die Raad belê wat gehou moet word op 'n tyd en plek deur hom of haar bepaal en moet, op 'n skriftelike versoek onderteken deur minstens drie lede van die Raad, 'n spesiale vergadering van die Raad belê wat gehou moet word binne twee weke na die datum van ontvangs van sodanige versoek, op 'n tyd en plek deur hom of haar bepaal. 35

(2) Die Minister moet die prosedure voorskryf wat op 'n vergadering van die Raad gevolg moet word.

(3) Die prosedure op 'n vergadering van die Raad moet, in soverre dit nie voorgeskryf word nie, deur die Voorsitter bepaal word.

(4) Die kworum vir 'n vergadering van die Raad is vyf lede. 40

(5) Enige vergadering kan verdaag word vir die tyd, na die plek en om die redes wat die Voorsitter nodig ag.

(6) 'n Besluit van die Raad word geneem deur 'n meerderheid van die stemme van die lede teenwoordig by sy vergaderings, en in die geval van 'n staking van stemme oor enige aangeleentheid, moet die Voorsitter die beslissende stem uitbring. 45

(7) Geen besluit van die Raad is ongeldig bloot vanweë 'n vakature in die Raad of vanweë die feit dat iemand wat nie geregtig is om as lid van die Raad sitting te neem, as 'n lid van die Raad sitting geneem het toe die besluit geneem is nie: Met dien verstande dat die besluit geneem is deur die vereiste meerderheid van die lede van die Raad wat toe teenwoordig was en geregtig was om as lede van die Raad sitting te neem. 50

### Notule

**14.** (1) Die verrigtinge van die Raad moet genotuleer word op die wyse wat die Voorsitter bepaal en moet, in die geval van 'n stemming, elke lid se stem weergee.

(2) Notule moet gehou word van vergaderings van die Raad en moet by die kantoor van die Raad bewaar word. 55

## HOOFSTUK 3

## WES-KAAPSE DRANKLISENSIËRINGSTRIBUNAAL EN APPËLTRIBUNAAL

**Instelling van Dranklisensiëringstribunaal**

- 15.** (1) Die Wes-Kaapse Dranklisensiëringstribunaal word hierby ingestel. 5  
 (2) Die Dranklisensiëringstribunaal moet sy funksies ooreenkomstig die bepalings van hierdie Wet verrig, onpartydig en sonder vrees, begunstiging of vooroordeel.  
 (3) Die Raad moet toesighouding oor die administrasie van die Dranklisensiëringstribunaal uitvoer maar mag nie enige besluit van die Tribunaal kragtens artikel 20 geneem in die uitoefening of verrigting van enige van sy bevoegdhede of funksies intrek of wysig nie. 10

**Samestelling van Dranklisensiëringstribunaal, en benoeming en aanstelling van lede van Dranklisensiëringstribunaal**

- 16.** (1) Die Dranklisensiëringstribunaal bestaan uit—  
 (a) een lid met regs kwalifikasies gelykwaardig aan dit wat vir toelating as prokureur, of advokaat van die Hoë Hof van Suid-Afrika, vereis word, en met ervaring van die regspleging, en wat deur die Raad as Voorsittende Beampte aangestel word; 15  
 (b) een lid met die kwalifikasies in paragraaf (a) vermeld, wat deur die Raad as Adjunk Voorsittende Beampte aangestel word;  
 (c) een lid wat die georganiseerde plaaslike regering verteenwoordig, deur die Raad aangestel na oorleg met die Minister verantwoordelik vir plaaslike regering in die Provinsie; 20  
 (d) een lid wat 'n polisiebeampte met die rang van Superintendent 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 25  
 (e) twee burgers van die Republiek, wat permanent in die Provinsie woonagtig is.  
 (2) Die lede word aangestel ooreenkomstig die voorgeskrewe prosedure, wat voorsiening moet maak vir openbare deelname in die benoeming van die kandidate in subartikel 1(a), (b) en (e) vermeld. 30  
 (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 Adjunk Voorsittende 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. 35  
 (4) Voordat 'n kandidaat as lid van die Dranklisensiëringstribunaal aangestel word, moet hy of sy 'n beëdigde verklaring aan die Raad voorlê waarin sodanige kandidaat verklaar dat hy of sy nie kragtens artikel 17 gediskwalifiseer word nie.  
 (5) Die Raad mag, in oorleg met die Minister, te eniger tyd vra vir bewyse tot sy bevrediging van die voortgesette geskiktheid van enige lid of voorgenome lid van die Dranklisensiëringstribunaal, of enige ondersoek of navraag in daardie verband doen of laat doen.

**Diskwalifisering van aanstelling as lid van Dranklisensiëringstribunaal**

- 17.** Die volgende persone is gediskwalifiseer om aangestel te word, voort te gaan of op te tree as lede van die Dranklisensiëringstribunaal— 45  
 (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 kragtens 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; 50  
 (c) 'n ongerehabiliteerde insolvent of iemand wat onderhewig is aan enige handelingsonbevoegdheid; 55  
 (d) iemand wat jonger as een-en-twintig (21) jaar is;

- (e) iemand wat 'n regstreekse belang in die drankhandel het;
- (f) iemand wat die familielid, vennoot of besigheidsdeelsgenoot van 'n persoon is met 'n regstreekse belang in die drankhandel, tensy die Raad van mening is dat die belang van die familielid in die drankhandel nie impliseer dat die persoon ongeskik is om die amp te beklee nie; 5
- (g) iemand wat kragtens artikel 35 gediskwalifiseer word om 'n dranklisensie te hou; of
- (h) iemand wat nie in die Provinsie woonagtig is nie.

### Ampstermyn

**18.** (1) 'n Lid van die Dranklisensieringstribunaal word vir 'n tydperk van hoogstens vyf jaar aangestel, en mag by verstryking van sy of haar ampstermyn vir hoogstens een termyn heraan gestel word. 10

(2) 'n Vakature in die Dranklisensieringstribunaal moet gevul word deur die aanstelling van 'n ander lid deur die Raad.

### Beëindiging van lidmaatskap van Dranklisensieringstribunaal 15

**19.** 'n Vakature in die amp van 'n lid van die Dranklisensieringstribunaal ontstaan wanneer—

- (a) sodanige lid se skriftelike bedanking deur die Raad ontvang word: Met dien verstande dat die bedanking van krag word vanaf die datum wat in die skriftelike bedanking vermeld word of die ander datum waarop deur die Raad en die betrokke lid ooreengekom word; 20
- (b) sodanige lid nie meer kwalifiseer om lid van die Dranklisensieringstribunaal te bly nie;
- (c) sodanige lid van drie opeenvolgende vergaderings van die Dranklisensieringstribunaal afwesig is sonder die vooraf skriftelike verlof van die Voorsittende Beampte of, waar van toepassing, die Adjunk Voorsittende Beampte; 25
- (d) sodanige lid se ampstermyn verstryk het;
- (e) sodanige lid se ampstermyn deur die Raad beëindig word: Met dien verstande dat die Raad nie 'n lid se ampstermyn mag beëindig tensy daar geag word dat dit in die openbare belang of in die belang van die behoorlike toepassing van hierdie Wet is nie; en 30
- (f) sodanige lid nie meer in die Provinsie woonagtig is nie.

### Bevoegdheid en funksies van Dranklisensieringstribunaal

**20.** (1) Die Dranklisensieringstribunaal mag enige van die volgende aangeleenthede by sy vergaderings oorweeg— 35

- (a) 'n aansoek om 'n lisensie bedoel in artikel 33, 48 of 89(14);
- (b) 'n aansoek om oordrag van 'n lisensie kragtens artikel 65(9);
- (c) verdoë ten gunste van of teen die toestaan van aansoeke;
- (d) 'n verslag aan hom voorgelê deur 'n aangewese drankbeampte, 'n inspekteur of 'n munisipale beampte; 40
- (e) 'n klagte by hom ingedien oor die optrede van 'n gelisensieerde besigheid;
- (f) verdoë deur 'n lisensiehouer of ander belanghebbende oor die herroeping van die opskorting van 'n lisensie of die verwydering of wysiging van enige voorwaarde wat vir 'n lisensie opgelê is; of 45
- (g) enige ander aangeleentheid deur die Hoof Uitvoerende Beampte na hom verwys of wat hy kragtens hierdie Wet mag of moet oorweeg.

(2) Behalwe ten opsigte van aangeleenthede in subartikel (1)(a), (b), (c), (f) en (g) bedoel, het die Voorsittende Beampte 'n diskresie om te weier om 'n vergadering van die Dranklisensieringstribunaal te belê indien so 'n vergadering na sy of haar mening nie geregverdig word deur die inligting wat aan hom of haar verstrek word nie. 50

(3) Die Dranklisensieringstribunaal mag, na oorweging deur hom van enige aangeleentheid beoog in—

- (a) subartikel (1)(a), (b), of (c), die aansoek weier of toestaan behoudens die voorwaardes wat hy toepaslik ag; 55
- (b) subartikel (1)(d) of (e)—
  - (i) die verslag of klagte, na gelang van die geval, van die hand wys;

- (ii) die betrokke lisensie intrek;
  - (iii) die lisensie op die voorgeskrewe wyse opskort as 'n straf- of regstellende maatreël;
  - (iv) sodanige voorwaardes aan die lisensie oplê wat hy toepaslik ag;
  - (v) die lisensiehouer beveel om die boete te betaal wat hy toepaslik ag, 5  
behoudens die voorgeskrewe perk; of
  - (vi) sodanige ander stappe neem wat hy toepaslik ag;
  - (c) subartikel (1)(f), die verstoë van die hand wys of die opskorting van die lisensie herroep, of die betrokke voorwaarde of voorwaardes, verwyder of wysig; of
  - (d) subartikel (1)(g), die aangeleentheid oorweeg en die stappe neem wat hy 10  
toepaslik ag.
- (4) Die Dranklisensieringstribunaal mag te eniger tyd op aansoek deur 'n lisensiehouer, enige voorwaarde deur hom opgelê met betrekking tot die betrokke lisensie opskort, intrek of wysig.
- (5) Die Dranklisensieringstribunaal mag, behoudens artikel 17, ten opsigte van enige 15  
aangeleentheid en vir die tydperk wat hy nodig ag, enige persoon koöpteer om in die Tribunaal te dien wat hy ag in staat is om hom by te staan in die oorweging van die betrokke aangeleentheid.
- (6) 'n Persoon aldus gekoöpteer het nie die reg om te stem nie.
- (7) Die vergoeding van enige persoon kragtens subartikel (5) gekoöpteer moet deur 20  
die Raad bepaal word.

### Vergaderings en besluite van Dranklisensieringstribunaal

- 21.** (1) Die Voorsittende Beampte moet die tyd en plek bepaal vir die hou van vergaderings van die Dranklisensieringstribunaal en mag vergaderings verdaag of 25  
herbelê op die tye en plekke waarop hy of sy besluit.
- (2) 'n Kworum vir 'n vergadering van die Dranklisensieringstribunaal is vier lede, insluitende die Voorsittende Beampte of die Adjunk Voorsittende Beampte of hulle albei.
- (3) 'n Besluit van die Dranklisensieringstribunaal word geneem deur 'n meerderheidstem van die lede teenwoordig by sy vergaderings, en in die geval van 'n 30  
staking van stemme oor enige aangeleentheid, moet die Voorsittende Beampte die beslissende stem uitbring.

### Onttrekking van lid met botsende belang

- 22.** (1) 'n Lid van die Dranklisensieringstribunaal mag op geen vergadering of verhoor van die Tribunaal stem of dit bywoon of op enige wyse aan die verrigtinge 35  
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 besigheidsdeelsgenoot 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 40  
geval, staan te verleen;
  - (b) hy of sy of sy of haar familielid, vennoot of besigheidsdeelsgenoot '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 45  
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 van die Dranklisensieringstribunaal op 'n billike, onbevooroordeelde en behoorlike wyse te verrig.
- (2) Indien dit in enige stadium blyk dat 'n lid of die Voorsittende Beampte, na gelang 50  
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 die aard van sy of haar belang onverwyld en volledig openbaar en die vergadering of verhoor verlaat ten 55  
einde die oorblywende lede in staat te stel om die aangeleentheid te bespreek en te bepaal of daardie lid uitgesluit moet word van deelname aan die verrigtinge op sodanige vergadering of verhoor as gevolg van 'n botsing van belange; en

- (b) 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 Dranklisensiëringstribunaal, in welke geval die Tribunaal die aangeleentheid moet oorweeg.
- (3) Die openbaring en besluit geneem deur die oorblywende lede van die Dranklisensiëringstribunaal in subartikel (2)(a) bedoel, moet in die notule van die betrokke verrigtinge aangeteken word. 5

### Verrigtinge van Dranklisensiëringstribunaal

23. (1) Die Voorsittende Beampte moet, behoudens die bepalings van hierdie Wet, die prosedure bepaal wat op vergaderings van die Dranklisensiëringstribunaal gevolg moet word. 10
- (2) Die Voorsittende Beampte mag enige persoon wat benadeel mag word in die oorweging van 'n aangeleentheid deur die Dranklisensiëringstribunaal op die voorgeskrewe wyse in kennis stel om teenwoordig te wees op die vergadering waar die aangeleentheid oorweeg gaan word. 15
- (3) 'n Persoon wat kragtens subartikel (2) in kennis gestel is, mag—
- (a) die vergadering persoonlik bywoon of verteenwoordig word deur 'n prokureur, advokaat of ander persoon wat namens hom of haar verskyn; of
- (b) kies om dit nie by te woon of verteenwoordig te word nie.
- (4) Indien die Voorsittende Beampte oortuig is dat 'n persoon behoorlik in kennis gestel is om op 'n vergadering van die Dranklisensiëringstribunaal te verskyn maar nie daar teenwoordig is nie, mag die Voorsittende Beampte gelas dat die vergadering in die afwesigheid van daardie persoon voortgaan of die ander stappe neem wat hy of sy in die omstandighede billik en regverdig ag. 20
- (5) Die Voorsittende Beampte mag enige persoon op die voorgeskrewe wyse laat dagvaar om op 'n vergadering van die Dranklisensiëringstribunaal teenwoordig te wees om getuienis te lewer of om 'n dokument of enigiets wat in sy of haar besit of bewaring of onder sy of haar beheer is, voor te lê. 25
- (6) Die Voorsittende Beampte mag enige persoon teenwoordig op 'n vergadering van die Dranklisensiëringstribunaal gelas om getuienis te lewer of om 'n dokument of enigiets wat in sy of haar besit of bewaring of onder sy of haar beheer is, voor te lê en deur die Dranklisensiëringstribunaal ondervra te word. 30
- (7) Die Dranklisensiëringstribunaal mag enige dokument of artikel wat aan hom voorgelê word, inspekteer en behou vir die tydperk wat redelikerwys nodig is.
- (8) 'n Persoon wat op 'n vergadering van die Dranklisensiëringstribunaal getuienis lewer, moet dit onder eed of plegtige verklaring doen. 35
- (9) By die oorweging van 'n aangeleentheid mag die Dranklisensiëringstribunaal, uit eie beweging, kennis neem van enige tersaaklike feit of omstandigheid wat na sy mening die besluit van die Dranklisensiëringstribunaal mag beïnvloed.
- (10) Indien enige party uitstel versoek om hom in staat te stel om beredenering met betrekking tot 'n aangeleentheid voor te berei, mag die Voorsittende Beampte daardie aangeleentheid vir dié doel uitstel. 40
- (11) Alle vergaderings van die Dranklisensiëringstribunaal is oop vir die publiek, behalwe dat die Voorsittende Beampte op redelike gronde mag gelas dat enige persoon wie se teenwoordigheid op die vergadering nie wenslik is nie, nie teenwoordig mag wees nie of die vergadering moet verlaat. 45
- (12) Die beraadslagings en stemming van die Dranklisensiëringstribunaal is nie oop vir die publiek nie.
- (13) Versuim om 'n vergadering by te woon na 'n dagvaarding kragtens subartikel (5) ontvang is, is 'n misdryf. 50

### Komitees van Dranklisensiëringstribunaal

24. (1) Die Voorsittende Beampte mag een of meer komitees aanstel wat bestaan uit hom- of haarself of die Adjunk Voorsittende Beampte en enige lid of enige persoon wat kragtens artikel 20(5) gekoöpteer is.
- (2) 'n Komitee bestaan uit minstens drie persone. 55
- (3) Die Dranklisensiëringstribunaal mag die funksies van die Dranklisensiëringstribunaal wat in artikels 64, 65, 71 en 89(14)(b) uiteengesit word, aan 'n komitee deleger.



(4) Die Dranklisensiëringstribunaal mag riglyne aan 'n komitee uitreik oor die uitoefening van 'n bevoegdheid of die verrigting van 'n funksie wat deur hom aan die komitee gedelegeer is.

(5) 'n Komitee moet in die uitoefening van 'n gedelegeerde bevoegdheid of die verrigting van 'n gedelegeerde funksie voldoen aan die riglyne bedoel in subartikel (4). 5

(6) By die aanstelling van die lede van 'n komitee moet die Voorsittende Beampte behoorlik ag slaan op die kennis, kundigheid en ervaring wat vereis word vir die aangeleentheid wat oorweeg moet word.

(7) 'n Komitee van die Dranklisensiëringstribunaal word beheer deur dieselfde prosedurereëls as dié wat op die Dranklisensiëringstribunaal van toepassing is. 10

### Appèltribunaal

**25.** (1) Die Minister moet, vir die termyn deur hom of haar bepaal, 'n persoon aanstel met regskwalifikasies gelykwaardig aan dié wat vir toelating as prokureur, of advokaat van die Hoë Hof van Suid-Afrika, vereis word, en met ervaring in regspleging, om as Appèltribunaal op te tree om te beslis oor appèlle teen of aansoeke vir die hersiening van die besluite van die Dranklisensiëringstribunaal kragtens hierdie Wet. 15

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

## HOOFSTUK 4

### ADMINISTRASIE, BESOLDIGING EN FINANSIËLE BESTUUR 20

#### Administrasie van Raad, Dranklisensiëringstribunaal en Appèltribunaal

**26.** (1) Die Raad moet die volgende aanstel—

(a) 'n persoon met geskikte kwalifikasies en ondervinding as Hoof Uitvoerende Beampte met die doel om die Raad by te staan in die verrigting van alle finansiële en administratiewe verantwoordelikhede van die Raad, die Dranklisensiëringstribunaal en die Appèltribunaal, en wat ten opsigte daarvan teenoor die Raad verantwoordingspligtig is; 25

(b) 'n sekretaris van die Dranklisensiëringstribunaal, wat verantwoordelik sal wees vir—  
 (i) die opstel van sakelyste; 30  
 (ii) die opneem van verrigtinge;  
 (iii) die hou van die notule van die Dranklisensiëringstribunaal; en  
 (iv) sodanige ander pligte wat die Voorsittende Beampte bepaal; en

(c) sodanige ander personeel wat nodig mag wees om die Raad, die Dranklisensiëringstribunaal en die Appèltribunaal in staat te stel om hulle funksies te verrig. 35

(2) Die personeel van die Raad, die Dranklisensiëringstribunaal en die Appèltribunaal moet—

(a) aangestel word op sodanige bepalings en voorwaardes wat die Raad bepaal en moet deur die Raad besoldig word; en 40

(b) hulle funksies en pligte verrig onderworpe aan die voorskrifte en beheer van die Raad.

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

(a) moet 'n menslikehulpbronbeleid vir die Raad, die Dranklisensiëringstribunaal, die Appèltribunaal en sy personeel bepaal; en 45

(b) moet die besoldiging van sy personeel bepaal, behalwe die personeellede wat kragtens subartikel (5) gesekondeer is.

(4) Die Raad moet, op aanbeveling van die Hoof Uitvoerende Beampte, 'n gedragskode, van toepassing op alle personeellede van die Raad, die Dranklisensiëringstribunaal en die Appèlraad, bepaal om die volgende te verseker— 50

(a) voldoening aan toepaslike wetgewing;

(b) die doeltreffende, doelmatige en ekonomiese gebruik van die Raad se fondse en hulpbronne;

(c) die bevordering en handhawing van 'n hoë etiese standaard; 55

(d) die voorkoming van belangebotsings;



- (e) die beskerming van vertroulike inligting wat deur die Raad, die Dranklisensieringstribunaal en die Appèltribunaal gehou word; en
- (f) professionele, eerlike, onpartydige, regverdige en billike diens.
- (5) Die Raad mag gebruik maak van die dienste van persone wat uit die staatsdiens gesekondeer of oorgeplaas is in ooreenstemming met die bepalings van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994). 5
- (6) Die Hoof Uitvoerende Beampte mag sodanige finansiële transaksies aangaan wat nodig is vir die bedryf van 'n openbare entiteit, insluitende maar nie beperk nie tot die bevoegdheid om vennootskappe met ander staatsorgane te sluit en om die dienste van kontrakteurs en diensverskaffers te verkry. 10
- (7) Die Hoof Uitvoerende Beampte mag enige aangeleentheid wat kragtens artikel 9 binne die bevoegdhede en funksies van die Raad of kragtens artikel 20 binne die bevoegdhede en funksies van die Dranklisensieringstribunaal val na 'n vergadering van die Raad of die Dranklisensieringstribunaal, na gelang van die geval, verwys.
- (8) Notules van verrigtinge van die Raad, die Dranklisensieringstribunaal en die Appèltribunaal moet gehou word en moet by die kantore van die Raad bewaar word en is beskikbaar vir enige persoon vir die doel van insae of kopiëring, behoudens die betaling van die voorgeskrewe fooi en behoudens die bepalings van die Wet op Bevordering van Toegang tot Inligting, 2000 (Wet 2 van 2000). 15
- (9) Die Voorsittende Beampte mag, behoudens die bepalings van die Wet op Bevordering van Toegang tot Inligting, 2000, en by aanvoering van goeie redes, gelas dat 'n rekord van die verrigtinge van die Dranklisensieringstribunaal in geheel of 'n gedeelte daarvan nie vir die publiek beskikbaar mag wees nie, in welke geval sodanige rekord of gedeelte daarvan nie sonder die goedkeuring vooraf van die Voorsittende Beampte deur enige persoon ondersoek of gekopieer mag word nie. 25

#### **Besoldiging van Hoof Uitvoerende Beampte, lede van Raad, Dranklisensieringstribunaal en Appèltribunaal**

27. Die Hoof Uitvoerende Beampte, lede van die Raad en die Dranklisensieringstribunaal en die persoon wat aangestel word om as die Appèltribunaal op te tree, is geregtig om redelike besoldiging te ontvang soos deur die Minister, in oorleg met die Minister verantwoordelik vir finansies in die Provinsie, bepaal. 30

#### **Befondsing en finansiële bestuur van Raad**

28. (1) Die fondse van die Raad bestaan uit—
- (a) geld wat deur die Provinsiale Parlement bewillig word; en
- (b) geld wat aan die Raad toeval uit enige ander bron wat deur die Minister goedgekeur is na oorleg met die Minister verantwoordelik vir finansies in die Provinsie, insluitende fooie wat kragtens hierdie Wet toeval. 35
- (2) Die Hoof Uitvoerende Beampte moet volledige en behoorlike rekeningboeke en al die nodige rekords in verband daarmee laat hou.
- (3) Die Hoof Uitvoerende Beampte moet verseker dat die Raad se jaarlikse begrotings, besigheidsplanne, jaarverslae en geouditeerde finansiële state opgestel en voorgelê word ooreenkomstig die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999). 40
- (4) Die Hoof Uitvoerende Beampte moet ten minste ses maande of 'n ander tydperk wat deur die Minister bepaal word, voor die begin van die Raad se finansiële jaar die volgende vir goedkeuring voorlê— 45
- (a) 'n besigheidsplan vir die Raad, met meetbare doelwitte; en
- (b) 'n staat van die Raad se geprojekteerde inkomste en uitgawes ten opsigte van die volgende finansiële jaar.
- (5) In enige finansiële jaar moet die Hoof Uitvoerende Beampte, indien van toepassing, aanvullende state van die Raad se geprojekteerde inkomste en uitgawes vir daardie finansiële jaar aan die Minister voorlê vir goedkeuring. 50
- (6) Die Raad mag geen finansiële verbintenis buite sy goedgekeurde begroting en sy opgelope reserwes aangaan nie.

#### **Oudit en jaarverslae**

29. (1) Die Ouditeur-generaal moet die finansiële state van die Raad oudit. 55

(2) Die Raad moet 'n verslag oor sy aktiwiteite gedurende 'n finansiële jaar vir tertafellegging in die Provinsiale Parlement binne vyf maande na die einde van daardie finansiële jaar voorlê.

(3) Die verslag moet—

- (a) 'n balansstaat en 'n staat van inkomste en uitgawes wat deur die Ouditeur-generaal gesertifiseer is, insluit; 5
- (b) die meetbare doelwitte gedurende die betrokke finansiële jaar vermeld, soos uiteengesit in die besigheidsplan in artikel 28(4)(a) bedoel; en
- (c) tersaaklike prestasie-inligting bevat rakende die ekonomiese, doeltreffende en doelmatige aanwending van hulpbronne en spesifiek 'n vergelyking tussen beplande en werklike prestasieaanwysers soos in daardie besigheidsplan uiteengesit. 10

### **Inkomste wat aan Provinsiale Inkomstefonds, Raad of munisipaliteite toeval**

**30.** (1) Die fooie, strawwe, boetes en opbrengs uit die verkoop van verbeurdverklarde items in artikels 20(3)(b)(v), 63(2) en (4), 64(1), 65(16), 82(2)(b) en 87(4) bedoel moet in die Provinsiale Inkomstefonds gestort word, behalwe die persentasie van elke hernuwingsfooie in artikel 31(3) bedoel. 15

(2) Die fooie in artikels 26(8), 36(1)(e), 38, 46, 48, 65(9) en 84(2) bedoel moet aan die Raad betaal word.

(3) Die fooie in artikel 36(5)(a)(i) en (b)(i) bedoel moet aan die betrokke munisipaliteit betaal word. 20

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

## HOOFSTUK 5

### INSTELLING VAN MAATSKAPLIKE EN OPVOEDINGSFONDS

#### **Instelling van fonds** 25

**31.** (1) Die Hoof Uitvoerende Beampte moet 'n fonds instel vir die doel van—

- (a) die bestryding van die negatiewe maatskaplike gevolge van die misbruik van drank; 30
- (b) die opvoeding van persone betrokke by die verkoop en verskaffing van drank; en
- (c) die opvoeding van die algemene publiek in die verantwoordelike verkoop, verskaffing en verbruik van drank. 30

(2) Die Hoof Uitvoerende Beampte moet, na oorleg met die Raad en in oorleg met die Minister, die opdragte vir die fonds in subartikel (1) bedoel verskaf en die fonds administreer. 35

(3) Die Minister moet, in oorleg met die Minister verantwoordelik vir finansies in die Provinsie, die persentasie van elke hernuwingsfooie wat aan die fonds in subartikel (1) bedoel toegewys moet word, bepaal.

(4) Die Hoof Uitvoerende Beampte moet, in oorleg met die Raad, die Minister en die Minister verantwoordelik vir finansies in die Provinsie— 40

- (a) 'n rekening vir die fonds op naam van die Raad open by 'n instelling wat kragtens die Bankwet, 1990 (Wet 94 van 1990) as 'n bank geregistreer is; en
- (b) alle geld wat kragtens subartikel (3) toegewys word, daarin stort.

## HOOFSTUK 6

### LISENSIËRING 45

#### **Lisensies**

**32.** (1) 'n Persoon mag nie drank mikrovervaardig of verkoop nie tensy hy of sy gemagtig is om dit te doen kragtens 'n lisensie wat kragtens hierdie Wet, die Drankwet of die Drankwet, 1989 (Wet 27 van 1989) uitgereik is.

(2) 'n Persoon wat gemagtig is om drank te mikrovervaardig of te verkoop moet dit in ooreenstemming met die voorwaardes van die lisensie doen. 50

(3) 'n Persoon wat, sonder vrystelling kragtens artikel 89(14), drank mikrovervaardig of verkoop in stryd met subartikels (1) of (2) hierbo, begaan 'n misdryf.

### Kategorieë van lisensies

33. Die Dranklisensieringstribunaal mag die volgende lisensies toestaan—
- (a) 'n lisensie vir die mikrovervaardiging en verkoop van drank vir verbruik sowel op as buite die perseel waar die drank verkoop word; 5
  - (b) 'n lisensie vir die verkoop van en verbruik van drank op die perseel waar die drank verkoop word;
  - (c) 'n lisensie vir die verkoop van drank vir verbruik buite die perseel waar die drank verkoop word;
  - (d) in buitengewone omstandighede, 'n lisensie vir die verkoop van drank vir verbruik sowel op as buite die perseel waar die drank verkoop word; en 10
  - (e) 'n lisensie vir die verkoop van drank vir verbruik op of buite die perseel waar die drank op spesiale geleenthede verkoop word.

### Maatstawwe vir toestaan van lisensies

34. Die Dranklisensieringstribunaal mag nie 'n lisensie toestaan nie tensy hy volgens oorwig van waarskynlikheid oortuig is dat— 15
- (a) die toestaan daarvan in die openbare belang is;
  - (b) die aansoeker van goeie karakter is en nie kragtens artikel 35 gediskwalifiseer is om 'n lisensie te hou nie;
  - (c) die perseel waarop die verkoop of verbruik van drank sal plaasvind, geskik is of by voltooiing geskik sal wees vir gebruik deur die aansoeker vir die doel van die lisensie; 20
  - (d) die aansoeker die reg het om die voorgestelde perseel te okkupeer; en
  - (e) die toestaan van die aansoek nie die volgende sal benadeel nie—
    - (i) die inwoners van 'n woongebied;
    - (ii) die inwoners van 'n instelling vir bejaardes of verswaktes; 25
    - (iii) die leerders van 'n opvoedkundige instelling onder die ouderdom van agtien (18) jaar;
    - (iv) die pasiënte van 'n instelling vir dwelm- of alkoholverwante afhanklikheid; of
    - (v) die gemeentede van 'n godsdienstinstelling wat in die nabyheid van die voorgestelde perseel geleë is. 30

### Diskwalifisering van aansoekers

35. (1) Die volgende persone is gediskwalifiseer om dranklisensies te hou—
- (a) 'n persoon wat binne sestig (60) maande voor die indiening van die aansoek gevonniss is tot gevangenisstraf sonder die keuse van 'n boete; 35
  - (b) 'n persoon wat binne sestig (60) maande voor die indiening van die aansoek ongeskik verklaar is vir die hou van 'n registrasie deur die Nasionale Drankowerheid of 'n lisensie deur enige provinsiale drankraad of owerheid;
  - (c) 'n persoon wat 'n ongerehabiliteerde insolvent is;
  - (d) 'n persoon wat 'n minderjarige is op die datum waarop die aansoek oorweeg word; 40
  - (e) 'n persoon wat die houer was van 'n lisensie wat binne 'n tydperk van twaalf (12) maande voor die indiening van die aansoek ingetrek is kragtens die bepalings van hierdie Wet of 'n wet wat dranklisensies in enige ander provinsie reguleer; 45
  - (f) 'n persoon wat die gade of lewensmaat is van 'n persoon in (a), (b) of (e) hierbo beskryf; en
  - (g) 'n persoon wat geestelik siek is soos omskryf in die Wet op Geestesgesondheidsorg, 2002 (Wet 17 van 2002).
- (2) Indien 'n persoon kragtens subartikel (1)(a) tot (e) of (g) gediskwalifiseer is, is enige maatskappy, beslote korporasie of koöperasie waarin hy of sy aandeel, 'n ledebelang of 'n lede-aandeel het, enige trust waarvan hy of sy 'n trustee of bevoordeelde is en enige vennootskap waarvan hy of sy 'n vennoot is, insgelyks gediskwalifiseer.
- (3) Die Dranklisensieringstribunaal mag in buitengewone omstandighede en by aanvoering van grondige redes bepaal dat 'n persoon wat kragtens subartikel (1) of (2) gediskwalifiseer is, geag word gekwalifiseer te wees vir die doel van 'n bepaalde aansoek of lisensie. 55

### Aansoekprosedure

- 36.** (1) 'n Aansoek om 'n lisensie van 'n kategorie in artikel 33 bedoel moet by die Raad gedoen word deur die volgende voor of op die voorgeskrewe datum in te dien—
- (a) die voorgeskrewe aansoekvorm, behoorlik ingevul; 5
  - (b) 'n soneringsertifikaat; 5
  - (c) waar nodig, 'n afskrif van 'n beplanningsaansoek wat kragtens toepaslike beplanningswetgewing aan die betrokke munisipaliteit voorgelê is;
  - (d) ander inligting wat die Dranklisensieëringstribunaal nodig mag hê om te kan bepaal of die aansoeker aan die maatstawwe vir die toestaan van 'n lisensie voldoen of nie; en 10
  - (e) die voorgeskrewe fooi, wat op die voorgeskrewe manier betaal moet word.
- (2) Deur 'n aansoek om 'n lisensie in te dien, stem die aansoeker in dat die Dranklisensieëringstribunaal of enige lid of gemagtigde werknemer van die Raad—
- (a) 'n verhoor mag hou of ondersoek of navraag mag doen met betrekking tot die integriteit, karakter, reputasie, vorige gedrag, gewoontes, verbintenis, finansiële stand en vermoë, kriminele rekord, bevoegdheid, ondervinding en geskiktheid van— 15
    - (i) die aansoeker of, as die lisensie toegestaan is, die lisensiehouer;
    - (ii) enige direkteur of aandeelhouer, lid, trustee of bevoordeelde, of persoon wat 'n lede-aandeel hou waar die aansoeker 'n maatskappy, beslote korporasie, trust of koöperasie is; en 20
    - (iii) enige persoon wat regstreeks of onregstreeks betrokke is by die sake van 'n aansoeker of, waar die lisensie toegestaan is, die lisensiehouer;
  - (b) enige dokument of inligting wat as deel van of saam met 'n aansoek voorgelê is, aan enige persoon in verband met sodanige verhoor, ondersoek of navraag openbaar mag maak; en 25
  - (c) by enige wetstoepassings- of regulerende agentskap enige plek ter wêreld inligting van en oor die aansoeker mag verkry en openbaar mag maak vir die doel van 'n verhoor, ondersoek of navraag.
- (3) 'n Personeellid van die Raad moet, binne die voorgeskrewe tydperk vanaf die datum van ontvangs van 'n aansoek die aansoek bestudeer om te bepaal of dit aan die vereistes van subartikel (1) voldoen. 30
- (4) Indien die personeellid in subartikel (3) bedoel bepaal dat die aansoek onvolledig of gebrekkig is, moet hy of sy, binne die voorgeskrewe tydperk na die datum van ontvangs van die aansoek 'n kennisgewing van onvolledige of gebrekkige indiening uitreik soos voorgeskryf en die aansoeker versoek om die gebrek in die aansoek binne die voorgeskrewe tydperk vanaf die datum van versoek aan te vul of reg te stel. 35
- (5) Die Raad moet, moet binne die voorgeskrewe tydperk nadat bevind is dat 'n aansoek aan subartikel (1) voldoen—
- (a) waar subartikel (1)(c) van toepassing is, die aansoek aan die betrokke munisipaliteit stuur sodat die munisipaliteit— 40
    - (i) die publiek kan toelaat om toegang daartoe te kry, insae daarin te hê of, teen betaling van die voorgeskrewe fooi, 'n afskrif van die aansoek te verkry;
    - (ii) die kommentaar van die wyksraadslid kan verkry; 45
    - (iii) kommentaar op die aansoek kan lewer; en
    - (iv) die oorweging van die beplanningsaansoek met betrekking tot die aansoek om 'n dranklisensie kan toelaat.
  - (b) waar subartikel (1)(c) nie van toepassing is nie, die aansoek aan die betrokke munisipaliteit stuur sodat die munisipaliteit— 50
    - (i) die publiek kan toelaat om toegang daartoe te kry, insae daarin te hê of, teen betaling van die voorgeskrewe fooi, 'n afskrif van die aansoek te verkry;
    - (ii) die kommentaar van die wyksraadslid kan verkry; en
    - (iii) kommentaar op die aansoek kan lewer. 55

### Kennisgewing van aansoek

- 37.** (1) Die Raad moet, in die voorgeskrewe vorm, kennisgewings in die drie amptelike tale van die Provinsie publiseer in die *Provinsiale Koerant* en in ten minste twee van die amptelike tale in 'n gemeenskapskoerant wat sirkuleer in die gebied waar die voorgestelde gelisensieerde perseel geleë is, en waar daar geen sodanige 60

gemeenskapskoerant is nie, in ten minste een ander koerant wat sirkuleer in die gebied waar die betrokke perseel geleë is.

(2) Die aansoeker moet 'n kennisgewing, soos voorgeskryf, in die drie amptelike tale van die Provinsie op 'n opvallende plek op die voorgestelde gelisensieerde perseel vertoon sodat dit sigbaar is vir verbygangers: Met dien verstande dat die Dranklisensieringstribunaal die nie-voldoening aan hierdie bepaling mag kondoneer by aanvoering van grondige redes. 5

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

(4) Die Raad moet binne die voorgeskrewe tydperk vanaf die datum van indiening van 'n aansoek 'n kennisgewing van die aansoek in die voorgeskrewe vorm aan elk van die volgende beteken— 10

(a) die aangewese drankbeampte in wie se regsgebied die voorgestelde gelisensieerde perseel geleë is, wat binne die voorgeskrewe tydperk kennis van die aansoek moet gee aan— 15

(i) bure of sodanige persone wat na sy of haar oordeel geraak mag word deur of 'n belang het by die toestaan of weiering van die aansoek; en

(ii) die gemeenskapspolisieringsforum, as daar een is, van die gebied waarin die betrokke perseel geleë is; en

(b) die munisipaliteit in wie se regsgebied die voorgestelde gelisensieerde perseel geleë is, wat binne die voorgeskrewe tydperk kennis van die aansoek moet gee aan die wyksraadslid, as daar een is, wat aangewys is vir die wyk waarin die betrokke perseel geleë is. 20

(5) Ondanks subartikel (1), waar 'n aansoeker aan artikel 36(1)(c) moet voldoen, word die kennisgewing wat kragtens die toepaslike beplanningswetgewing gegee is, geag voldoening te wees aan die kennisgewingsvereistes kragtens hierdie artikel: Met dien verstande dat die Dranklisensieringstribunaal sodanige bykomende kennisgewing mag vereis wat hy gepas ag. 25

#### Aansoeke ter insae by Raad

**38.** Die Raad moet binne die voorgeskrewe tydperk nadat bevind is dat 'n aansoek aan artikel 36(1) voldoen tot die datum waarop die aansoek deur die Dranklisensieringstribunaal oorweeg word, die publiek in staat stel om by die kantore van die Raad toegang te kry tot, insae te hê in of, teen betaling van die voorgeskrewe fooi, 'n afskrif van die aansoek en enige dokumente wat in verband daarmee ingedien is, te verkry. 30

#### Vertoë 35

**39.** (1) 'n Persoon wat 'n belang het by die toestaan of weiering van 'n aansoek mag binne die voorgeskrewe tydperk versoë tot die Dranklisensieringstribunaal vir of teen sodanige toestaan of weiering van daardie aansoek rig.

(2) Die versoë moet by die Raad of die betrokke munisipaliteit ingedien word.

(3) 'n Afskrif van die versoë moet deur die persoon wat die versoë rig beteken word aan die aansoeker of sy of haar verteenwoordiger en die aangewese drankbeampte. 40

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

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

(a) sy of haar volle naam en adres;

(b) sy of haar identiteitsnommer of, in die geval van 'n maatskappy of beslote korporasie, sy registrasienommer; 45

(c) indien van toepassing, die naam en adres van sy of haar verteenwoordiger;

(d) die aard van sy of haar belang by die toestaan of weiering van die aansoek; en

(e) omvattende redes vir die beswaar of ondersteuning.

(6) Die aansoeker mag binne die voorgeskrewe tydperk 'n repliek op versoë teen die aansoek indien. 50

#### Aanstuur van dokumente

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

(a) sy besluit ten opsigte van die beplanningsaansoek in artikel 36(1)(c) bedoel; 55

(b) inligting betreffende die omvang van die openbare deelnemingsproses wat ten opsigte van daardie aansoek gevolg is;

- (c) die kommentaar van die wyksraadslid;
- (d) sy kommentaar, indien enige, oor die aansoek om 'n dranklisensie; en
- (e) enige ander dokument of artikel wat in verband met die aansoek om 'n dranklisensie by hom ingedien is.

### Oorweging van aansoeke

5

41. (1) Indien 'n aansoeker versuim om binne die vasgestelde tyd na behore aan die kennisgewing in artikel 36(4) bedoel te voldoen, mag die Dranklisensieringstribunaal—
- (a) weier om die aansoek te oorweeg;
  - (b) die oorweging van die aansoek uitstel hangende voldoening aan die kennisgewing; of
  - (c) die aansoek weier.
- (2) Die Dranklisensieringstribunaal mag by die oorweging van 'n aansoek kennis neem van die volgende—
- (a) die aansoek en verslae wat in repliek daarop ingedien is;
  - (b) vertoë vir of teen die aansoek, repliek op vertoë teen aansoeke en enige ander dokument of artikel wat in verband met die aansoek ingedien is; en
  - (c) behoudens artikel 23(9), enige aangeleentheid wat na die Dranklisensieringstribunaal se mening in aanmerking geneem moet word.
- (3) Indien 'n aansoek, 'n gepaardgaande dokument, vertoë of 'n verslag in enige opsig gebrekkig is of indien enige persoon versuim om enige dokument in te dien of om by 'n redelike tydperk of tydsbeperking te hou, mag die Dranklisensieringstribunaal die gebrek of versuim kondoneer indien daar wesenlike voldoening aan hierdie Wet was of indien dit onwaarskynlik is dat sodanige kondonering enige persoon sal benadeel.

### Voorwaardelike toestaan van lisensie

42. (1) Die Dranklisensieringstribunaal mag 'n lisensie voorwaardelik toestaan. 25
- (2) 'n Lisensie wat deur die Dranklisensieringstribunaal kragtens subartikel (1) toegestaan is, mag nie uitgereik word nie totdat die aansoeker voldoen aan die voorwaardes wat ten tyde van die toestaan opgelê is.
- (3) Die Dranklisensieringstribunaal moet, wanneer hy 'n lisensie voorwaardelik toestaan, 'n tydperk bepaal waarbinne die aansoeker aan die voorwaardes in subartikel (2) bedoel moet voldoen. 30
- (4) Die Dranklisensieringstribunaal mag te eniger tyd op aansoek van die aansoeker die voorwaardes wysig of intrek.
- (5) Die Voorsittende Beampte mag te eniger tyd op aansoek van die aansoeker—
- (a) die bepaalde tydperk verleng; of
  - (b) 'n wysiging van die plan van die perseel goedkeur.
- (6) Indien die aansoeker versuim om aan die voorwaardes in subartikel (2) bedoel te voldoen binne die tydperk in subartikel (3) bedoel of kragtens artikel (5) verleng, verval die toestaan van die lisensie en word die lisensie geag nie toegestaan te gewees het nie.
- (7) Wanneer die aansoeker voldoen aan die voorwaardes wat deur die Dranklisensieringstribunaal opgelê is, moet die Raad die lisensie uitreik soos voorgeskryf, behoudens artikel 46. 40

### Reg om perseel te gebruik

43. Die Dranklisensieringstribunaal mag 'n lisensie voorwaardelik toestaan en gelas dat die lisensie nie uitgereik mag word nie tensy hy oortuig is dat die aansoeker die reg het om die betrokke perseel te gebruik vir die doel wat deur die lisensie gemagtig staan te word. 45

### Onvolledige perseel

44. Die Dranklisensieringstribunaal mag 'n lisensie voorwaardelik toestaan ten opsigte van 'n perseel wat nog nie opgerig is nie of 'n perseel wat strukturele veranderings, aanbouings of verbouings verg om dit geskik te maak vir die doel waarvoor dit kragtens die lisensie gebruik gaan word en gelas dat die lisensie nie uitgereik mag word nie totdat die aansoeker voldoen aan die voorwaardes wat die Dranklisensieringstribunaal rakende die voltooiing van die perseel opgelê het. 50



## Onderrig en opleiding

45. Die Dranklisensieringstribunaal mag 'n lisensie voorwaardelik toestaan en gelas dat die lisensie nie uitgereik mag word nie totdat die aansoeker of 'n werknemer of werknemers van die aansoeker sodanige opleiding en onderrig ondergaan het as wat die Dranklisensieringstribunaal mag vereis. 5

## Uitreiking van lisensie

46. (1) Die Raad moet binne die voorgeskrewe tydperk nadat die Dranklisensieringstribunaal 'n aansoek toegestaan het wat kragtens artikel 36 gedoen is, die aansoeker skriftelik in kennis stel dat die aansoek toegestaan is.

(2) Die aansoeker moet die voorgeskrewe fooi binne sestig (60) dae na die uitreiking van die kennisgewing in subartikel (1) bedoel betaal. 10

(3) Die Raad moet binne die voorgeskrewe tydperk na die betaling van die voorgeskrewe fooi in subartikel (2) bedoel, en behoudens artikels 42, 43, 44 en 45, 'n lisensie aan die aansoeker in die voorgeskrewe vorm uitreik waarin die voorwaardes van die lisensie wat deur die Dranklisensieringstribunaal opgelê is, uiteengesit word. 15

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

(5) Indien die aansoeker versuim om die fooi in subartikel (2) bedoel te betaal, verval die aansoek, behoudens subartikel (6). 20

(6) Die aansoeker mag, binne 'n tydperk van sestig (60) dae na verstryking van die tydperk in subartikel (2) bedoel, skriftelik by die Hoof Uitvoerende Beampte aansoek doen om kondonering van die versuim om die voorgeskrewe fooi in subartikel (2) bedoel te betaal, en die Hoof Uitvoerende Beampte mag die versuim kondoneer en die laat betaling van die genoemde fooi toelaat teen 'n datum wat die Hoof Uitvoerende Beampte bepaal, behoudens betaling van 'n boete van 100% van daardie fooi. 25

## Dood of onbevoegdheid van aansoeker

47. Indien 'n aansoeker vir 'n lisensie—

- (a) sterf;
- (b) gesekwestreer word; 30
- (c) deur 'n hof onbevoeg verklaar word om sy of haar eie sake te hanteer; of
- (d) synde 'n maatskappy, beslote korporasie, trust of koöperasie, gelikwieder word,

voor die datum waarop die aansoek oorweeg word, mag die aangestelde eksekuteur, trustee, kurator of likwidateur al die bevoegdhede en regte uitoefen wat die aansoeker sou gehad het as dit nie vir sodanige dood, sekwestrasie, verklaring of likwidasie was nie. 35

## Tydlike dranklisensies en lisensies vir spesiale geleenthede

48. (1) Die Voorsittende Beampte mag op aansoek deur 'n lisensiehouer in artikel 33(b) of (d) bedoel en teen betaling van die voorgeskrewe fooi 'n tydelike dranklisensie vir die gebruik van net daardie lisensiehouer toestaan: Met dien verstande dat in die geval van artikel 33(d) die tydelike dranklisensie beperk is tot die verkoop en verbruik van drank op die perseel waar die drank verkoop word. 40

(2) Die Voorsittende Beampte mag nie 'n tydelike dranklisensie kragtens subartikel (1) aan 'n bepaalde persoon vir 'n tydperk langer as agt opeenvolgende dae en vir meer as 'n totaal van dertig (30) dae per jaar beginnende op 1 Januarie toestaan nie. 45

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

(4) Die Voorsittende Beampte mag op aansoek deur— 50

- (a) 'n opvoedkundige inrigting;
- (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 55
- (e) die organiseerder van 'n kunsuitvoering;

op die voorgeskrewe manier en teen betaling van die voorgeskrewe fooi 'n dranklisensie vir 'n spesiale geleentheid toestaan vir die verkoop van drank vir verbruik op of buite die perseel waar drank op 'n spesiale geleentheid verkoop word.

(5) 'n Aansoek om 'n dranklisensie vir 'n spesiale geleentheid moet minstens veertien (14) dae voor die datum van die spesiale geleentheid gedoen word. 5

(6) 'n Aansoek om '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 onderworpe aan die voorwaardes in artikel 49 bedoel, waar van toepassing, en sodanige ander voorwaardes en beperkings wat die Dranklisensieringstribunaal mag oplê. 10

## HOOFSTUK 7

### VOORWAARDES VIR LISENSIES

#### Standaardlisensievoorwaardes

**49.** (1) Dit moet 'n voorwaarde van elke lisensie vir die verbruik van drank op die perseel waar die drank verkoop word, wees dat alle drank wat verkoop word, slegs op die gelisensieerde perseel verbruik mag word en dat geen drank wat verkoop is, van die gelisensieerde perseel verwyder mag word nie. 15

(2) Dit moet 'n voorwaarde van elke lisensie vir die verbruik van drank buite die gelisensieerde perseel wees dat geen houer wat drank bevat, op die gelisensieerde perseel oopgemaak mag word nie en geen drank op die gelisensieerde perseel verbruik mag word nie, behalwe vir proedoeleindes soos goedgekeur deur die Dranklisensieringstribunaal of die Voorsittende Beampte, na gelang van die geval. 20

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

(4) Die lisensiehouer van 'n perseel waarop die besigheid van 'n kleinhandelvoedselwinkel bedryf word, mag geen ander drank as tafelwyn verkoop nie. 25

(5) 'n Kleinhandelvoedselwinkel, soos bedoel in subartikel (4), moet sy drank verkoop van 'n aangewese gebied wat op so 'n wyse gesluit word dat dit te alle tye wanneer drank nie verkoop mag word nie, ontoeganklik is vir die publiek.

(6) Die gebied van waar drank verkoop word kragtens 'n dranklisensie vir verbruik op die perseel waar die drank verkoop word, moet op so 'n wyse gesluit word dat dit te alle tye wanneer drank nie verkoop mag word nie, ontoeganklik is vir die publiek.

(7) Die Voorsittende Beampte mag te eniger tyd na die uitreiking van 'n lisensie kragtens artikel 46, op aansoek deur die lisensiehouer of enige ander belanghebbende, by kennisgewing afgelewer of aangebied aan die betrokke lisensiehouer— 35

(a) verklaar dat die lisensie onderworpe is aan die voorwaardes of verdere voorwaardes wat hy of sy na goeddunke oplê, soos in die kennisgewing uiteengesit; of

(b) enige voorwaarde of verklaring deur hom of haar of die Dranklisensieringstribunaal opgelê of gedoen, opskort, intrek of wysig. 40

(8) 'n Oortreding van, of versuim om te voldoen aan, die voorwaardes in subartikel (1), (2), (4), (5) of (6) uiteengesit, is 'n misdryf.

#### Aflewering

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

(a) drank van geen voertuig af afgelewer mag word nie, tensy die drank van die gelisensieerde perseel bestel is voor die versending van die drank, en 'n faktuur, waarvan die oorspronklike op die gelisensieerde perseel gehou is, op die voorgeskrewe wyse uitgereik is;

(b) drank slegs by die adres getoon op die faktuur in paragraaf (a) beskryf, 50 afgelewer mag word; en

(c) 'n leesbare afskrif van die faktuur in paragraaf (a) beskryf, in die afleweringvoertuig gehou moet word van die tyd van versending tot die tyd van aflewering van die drank, wanneer dit oorhandig moet word aan die persoon wat aflewering aanvaar. 55

(2) Versuim deur die lisensiehouer om te voldoen aan 'n voorwaarde in subartikel (1) beoog, is 'n misdryf.

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

### Finansiële belange en verhuring van gelisensieerde perseel

51. (1) 'n Lisensiehouer mag nie 'n finansiële belang van meer as 5% in die gelisensieerde besigheid aan enige ander persoon oordra sonder die voorafverkreë skriftelike toestemming van die Voorsittende Beampte nie. 5

(2) 'n Lisensiehouer wat 'n finansiële belang van meer as 5% in die gelisensieerde besigheid aan enige ander persoon wil oordra, moet op die voorgeskrewe wyse by die Voorsittende Beampte aansoek doen vir toestemming daartoe. 10

(3) Die Voorsittende Beampte mag nie toestemming kragtens subartikel (2) verleen nie indien die persoon aan wie dit die voorneme is om die finansiële belang oor te dra—

(a) gediskwalifiseer is om 'n lisensie te hou kragtens artikel 35; of

(b) nie van goeie karakter is nie.

(4) Die Raad moet die aangewese drankbeampte op die voorgeskrewe wyse van die aansoek in kennis stel en 'n verslag van hom of haar aanvra oor die kwalifikasie en geskiktheid van 'n persoon aan wie dit die voorneme is om die finansiële belang oor te dra. 15

(5) Die aangewese beampte moet 'n verslag soos by subartikel (4) vereis, binne die voorgeskrewe tydperk indien en kan enige ander aangeleentheid wat hy of sy as tersaaklik vir die aansoek beskou, daarby insluit. 20

(6) Die Voorsittende Beampte moet die aansoek óf weier óf toestaan binne die voorgeskrewe tydperk.

(7) 'n Lisensiehouer mag nie die lisensie aan 'n ander persoon verhuur of toelaat dat 'n ander persoon sake kragtens die lisensie doen nie: Met dien verstande dat 'n lisensiehouer, ten opsigte van 'n lisensie wat die reg van mikrovervaardiging insluit, by die Dranklisensieëringstribunaal aansoek kan doen om die betrokke gelisensieerde perseel of 'n deel daarvan vir die doel van mikrovervaardiging aan 'n ander persoon te verhuur deur die aansoek op die voorgeskrewe wyse en in die voorgeskrewe vorm en teen betaling van die voorgeskrewe bedrag by die Raad in te dien. 30

(8) Die Voorsittende Beampte mag nie 'n aansoek om verhuring toestaan nie tensy hy of sy oortuig is dat die persoon aan wie dit die voorneme is om die gelisensieerde perseel of deel daarvan te verhuur—

(a) nie kragtens artikel 35 gediskwalifiseer is om 'n lisensie te hou nie;

(b) van goeie karakter is; of 35

(c) gepas onderrig en opgelei is of sal word, of een of meer werknemers in diens sal hê wat gepas onderrig en opgelei is of sal word om die gelisensieerde besigheid te bestuur.

(9) 'n Oortreding van, of versuim om te voldoen aan, subartikel (1) tot (7) is 'n misdryf. 40

### Bestuur

52. (1) Die Dranklisensieëringstribunaal moet, wanneer hy 'n lisensie toestaan, tensy die aansoeker 'n natuurlike persoon is, die aanstelling van 'n natuurlike persoon wat in die Provinsie woon en deur die aansoeker benoem word, as bestuurder van die gelisensieerde besigheid goedkeur. 45

(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 Dranklisensieëringstribunaal daardie persoon se aanstelling as bestuurder goedkeur.

(3) Die aangewese drankbeampte moet 'n verslag oor die geskiktheid van die benoemde persoon binne die voorgeskrewe tydperk verstrek. 50

(4) Die Dranklisensieëringstribunaal mag nie goedkeuring verleen dat 'n persoon wat kragtens artikel 35 gediskwalifiseer is om 'n dranklisensie te hou of wat nie van goeie karakter is nie, as bestuurder aangestel word nie.

(5) Die Dranklisensieëringstribunaal mag gelas dat die voorgestelde bestuurder die opleiding en onderrig wat die Dranklisensieëringstribunaal spesifiseer, moet ontvang as 'n voorvereiste vir aanstelling. 55

- (6) 'n Bestuurder wie se aanstelling kragtens hierdie artikel goedgekeur word, is verantwoordelik vir die bestuur van die besigheid en het dieselfde pligte, verpligtinge en aanspreeklikhede as die lisensiehouer.
- (7) Die goedkeuring van die aanstelling van 'n bestuurder kragtens hierdie artikel stel die lisensiehouer nie vry van enige plig, verpligting of aanspreeklikheid deur hierdie Wet of kragtens die voorwaardes van die lisensie aan hom opgelê nie. 5
- (8) Die goedkeuring van die aanstelling van 'n bestuurder kragtens subartikel (1) of (2) bly geldig tot die aanstelling van 'n nuwe bestuurder.
- (9) Indien 'n persoon wie se aanstelling as bestuurder kragtens subartikel (1) 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, kragtens subartikel (2) aansoek doen vir goedkeuring van die aanstelling van 'n bestuurder in sy of haar plek. 10
- (10) Indien 'n lisensiehouer versuim om aan subartikel (9) te voldoen, mag sy lisensie kragtens artikel 20(3)(b)(iii) opgeskort word. 15

### Veranderings aan gelisensieerde perseel of aard van besigheid

- 53.** (1) Behalwe met die skriftelike toestemming vooraf van die Voorsittende Beampte, wat op aansoek op die voorgeskrewe wyse verleen is, mag 'n lisensiehouer nie—
- (a) enige strukturele verandering, aanbouing, verbouing of uitbreiding van of aan die gelisensieerde perseel uitvoer nie; 20
- (b) die aard van die besigheid ten opsigte waarvan die lisensie toegestaan is, verander van dié soos beskryf in die aansoek wat deur die Dranklisensieëringstribunaal oorweeg is toe die lisensie toegestaan is nie; of
- (c) sy of haar besigheid kragtens die lisensie bedryf nie op 'n perseel waarop enige ander besigheid, insluitende 'n besigheid waarop enige ander lisensie betrekking het, of enige bedryf of beroep beoefen word. 25
- (2) Twee of meer persele onder dieselfde dak word vir die toepassing van subartikel (1)(c) geag een te wees indien daardie persele nie heeltemal van mekaar geskei word deur 'n muur of mure waarin daar geen deur, venster of ander opening is nie, tensy die Dranklisensieëringstribunaal te eniger tyd wanneer die aangeleentheid na sy mening met reg geopper kan word, in 'n spesifieke geval anders bepaal. 30
- (3) 'n Toestemming kragtens subartikel (1)(a) moet nie uitgereik word nie voordat die aansoeker binne die voorgeskrewe tydperk bewys ten genoë van die Voorsittende Beampte ingedien het dat hy of sy die reg het om die betrokke perseel vir die doel soos in die aansoek beoog, te verander. 35
- (4) 'n Oortreding van, of versuim om te voldoen aan, subartikel (1) is 'n misdryf.

### Kinders

- 54.** (1) Geen persoon mag drank aan 'n persoon onder die ouderdom van agttien (18) jaar verkoop nie. 40
- (2) Geen persoon mag drank aan 'n persoon onder die ouderdom van agttien (18) jaar gee of verskaf of so 'n persoon toelaat om drank te verbruik nie, behalwe in onbeduidende hoeveelhede in die teenwoordigheid van daardie persoon se ouer of voog.
- (3) 'n Lisensiehouer of 'n bestuurder, na gelang van die geval, mag nie 'n persoon onder die ouderdom van agttien (18) jaar toelaat om drank op die gelisensieerde perseel te verbruik nie. 45
- (4) 'n Lisensiehouer of 'n bestuurder, na gelang van die geval, mag nie 'n persoon onder die ouderdom van agttien (18) jaar toelaat om in 'n deel van 'n gelisensieerde perseel te wees waarin daardie persoon kragtens hierdie Wet of kragtens lisensievoorwaardes nie mag wees nie. 50
- (5) 'n Persoon onder die ouderdom van agttien (18) jaar mag nie drank strydig met hierdie Wet verkry of verbruik nie, of enige persoon mislei met betrekking tot sy of haar ouderdom ten einde drank te verkry of te verbruik of om toegang te verkry tot dele van 'n gelisensieerde perseel wat daardie persoon nie mag binnegaan nie.
- (6) Enige oortreding van, of versuim om te voldoen aan, subartikel (1), (2), (3), (4) of (5) is 'n misdryf. 55

### Werkgewers en werknemers

- 55.** (1) 'n Persoon mag nie 'n persoon onder die ouderdom van agttien (18) jaar in verband met die verkoop of verskaffing van drank in diens neem nie tensy daardie persoon—
- (a) sestien (16) jaar oud of ouer is; 5
  - (b) opleiding in spysenieringsdienste ondergaan; en
  - (c) as vakleerling by die lisensiehouer is.
- (2) 'n Werkgewer mag nie—
- (a) drank aan 'n persoon verskaf as lokmiddel om sy of haar diens te verkry nie;
  - (b) drank pleks van loongeld aan 'n werkgewer verskaf nie; 10
  - (c) die koste van drank wat namens hom of haar aan die werknemer of enige ander persoon verskaf is, van die werknemer se loon aftrek nie; of
  - (d) die betaling van 'n werknemer se loon terughou vir skuld ten opsigte van die verkoop of verskaffing van drank nie.
- (3) Enige oortreding van, of versuim om te voldoen aan, subartikel (1) of (2) is 'n 15 misdryf.

### Toegang tot gelisensieerde perseel

- 56.** (1) Behalwe soos in artikel 55(1) en subartikel (3) van hierdie artikel bepaal, mag 'n lisensiehouer nie 'n persoon onder die ouderdom van agttien (18) jaar toelaat om 'n beperkte gebied binne te gaan nie. 20
- (2) 'n Beperkte gebied is—
- (a) 'n kamer of enige plek op 'n gelisensieerde perseel waar drank oor 'n toonbank verkoop word, behalwe wanneer maaltye bedien word aan eters wat by tafels in daardie kamer of plek sit;
  - (b) 'n kamer of plek wat die Dranklisensieringstribunaal afgebaken het as 'n 25 gebied waar persone onder die ouderdom van agttien (18) jaar nie toegelaat word nie; en
  - (c) 'n perseel, wat nie 'n kleinhandelvoedselwinkel is nie, wat slegs vir die verkoop van drank vir verbruik buite die gelisensieerde perseel gelisensieer is.
- (3) 'n Persoon onder die ouderdom van agttien (18) jaar mag toegang tot 'n beperkte 30 gebied hê indien vergesel óf deur 'n ouer of voog óf deur 'n volwassene met die toestemming van 'n ouer of voog.
- (4) Elke beperkte gebied moet as sodanig aangedui word op die wyse soos voorgeskryf.
- (5) Enige oortreding van, of versuim om te voldoen aan, subartikel (1) of (4) is 'n 35 misdryf.

### Berging van drank

- 57.** (1) 'n Lisensiehouer moet sy of haar drank berg op die gelisensieerde perseel of op 'n ander of bykomende plek in die Provinsie, soos goedgekeur mag word deur die Dranklisensieringstribunaal by die toestaan van 'n lisensie, of deur die Voorsittende 40 Beampte op aansoek te eniger tyd daarna.
- (2) 'n Lisensiehouer mag nie drank verkoop of verskaf of die verbruik daarvan in of uit die ander of bykomende bergingsplek toelaat nie.
- (3) Enige oortreding van, of versuim om te voldoen aan, subartikel (1) of (2) is 'n 45 misdryf.

### Plek van verkoop

- 58.** (1) 'n Lisensiehouer mag nie drank uit enige ander plek as die gelisensieerde perseel verkoop of verskaf nie.
- (2) Ondanks die bepalings van hierdie artikel mag 'n lisensiehouer die verkoop van drank adverteer en bestellings vir die koop van drank ontvang elders as op die 50 gelisensieerde perseel.
- (3) Enige oortreding van, of versuim om te voldoen aan, subartikel (1) is 'n misdryf.

## Handelsure

**59.** (1) Behoudens voorwaardes wat die Dranklisensiëringstribunaal by die toestaan van 'n lisensie of na 'n vergadering kragtens artikel 20 oplê, mag 'n lisensiehouer drank verkoop op sodanige dae en gedurende sodanige handelsure wat die Dranklisensiëringstribunaal vir gelisensieerde besighede bepaal. 5

(2) (a) Behoudens voorwaardes wat die Dranklisensiëringstribunaal oplê, mag 'n lisensiehouer van 'n perseel waarop drank vir verbruik buite die gelisensieerde perseel verbruik mag word, drank op enige dag tussen 08:00 en 20:00 verkoop.

(b) Behoudens voorwaardes wat die Dranklisensiëringstribunaal oplê, mag 'n lisensiehouer van 'n perseel waarop drank vir verbruik op die gelisensieerde perseel verkoop mag word, drank op enige dag tussen 08:00 en 04:00 die volgende dag verkoop. 10

(c) Indien die lisensiehouer 'n lisensie het vir die verbruik van drank sowel op as buite die gelisensieerde perseel, is paragraaf (a) van toepassing vir soverre die verkoop van drank vir verbruik buite die gelisensieerde perseel is, en is paragraaf (b) van toepassing vir soverre die verkoop vir verbruik op die gelisensieerde perseel is. 15

(3) 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 deur die lisensie toegelaat word nie, skuldig aan 'n misdryf.

## Hoeveelheid drank verkoop en hou van rekords

**60.** (1) 'n Lisensiehouer moet op die voorgeskrewe wyse 'n rekord hou van alle drank wat verkoop is vir verbruik buite die gelisensieerde perseel. 20

(2) Geen persoon, behalwe 'n lisensiehouer, mag meer drank as 'n hoeveelheid wat die Minister mag voorskryf, koop, en 'n lisensiehouer mag aan geen persoon meer as daardie voorgeskrewe hoeveelheid verkoop, op een enkele dag vir verbruik buite die gelisensieerde perseel sonder die vooraf skriftelike toestemming van die Voorsittende Beampte nie. 25

(3) 'n Persoon wat nie gelisensieer of gemagtig is om drank te verkoop nie, mag te gener tyd meer drank as die hoeveelheid kragtens subartikel (2) voorgeskryf, in sy of haar besit of onder sy of haar beheer hê nie, behalwe met die toestemming waarvoor in daardie subartikel voorsiening gemaak word. 30

(4) 'n Oortreding van, of versuim om te voldoen aan, subartikel (1), (2) of (3) is 'n misdryf.

## Verbode middels

**61.** (1) 'n Persoon mag geen stof onder die naam van enige drank mikrovervaardig, verkoop of verskaf indien dit nie drank is nie, soos in hierdie Wet omskryf. 35

(2) 'n Persoon mag nie enige ondrinkbare middel as drank mikrovervaardig, verkoop of verskaf, 'n ondrinkbare middel by drank voeg, of enige drank waarby 'n ondrinkbare middel gevoeg is, verkoop of verskaf nie.

(3) 'n Oortreding van, of versuim om te voldoen aan, subartikel (1) of (2) is 'n misdryf. 40

## HOOFSTUK 8

### GELDIGHEID EN HERNUWING VAN LISENSIES

#### Geldigheid van lisensies

**62.** (1) 'n Lisensie is geldig vanaf die datum waarop dit uitgereik is.

(2) 'n Lisensie verval— 45

(a) op die datum waarop die lisensiehouer dit skriftelik abandonneer;

(b) op 1 Januarie van die jaar ten opsigte waarvan die voorgeskrewe toepaslike fooie nie voor of op 31 Desember van die vorige jaar betaal is nie;

(c) op die datum deur die Dranklisensiëringstribunaal bepaal wanneer hy die lisensie intrek; 50

(d) waar geldigheid reeds aan die lisensie verleen is, op die datum waarop 'n hof die besluit om die lisensie toe te staan of uit te reik ter syde stel; of

(e) op die datum waarop dit kragtens artikel 89 in 'n ander lisensie omgeskakel word.



- (3) 'n Lisensie wat verval het, en die regte, voorregte, verpligtinge en aanspreeklikhede wat daaraan verbonde was onmiddellik voor die datum waarop dit verval het, word weer geldig op die datum waarop—
- (a) waar die lisensie verval het in die omstandighede in subartikel (2)(b) beoog, die fooie aldus beoog— 5
    - (i) plus 'n boete van 50% voor of op 31 Januarie betaal word; of
    - (ii) plus 'n boete van 100% betaal word tussen die eerste en die laaste dag van Februarie van die jaar ten opsigte waarvan daardie gelde betaal moes gewees het;
  - (b) waar die lisensie verval het in die omstandighede in subartikel (2)(c) beoog, die besluit deur die Dranklisensiëringstribunaal om daardie lisensie in te trek, deur 'n hof ter syde gestel is; of 10
  - (c) waar die lisensie verval het in die omstandighede in subartikel (2)(d) beoog, die besluit deur die hof om die besluit om daardie lisensie toe te staan of uit te reik ter syde te stel, op appèl ter syde gestel word. 15
- (4) Die Voorsittende Beampte mag by ontvangs van 'n verslag dat die lisensiehouer die gelisensieerde perseel geabandonneer het, die lisensie op die voorgeskrewe wyse onmiddellik opskort.
- (5) Die opskorting van die lisensie kragtens subartikel (4) verval by ontvangs deur die Voorsittende Beampte van bewys dat die gelisensieerde perseel nie deur die lisensiehouer geabandonneer is nie of weer deur dieselfde lisensiehouer gebruik word. 20

#### Outomatiese hernuwing van lisensies

- 63.** (1) Die Raad moet 'n jaarlikse hernuwingskennisgewing in die voorgeskrewe vorm uitreik nie later nie as 31 Oktober van die jaar wat die jaar ten opsigte waarvan die voorgeskrewe hernuwingsfooie betaal moet word, voorafgaan. 25
- (2) By betaling van die voorgeskrewe hernuwingsfooie word die lisensie outomaties hernu tot 31 Desember van die jaar ten opsigte waarvan die hernuwingsfooie betaal is.
- (3) Die lisensiehouer word nie van sy of haar verpligting om die voorgeskrewe hernuwingsfooie betyds te betaal, kwytgeskeld nie as die kennisgewing nie aan hom of haar gestuur of deur hom of haar ontvang is nie. 30
- (4) 'n Lisensiehouer wat versuim het om die voorgeskrewe hernuwingsfooie te betaal voor of op die laaste dag van Februarie van die jaar ten opsigte waarvan dit betaal moes gewees het, mag voor of op 31 Maart van daardie jaar skriftelik aansoek doen by die Hoof Uitvoerende Beampte om daardie versuim te kondoneer, en die Hoof Uitvoerende Beampte mag die versuim kondoneer en die laat betaling van die voorgeskrewe hernuwingsfooie toelaat teen 'n datum wat die Raad moet bepaal, behoudens die betaling van die hernuwingsfooie plus 'n boete van 150%. 35
- (5) Indien die Hoof Uitvoerende Beampte kragtens subartikel (4) kondonering toegestaan het en die voorgeskrewe hernuwingsfooie en boete betaal is, word die lisensie geag hernu te wees vanaf 31 Desember van die jaar wat die jaar ten opsigte waarvan die hernuwingsfooie betaal moes word, voorafgaan. 40
- (6) Indien die lisensiehouer versuim om die voorgeskrewe hernuwingsfooie en die boete kragtens subartikel (4) opgelê te betaal, sal die lisensie geag word te verval het op 1 Januarie van die jaar ten opsigte waarvan die voorgeskrewe hernuwingsfooie betaal moes word. 45

#### Aansoeke vir hernuwing van lisensies

- 64.** (1) Indien 'n lisensiehouer sedert die datum van uitreiking van die lisensie of, indien die lisensie hernu is, sedert die vorige hernuwing van die lisensie—
- (a) kragtens artikel 35 gediskwalifiseer is om 'n lisensie te hou;
  - (b) ongeskik verklaar is deur die Dranklisensiëringstribunaal om 'n dranklisensie te hou; 50
  - (c) versuim het om te voldoen aan 'n voldoeningskennisgewing kragtens hierdie Wet uitgereik; of
  - (d) die onderwerp was van 'n verslag kragtens artikel 73(7)(c) of (d),
- kan die lisensie nie kragtens artikel 63 outomaties hernu word nie, maar mag dit deur die Raad hernu word op aansoek deur die lisensiehouer op die voorgeskrewe wyse en teen betaling van die voorgeskrewe fooie. 55

- (2) Die Raad moet voor 31 Julie van die jaar waarin 'n hernuwingskennisgewing uitgereik moet word, 'n kennisgewing aan 'n lisensiehouer in subartikel (1) bedoel, beteken wat—
- (a) die lisensiehouer meedeel dat die lisensie nie outomaties hernu sal word nie; en 5
  - (b) die lisensiehouer versoek om nie later nie as 30 September van daardie jaar aansoek te doen, in die voorgeskrewe vorm, vir die hernuwing van die lisensie.
- (3) Indien die lisensiehouer versuim om te voldoen aan die kennisgewing in subartikel (2) bedoel, sal die lisensie op 31 Desember van daardie jaar verval, behoudens subartikel (4). 10
- (4) Indien die lisensiehouer aansoek doen soos in subartikel (2)(b) bedoel na 30 September maar voor 31 Desember van die jaar waarin die hernuwingskennisgewing uitgereik moet word, mag die lisensiehouer skriftelik aansoek doen by die Dranklisensiëringstribunaal om daardie versuim te kondoneer, en die Dranklisensiëringstribunaal mag die versuim kondoneer en die laat betaling van die voorgeskrewe hernuwingsfooi toelaat teen 'n datum wat die Dranklisensiëringstribunaal bepaal, behoudens die betaling van 'n boete van 150% van daardie hernuwingsfooi. 15
- (5) Indien die lisensiehouer aan die kennisgewing voldoen, bly die lisensie geldig totdat die Dranklisensiëringstribunaal sy oorweging van die aansoek om hernuwing afgehandel het. 20
- (6) Wanneer die Dranklisensiëringstribunaal 'n aansoek om hernuwing oorweeg, is sy pligte en bevoegdhede dieselfde as wanneer hy 'n aansoek vir 'n nuwe lisensie oorweeg, insluitende die reg om die aansoek te weier of toe te staan, behoudens die voorwaardes wat hy geskik ag. 25
- (7) Indien die Dranklisensiëringstribunaal 'n aansoek om hernuwing van die lisensie toestaan, word die lisensie geag hernu te wees kragtens artikel 63(2).
- (8) Indien die Dranklisensiëringstribunaal 'n aansoek om hernuwing van 'n lisensie weier, verval die lisensie onmiddellik of op die datum wat die Dranklisensiëringstribunaal bepaal. 30

## HOOFSTUK 9

### VERVREEMDING, OORDRAG EN VERWYDERING VAN LISENSIES

#### Vervreemding en oordrag van lisensies

- 65.** (1) 'n Lisensiehouer wat die gelisensieerde besigheid vervreem, moet die Raad binne dertig (30) dae vanaf die datum van vervreemding skriftelik en op die voorgeskrewe wyse in kennis stel van die datum van vervreemding. 35
- (2) Versuim om die Raad van sodanige vervreemding in kennis te stel is 'n misdryf.
- (3) 'n Persoon wat 'n gelisensieerde besigheid gekoop het, mag by die Voorsittende Beampte aansoek doen vir toestemming om die gelisensieerde besigheid te bedryf hangende die oordrag van die lisensie na daardie persoon. 40
- (4) 'n Aansoek kragtens subartikel (3) moet gedoen word deur dit in die voorgeskrewe vorm by die Voorsittende Beampte in te dien.
- (5) Die Voorsittende Beampte mag toestemming verleen wat die koper van die besigheid magtig om die besigheid vir eie rekening te bedryf vir 'n gespesifiseerde tydperk, wat nie langer mag wees nie as ses maande vanaf die datum waarop toestemming verleen is. 45
- (6) Die Voorsittende Beampte kan te eniger tyd die toestemming kragtens subartikel (5) verleen, intrek of op aansoek deur die koper verleng.
- (7) 'n Persoon aan wie toestemming kragtens subartikel (5) verleen is, mag die gelisensieerde besigheid kragtens die lisensie vir eie rekening bedryf en het dieselfde regte en is onderworpe aan dieselfde pligte as die lisensiehouer. 50
- (8) Die verlening van toestemming kragtens subartikel (5) onthef die lisensiehouer nie van enige van sy of haar pligte en verpligtinge ten opsigte van die lisensie nie.
- (9) 'n Lisensiehouer mag aansoek doen vir die oordrag van die lisensie aan 'n ander persoon deur 'n aansoek op die voorgeskrewe wyse en in die voorgeskrewe vorm by die Raad in te dien, en teen betaling van die voorgeskrewe fooi. 55
- (10) Die Raad moet die aangewese drankbeampte op die voorgeskrewe wyse van die aansoek in kennis stel en van hom of haar 'n verslag aanvra oor die kwalifikasie en geskiktheid van die voorgestelde lisensiehouer om die lisensie te hou.

- (11) Die aangewese drankbeampte moet 'n verslag soos by subartikel (10) verlang, indien, en mag by daardie verslag enige ander aangeleentheid insluit wat hy of sy tersaaklik ag vir die aansoek.
- (12) Die Dranklisensieringstribunaal moet die aansoek óf weier óf toestaan binne die voorgeskrewe tydperk. 5
- (13) Die Dranklisensieringstribunaal mag nie 'n aansoek om oordrag toestaan nie tensy hy oortuig is dat die voorgestelde lisensiehouer—
- (a) nie kragtens artikel 35 gediskwalifiseer is om 'n lisensie te hou nie;
  - (b) van goeie karakter is; en
  - (c) gepas onderrig en opgelei is of sal word, of in sy of haar diens een of meer werknemers in diens sal hê wat gepas onderrig en opgelei is of sal word om die gelisensieerde besigheid te bestuur.
- (14) Die Dranklisensieringstribunaal mag, by die toestaan van 'n aansoek om oordrag, gelas dat die voorgestelde lisensiehouer, of een of meer werknemers van daardie persoon, onderrig en opgelei moet word soos deur die Dranklisensieringstribunaal gelas. 15
- (15) Die Raad moet die voorgestelde lisensiehouer binne die voorgeskrewe tydperk nadat die Dranklisensieringstribunaal 'n aansoek om oordrag van 'n lisensie toegestaan het, skriftelik in kennis stel dat die aansoek toegestaan is.
- (16) Die voorgestelde lisensiehouer moet die voorgeskrewe fooi binne sestig (60) dae vanaf die uitreiking van die kennisgewing in subartikel (15) beoog, betaal. 20
- (17) Die Raad moet binne die voorgeskrewe tydperk na betaling van die voorgeskrewe fooi in subartikel (9) bedoel en behoudens artikels 42 tot 45 en 53(1) en (2) 'n sertifikaat van oordrag in die voorgeskrewe vorm, wat die voorwaardes van die lisensie soos deur die Dranklisensieringstribunaal opgelê, uiteensit, aan die voorgestelde lisensiehouer uitreik. 25
- (18) Indien die voorgestelde lisensiehouer versuim om die bedrag in subartikel (16) bedoel te betaal, sal die toestaan van die aansoek behoudens subartikel (19) verval.
- (19) Die voorgestelde lisensiehouer mag binne 'n tydperk van sestig (60) dae vanaf die verstryking van die tydperk in subartikel (16) bedoel, skriftelik aansoek doen by die Hoof Uitvoerende Beampte om die versuim om die voorgeskrewe fooi in subartikel (16) bedoel te betaal, te kondoneer, en die Hoof Uitvoerende Beampte mag die versuim kondoneer en die laat betaling van die fooi teen 'n datum wat die Hoof Uitvoerende Beampte moet bepaal, toelaat behoudens die betaling van 'n boete van 100% van daardie fooi. 30 35
- (20) Indien die voorgestelde lisensiehouer te sterwe kom, insolvent raak of deur 'n hof onbevoeg verklaar word om sy of haar eie sake te hanteer, of as die voorgestelde lisensiehouer 'n maatskappy, trust, koöperasie of beslote korporasie is, gelikwieder word voor die datum waarop die aansoek om oordrag oorweeg word, mag die eksekuteur, trustee, kurator of likwidateur, na gelang van die geval, al die bevoegdhede en regte uitoefen wat sodanige persoon, maatskappy, trust, koöperasie of beslote korporasie sou gehad het as dit nie vir die sterfte, insolvensie, verklaring of likwidasie was nie. 40
- (21) Die Dranklisensieringstribunaal kan, na goeddunke, 'n aansoek om oordrag toestaan ten gunste van 'n eksekuteur, trustee, kurator of likwidateur, of aan sodanige ander persoon wat die Dranklisensieringstribunaal geskik ag. 45

### Verwydering van lisensies

- 66.** (1) 'n Tydelike dranklisensie of dranklisensie vir 'n spesiale geleentheid is nie verwyderbaar vanaf die betrokke gelisensieerde perseel na 'n ander perseel nie.
- (2) 'n Lisensiehouer, behalwe die houer van 'n tydelike dranklisensie en 'n dranklisensie vir 'n spesiale geleentheid, mag te eniger tyd aansoek doen om verwydering van die lisensie, hetsy permanent of tydelik, van die betrokke gelisensieerde perseel na enige ander perseel wat in die Provinsie geleë is. 50
- (3) Die Raad moet die aangewese drankbeampte in wie se regsgebied die lisensie tans gevestig is, op die voorgeskrewe wyse van die aansoek in kennis stel en van hom of haar 'n verslag, soos voorgeskryf, aanvra, en waar die toestaan van die aansoek tot gevolg sal hê dat die lisensie na die regsgebied van 'n ander aangewese drankbeampte verwyder sal word, moet die Raad ook die aangewese drankbeampte na wie se regsgebied die lisensie verwyder sal word, van die aansoek in kennis stel en 'n verslag, soos voorgeskryf, van hom of haar aanvra. 55 60

- (4) Die Dranklisensieringstribunaal moet elke aansoek om die verwydering van 'n lisensie oorweeg en mag—
- (a) die aansoek weier; of
  - (b) die aansoek toestaan.
- (5) Die Raad moet, binne die voorgeskrewe tydperk nadat die Dranklisensieringstribunaal 'n aansoek om die verwydering van 'n lisensie toegestaan het, maar behoudens subartikel (10), die aansoeker skriftelik in kennis stel dat die aansoek toegestaan is. 5
- (6) Die Raad moet, behoudens die betaling van die voorgeskrewe fooi binne sestig (60) dae vanaf uitreiking van die kennisgewing in subartikel (5) beoog, 'n verwyderingsertifikaat in die voorgeskrewe vorm aan die lisensiehouer uitreik. 10
- (7) Indien die lisensiehouer versuim om die fooi in subartikel (6) bedoel te betaal, sal die toestaan van die aansoek verval, behoudens subartikel (8).
- (8) Die lisensiehouer mag binne 'n tydperk van sestig (60) dae na die verstryking van die tydperk in subartikel (6) bedoel, by die Hoof Uitvoerende Beampte skriftelik aansoek doen om die versuim om die voorgeskrewe fooi in subartikel (6) bedoel te betaal, te kondoneer, en die Hoof Uitvoerende Beampte mag die versuim kondoneer en die laat betaling van daardie fooi teen 'n datum wat die Hoof Uitvoerende Beampte moet bepaal, toelaat, behoudens die betaling van 'n boete van 100% van daardie fooi. 15
- (9) 'n Verwyderingsertifikaat is onderworpe aan die voorwaardes in die sertifikaat uiteengesit, wat die Voorsittende Beampte of die Dranklisensieringstribunaal, na gelang van die geval, na goeddunke oplê. 20
- (10) Die Voorsittende Beampte mag te eniger tyd na die uitreiking van 'n verwyderingsertifikaat enige voorwaarde deur hom of haar of die Dranklisensieringstribunaal kragtens subartikel (9) opgelê, intrek of wysig by kennisgewing wat afgelewer of aangebied word aan die betrokke lisensiehouer. 25
- (11) Die gevolg van die uitreiking van 'n verwyderingsertifikaat sal wees dat die lisensiehouer óf permanent óf tydelik vir die tydperk wat die Voorsittende Beampte of die Dranklisensieringstribunaal, na gelang van die geval, bepaal en wat in die sertifikaat gemeld word, die besigheid waarop die lisensie betrekking het, sal bedryf op die perseel ten opsigte waarvan die Voorsittende Beampte of die Dranklisensieringstribunaal, na gelang van die geval, die plan goedgekeur het, maar vir die doeleindes van die lisensie waarvoor die betrokke aansoek gedoen is, mag die perseel nie daardie plek of plekke daarop insluit wat die Voorsittende Beampte of die Dranklisensieringstribunaal na goeddunke spesifiek daarvan uitgesluit het nie. 30
- (12) Waar 'n verwyderingsertifikaat die verwydering van 'n lisensie vir 'n vasgestelde tydperk toelaat, mag die Voorsittende Beampte te eniger tyd voor die verstryking van daardie tydperk, op aansoek deur die betrokke lisensiehouer— 35
- (a) daardie tydperk verleng; of
  - (b) die sertifikaat intrek.
- (13) Indien 'n aansoek om die verwydering van 'n lisensie deur die Dranklisensieringstribunaal toegestaan word ten opsigte van 'n perseel wat nog nie opgerig is nie, of 'n perseel waaraan enige strukturele verandering, aanbouing of verbouing aangebring moet word ten einde dit geskik te maak vir die doeleindes waarvoor dit kragtens die lisensie gebruik sal word, moet die Raad in die kennisgewing in subartikel (5) bedoel, die lisensiehouer gelas om aan die voorwaardes of vereistes in die kennisgewing bedoel, wat die Voorsittende Beampte ten opsigte van daardie perseel bepaal, te voldoen binne die tydperk wat die Voorsittende Beampte bepaal. 45
- (14) Die Voorsittende Beampte mag te eniger tyd na uitreiking van die kennisgewing op aansoek deur die betrokke aansoeker—
- (a) enige voorwaarde of vereiste kragtens subartikel (13) bepaal, intrek of wysig; 50
  - (b) die tydperk kragtens subartikel (13) bepaal, verleng;
  - (c) die tydperk aldus bepaal en kragtens paragraaf (b) verleng ten opsigte van 'n perseel wat ten tyde van die uitreiking van die kennisgewing nog nie opgerig was nie, verleng indien hy of sy tevrede is dat 'n wesenlike deel van die perseel sedertdien opgerig is; of 55
  - (d) 'n gewysigde plan ten opsigte van die perseel goedkeur.
- (15) Die tydperk kragtens subartikel (13) bepaal of die tydperk kragtens subartikel (14)(b) aldus bepaal en verleng, na gelang van die geval, mag nie langer wees as vier-en-twintig (24) maande nie, en die tydperk kragtens subartikel (14)(c) verleng of verder verleng, na gelang van die geval, mag nie langer wees as 'n verdere twaalf (12) maande nie. 60
- (16) Wanneer die Voorsittende Beampte tevrede is dat die perseel ten opsigte waarvan 'n kennisgewing kragtens subartikel (13) uitgereik is, voltooi is in ooreenstemming met

die plan daarvan wat deur die Voorsittende Beampte of die Dranklisensieringstribunaal, na gelang van die geval, goedgekeur is, die voorwaardes en vereistes deur die Voorsittende Beampte bepaal, nagekom is en die perseel geskik is vir die doeleindes waarvoor dit kragtens die betrokke lisensie gebruik sal word, moet die Raad die verwyderingsertifikaat in ooreenstemming met subartikel (6) uitreik. 5

(17) Indien die verwyderingsertifikaat nie uitgereik word voor die verstryking van die tydperk kragtens subartikel (13) bepaal nie, of dit kragtens subartikel (14)(b) verleng word of kragtens subartikel (14)(c) verder verleng word, na gelang van die geval, vervall die betrokke kennisgewing en word die aansoek om verwydering van die lisensie geag nie toegestaan te gewees het nie. 10

### **Abandonnering van perseel en dood of onbekwaamheid van lisensiehouer**

**67.** (1) Die Dranklisensieringstribunaal mag, indien hy tevrede is dat—

- (a) 'n gelisensieerde besigheid deur die lisensiehouer abandonneer is; of
- (b) die lisensiehouer 'n persoon is soos in subartikel (3) beskryf, en 'n eksekuteur, administrateur, trustee, kurator of likwidateur nie aangestel is nie, 15

'n persoon aanstel om die lisensie te hou en die gelisensieerde besigheid te bedryf totdat 'n eksekuteur, administrateur, trustee, kurator of likwidateur of, in die geval van 'n besigheid wat geabandonneer is, 'n bestuurder, aangestel word.

(2) 'n Persoon kragtens subartikel (1)(b) aangestel, word geag die lisensiehouer te wees. 20

(3) Indien 'n lisensiehouer sterf, insolvent raak, onder geregtelike bestuur geplaas word of deur 'n hof onbevoeg verklaar word om sy of haar eie sake te hanteer of, indien dit 'n maatskappy, trust, koöperasie of beslote korporasie is, gelikwedeer word—

- (a) gaan die lisensie oor op die eksekuteur van die bestorwe boedel, administrateur van die insolvente boedel, geregtelike bestuurder, kurator of likwidateur, na gelang van die geval, vanaf die aanstellingsdatum; 25
- (b) mag die eksekuteur van die bestorwe boedel, administrateur van die insolvente boedel, geregtelike bestuurder, kurator of likwidateur die gelisensieerde besigheid bedryf op dieselfde wyse en onderworpe aan dieselfde voorwaardes as die lisensiehouer sou gedoen het as dit nie vir sy of 30
- (c) mag die eksekuteur van die bestorwe boedel, administrateur van die insolvente boedel, geregtelike bestuurder, kurator of likwidateur aansoek doen vir die oordrag van die lisensie kragtens artikel 65, en word hy of sy vir die doeleindes van daardie aansoek geag die lisensiehouer te wees. 35

## **HOOFSTUK 10**

### **APPÈLLE EN HERSIENINGS**

#### **Appèlle en hersienings na Appèltribunaal**

**68.** (1) Die Appèltribunaal moet enige appèl teen, of aansoek om die hersiening van, 'n besluit van die Dranklisensieringstribunaal kragtens artikel 20(3) oorweeg. 40

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

(3) 'n Aansoeker of belanghebbende wat gegrief is deur 'n besluit van die Raad, mag binne die voorgeskrewe tydperk na ontvangs van redes vir 'n besluit van die Raad, 'n kennisgewing van appèl of hersiening by die Raad indien soos voorgeskryf. 45

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

(5) Behalwe waar die aansoeker of belanghebbende van die betaling van sekuriteit kragtens subartikel (6) vrygestel is, moet 'n persoon wat gegrief is deur 'n besluit van die Dranklisensieringstribunaal, saam met die indiening van die kennisgewing van appèl of hersiening kragtens subartikel (3) 'n bedrag betaal wat voorgeskryf is as sekuriteit vir die verwagte koste van die Dranklisensieringstribunaal of 'n opponerende party. 50  
55



- (6) Die Appèltribunaal mag op aansoek deur die aansoeker of die belanghebbende wat deur die besluit van die Dranklisensieringstribunaal gegrief is, die bedrag van sekuriteit verminder of die aansoeker of belanghebbende vrystel van die betaling van sekuriteit.
- (7) Geld wat kragtens hierdie artikel as sekuriteit betaal word, moet aan die Hoof Uitvoerende Beampte betaal word, wat dit in 'n afsonderlike bankrekening moet stort hangende die uitkoms van die appèl of hersiening, wanneer hy of sy dit betaal in ooreenstemming met die bevel van die Appèltribunaal. 5
- (8) Die Appèltribunaal mag sodanige bevel wat hy in die omstandighede goedvind, maak aangaande die betaling van die koste van die partye by die verrigtinge of van die Dranklisensieringstribunaal. 10
- (9) 'n Aansoeker of belanghebbende wat gegrief is deur die besluit van die Raad, mag persoonlik voor die Appèltribunaal verskyn of mag daar verteenwoordig word deur 'n advokaat, prokureur of enige ander persoon wat namens hom of haar verskyn.
- (10) Indien 'n persoon wat behoorlik in kennis gestel is dat hy of sy by 'n vergadering van die Appèltribunaal teenwoordig moet wees, versuim om daardie vergadering by te woon of die vergadering verlaat sonder die toestemming van die Appèltribunaal, mag die vergadering voortgaan in die afwesigheid van daardie persoon of mag die Appèltribunaal die stappe doen wat hy billik en regverdig ag in die omstandighede. 15
- (11) 'n Besluit van die Appèltribunaal oor die meriete van 'n aangeleentheid is finaal.

## HOOFSTUK 11 20

### VOLDOENING

#### **Voldoeningskennisgewings**

- 69.** (1) 'n Inspekteur mag 'n voldoeningskennisgewing aan 'n lisensiehouer of enige persoon in beheer van 'n gelisensieerde perseel uitreik en beteken, waarin daardie persoon versoek word om aan die bepalings van hierdie Wet of 'n voorwaarde van 'n lisensie te voldoen. 25
- (2) 'n Voldoeningskennisgewing moet die volgende uiteensit—
- (a) die bepalings van hierdie Wet of die voorwaardes van die lisensie waaraan voldoen moet word;
  - (b) die handeling of versuim wat die nievoldoening uitmaak; 30
  - (c) die maatreëls wat getref moet word om te voldoen;
  - (d) die datum waarteen voldoening afgehandel moet word; en
  - (e) die moontlike gevolge van nievoldoening.
- (3) 'n Aangewese drankbeampte mag in die afwesigheid van 'n inspekteur, of waar 'n inspekteur nie geredelik beskikbaar is nie, 'n kennisgewing in subartikel (1) bedoel, uitreik en beteken, en moet die Hoof Uitvoerende Beampte van die uitreiking en betekening van die kennisgewing in kennis stel voor of op die voorgeskrewe datum. 35
- (4) Die inspekteur of aangewese drankbeampte, na gelang van die geval, mag op versoek van die persoon aan wie 'n voldoeningskennisgewing beteken is, by aanvoering van goeie redes die tydperk vir voldoening verleng deur 'n gewysigde voldoeningskennisgewing uit te reik. 40
- (5) 'n Voldoeningskennisgewing bly van krag tot die voldoeningsdatum of enige verlenging daarvan of die uitreiking deur die inspekteur of aangewese drankbeampte, na gelang van die geval, van 'n sertifikaat van voldoening, watter ook al die vroegste is.
- (6) Indien die persoon aan wie 'n voldoeningskennisgewing beteken is, daaraan voldoen het, moet die inspekteur of aangewese beampte, na gelang van die geval, 'n sertifikaat van voldoening uitreik. 45
- (7) 'n Persoon aan wie 'n voldoeningskennisgewing beteken is, mag op die voorgeskrewe wyse 'n verklaring by die inspekteur of aangewese drankbeampte, na gelang van die geval, indien waarin die kennisgewing betwis word en die gronde vermeld word waarop dit betwis word. 50
- (8) 'n Inspekteur of aangewese drankbeampte, na gelang van die geval, wat 'n verklaring kragtens subartikel (7) ontvang, moet die voldoeningskennisgewing, die verklaring kragtens subartikel (7) en enige ander dokument wat hy of sy tersaaklik ag, binne die voorgeskrewe tydperk aan die Hoof Uitvoerende Beampte voorlê, wat moet besluit of die handeling of versuim in subartikel (2)(b) bedoel, die uitreiking van die voldoeningskennisgewing regverdig. 55
- (9) Die Hoof Uitvoerende Beampte mag, indien hy of sy besluit dat die uitreiking van die voldoeningskennisgewing nie geregverdig was nie, dit ter syde stel, of as hy of sy



bevind dat dit geregverdig is, gelas dat daar aan die voldoeningskennisgewing voldoen word teen die datum waarteen voldoening afgehandel moet wees, soos in subartikel (2)(d) beoog, of die later datum wat hy of sy bepaal.

(10) Die Hoof Uitvoerende Beampte mag die funksie in subartikel (9) bedoel, aan 'n werknemer van die Raad deleger. 5

(11) Versuim om aan 'n voldoeningskennisgewing te voldoen is 'n misdryf.

(12) Bewys van nievoldoening aan 'n voldoeningskennisgewing, op 'n vergadering van die Dranklisensieringstribunaal, maak *prima facie*-bewys uit van die pleging van 'n misdryf of 'n oortreding van die lisensievoorwaardes in die voldoeningskennisgewing vermeld. 10

### Sluiting van gelisensieerde perseel

**70.** (1) 'n Inspekteur, aangewese drankbeampte of enige polisiebeampte met of bo die rang van inspekteur mag, as 'n openbare oorlas, wanorde of openbare geweld op 'n gelisensieerde perseel ontstaan of dreig, die lisensiehouer of 'n persoon in beheer van die gelisensieerde perseel beveel om die betrokke perseel vir 'n tydperk van hoogstens die oorblywende handelse vir daardie dag te sluit. 15

(2) Die lisensiehouer of 'n persoon in beheer van 'n gelisensieerde perseel moet by ontvangs van 'n bevel kragtens subartikel (1) onmiddellik daaraan voldoen, en as 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 wat na gelang van die omstandighede nodig is om die perseel te sluit. 20

(3) Enige bevel kragtens subartikel (1) gegee, mag te eniger tyd ingetrek word—

- (a) deur die aangewese drankbeampte, die inspekteur of die polisiebeampte wat die bevel gegee het;
- (b) waar so 'n bevel deur 'n polisiebeampte gegee is, deur 'n polisiebeampte met 'n meer senior rang; of 25
- (c) deur die Dranklisensieringstribunaal.

### Tussentydse bevele

**71.** (1) Die Dranklisensieringstribunaal mag, waar daar 'n onmiddellike bedreiging vir die gesondheid, welsyn of veiligheid van die publiek is, op aansoek deur 'n inspekteur of 'n aangewese drankbeampte 'n tussentydse bevel uitreik om 'n lisensie op te skort. 30

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

- (a) dit gestaaf word deur 'n beëdigde verklaring waarin die feite rakende die aangeleentheid uiteengesit word; 35
- (b) bewys gelewer word dat die aansoek en stawende beëdigde verklarings minstens agt-en-veertig (48) uur voor die indiening van die aansoek aan die lisensiehouer beteken is; en
- (c) dit uit die aansoek blyk dat dit 'n dringende aangeleentheid is. 40

(3) 'n Bevel wat kragtens subartikel (1) toegestaan is, moet aan die lisensiehouer beteken word op die wyse deur die Raad gelas en word van krag op die datum en die tyd van betekening daarvan. 40

(4) 'n Bevel wat kragtens subartikel (1) toegestaan is, moet 'n datum bepaal waarop die lisensiehouer voor die Dranklisensieringstribunaal moet verskyn om redes aan te voer waarom die bevel nie finaal gemaak moet word nie. 45

(5) Die lisensiehouer mag voor die datum in subartikel (4) bepaal, by die Dranklisensieringstribunaal 'n kennisgewing van opposisie indien en moet daarna beëdigde verklarings indien waarin hy of sy die gronde uiteensit waarop die aansoek teengestaan word, en moet terselfdertyd 'n afskrif van die kennisgewing en beëdigde verklarings beteken op die inspekteur of die aangewese drankbeampte in subartikel (1) bedoel. 50

(6) 'n Lisensiehouer mag te eniger tyd voor die datum kragtens subartikel (4) bepaal, by die Voorsittende Beampte aansoek doen om die aangeleentheid ter rolle te plaas vir verhoor op 'n vroeër datum, en moet terselfdertyd 'n afskrif van die aansoek beteken op die inspekteur of die aangewese drankbeampte in subartikel (1) bedoel. 55

(7) Die Voorsittende Beampte mag gelas dat die keerdatum tot 'n vroeër datum vervroeg word.

(8) Op die datum waarop die aansoek verhoor word, mag die Dranklisensiërings-tribunaal die tussentydse bevel ophef of bevestig, behoudens die wysigings wat hy goedvind.

### Opskorting, intrekking en verval van lisensies

72. (1) 'n Lisensie wat kragtens enige bepaling van hierdie Wet opgeskort is, bly in alle opsigte geldig behalwe dat die lisensiehouer gedurende die tydperk van opskorting nie drank kragtens daarvan mag verkoop nie. 5

(2) 'n Lisensie wat deur die Dranklisensiëringstribunaal ingetrek is, is ongeldig vanaf die datum van intrekking of 'n ander datum wat die Dranklisensiëringstribunaal bepaal.

(3) 'n Lisensie wat kragtens artikel 62, 63 of 64 verval het, is ongeldig vanaf die datum waarop dit verval. 10

(4) Die lisensiehouer van 'n lisensie wat opgeskort of ingetrek is of verval het, mag binne dertig (30) dae na die opskorting, intrekking of verval daarvan enige drank wat op die gelisensieerde perseel was op die datum waarop die opskorting, intrekking of verval van krag geword het, verkoop per openbare veiling wat deur 'n gelisensieerde afslaer gehou word. 15

## HOOFSUK 12

### WETSTOEPASSING

#### Aanwysing en funksies van aangewese drankbeamptes en inspekteurs

73. (1) Die Wes-Kaapse Provinsiale Kommissaris van die Suid-Afrikaanse Polisie mag ten opsigte van elke polisie-stasie enige polisiebeampte met of bo die rang van Inspekteur aanwys om die funksies van 'n aangewese drankbeampte kragtens hierdie Wet te verrig. 20

(2) 'n Polisiebeampte wat kragtens artikel 139 van die Drankwet, 1989 (Wet 27 van 1989), as 'n aangewese polisiebeampte aangestel is, word 'n aangewese drankbeampte kragtens hierdie Wet en word geag kragtens subartikel (1) aangestel te wees. 25

(3) Die Wes-Kaapse Provinsiale Kommissaris van die Suid-Afrikaanse Polisie mag 'n aanstelling kragtens subartikel (1) gemaak of geag gemaak te wees, te eniger tyd beëindig.

(4) Die Raad mag enige persoon in diens van die Raad as 'n inspekteur vir doeleindes van hierdie Wet aanstel. 30

(5) Die Kommissaris moet by die aanwysing van 'n drankbeampte kragtens subartikel (1), en die Raad moet by die aanstelling van 'n inspekteur kragtens subartikel (4), 'n sertifikaat van aanwysing of aanstelling uitreik, onderteken deur die Kommissaris of die Hoof Uitvoerende Beampte namens die Raad, na gelang van die geval. 35

(6) 'n Aangewese drankbeampte of 'n inspekteur moet by die uitoefening van sy of haar funksies kragtens hierdie Wet, op versoek van enige persoon wat deur die verrigting van daardie funksie geraak word, bewys verskaf van aanstelling as aangewese drankbeampte of inspekteur.

(7) 'n Aangewese drankbeampte of 'n inspekteur moet— 40

(a) ten opsigte van elke aansoek gedoen kragtens hierdie Wet, aan die Dranklisensiëringstribunaal verslag doen oor aangeleenthede wat voorgeskryf word of wat na die mening van die beampte of inspekteur in aanmerking geneem moet word wanneer die aansoek oorweeg word;

(b) op versoek van die Dranklisensiëringstribunaal verslag doen oor, of die inligting verstrek in verband met, 'n aangeleentheid wat die Dranklisensiëringstribunaal verlang; 45

(c) sodra die feit onder sy of haar aandag kom, die versuim deur 'n lisensiehouer om aan die voorwaardes van sy of haar lisensie, 'n voldoeningskennisgewing of die bepalings van hierdie Wet te voldoen, by die Hoof Uitvoerende Beampte aanmeld; 50

(d) die feit dat 'n lisensiehouer nie meer kwalifiseer nie of ongeskik geword het om 'n lisensie te hou, by die Hoof Uitvoerende Beampte aanmeld;

(e) indien hy of sy van mening is dat die gelisensieerde perseel geabandonneer is of ongeskik vir gebruik vir die doel van 'n gelisensieerde besigheid geword het, hierdie feit by die Hoof Uitvoerende Beampte aanmeld; en 55

- (f) indien die lisensiehouer skuldig bevind is aan 'n strafregtelike misdryf, die aard en omstandighede van die misdryf en skuldigbevinding by die Hoof Uitvoerende Beampte aanmeld.

### Bevoegdheid van aangewese drankbeamptes en inspekteurs

74. (1) Behoudens artikel 75, mag 'n aangewese drankbeampte of 'n inspekteur by die 5  
verrigting van sy of haar funksies—
- (a) te alle redelike tye—
- (i) enige gelisensieerde perseel;
- (ii) enige perseel ten opsigte waarvan 'n aansoek kragtens hierdie Wet 10  
gedoen is;
- (iii) enige perseel of voertuig waar hy of sy op redelike gronde vermoed dat  
drank geberg of verkoop word strydig met die bepalings van hierdie Wet,  
betree en enige ondersoek instel en navrae of inspeksies doen wat hy of sy  
nodig ag;
- (b) op enige tyd en plek enige persoon versoek om onmiddellik of op 'n datum en 15  
tyd wat deur die aangewese drankbeampte of inspekteur bepaal moet 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, aan hom  
of haar voor te lê;
- (c) insae hê in enige dokument in paragraaf (b) bedoel, kopieë daarvan of 20  
uittreksels daaruit maak, van die persoon in daardie paragraaf bedoel 'n  
verklaring vereis van enige deel daarvan;
- (d) op enigiets beslag lê indien dit na sy of haar mening getuienis kan uitmaak van  
'n misdryf kragtens hierdie Wet, of van 'n oortreding van enige voorwaarde 25  
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  
werknemer, aansoeker of persoon enige dokument in sy of haar besit of onder  
sy of haar beheer het wat tersaaklik kan wees vir 'n aangeleentheid wat hy of 30  
sy ondersoek; en
- (f) versoek 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) bedoel, moet die 35  
bystand verleen wat die aangewese drankbeampte of inspekteur redelikerwys versoek.
- (3) Enige persoon wat deur 'n aangewese drankbeampte of inspekteur ondervra word  
kragtens 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 en  
na sy of haar beste vermoë wees.
- (4) 'n Antwoord of verduideliking wat aan 'n aangewese drankbeampte of 'n 40  
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 oplegging van 'n eed of die afneem van 'n bevestiging;
- (b) die aflê van vals verklaring; of 45
- (c) versuim om 'n wettige vraag ten volle en bevredigend te beantwoord.

### Uitoefening van bevoegdheid om perseel te betree en te inspekteer

75. (1) 'n Aangewese drankbeampte 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 50  
met subartikel (3).
- (2) 'n Inspekteur of 'n aangewese drankbeampte mag by die uitoefening en verrigting  
van enige bevoegdheid of funksie soos in subartikel (1) bedoel, vergesel word deur 'n  
vredesbeampte of vredesbeamptes.
- (3) 'n Landdros mag 'n lasbrief uitreik om enige perseel te betree en te inspekteer 55  
indien, op grond van inligting wat skriftelik en onder eed of bevestiging verstrekkend is, die  
landdros rede het om te glo dat—
- (a) hierdie Wet nie nagekom word nie; en

- (b) die betreding en inspeksie in belang van die publiek nodig is om inligting te verkry—
- (i) wat verband hou met die beweerde versuim om aan hierdie Wet te voldoen; en
- (ii) wat nie verkry kan word sonder om daardie perseel te betree nie. 5
- (4) 'n Aangewese drankbeampte of 'n inspekteur mag die bevoegdheids 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 kragtens artikel 69, met die doel om vas te stel of daar aan die kennisgewing voldoen is; of
- (c) indien die aangewese drankbeampte of inspekteur op redelike gronde glo dat—
- (i) 'n lasbrief kragtens subartikel (3) uitgereik sal word as hy of sy daarvoor aansoek doen; en
- (ii) 'n vertraging in die verkryging van 'n lasbrief die doel van die deursoeking of inspeksie sou verydel. 15
- (5) By die betreding van 'n perseel kragtens hierdie artikel moet die aangewese drankbeampte of inspekteur— 20
- (a) hom- of haarself identifiseer aan die persoon in beheer van die perseel;
- (b) die lasbrief, as een daar is, aan daardie persoon toon;
- (c) die gesag kragtens waarvan die inspeksie gedoen word, verklaar; en
- (d) die inspeksie doen met die mins moontlike ongerief vir die lisensiehouer of sy of haar kliënte en met die mins moontlike ontwigting van die gelisensieerde besigheid. 25
- (6) 'n Aangewese drankbeampte of inspekteur moet by die beslaglegging op enigiets kragtens hierdie artikel, 'n kwitansie aan die persoon van wie daar op die artikel beslag gelê is, uitreik waarin die artikel of artikels waarop beslag gelê is, beskryf word en die redes vir die beslaglegging verduidelik word. 30
- (7) Enigiets waarop kragtens hierdie artikel beslag gelê is, moet behou en bewaar word totdat 'n hof 'n bevel uitgereik het oor hoe daarvoor beskik moet word.
- (8) Tensy die lisensiehouer of 'n persoon in sy of haar diens vir wie hy of sy verantwoordelik is kragtens hierdie Wet, in 'n hof van 'n strafregtelike misdryf aangekla word, of gedagvaar word om op 'n vergadering van die Dranklisensieëringstribunaal te verskyn binne dertig (30) dae vanaf die datum van die beslaglegging, moet die artikel waarop beslag gelê is, terugbesorg word aan die persoon van wie daar op die artikel beslag gelê is.

### Algemene misdrywe

- 76.** 'n Persoon wat— 40
- (a) (i) dronk en wanordelik is in of op enige perseel waar drank verkoop word; of
- (ii) dronk is in enige plek waartoe die publiek toegang het;
- (b) drank verkoop of verskaf aan 'n dronk persoon of, synde 'n lisensiehouer of 'n persoon in beheer van 'n gelisensieerde perseel, toelaat dat 'n dronk en wanordelike persoon op daardie perseel bly; 45
- (c) drank in 'n houer verkoop of verskaf wat nie voldoen nie aan die standarde en spesifikasies wat die Minister by kennisgewing in die *Provinsiale Koerant* voorgeskryf het;
- (d) drank koop van enige persoon, wetende of met redelike gronde om te vermoed dat daardie persoon nie gelisensieer is of toegelaat is om drank kragtens hierdie Wet te verkoop nie; 50
- (e) drank verkoop aan 'n persoon, wetende of met redelike gronde om te vermoed dat daardie persoon die drank op 'n ander manier sal herverkoop as wat kragtens hierdie Wet toegelaat word; 55
- (f) synde 'n lisensiehouer, toelaat dat die gelisensieerde perseel as 'n bordeel gebruik of gereeld deur prostitute besoek word;
- (g) synde 'n lisensiehouer, toelaat dat 'n verskaffer van onwettige dwelmmiddels op die gelisensieerde perseel aanwesig bly;

- (h) synde 'n lisensiehouer, die verkoop, gebruik of besit van dwelmmiddels op die perseel toelaat strydig met enige wet wat oor dié soort verkoop, gebruik of besit handel; of
- (i) synde 'n lisensiehouer, of 'n persoon namens hom of haar, enige dokument of roerende eiendom ontvang of hou as sekuriteit of as 'n pand vir die betaling van 'n skuld ten opsigte van die verkoop van drank, is skuldig aan 'n misdryf. 5

#### Misdrywe betreffende inligting

77. (1) 'n Persoon wat met betrekking tot 'n aansoek, beswaar of vertoë—
- (a) inligting voorlê of verstrek wat hy of sy weet vals of misleidend is of waarvan hy of sy nie weet dat dit waar is nie, of 'n vervalste dokument of een wat voorgee 'n ware afskrif van die oorspronklike te wees maar nie is nie voorlê; 10
  - (b) op enige beswaar of vertoë of klag antwoord op 'n wyse wat hy of sy weet vals of misleidend is of wat hy of sy nie weet dat dit waar is nie; of
  - (c) na aanleiding van 'n vraag deur 'n aangewese drankbeampte, 'n inspekteur, 'n vredesbeampte, 'n munisipale beampte of die Dranklisensieringstribunaal inligting voorlê of verskaf wat hy of sy weet vals of misleidend is of wat hy of sy nie weet dat dit waar is nie of 'n vervalste dokument of een wat voorgee om 'n juiste afskrif van die oorspronklike te wees, maar nie is nie, voorlê, is skuldig aan 'n misdryf. 15 20

#### Misdrywe betreffende vergaderings van Dranklisensieringstribunaal en Appèltribunaal

78. (1) 'n Persoon wat—
- (a) nadat hy of sy behoorlik in kennis gestel is om voor die Dranklisensieringstribunaal te verskyn, versuim om dit te doen, hetsy persoonlik of verteenwoordig deur 'n ander persoon, 'n prokureur of 'n advokaat; 25
  - (b) voor die Dranklisensieringstribunaal verskyn, maar sonder toestemming van die Voorsittende Beampte die vergadering voor die afsluiting daarvan verlaat;
  - (c) nadat hy of sy op 'n vergadering deur die Voorsittende Beampte in kennis gestel is om 'n vergadering by te woon op 'n datum tot wanneer die vergadering uitgestel is, versuim om daar teenwoordig te wees; 30
  - (d) nadat hy of sy deur die Voorsittende Beampte gelas is om getuienis te lewer of 'n dokument voor te lê, weier of versuim om dit te doen;
  - (e) wanneer die eed aan hom of haar opgelê, of 'n bevestiging van hom of haar afgeneem word, weier of versuim om die eed af te lê of om te bevestig; 35
  - (f) nadat hy of sy die eed of bevestiging afgelê het, versuim om na sy of haar beste wete te antwoord op vrae wat aan hom of haar gestel word of vals of misleidende getuienis lewer, wetende dat die getuienis vals of misleidend is;
  - (g) die verrigtinge van die Dranklisensieringstribunaal opsetlik ontwrig; of
  - (h) weier om die vergadering te verlaat wanneer hy of sy deur die Voorsittende Beampte gelas word om dit te doen, is skuldig aan 'n misdryf. 40
- (2) 'n Persoon wat behoorlik in kennis gestel is om voor die Dranklisensieringstribunaal te verskyn moet—
- (a) die Voorsittende Beampte vyf (5) werkdade voor die datum van die verskyning skriftelik in kennis stel dat hy of sy nie op daardie datum kan verskyn nie; en 45
  - (b) die redes insluit vir sy of haar versuim om op daardie datum te verskyn.
- (3) 'n Oortreding van, of versuim om te voldoen aan, subartikel (2), is 'n misdryf.
- (4) Die bepalings van subartikels (1) en (2) is met die nodige veranderings van toepassing op vergaderings van die Appèltribunaal.

#### Misdrywe betreffende aangewese drankbeamptes en inspekteurs 50

79. 'n Persoon wat—
- (a) hom of haar valslik as 'n aangewese drankbeampte of inspekteur voordoen;
  - (b) 'n aangewese drankbeampte of inspekteur by die uitvoering van sy of haar pligte verhinder;
  - (c) weier of versuim om 'n wettige opdrag van 'n aangewese drankbeampte of inspekteur te gehoorsaam; of 55

- (d) wanneer hy of sy deur 'n aangewese beampte 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 of 'n inspekteur kragtens artikel 74, is skuldig aan 'n misdryf. 5

### Misdrywe betreffende motorvoertuie

- 80.** (1) 'n Persoon wat—
- (a) drank verbruik in 'n motorvoertuig wat op 'n openbare pad bestuur word of geparkeer is;
- (b) die verbruik van drank toelaat in 'n motorvoertuig waarvan hy of sy die bestuurder is of wat onder sy of haar beheer is terwyl dit op 'n openbare pad bestuur word; of
- (c) toelaat dat drank in 'n oop houer is in 'n motorvoertuig terwyl dit op 'n openbare pad bestuur word, is skuldig aan 'n misdryf. 10
- (2) Subartikel (1) is nie van toepassing nie op die verbruik van drank in 'n motorvoertuig wat vir die verkoop en verbruik van drank gelisensieer is. 15

### Misdrywe betreffende diensstasies

- 81.** (1) Geen drank mag verkoop, verskaf of verbruik word nie op 'n erf waarop die besigheid van 'n diensstasie wat petrol, diesel en ander petroleumprodukte aan die publiek verkoop, bedryf word. 20
- (2) Subartikel (1) is nie van toepassing op persele wat reeds gelisensieer is nie.
- (3) Behalwe in buitengewone omstandighede, mag die Dranklisensieringstribunaal nie 'n lisensie toestaan ten opsigte van 'n perseel in subartikel (1) bedoel nie.
- (4) Oortreding van, of versuim om te voldoen aan, subartikel (1), is 'n misdryf.

### Versuim om aan bevel van Dranklisensieringstribunaal te voldoen 25

- 82.** (1) Versuim deur 'n lisensiehouer om aan 'n bevel van die Dranklisensieringstribunaal in verband met die betrokke lisensie of gelisensieerde perseel te voldoen, is 'n misdryf.
- (2) Indien 'n persoon versuim om aan 'n bevel van die Dranklisensieringstribunaal te voldoen, mag die Dranklisensieringstribunaal na behoorlike ondersoek— 30
- (a) die lisensie opskort hangende voldoening aan die bevel;
- (b) 'n boete opleë, waarvan die betaling opgeskort mag word hangende voldoening aan die bevel;
- (c) die aangeleentheid na die Suid-Afrikaanse Polisie diens verwys vir die vervolging van die oortreder; of 35
- (d) die lisensie intrek.

### Middellike verantwoordelikheid

- 83.** (1) Indien die bestuurder, agent of werknemer van 'n lisensiehouer iets doen of versuim om iets te doen wat, as dit deur die lisensiehouer gedoen of versuim was, 'n misdryf kragtens hierdie Wet sou wees, word die lisensiehouer geag daardie handeling te verrig het of versuim het om dit te verrig, behalwe waar— 40
- (a) die lisensiehouer die handeling of versuim nie oogluikend toegelaat, veroorloof of toegelaat het nie;
- (b) die lisensiehouer die stappe geneem het wat hy of sy redelikerwys kon neem ten einde die handeling of versuim te voorkom; en 45
- (c) die handeling of versuim nie binne die bestek van die diens of gesag van die bestuurder, agent of werknemer geval het nie.
- (2) Die feit dat 'n lisensiehouer opdragte uitgereik het wat 'n handeling of versuim verbied, is nie op sigself voldoende om te bewys dat hy of sy die stappe geneem het wat by subartikel (1)(b) vereis word nie. 50
- (3) Wanneer 'n lisensiehouer aanspreeklik is vir die handeling of versuim van 'n ander persoon kragtens subartikel (1), is daardie ander persoon ook daarvoor aanspreeklik asof hy of sy die lisensiehouer is.



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

### Vrystellings

- 84.** (1) Die volgende persone is vrygestel van weking van hierdie Wet— 5
- (a) 'n beampte soos omskryf in artikel 1(1) van die Doeane- en Aksynswet, 1964 (Wet 91 van 1964), by die verrigting van amptelike pligte;
  - (b) 'n balju of sy of haar werknemer of enige ander beampte wat kragtens 'n bevel van 'n hof optree by die uitvoering van sy of haar pligte;
  - (c) 'n persoon bedoel in 'n kennisgewing kragtens artikel 10 van die Wet op 10  
Drankprodukte, 1989 (Wet 60 van 1989), met betrekking tot die verkoop van 'n sakramentele drank kragtens die kennisgewing; en
  - (d) 'n persoon wat medisyne soos omskryf in die Wet op Medisyne en Verwante Stowwe, 1965 (Wet 101 van 1965), vervaardig of verkoop.
- (2) Die Dranklisensieringstribunaal mag op aansoek en teen betaling van die 15  
voorgeskrewe bedrag en as omstandighede dit regverdig, verklaar dat die Wet, behalwe daardie bepalings wat hy bepaal, nie van toepassing is nie op—
- (a) 'n versamelaar van drank; en
  - (b) 'n persoon wat alkoholiese of gedistilleerde reukwerk vervaardig of verkoop.
- (3) Die Dranklisensieringstribunaal of die Voorsittende Beampte mag te eniger tyd na 20  
die uitreiking van 'n verklaring kragtens subartikel (2) by kennisgewing, afgelewer of aangebied aan die persoon wat in die betrokke verklaring gemeld word—
- (a) na goeddunke, die voorwaardes of verdere voorwaardes wat in die kennisgewing uiteengesit is, oplê waaraan die verklaring onderworpe is;
  - (b) enige voorwaarde deur hom of haar of kragtens die artikel opgelê, intrek of 25  
wysig; of
  - (c) die verklaring intrek of wysig.

### Bewys

- 85.** (1) Indien daar in enige strafverrigtinge of op 'n vergadering van die 30  
Dranklisensieringstribunaal getuienis voorgelê word dat 'n persoon wat nie gelisensieer of toegelaat is om drank kragtens hierdie 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;
  - (b) 'n perseel beset het wat toegerus was op 'n wyse wat tot die redelike afleiding 35  
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 voorafgaande toestemming wat by daardie artikel vereis word; of
  - (d) meer drank as die maksimum volume in artikel 60 bedoel, gekoop of verkry het sonder die voorafgaande toestemming wat by daardie artikel vereis word, 40  
is dit *prima facie*-bewys van die verkoop van drank.
- (2) Indien in enige strafverrigtinge of op 'n vergadering van die Dranklisensierings-tribunaal—
- (a) 'n verseelde houer as bewys gelewer word wat 'n vloeistof bevat en op daardie 45  
houer daar 'n etiket of ander toestel is wat die alkoholinhoud van die vloeistof aandui, dan is dit *prima facie*-bewys dat die vloeistof die verklaarde alkohol bevat, en as die verklaarde alkoholinhoud meer as 1% alkohol per volume is, dat die vloeistof drank is;
  - (b) meer as een houer as bewys gelewer word wat elkeen deel uitmaak van 'n 50  
voorraad of lot drank wat op dieselfde tyd op dieselfde plek aangetref is, en daar bewys word dat een of meer sulke houers drank bevat, dan is dit *prima facie*-bewys, dat al die houers drank bevat;
  - (c) 'n dokument as bewys gelewer word wat voorgee 'n afskrif van 'n lisensie te 55  
wees, is dit by die blote voorlegging daarvan *prima facie*-bewys van die lisensie of permit en word enige voorwaarde of endossement daarop of daaraan geheg geag 'n voorwaarde of endossement te wees wat kragtens hierdie Wet opgelê is;
  - (d) 'n verklaring of sertifikaat as bewys gelewer word wat voorgee deur 'n 55  
ontleder of chemikus in diens van die Regering van die Republiek of in diens

- van 'n universiteit of van 'n mediese navorsingsinstituut onderteken te wees, wat 'n ontleding gemaak het van 'n vloeistof of stof wat die onderwerp van die strafverrigtinge of vergadering is, is die verklaring of sertifikaat *prima facie*-bewys van die inhoud van die verklaring of sertifikaat; of
- (e) bewys gelewer word dat 'n lisensiehouer wat beskuldig word van 'n oortreding van artikel 54, versuim het om van 'n persoon onder die ouderdom van agttien (18) jaar óf—
- (i) sy of haar geldige identiteitsdokument;
  - (ii) sy of haar geldige bestuurslisensie; of
  - (iii) sy of haar geldige paspoort, te verkry, is sodanige bewys *prima facie*-bewys van die feit dat die lisensiehouer kennis gedra het van die feit dat die persoon onder die ouderdom van agttien (18) jaar was.

### Kennisgewings

- 86.** (1) Die Minister mag, behoudens artikel 41 van die Drankwet—
- (a) die inhoud van; en
  - (b) die wyse waarop,
- openbare kennisgewings op 'n gelisensieerde perseel vertoon moet word, voorskryf.
- (2) Versuim om 'n kennisgewing in subartikel (1) bedoel te vertoon, is 'n misdryf.

### Strawwe en verbeurdverklaring

- 87.** (1) Enige persoon wat aangekla word van 'n misdryf bedoel in:
- (a) artikels 32(3), 54, 55, 76(g) of 76(h) is by skuldigbevinding strafbaar met 'n boete van hoogstens R1 000 000,00 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar, of met sowel sodanige boete as sodanige tydperk van gevangenisstraf;
  - (b) artikel 49(8), 50(2), 51(9), 53(4), 58(3), 59(3), 76(e), 76(f), 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 as sodanige tydperk van gevangenisstraf;
  - (c) artikel 50(3), 57(3), 60(4), 65(2), 69(11), 76(b), 76(c) of 82(1) is by skuldigbevinding strafbaar met 'n boete van hoogstens R100 000,00 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande, of met sowel sodanige boete as sodanige tydperk van gevangenisstraf; of
  - (d) artikel 23(12), 56(5), 76(a), 76(d), 77, 78(1), 78(3), 79 of 86(2) is by 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 as sodanige tydperk van gevangenisstraf.
- (2) 'n Hof wat 'n persoon skuldig bevind het aan 'n misdryf in subartikel (1) bedoel, moet ten opsigte van 'n misdryf in paragraaf (a) van daardie subartikel bedoel, en mag ten opsigte van 'n misdryf in paragrawe (b), (c) of (d) van daardie subartikel bedoel, benewens oplegging van 'n straf, gelas dat enige item waarop beslag gelê is kragtens die Strafproseswet, aan die Staat verbeur word.
- (3) By betaling deur 'n persoon van 'n skulderkenningsboete kragtens artikel 57 van die Strafproseswet—
- (a) moet die hof, waar die betaling betrekking het op 'n aanklag van 'n oortreding van artikel 32(1), 54(1) tot (4), 55(1), 55(2), 76(h) of 76(i) van hierdie Wet, gelas dat enige item waarop beslag gelê is kragtens hierdie Wet of die Strafproseswet, aan die Staat verbeur word; of
  - (b) mag die hof, waar die betaling betrekking het op 'n aanklag van 'n oortreding van artikel 49(4) tot (6), 50(1), 51(1), 51(7), 52(9), 56(1), 56(4), 57(1), 57(2), 58(1), 59, 60(1) tot (3), 65(1), 69, 75, 77, 78(1), 78(2), 79, 80(1), 81(1), 82(1) of 86(2) van hierdie Wet, gelas dat enige item waarop beslag gelê is kragtens hierdie Wet of die Strafproseswet, aan die Staat verbeur word,
- waarna artikel 35 van die Strafproseswet met die nodige veranderings van toepassing is op enigiets wat kragtens hierdie artikel verbeur word.
- (4) Enige drank wat aan die Staat verbeur word kragtens hierdie artikel moet oor beskik word op die voorgeskrewe wyse.

## HOOFSTUK 13

## REGULASIES, OORGANGSBEPALINGS EN KORT TITEL

**Regulasies**

**88.** (1) Die Minister moet regulasies uitvaardig betreffende aangeleenthede wat 5  
krachtens hierdie Wet voorgeskryf moet word, en mag regulasies uitvaardig  
betreffende—

- (a) enige aangeleentheid wat krachtens hierdie Wet voorgeskryf mag word;
- (b) die kleinhandelverkoop en mikrovervaardiging van brandspiritus;
- (c) die vasstelling van die persentasie van elke hernuwingsfooi wat aan die fonds 10  
toegewys moet word krachtens artikel 31(3);
- (d) die beskikking oor drank wat aan die Staat verbeur word krachtens artikel  
87(2); of
- (e) enige aangeleentheid wat die Minister nodig of dienstig ag ten einde die  
oogmerke van hierdie Wet te bereik.

(2) 'n Regulasie wat krachtens hierdie artikel uitgevaardig is ten opsigte van fooie of 15  
geld wat betaal moet word, moet uitgevaardig word in oorleg met die Minister  
verantwoordelik vir finansies vir die Provinsie.

**Oorgangsbepalings**

**89.** (1) Die Drankraad, ingestel vir die Provinsie deur artikel 5 van die Drankwet, 20  
1989 (Wet 27 van 1989), bly voortbestaan en funksioneer onder die naam Wes-Kaapse  
Dranklisensieringstribunaal in ooreenstemming met die bepalinge van hierdie Wet asof  
dit ingestel is krachtens artikel 15(1) van hierdie Wet.

(2) Enige lisensie van die tipe hieronder gelys wat van krag was onmiddellik voor die 25  
datum van inwerkingtreding van hierdie Wet, word geag 'n lisensie vir die verkoop van  
drank vir verbruik op die gelisensieerde perseel te wees—

- (a) hoteldranklisensie;
- (b) restourantdranklisensie;
- (c) wynhuislisensie;
- (d) sorghumbierlisensie vir binneverbruik;
- (e) teaterdranklisensie; 30
- (f) klubdranklisensie; en
- (g) spesiale dranklisensie vir binneverbruik.

(3) 'n Lisensie van die tipe hieronder gelys wat van krag was onmiddellik voor die 35  
datum van inwerkingtreding van hierdie Wet, word geag 'n lisensie vir die verkoop van  
drank vir verbruik buite die gelisensieerde perseel te wees—

- (a) drankwinkellisensie;
- (b) kruidenierswynlisensie;
- (c) sorghumbierlisensie vir buiteverbruik;
- (d) wynboerlisensie;
- (e) spesiale dranklisensie vir buiteverbruik, wat nie die reg om drank te 40  
mikrovervaardig insluit nie; en
- (f) groothandeldranklisensie (publiek), goedgekeur krachtens die Drankwet, 1977  
(Wet 87 van 1977).

(4) Enige lisensie hieronder gelys wat van krag was onmiddellik voor die datum van 45  
inwerkingtreding van hierdie Wet en ten opsigte waarvan die volume drank wat in die  
voorafgaande twaalf (12) maande vervaardig is nie die drempelbeperking voorgeskryf  
krachtens artikel 4(10) van die Drankwet oorskry nie, word geag 'n lisensie vir die  
mikrovervaardiging en verkoop van drank vir verbruik buite die gelisensieerde perseel  
te wees—

- (a) groothandeldranklisensie; 50
- (b) produsentlisensie;
- (c) brouerslisensie;
- (d) sorghumbierbrouerslisensie, en
- (e) spesiale dranklisensie vir buiteverbruik, wat die reg om drank te mikro-  
vervaardig insluit. 55

(5) 'n Lisensie hieronder gelys, wat aan die houer daarvan die reg verleen om drank  
te verkoop vir verbruik buite die gelisensieerde perseel soos krachtens die Drankwet  
omgeskakel, wat van krag was onmiddellik voor die datum van inwerkingtreding van

hierdie Wet, mag op aansoek deur die lisensiehouer omgeskakel word in 'n lisensie vir verbruik buite die gelisensieerde perseel—

- (a) groothandeldranklisensie;
- (b) produsentlisensie;
- (c) brouerslisensie; en 5
- (d) sorghumbierbrouerslisensie.

(6) 'n Kennisgewing uitgereik kragtens artikel 33 van die Drankwet, 1989 (Wet 27 van 1989), en van krag onmiddellik voor die inwerkingtreding van hierdie Wet, word geag voorwaardes te wees wat kragtens artikel 44 van hierdie Wet skriftelik uiteengesit is. 10

(7) Ondanks die herroeping van enige wet deur hierdie Wet, moet enige aansoek wat voor die inwerkingtreding van hierdie Wet gedoen is, beskou en afgehandel word as in ooreenstemming met die bepalings van die wet kragtens waarvan dit ingedien is.

(8) Die bepalings van subartikels (2) en (3) is ook van toepassing op lisensies wat ná die datum van inwerkingtreding van hierdie Wet kragtens die bepalings van die Drankwet, 1989, verleen is. 15

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

(10) 'n Lisensie uitgereik voor die inwerkingtreding van hierdie Wet vir 'n perseel waarop drank verkoop mag word vir verbruik op of buite die gelisensieerde perseel wat sake doen buite die handelsure in artikel 59(2) vermeld, is na twaalf (12) maande na die datum van inwerkingtreding van hierdie Wet onderworpe aan artikel 59. 25

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

(12) Enige voorwaarde opgelê vir 'n lisensie kragtens die bepalings van die Drankwet of enige wet wat daardeur herroep word, wat nie strydig met die bepalings van hierdie Wet is nie, word geag 'n voorwaarde te wees wat kragtens hierdie Wet opgelê is. 30

(13) 'n Lisensiehouer van 'n perseel wat voor die inwerkingtreding van hierdie Wet gelisensieer is, soos in artikel 49(5) en (6) bedoel, moet binne agttien (18) maande na die datum van inwerkingtreding van hierdie Wet voldoen aan die voorwaardes in daardie subartikels bedoel. 35

(14) (a) Die Dranklisensieëringstribunaal mag, op aansoek gedoen binne twaalf (12) maande vanaf die datum van inwerkingtreding van hierdie Wet, deur 'n persoon wat vir 'n lisensie aansoek gedoen het, verklaar dat die persoon en perseel vrygestel is van die toepassing van artikel 32 van hierdie Wet, indien hy op grond van die inligting voor hom tevrede is dat— 40

- (i) 'n aansoek kragtens artikel 36 gedoen is om 'n lisensie vir die betrokke perseel en persoon;
- (ii) die aansoek in subparagraaf (i) bedoel, voldoen aan die formele vereistes;
- (iii) die persoon sonder 'n dranklisensie handel gedryf het op die datum van inwerkingtreding van hierdie Wet; 45
- (iv) die voorgestelde perseel geleë is in 'n gebied wat—
  - (aa) aangewys is as 'n nie-blanke gebied kragtens die Wet op die Ontwikkeling van Swart Gemeenskappe, 1984 (Wet 4 van 1984) of die Groepsgebiedewet, 1950 (Wet 41 van 1950); of 50
  - (bb) onderworpe is aan die Wet op Minder Formele Dorpstigting, 1991 (Wet 113 van 1991);
- (v) die persoon 'n lid is van 'n gemeenskap waarop daardie Wette van toepassing is of was;
- (vi) die persoon op die betrokke erf woon; 55
- (vii) die oorheersende gebruik van die betrokke perseel residensieel sal wees;
- (viii) die persoon voorheen benadeel was weens die wetgewing waarna in subparagraaf (iii) verwys word;
- (ix) die persoon nie die nodige goedkeuring van die munisipaliteit het om die betrokke perseel te gebruik vir die doel wat deur die lisensie gemagtig sal word nie; en 60
- (x) daar niks anders is wat die toestaan van 'n lisensie aan daardie persoon sou verhinder nie.

- (b) 'n Vrystelling kragtens paragraaf (a) mag verleen word behoudens die voorwaardes en beperkings wat die Dranklisensieringstribunaal mag oplê.
- (c) 'n Vrystelling kragtens paragraaf (a)—
- (i) tree in werking op die datum gespesifiseer in die vrystellingsertifikaat wat deur die Raad uitgereik word; en 5
  - (ii) hou op om van krag te wees—
    - (aa) by verstryking van die tydperk van vier-en-twintig (24) maande na die datum in subparagraaf (i) bedoel;
    - (bb) by uitreiking van die lisensie, die weiering van die aansoek in paragraaf (a)(i) bedoel, of op die datum in artikels 42(6) en 46(5) bedoel ten opsigte van die perseel waarop die sertifikaat betrekking het; of 10
    - (cc) by die afstanddoening of kansellering van die vrystelling, watter een ook al eerste gebeur.
- (d) Hierdie Wet is van toepassing op die houer van 'n vrystelling kragtens paragraaf (a) asof daardie persoon die houer is van 'n lisensie kragtens artikel 31. 15
- (e) Die Dranklisensieringstribunaal mag te eniger tyd die vrystelling kragtens paragraaf (a) wysig of intrek of die voorwaardes of beperkings kragtens paragraaf (b) opgelê, wysig.

### **Herroepingsbepaling**

**90.** Die Drankwet, 1989 (Wet 27 van 1989), word herroep vir soverre dit op die Provinsie betrekking het. 20

### **Kort titel en inwerkingtreding**

**91.** Hierdie Wet heet die Wes-Kaapse Drankwet, 2008, en tree in werking op 'n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

## VERDUIDELIKENDE MEMORANDUM

### (i) Inleiding en redes vir die Wetsontwerp

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

Die Drankwet, 2003, het die Drankwet, 1989 (Wet 27 van 1989) ("die Drankwet, 1989"), wat tot die herroeping daarvan al drie vlakke van die bedryf gereguleer het, herroep, maar stipuleer dat daardie Wet van krag bly in provinsies wat nie hul eie provinsiale drankwetgewing uitgevaardig het nie, totdat hulle dit doen.

Daar word algemeen aanvaar dat dit nodig is om die drankbedryf te reguleer vanweë die potensieel skadelike aard van die produk. Verskeie beheermaatreëls is in die verlede op die bedryf toegepas in ooreenstemming met die maatskaplike en politieke oogmerke van die regering van die dag. 'n Groot deel van die drankkleinhandelbedryf is egter ongereguleerd as gevolg van historiese redes, veral die uitsluiting van geskiedkundig benadeelde persone uit die formele drankhandel. Dit het gelei tot die vestiging van 'n groot aantal ongelisensieerde afsetpunte in tradisioneel nie-wit woongebiede. Hierdie afsetpunte voldoen nie aan ruimtelike ordening- en ander beheermaatreëls nie. Drank word verder vereenselwig met die voorkoms van misdaad in beide die gereguleerde en ongereguleerde sektore van die bedryf en maatreëls wat in die verlede toegepas is om dit aan te spreek, is met gemengde welslae begroet.

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

Dit sal doelmatig wees om op hierdie stadium 'n kort oorsig van die wetgewende geskiedenis van die wetsontwerp te verskaf.

Die Wes-Kaapse provinsiale regering het gedurende 2003 met die opstel van die provinsiale drankwetgewing begin met die uitreiking van die Groenskrif op drank. Dit het in 2005 gelei tot die aanvaarding van die beleidsdokument "A Liquor Policy for the Western Cape" (die Drankwitskrif) deur die Provinsiale Kabinet.

Die Wes-Kaapse Drankwetsontwerp [W 8—2005] is op 3 Februarie 2006 vir kommentaar gepubliseer. Sestien stelle skriftelike kommentaar, wat meer as 550 bladsye beslaan het, is voor die einde van die periode vir kommentaar op 31 Maart 2006 ontvang. Die verantwoordelike staande komitee is breedvoerig oor die kommentaar toegelig en het besluit om mondelinge getuienis aan te hoor tydens 'n reeks openbare verhore, wat gedurende Januarie tot Maart 2007 gehou is. Die wetsontwerp is dienooreenkomstig in die Wetgewer ter tafel gelê en is op 27 Maart 2007 goedgekeur.

Item 2(2) van Skedule 1 tot die Drankwet, 2003, bepaal dat 'n konsultasieproses (ten opsigte van die wetsontwerp aan sekere maatstawwe wat in die nasionale wetgewing gestel word) tussen die Premier en die (nasionale) Minister van Handel en Nywerheid moet plaasvind nadat die provinsiale wetgewing uitgevaardig is (dit wil sê, nadat die Wetgewer dit goedgekeur het en dit deur die Premier geteken is). Die Departement van Handel en Nywerheid het egter besef dat die bovermelde bepaling problematies is en gedurende 2006 in skrywes aan die provinsiale regerings voorgestel dat die konsultasieproses vóór goedkeuring van die wetgewing van stapel gestuur en afgehandel moet word. In die geval van die onderhawige Wetsontwerp kon die konsultasieproses eers na die goeikeuring van die Wetsontwerp 'n aanvang neem, aangesien die Wetsontwerp op 14 Maart 2007 gesertifiseer is en onmiddellik daarna deur die staande komitee ingedien is vir goedkeuring deur die Wetgewer, wat soos vroeër vermeld, op 27 Maart 2007 plaasgevind het.

Die konsultasieproses het langer geneem as wat voorsien is, as gevolg van sekere aspekte van die wetgewing wat aansienlike onderhandeling geverg het ten einde geskik te word. Ten opsigte van ander aspekte moes wysigings aangebring word.

Dit was gevolglik nie moontlik om die gemelde prosesse af te handel binne die 45 dae waarbinne die Premier kragtens artikel 31(2) van die Wes-Kaapse Grondwet 'n wetsontwerp wat deur die Wetgewer goedgekeur is, moet onderteken nie. Dit is om



hierdie rede dat die voorgestelde wetgewing nou weer ter tafel gelê word as die Drankwetsontwerp, 2008, met die nodige wysigings daaraan.

Waarskynlik die grootste enkele wysiging aan die wetgewing het betrekking op die struktuur van die Drankraad. Terwyl die vorige wetsontwerp voorsiening gemaak het vir 'n Raad wat beide korporatiewe bestuursbevoegdhede en -funksies enersyds en juridiese beslissingsbevoegdhede andersyds sou hê en moes uitvoer, maak hierdie wetsontwerp voorsiening vir 'n deelydse Raad wat, in samewerking met die Hoof Uitvoerende Beampte, die eersgenoemde bevoegdhede en funksies sal uitvoer, terwyl die nuutgeskepte Dranklisensieringstribunaal uitsluitlik vir die oorweging van aansoeke om dranklisensies, en ander verwante aansoeke, verantwoordelik sal wees.

Ander wysigings het betrekking op verfyning en vaartbelyning van prosedures wat betrekking het op die verwittiging van lede van die publiek, en veral belanghebbendes, van die feit dat 'n aansoek om 'n dranklisensie by die Drankraad aanhangig gemaak is.

### **(ii) Maatskaplike impak van die Wetsontwerp**

Die Wetsontwerp maak voorsiening vir die Wes-Kaapse Drankraad as 'n onafhanklike statutêre liggaam in ooreenstemming met die bepalings van die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999), met voldoende hulpbronne om die administrasie van 'n lisensieringstelsel, die afdwinging van beheermaatreëls op en monitering van gelisensieërde persele, die verpligte opleiding van verkopers van drank, asook ander opvoedingsinsette ten einde die skadelike impak van die drankbedryf te verminder, te verseker. Die Wetsontwerp maak verder voorsiening vir verhoogde openbare bewustheid van en deelname aan die lisensieringsproses, asook maatreëls om om te sien na klagtes oor gelisensieerde persele. Voorsiening word gemaak vir die deelname deur plaaslike owerhede aan die lisensieringsproses: Die Drankraad ("die Raad") sal kragtens hierdie wetgewing die betrokke munisipaliteit moet verwittig van enige aansoek om 'n dranklisensie wat ten opsigte van 'n perseel in daardie munisipaliteit se gebied aanhangig gemaak word, en dit die geleentheid gee om op die aansoek en soneringsaspekte daaromtrent kommentaar te lewer, en die kommentaar te verkry van die wyksraadslid in wie se gebied die perseel geleë is. Daar word ook voorsiening gemaak 'n Appèltribunaal om hersienings van en appèlle teen besluite van die Dranklisensieringstribunaal te oorweeg. Die afdwinging en administrasie van die Drankwetsontwerp word verseker deur die voortsetting van die bestaande stelsel van aangewese polisiebeamptes (as aangewese drankbeamptes herbenoem in die Wetsontwerp) binne die rangstruktuur van die Suid Afrikaanse Polisiediens in die Wes-Kaap, met verbeterde bevoegdhede en funksies. Verbeterde beheermaatreëls, misdrywe en strawwe is ingesluit ten einde die gelisensieerde bedryf beter te reguleer en bedrywighede strydig met die Wetsontwerp te bekamp.

Die Wetsontwerp maak ook voorsiening vir minder kategorieë van lisensies. Dit sluit in lisensies vir mikro-vervaardiging en verkoop van drank vir verbruik op en buite die perseel; verkoop vir verbruik op die perseel; verkoop vir verbruik buite die perseel; in buitengewone omstandighede, verkoop vir verbruik beide op en buite die perseel, en dranklisensies vir spesiale geleenthede. Die reg van kleinhandelsvoedselwinkels om slegs in tafelwyn handel te dryf, word behou. Voorsiening word gemaak vir die oplegging van standaardlisensievoorwaardes, asook spesifieke lisensievoorwaardes vir elke lisensie. Die gronde van oorweging van lisensies deur die Dranklisensieringstribunaal word uiteengesit en sluit grondgebruiksregte in as 'n voorvereiste vir die uitreiking van lisensies.

Maatreëls vir die verpligte opleiding van die drankkleinhandelaars het ten doel om te verseker dat hulle verantwoordelik optree. Voorsiening word gemaak vir die verhoging van openbare bewustheid van die gevare verbonde aan die misbruik van drank by wyse van verpligte kennisgewings en bewustheidsveldtogte. Die Wetsontwerp maak voorsiening vir die stigting van 'n toegewyde fonds om die negatiewe maatskaplike gevolge van die misbruik van drank teen te werk en verkopers en verbruikers van drank in hierdie verband op te voed.

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

Die Wetsontwerp maak voorsiening vir die vasstelling van aansoekfooie, lisensiefooie, hernuwingsfooie en boetes deur die Minister. Die bestaande fooie is laas in 1992 hersien. Die inkomste wat uit die lisensiestelsel voortspruit, sal Provinsiale Inkomstefonds toeval. Die openbare liggaam en sy strukture en funksies wat deur die

Wetsontwerp geskep word, sal befonds word deur gelde wat deur die Provinsiale Parlement toegewys word, asook enige ander gelde wat die Raad toeval uit enige ander bron wat deur die verantwoordelike Minister goedgekeur is, na oorleg met die Minister verantwoordelik vir finansies in die Provinsie.

Die fonds vir die bekamping van die negatiewe maatskaplike gevolge van die verkoop en verbruik van drank waarna hierbo verwys word, sal befonds word by wyse van 'n persentasie (wat deur die verantwoordelike Minister in oorleg met die Minister verantwoordelik vir finansies bepaal sal word) van elke hernuwingsfooi wat aan die fonds toegewys moet word.

**(iv) Klousule per klousule verduideliking**

INHOUD

HOOFSTUK 1

INTERPRETASIE

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

HOOFSTUK 2

WES-KAAPSE DRANKRAAD

- Klousule 2 Instelling van Wes-Kaapse Drankraad—Hierdie klousule maak voorsiening die instelling van die Wes-Kaapse Drankraad as 'n regs persoon.
- Klousule 3 Samestelling van Raad—Daar word in hierdie klousule voorsiening gemaak vir die aantal lede van die Drankraad, die rol van die Provinsiale Kabinet, staande komitee en die Minister in hulle aanstelling, die aanwysing van die Voorsitter en Ondervoorsitter en die posisie van die Hoof Uitvoerende Beampte as 'n *ex officio* lid.
- Klousule 4 Geskiktheid vir aanstelling as lid of werknemer van Raad—Hierdie klousule bepaal die minimum geskiktheidskriteria vir aanstelling as 'n lid of werknemer van die Raad.
- Klousule 5 Diskwalifikasie van aanstelling as lid of werknemer van Raad—Hierdie klousule sit die gronde uiteen waarop persone gediskwalifiseer word om as lede of werknemers van die Raad aangestel te word, aan te bly of op te tree.
- Klousule 6 Ampstermyn—Die ampstermyn van Drankraadlede is vier jaar en hulle is herkiesbaar aan die einde van hulle ampstermyn.
- Klousule 7 Beëindiging van lidmaatskap van Raad—Hierdie klousule sit die gevalle uiteen waarin lidmaatskap van die Raad tot 'n einde kom.
- Klousule 8 Vakatures—Bepaal dat die Provinsiale Kabinet 'n nuwe Raadslid moet aanstel wanneer 'n vakature ontstaan.
- Klousule 9 Bevoegdheids- en funksies van Raad—Hierdie klousule sit al die bevoegdheids- en funksies van die Raad uiteen, insluitende die bevoegdheid om sommige van daardie bevoegdhede te deleger. Die Raad se bevoegdhede sluit onder andere in dié wat betrekking het op die ontvangs en verwerking van lisensie-aansoeke en die uitreiking van lisensies na toestaan van aansoeke deur die Dranklisensieëringstribunaal, en korporatiewe funksies soos verkryging, behoud, huur, verhuring, en vervreemding van eiendom, oopmaak van bankrekenings, aanstel en afdank van personeel; ontvangs, besteding en algemene administrasie van fondse, aangaan van ooreenkomste en vasstelling van fooie en heffings.
- Klousule 10 Delegasie—Hierdie klousule magtig die Raad om enige van sy bevoegdhede, behalwe daardie wat in sub-klousule (7) gespesifiseer word, aan die Hoof Uitvoerende Beampte te deleger. Dit bepaal verder dat die Raad sodanige delegasie onderhewig mag stel aan enige bedinge, voorwaardes en beperkinge soos die Raad mag bepaal, en dat die Hoof

- Uitvoerende Beampte enige van die bevoegdhede of funksies wat aan hom of haar gedelegeer is, mag sub-delegeer.
- Klousule 11 Koöptering van persone—Die Raad mag geskikte persone koöpteer, wat nie geregtig sal wees om by Raadsvergaderings te stem nie en wie se vergoeding deur die Raad bepaal sal word.
- Klousule 12 Vertroulikheid—Hierdie klousule bepaal dat lede en werknemers van die Raad nie enige inligting wat op grond van sy of haar aanstelling op of indiensneming deur die Raad tot sy of haar kennis gekom het, mag openbaar maak nie, behalwe in die omstandighede soos in subklousule (2) of klousule 36(2) uiteengesit.
- Klousule 13 Vergaderings van Raad—Hierdie klousule bepaal die minimum aantal kere wat die Raad elke jaar moet vergader; maak voorsiening vir die Voorsitter om spesiale vergaderings te belê en vir die Minister om prosedure vir Raadsvergaderings voor te skryf; bepaal die kworum en reguleer die besluitnemingsprosesse in Raadsvergaderings.
- Klousule 14 Notule—Notules moet gehou en by die Raad se kantore bewaar word.

### HOOFSTUK 3

#### WES-KAAPSE DRANKLISENSIËRINGSTRIBUNAAL EN APPËLTRIBUNAAL

- Klousule 15 Instelling van Dranklisensiëringstribunaal—Hierdie klousule stel die Dranklisensiëringstribunaal (“Tribunaal” in hierdie Memorandum, behalwe in opskrifte) in en bepaal dat die Raad sal toesig hou oor die Tribunaal maar dat dit nie enige besluit wat die Tribunaal kragtens artikel 20 geneem het, mag tersyde stel of wysig nie.
- Klousule 16 Samestelling van Dranklisensiëringstribunaal en benoeming en aanstelling van lede van Dranklisensiëringstribunaal—Die samestelling van die Tribunaal en kwalifikasies wat van lede van die Tribunaal vereis word, word in hierdie klousule uiteengesit. Dit maak verder daarvoor voorsiening gemaak dat lede van die Tribunaal onder eed of bevestiging moet verklaar dat hulle nie daarvan gediskwalifiseer is om as lid te dien nie en dat die Raad, in oorleg met die Minister, te eniger tyd kan vra vir bewys van die voortgesette geskiktheid van enige lid van die Tribunaal.
- Klousule 17 Diskwalifikasie van aanstelling as lid van Dranklisensiëringstribunaal—Hierdie klousule bepaal watter persone gediskwalifiseer word om aangestel te word, voort te gaan of op te tree as lede van die Tribunaal.
- Klousule 18 Ampstermyn—Lede van die Dranklisensiëringstribunaal word vir ’n tydperk van vyf jaar aangestel, en die Raad moet enige vakature wat mag ontstaan, vul.
- Klousule 19 Beëindiging van lidmaatskap van Dranklisensiëringstribunaal—Hierdie klousule bepaal wanneer ’n vakature op die Tribunaal ontstaan: Bedanking deur ’n lid; wanneer ’n lid nie meer kwalifiseer nie; wanneer ’n lid sonder die vooraf skriftelike verlof van die Voorsittende Beampte afwesig is van drie of meer opeenvolgende vergaderings; wanneer ’n lid se ampstermyn verstryk; beëindiging van ’n lid se ampstermyn deur die Provinsiale Kabinet of waar ’n lid nie meer binne die Provinsie woon nie.
- Klousule 20 Bevoegdhede en funksies van Dranklisensiëringstribunaal—Hierdie klousule sit die aangeleenthede uiteen wat die Tribunaal by sy vergaderings mag oorweeg en die stappe wat dit mag neem ten opsigte van daardie aangeleenthede. Verder magtig dit die Tribunaal om persone te koöpteer, welke persone nie stemreg sal hê nie en wie se vergoeding deur die Raad bepaal sal word.
- Klousule 21 Vergaderings en besluite van Dranklisensiëringstribunaal—Hierdie klousule bepaal dat die Voorsittende Beampte die tyd en plek vir die hou van vergaderings moet bepaal. Dit bepaal ook die kworum vas as vier lede, insluitende die Voorsittende Beampte of Adjunk Voorsittende Beampte, en dat die Voorsittende Beampte in die geval van ’n staking van stemme ’n beslissende stem moet uitbring.
- Klousule 22 Onttrekking van lid met botsende belang—Die gronde waarop ’n lid homself moet onttrek of deur die Voorsittende Beampte onttrek moet word, word in hierdie klousule uiteengesit.

- Klousule 23 Verrigtinge van Dranklisensieringstribunaal—Hierdie klousule maak voorsiening vir die Voorsittende Beampte om prosedure vir vergaderings van die Tribunaal te bepaal en om persone wat benadeel kan word in 'n aangeleentheid wat deur die Tribunaal oorweeg word, in kennis te stel om teenwoordig te wees op die vergadering waar die aangeleentheid oorweeg gaan word. Dit bevat ook bepalings oor die aanbied van getuienis voor die Tribunaal en die toeganklikheid van die Tribunaalvergaderings vir lede van die publiek, en maak nie-bywoning deur 'n persoon wat behoorlik gedagvaar is, 'n misdryf.
- Klousule 24 Komitees van Dranklisensieringstribunaal—Daar word voorsiening gemaak vir die aanstel van komitees van die Tribunaal deur die Voorsittende Beampte, hulle grootte, prosedure en bevoegdheid om gedelegeerde funksies uit te voer.
- Klousule 25 Appèltribunaal—'n Appèltribunaal word ingestel en die kwalifikasies wat vir die lid se aanstelling vereis word, word bepaal.

#### HOOFSTUK 4

##### ADMINISTRASIE, BESOLDIGING EN FINANSIËLE BESTUUR

- Klousule 26 Administrasie van Raad, Dranklisensieringstribunaal en Appèltribunaal—Hierdie klousule bepaal dat die Raad 'n Hoof Uitvoerende Beampte, en 'n sekretaris en die personeel van die Dranklisensieringstribunaal moet aanstel. Dit verplig die Raad om 'n beleid vir menslike hulpbronne en besoldiging van personeel, asook 'n gedragskode wat op die Raad, Dranklisensieringstribunaal en Appèltribunaal van toepassing is, daar te stel. Dit maak ook voorsiening vir die hou en bewaring van notules van verrigtinge van die Dranklisensieringstribunaal en vir die Voorsittende Beampte om te gelas dat 'n gedeelte of die geheel van die rekord van verrigtinge van die Dranklisensieringstribunaal nie openbaar gemaak mag word nie, behoudens die bepalings van die Wet op die Bevordering van Toegang tot Inligting, 2000.
- Klousule 27 Besoldiging van Hoof Uitvoerende Beampte, lede van Raad, Dranklisensieringstribunaal en Appèltribunaal—Die Minister, in oorleg met die Minister verantwoordelik vir finansies in die Provinsie, bepaal die besoldiging van hierdie persone.
- Klousule 28 Befondsing en finansiële bestuur van Raad—Hierdie klousule bepaal watter gelde die Raad sal toeval en maak voorsiening vir die prosesse om aanspreeklikheid te verseker.
- Klousule 29 Oudit- en Jaarverslae—Hierdie klousule bepaal dat die Ouditeur-Generaal die finansiële state van die Raad moet oudit, en dat die Raad 'n Jaarverslag, waarvan die minimum inhoud uiteengesit word, moet indien.
- Klousule 30 Inkomste wat die Provinsiale Inkomstefonds, Raad of munisipaliteite toeval—Hierdie klousule bepaal dat sekere fooie, strawwe, boetes en opbrengs uit die verkoop van verbeurdverklaarde artikels die Provinsiale Inkomstefonds toeval, en sekere fooie die Raad en munisipaliteite onderskeidelik.

#### HOOFSTUK 5

##### INSTELLING VAN MAATSKAPLIKE EN OPVOEDINGSFONDS

- Klousule 31 Instelling van fonds—Hierdie klousule verplig die Hoof Uitvoerende Beampte om 'n fonds te stig vir die bestryding van die negatiewe maatskaplike gevolge van drankmisbruik en om beide lede van die publiek en persone wat betrokke is by die verkoop en verskaffing van drank te onderrig in die verantwoordelike verkoop, verskaffing en verbruik daarvan.

## HOOFSTUK 6

## LISENSIËRING

- Klousule 32 Lisensies—Hierdie klousule bepaal dat niemand drank mag mikro-vervaardig of verkoop nie tensy daartoe gemagtig ingevolge 'n lisensie uitgereik kragtens hierdie Wet of die Drankwet, 1989.
- Klousule 33 Kategorieë van lisensies—Hierdie klousule maak voorsiening vir vyf kategorieë van dranklisensies.
- Klousule 34 Maatstawwe vir toestaan van lisensies—Hierdie klousule bepaal die faktore wat in ag geneem moet word by die oorweging van aansoeke om dranklisensies.
- Klousule 35 Diskwalifikasie van aansoekers—Bepaal dat sommige persone daarvan gediskwalifiseer word om aansoek te doen om 'n dranklisensie.
- Klousule 36 Aansoekprosedure—Hierdie klousule bepaal dat aansoeke om dranklisensies by die Raad ingedien moet word, asook watter dokumente ter ondersteuning daarvan ingedien moet word. Verder verplig dit die Raad om die aansoeker te verwittig dat 'n aansoek onvolledig of gebrekkig is en om aansoeke wat aan formele vereistes voldoen, aan die betrokke munisipaliteit te stuur.
- Klousule 37 Kennisgewing van aansoek—Hierdie klousule bepaal dat die Raad in die *Provinsiale Koerant* en gemeenskapskoerante moet kennis gee van 'n aansoek en ook die aangewese drankoffisier en munisipaliteit moet verwittig. Daar word verder uiteengesit aan wie die aangewese drankoffisier en die munisipaliteit kennis moet gee van die aansoek.
- Klousule 38 Aansoeke ter insae by Raad—Hierdie klousule verplig die Raad om toegang tot 'n aansoek te verleen en teen 'n fooi afskrifte daarvan te verskaf gedurende 'n sekere tydperk na indiening.
- Klousule 39 Verdoë—Voorsiening word gemaak vir die indiening van verdoë deur belanghebbendes met betrekking tot aansoeke, asook die gepaardgaande prosedure.
- Klousule 40 Aanstuur van dokumente—Hier word voorsiening gemaak vir die aanstuur van aansoeke en verwante dokumente aan die Raad deur die betrokke munisipaliteit.
- Klousule 41 Oorweging van aansoeke—Hierdie klousule maak voorsiening vir die oorweging van aansoeke deur die Dranklisensiëringstribunaal en vir die gepaardgaande prosedure.
- Klousule 42 Voorwaardelike toestaan van lisensie—Hierdie klousule maak daarvoor voorsiening dat die Dranklisensiëringstribunaal 'n lisensie voorwaardelik mag toestaan, behoudens voldoening, binne 'n vasgestelde tydperk, aan sekere voorwaardes wat ten tyde van die toestaan opgelê word. Dit maak verder voorsiening vir die verlenging van die gemelde tydperk deur die Voorsittende Beampte.
- Klousule 43 Reg om perseel te gebruik—Hierdie klousule magtig die Dranklisensiëringstribunaal om te gelas dat 'n lisensie wat voorwaardelik toegestaan is, nie uitgereik mag word nie totdat die lisensiehouer die reg het om die perseel te gebruik vir die doel wat in die lisensie gemagtig sal word.
- Klousule 44 Onvolledige perseel—Hierdie klousule stel die Dranklisensiëringstribunaal in staat om 'n lisensie voorwaardelik goed te keur ten opsigte van 'n perseel wat nog nie opgerig is nie, of 'n perseel wat strukturele verandering, aanbouing of verbouing vereis om dit geskik te maak vir die doel waarvoor dit kragtens die lisensie gebruik sal word.
- Klousule 45 Onderrig en opleiding—Die Dranklisensiëringstribunaal mag 'n lisensie voorwaardelik toestaan en gelas dat dit nie uitgereik mag word nie totdat die aansoeker of 'n werknemer of werknemers onderrig ondergaan het soos deur die Tribunaal vereis.
- Klousule 46 Uitreik van lisensie—Hierdie klousule verplig die Raad om aansoekers te verwittig dat hulle aansoeke toegestaan is en dat hulle die toepaslike fooi binne 60 dae moet betaal. Dit maak verder daarvoor voorsiening vir 'n grasietydperk van 60 dae waarbinne die aansoeker mag aansoek doen om kondonasië vir nie-betaling van die lisensiefooie, en dat 'n aansoeker by die toestaan van die laasgenoemde aansoek, die lisensiefooie mag betaal tesame met 'n boete van 100% van die lisensiefooie.



- Klousule 47 Dood of onbevoegdheid van aansoeker—Hierdie klousule maak voorsiening vir die voortsetting van aansoeke na die afsterwe, sekwestrasie of onbevoegdheid van die aansoeker, of waar die aansoeker 'n maatskappy, trust of korporasie is, gelikwider word, voor die finale oorweging van die aansoek.
- Klousule 48 Tydelike dranklisensies en dranklisensies vir spesiale geleenthede—Hierdie klousule magtig die Voorsittende Beampte om op aansoek deur 'n lisensiehouer, 'n tydelike lisensie toe te staan vir gebruik van net daardie lisensiehouer toe te staan, en net ten opsigte van lisensies vir die verkoop en verbruik van drank op die gelisensieerde perseel. Verder magtig dit die Voorsittende Beampte om, op aansoek deur 'n lid van 'n geslote lys van aansoekers, dranklisensies vir spesiale geleenthede toe te staan vir 'n tydperk wat nie die duur van die spesiale geleentheid oorskry nie.

## HOOFSTUK 7

### VOORWAARDES VIR LISENSIES

- Klousule 49 Standaardlisensievoorwaardes—Hierdie klousule stel die vereiste dat drank slegs vir verbruik op of buite die gelisensieerde perseel verkoop mag word in ooreenstemming met die toepaslike lisensiekategorie en maak voorsiening vir die reg van kleinhandelvoedselwinkels om tafelwyn vir verbruik buite die perseel te verkoop. Dit bepaal verder dat drank in 'n kleinhandelvoedselwinkel slegs verkoop mag word van 'n aangewese gebied wat op tye wanneer drank nie verkoop mag word nie, gesluit kan word. Hierdie vereiste geld ook die area waar drank verkoop word op persele wat gelisensieer is vir die verbruik van drank op die gelisensieerde perseel.
- Klousule 50 Aflewerings—Die vereistes vir die aflewering van drank word in hierdie klousule voorgeskryf.
- Klousule 51 Finansiële belange en verhuring van gelisensieerde perseel—Hierdie klousule bepaal dat die lisensiehouer nie sonder die voorafverkreë toestemming van die Voorsittende Beampte, 'n finansiële belang van meer as 5% in die gelisensieerde besigheid mag oordra nie. 'n Lisensiehouer mag ook nie die lisensie aan iemand anders verhuur nie, behalwe 'n lisensie wat die reg tot mikro-vervaardiging insluit.
- Klousule 52 Bestuur—Die klousule skryf die prosedure en vereistes voor ten einde bevredigende bestuur van gelisensieerde persele te verseker, deur natuurlike persone wat aan vasgestelde standaarde voldoen.
- Klousule 53 Veranderings aan gelisensieerde persele of van aard van besigheid—Veranderings aan die gelisensieerde perseel of van die aard van die besigheid benodig die toestemming van die Voorsittende Beampte.
- Klousule 54 Kinders—Hierdie klousule bepaal dat drank nie verkoop mag word aan 'n kind ('n persoon onder die ouderdom van 18 jaar) of aan 'n kind gegee of verskaf mag word nie, behalwe in onbeduidende hoeveelhede in gespesifiseerde omstandighede. 'n Kind mag ook nie toegelaat word in 'n beperkte gebied van 'n gelisensieerde perseel nie, en mag nie enigiemand oor sy of haar ouderdom mislei ten einde drank te verkry of toegang tot 'n beperkte gebied van 'n gelisensieerde perseel te verky nie.
- Klousule 55 Werkgewers en werknemers—Die verhouding tussen werkgewer en werknemer aangaande die verskaffing van drank aan die werknemer word deur hierdie klousule gereguleer.
- Klousule 56 Toegang tot gelisensieerde persele—Hierdie klousule reguleer die toegang tot gelisensieerde persele deur persone onder die ouderdom van agttien jaar.
- Klousule 57 Berging van drank—Die klousule reguleer berging van drank deur lisensiehouers.
- Klousule 58 Plek van verkoop—Hierdie klousule bepaal die plek van verkoop van drank deur lisensiehouers.
- Klousule 59 Handelseure—Hierdie bepaal dat drank slegs verkoop mag word op dae en gedurende handelseure soos deur die Dranklisensieringstribunaal bepaal en stel die maksimum handelseure vas.



- Klousule 60 Hoeveelheid drank en hou van rekords—Hierdie klousule skryf die rekords van drankverkope voor wat deur 'n lisensiehouer bygehou moet word, maak voorsiening vir die vasstelling van 'n maksimum hoeveelheid drank wat op 'n enkele dag deur 'n lisensiehouer aan 'n enkele persoon verkoop mag word en verbied die besit van meer as 'n voorgeskrewe hoeveelheid drank deur 'n ongelisensieerde persoon.
- Klousule 61 Verbode middels—Hierdie klousule bepaal dat 'n persoon nie enige stof onder die naam van enige drank mag mikro-vervaardig, verkoop of verskaf nie as daardie stof nie drank is soos in die wetsontwerp gedefinieer nie, of ondrinkbaar is, of 'n ondrinkbare stof daarby gevoeg is.

## HOOFSTUK 8

### GELDIGHEID EN HERNUWING VAN LISENSIES

- Klousule 62 Geldigheid van lisensies—Die tydperk van geldigheid van lisensies word in hierdie klousule bepaal. Dit maak verder voorsiening vir lisensies wat verval het om weer geldig te word behoudens die betaling van bepaalde boetes en vir die opskorting van lisensies ten opsigte van geabandonneerde persele.
- Klousule 63 Outomatiese hernuwing van lisensies—Hierdie klousule maak voorsiening vir die outomatiese hernuwing van lisensies en vir die gepaardgaande prosedure, asook vir 'n kondonasiëprosedure waar die lisensie verval het weens nie-hernuwing.
- Klousule 64 Aansoeke om hernuwing van lisensies—Hierdie klousule maak voorsiening vir gevalle waar outomatiese hernuwing nie plaasvind nie en maak voorsiening vir aansoeke om hernuwing van sulke lisensies.

## HOOFSTUK 9

### VERVREEMDING, OORDRAG EN VERWYDERING VAN LISENSIES

- Klousule 65 Vervreemding en oordrag van lisensies—Hierdie klousule vereis dat 'n lisensiehouer wat sy of haar gelisensieerde besigheid vervreem het, binne 30 dae die Raad verwittig en dat die koper van 'n gelisensieerde besigheid by die Voorsittende Beampte aansoek doen om die besigheid vir 'n maksimum, maar verlengbare, tydperk van 6 maande te bedryf hangende die oordrag van die lisensie aan daardie koper. Voorts word die prosedure vir aansoek om oordrag en afhandeling daarvan uiteengesit.
- Klousule 66 Verwydering van lisensies—Hierdie klousule sit die prosedure uiteen om aansoek te doen om die verwydering van lisensies vanaf die gelisensieerde perseel na 'n ander perseel wat in die Provinsie geleë is.
- Klousule 67 Abandonering van perseel en dood of onbekwaamheid van lisensiehouer—Hierdie klousule voorsien maatreëls om beheer oor gelisensieerde persele te verseker by abandonnering van 'n perseel ingeval van die dood, onbekwaamheid of insolvensie van 'n lisensiehouer.

## HOOFSTUK 10

### APPÈLLE EN HERSIENINGS

- Klousule 68 Appèlle en hersienings na die Tribunaal—Hier word voorsiening gemaak vir die prosedure vir appèlle en hersienings na die Appèltribunaal.

## HOOFSTUK 11

### VOLDOENING

- Klousule 69 Voldoeningskennisgewings—Hierdie klousule maak voorsiening vir die uitreiking van voldoeningskennisgewings aan lisensiehouers deur drankinspekteurs of, in die afwesigheid of nie-beskikbaarheid van 'n

- drankinspekteur, 'n aangewese drankbeampte en vir die gepaardgaande prosedure.
- Klousule 70 Sluiting van gelisensieerde persele—Hierdie klousule magtig 'n drankinspekteur, aangewese drankbeampte of polisiebeampte met of bo die rang van inspekteur om 'n gelisensieerde perseel in sekere omstandighede te sluit vir 'n tydperk van hoogstens die oorblywende handelsure vir die betrokke dag.
- Klousule 71 Tussentydse bevele—Hierdie klousule maak voorsiening vir die Dranklisensiëringstribunaal om tussentydse bevele uit te reik in gevalle waar geregverdigde klagtes ontvang is, ten einde nakoming van vereistes deur lisensiehouers te verseker hangende die oorweging deur die Dranklisensiëringstribunaal van finale maatreëls.
- Klousule 72 Opskorting, intrekking en verval van lisensies—Hierdie handel met lisensies wat opgeskort of gekanselleer is, of verval het en laat die lisensiehouer toe om drank wat ten tyde van die opskorting, intrekking of verval op die perseel was, by wyse van 'n openbare veiling te verkoop.

## HOOFSUK 12

### WETSTOEPASSING

- Klousule 73 Aanwysing en funksies van aangewese drankbeamptes en inspekteurs—Hierdie klousule maak voorsiening vir die aanstelling van aangewese drankbeamptes in die Suid Afrikaanse Polisie deur die Provinsiale Kommissaris en die van inspekteurs deur die Raad. Dit vereis ook dat hulle bewys van hulle aanstelling moet verskaf tydens die uitvoer van hulle pligte en sit hulle verpligtinge kragtens die wetgewing uiteen.
- Klousule 74 Bevoegdhede van aangewese drankbeamptes en inspekteurs—Hierdie klousule maak voorsiening vir die bevoegdhede van aangewese drankbeamptes en inspekteurs rakende die toepassing van regsvoorskrifte wat van toepassing is op lisensiehouers.
- Klousule 75 Uitoefening van bevoegdhede om perseel te betree en te inspekteer—Hierdie klousule reguleer die bevoegdheid van aangewese drankbeamptes om gelisensieerde persele te betree, deursoek en te inspekteer, en beslaglegging van items daarop te doen.
- Klousule 76 Algemene misdrywe—Hierdie klousule maak voorsiening vir algemene misdrywe met betrekking tot die verkoop, verskaffing of verbruik van drank wat nie reeds in ander klousules van die wetsontwerp omskryf is nie.
- Klousule 77 Misdrywe betreffende inligting—Die oortredings wat in hierdie klousule geskep word, handel oor die verskaffing van inligting in aansoeke ingevolge die Wetsontwerp en aan wetstoepassingsagente deur lisensiehouers en/of hulle werknemers.
- Klousule 78 Misdrywe betreffende vergaderings van die Dranklisensiëringstribunaal en die Appèltribunaal—Die oortredings wat in hierdie klousule geskep word, handel oor die ordelike verloop van verrigtinge van die Dranklisensiëringstribunaal en Appèltribunaal.
- Klousule 79 Misdrywe betreffende polisiebeamptes en inspekteurs—Die oortredings wat in hierdie klousule geskep word, handel oor die dwarsboming of inmening in die uitvoering van die pligte van wetstoepassingsagente.
- Klousule 80 Motorvoertuie—Hierdie klousule skep oortredings rakende die verbruik van drank in motorvoertuie wat op openbare paaie bestuur of geparkeer word.
- Klousule 81 Misdrywe betreffende diensstasies—Hierdie klousule reguleer die verkoop, verskaffing en verbruik van drank op erwe waar diensstasies geleë is.
- Klousule 82 Versuim om aan bevel van Dranklisensiëringstribunaal te voldoen—Hierdie klousule verseker die nakoming van bevele van die Dranklisensiëringstribunaal.
- Klousule 83 Middellike verantwoordelikheid—Hierdie klousule verseker dat lisensiehouers verantwoordelik bly vir die onregmatige optrede van hulle bestuurders, agente of werknemers op gelisensieerde persele.

- Klousule 84 Vrystellings—Hierdie klousule verskaf die lys van persone wat vrygestel is van die bepalings van die Wetsontwerp en magtig die Dranklisensieringstribunaal om drankversamelaars en vervaardigers of verkopers van alkoholiese of gedistilleerde reukwerk vrygestel te verklaar.
- Klousule 85 Getuienis—Hierdie klousule skep maatreëls om die voorlegging van getuienis aan die Dranklisensieringstribunaal en tydens hofprosedure te vergemaklik.
- Klousule 86 Kennisgewings—Hierdie klousule maak voorsiening vir die verpligte vertoon van goedgekeurde inligting aangaande gesondheidsaspekte by afsetpunte vir die verkoop of verskaffing van drank.
- Klousule 87 Boetes—Hierdie klousule bepaal gepaste boetes vir misdrywe wat deur die Wetsontwerp geskep word.

### HOOFSTUK 13

#### REGULASIES, OORGANGSBEPALINGS, HERROEPING VAN WETGEWING EN KORT TITEL

- Klousule 88 Regulasies—Hierdie klousule verskaf aan die verantwoordelike Minister die mag om regulasies rakende die Wetsontwerp uit te vaardig.
- Klousule 89 Oorgangsbepalings—Hierdie klousule verseker deurlopendheid in die drankbedryf vanaf die bepalings van die Drankwet, 1989 (Wet 27 van 1989), en maak voorsiening vir die vrystelling van persone en persele wat onderhewig was aan en benadeel is deur apartheidera-wetgewing.
- Klousule 90 Herroeping van wetgewing—Hierdie klousule herroep die Drankwet, 1989 (Wet 27 van 1989).
- Klousule 91 Kort titel—Hierdie klousule verskaf die kort titel van die Wetsontwerp en maak voorsiening vir die promulgasie van die Wetsontwerp.

# UMTHETHO OYILWAYO WOTYWALA WENTSHONA KOLONI, 2008

**Ukulungiselela ukulayiseniswa kwentengiso nokusilwa kotywala kwiNtshona Koloni, nokulungiselela imiba enxulumene noko.**

**K**UNGOKO KE KUWISWA umthetho yiPalamente yePhondo leNtshona Koloni, ngale ndlela ilandelayo:—

## ISAHLUKO 1

### INGCACISO

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|----|----------------------|---|
| 1. | Ukucaciswa kwamagama | 5 |
|----|----------------------|---|

## ISAHLUKO 2

### IBHODI YOTYWALA YENTSHONA KOLONI

- |     |  |    |
|-----|--|----|
| 2.  | Ukumiselwa kweBhodi yoTywala yeNtshona Koloni                    |    |
| 3.  | Ubume beBhodi  |    |
| 4.  | Ukulungela ukutyunjelwa ubulungu nokuba ngumqeshwa weBhodi       | 10 |
| 5.  | Ukungakulungeli ukutyunjelwa ubulungu nokuba ngumqeshwa weBhodi  |    |
| 6.  | Ithuba lokuba sesikhundleni                                      |    |
| 7.  | Ukupheliswa kobulungu beBhodi                                    |    |
| 8.  | Izithuba   |    |
| 9.  | Amagunya nemisebenzi yeBhodi                                     | 15 |
| 10. | Ugunyaziso   |    |
| 11. | Ukwamkelwa ezikhundleni kwabantu abangatyunjwanga ngokusesikweni |    |
| 12. | Ubumfihlelo  |    |
| 13. | Iindibano zeBhodi  |    |
| 14. | Imizuzu  | 20 |

## ISAHLUKO 3

### INKUNDLA YENTSHONA KOLONI YOKULAYISENISA UTYWALA NENKUNDLA YEZIBHENO

- |     |   |    |
|-----|---|----|
| 15. | UkuMiselwa kweNkundla yokuLayisenisa uTywala  |    |
| 16. | Ubume beNkundla yokuLayisenisa uTywala, nokuphakanyiswa kwamagama amalungu eNkundla yokuLayisenisa uTywala nokutyunjwa kwaloo malungu | 25 |
| 17. | Ukungatyunjelwa ukuba lilungu leNkundla yokuLayisenisa uTywala  |    |
| 18. | Ithuba lokuba sesikhundleni   |    |
| 19. | Ukupheliswa kobulungu beNkundla yokuLayisenisa uTywala  |    |
| 20. | Amagunya nemisebenzi yeNkundla yokuLayisenisa uTywala   | 30 |
| 21. | Iindibano nezigqibo zeNkundla yokuLayisenisa uTywala  |    |

22. Ukuzirhoxisa kwamalungu aminqweno ingquzulanayo
23. UkuQhutywa komSebenzi weNkundla yokuLayisenisa uTywala
24. IiKomiti zeNkundla yokuLayisenisa uTywala
25. INkundla yeziBheno

#### ISAHLUKO 4

5

#### ULAWULO, IMIVUZO NOKUPHATHWA KWEZIMALI

26. Ukulawulwa kweBhodi, kweNkundla yokuLayisenisa uTywala neNkundla yeziBheno
27. Umvuzo weGosa loLawulo eliyiNtloko, owamalungu eBhodi, owamalungu eNkundla yokuLayisenisa uTywala noweNkundla yeziBheno 10
28. Ukuxhaswa kweBhodi ngezimali nokuphathwa kweemali zayo
29. Uphicotho neeNgxelo zoNyaka
30. Ingeniso eqokelelelwa iNgxowa-mali yePhondo, iBhodi okanye oomasipala

#### ISAHLUKO 5

#### UKUMISELWA KWENGXOWA-MALI YEZENTLALO NEZEMFUNDO

15

31. Ukumiselwa kwengxowa-mali

#### ISAHLUKO 6

#### ULAYISENISO/UKUNIKEZELWA KWAMAPHEPHA-MVUME

32. Iilayisenisi
33. Iintlelo zeelayisenisi 20
34. Iindlela zokufunyaniswa iilayisenisi
35. Ukungalungelwa kwabenzi-zicelo
36. Inkqubo yokwenza isicelo
37. Isaziso sesicelo esifakiweyo
38. Izicelo ezandlwe kwiBhodi ukuze zihlolwe 25
39. Uzathuzo
40. Ukuthunyelwa kwamaxwebhu
41. Ukuqwalaselwa kwezicelo
42. Ukufunyaniswa ilayisenisi phantsi kwemiqathango ethile
43. Ilungelo lokusebenzisa indawo yokushishina 30
44. Indawo yokushishina engagqitywanga
45. Imfundo noqeqesho
46. Ukukhutshwa kweelayisenisi
47. Ukufa okanye ukusilela komenzi-sicelo
48. Iilayisenisi zotywala zethutyana neelayisenisi zotywala bemicimbi eyodwa 35

#### ISAHLUKO 7

#### IMIQATHANGO YEELAYISENISI

49. Imiqathango eqhelekileyo yeelayisenisi
50. Ukuthuthwa
51. Inxaxheba yezimali nokuqeshiswa kweendawo ezineelayisenisi 40
52. ULawulo
53. Ukuguqulwa kwendawo elayisenisisweyo okanye kohlobo loshishino
54. Abantwana
55. AbaQeshi nabaQeshwa
56. Ukungena kwindawo elayisenisiweyo 45
57. Ukugcinwa kotywala
58. Indawo yokuthengisela
59. Amaxesha okurhweba
60. Ubungakanani botywala obuthengisiweyo nokugcinwa kweerekhodi
61. Izinto ezingavumelekanga 50

## ISIAHLUKO 8

## UKUSEBENZA NOKUHLAZIYWA KWEELAYISENISI

- |     |  |   |
|-----|--|---|
| 62. | Ukusebenza kweelayisenisi                      |   |
| 63. | Ukuhlaziywa kweelayisenisi kungfakwanga sicelo |   |
| 64. | Izicelo zokuhlaziywa kweelayisenisi            | 5 |

## ISIAHLUKO 9

## UKUHLUTHWA, UKUDLULISELWA NOKURHOXISWA KWEELAYISENISI

- |     |   |    |
|-----|---|----|
| 65. | Ukuhluthwa nokudluliselwa kweelayisenisi  |    |
| 66. | Ukurhoxiswa kweelayisenisi  |    |
| 67. | Ukushiywa kwendawo yokushishina nokufa okanye ukukhubazeka komnini-<br>layisenisi | 10 |

## ISIAHLUKO 10

## IINKQUBO ZOKUBHENA NOKUNIKA INGQWALASELO

- |     |  |    |
|-----|--|----|
| 68. | Ukuthunyelwa kwezibheno nezicelo zokunika ingqwalaselo kwiNkundla<br>yeziBheno | 15 |
|-----|--|----|

## ISIAHLUKO 11

## UTHOTYELO

- |     |  |    |
|-----|--|----|
| 69. | Izaziso zokuthobela                                    |    |
| 70. | Ukuvalwa kwendawo elayisenisiweyo                      |    |
| 71. | Imiyalelo yethutyana                                   | 20 |
| 72. | Ukunqunyanyiswa, ukucinywa nokuphelelwa kweelayisenisi |    |

## ISIAHLUKO 12

## UKUNYANZELISWA KOMTHETHO

- |     |  |    |
|-----|--|----|
| 73. | Izikhundla nemisebenzi yamagosa nabahloli abagunyazisiweyo bemcimbi<br>engotywala                        | 25 |
| 74. | Amagunya amagosa nabahloli bemcimbi engotywala abagunyazisiweyo  |    |
| 75. | Ukusetyeniswa kwamagunya okungena nokusetsha okanye awokuhlola   |    |
| 76. | Ulwaphulo-mthetho ngokubanzi   |    |
| 77. | Ulwaphulo-mthetho olumalunga nengcaciso  |    |
| 78. | Ulwaphulo-mthetho ngokubhekiselele kwiindibano zeNkundla yoku-<br>Layisenisa uTywala neNkundla yeziBheno | 30 |
| 79. | Ulwaphulo-mthetho olumalunga namagosa nabahloli bemcimbi engotywala<br>abagunyazisiweyo                  |    |
| 80. | Ulwaphulo-mthetho olumalunga neenqwelo-mafutha   |    |
| 81. | Ulwaphulo-mthetho olumalunga namaziko eenkonzo   | 35 |
| 82. | Ukungawuthobeli umyalelo weNkundla yokuLayisenisa uTywala  |    |
| 83. | Uxanduva olugunyazisiweyo  |    |
| 84. | Uxolelo  |    |
| 85. | Ubungqina  |    |
| 86. | Izaziso  | 40 |
| 87. | Izohlwayo  |    |

## ISIAHLUKO 13

## IMIGAQO, IMIMISELO YETHUTYANA NESIHLOKO ESIFUTSHANISIWEYO

- |     |   |    |
|-----|---|----|
| 88. | Imigaqo                                     |    |
| 89. | Imimiselelo yethutyana                      | 45 |
| 90. | Imimiselelo yotshitshiso                    |    |
| 91. | Isihloko esifutshaniweyo nomhla wokusungula |    |



## ISIAHLUKO 1

## INGCACISO

## Ukucaciswa kwamagama

1. Kulo mThetho, ngaphandle kokuba oko kubhaliweyo kuchaza nto yimbi—
- “**iNkundla yeziBheno**” yiNkundla yezibheno emiselwe ngokwecandelo 25(1); 5
- “**iBhodi**” yiBhodi yoTywala yeNtshona Koloni emiselwe ngokwecandelo 2(1);
- “**uSihlalo**” ngumntu omiselwe njengosiHlalo weBhodi ngokwecandelo 3(6) okanye ngumntu obambeleyo kwisikhundla sokuba ngusiHlalo ngeli xesha usihlalo angekhoyo ngokwecandelo 3(7);
- “**iGosa eliyiNtloko yoLawulo**” ngumntu otyunjelwe ukuba liGosa eliyiNtloko 10 yoLawulo lweBhodi ngokwecandelo 26(1)(a);
- “**umGaqo-siseko**” ngumGaqo-siseko weRiphabhliki yoMzantsi-Afrika, 1996;
- “**uKopolotyeni**” ngukopolotyeni njengoko echazwe kumThetho wooKopolotyeni, 2005 (umThetho 14 ka-2005);
- “**umThetho weeNkqubo zoTshutshiso**” ngumThetho weeNkqubo zoTshutshiso, 15 1977 (umThetho 51 ka-1977);
- “**umhla wokukhutshwa**” ngokubhekiselele kwilayisenisi, ngumhla ilayisenisi leyo eyakhutshwa ngawo okokuqala;
- “**iSebe**” lisebe elijongene nemicimbi yezoqoqosho kwiPhondo;
- “**uSekela-sihlalo**” ngumntu omiselwe njengoSekela-sihlalo weBhodi ngokwe- 20 candelo 3(6);
- “**iSekela-gosa eliChophela imiCimbi**” ngumntu otyunjelwe ukuba ngusekela-gosa elichophela imicimbi yeBhodi ngokwecandelo 16(1)(b);
- “**igosa elijongene notywala**” ligosa elijongene nemicimbi yotywala njengoko kumiselwe kwicandelo 73(1); 25
- “**iziyobisi**” zizinto ezibangela uxhomekeko kuzo, nayiphi na into ebangela ukuxhomekeka kuyo okanye nayiphi na enye into ebangela ukuba kuxhonyekekwe kuyo njengoko kuchazwe kumThetho weziYobisi nokuThutyeleziswa kweziYobisi, 1992 (umThetho 140 ka 1992);
- “**ilungu losapho**” nguloo mntu kutshatwe naye, usisihlobo sobomi, ungu- 30 mntwana, ungumzali, ungumsakwabo okanye udadewabo nokuba obo budlelwane bungenxa yokuzalwa, yokutshata okanye yokukhulela kwelo khaya;
- “**inxaxheba ngokwezimali**” ngokunxulumene naliphi na ishishini okanye iqumrhu, yinxaxheba eyenza ukuba umnini abenakho ukuxhamla kwinzuzo okanye kwimali yelo shishini okanye yelo qumrhu, kubandakanywa ubunini- 35 zabelo kwinkampani, izabelo zelungu likakopolotyeni kananjalo nenxaxheba yelungu lequmrhu eliyi-cc (close corporation), abaxhamli kwiqumrhu lethrasti, okanye inxaxheba kwiqumrhu lamahlakani;
- “**unyaka-mali**” ngunyaka ophela ngomhla wama-31 kuMatshi;
- “**into engatyiwayo**” yinto enobungozi yakutyiwa ngumntu; 40
- “**umhloli**” ngumntu otyunjelwe loo msebenzi njengoko kumiselwe kwicandelo 73(4);
- “**ukukhupha**”, ngokubhekiselele kwilayisenisi kubandakanya ukuziswa okanye ukuthunyelwa kwelayisenisi leyo kumntu lowo unikwe ilungelo lokubanayo okanye kummeli wakhe; 45
- “**ilayisenisi**” yilayisenisi ekubhekiswe kuyo kwicandelo 33, okanye ethatyathwa njengelayisenisi elolo hlobo njengoko kumiselwe kwicandelo 89;
- “**ishishini elilayisenisiweyo**” lishishini elunokuqhutywa kwindawo elayisenisi-weyo ngokokugunyaziswa yiBhodi;
- “**Indawo elayisenisiweyo**” yindawo apho kunokusilwa khona utywala, 50 buthengiswe, buselwe okanye bugcinwe ngokwemiqathango yelayisenisi phantsi kwalo mThetho;
- “**umnini-layisenisi**” ngumntu lowo ukhutshelwe ilayisenisi njengoko kumiselwe kwicandelo 46 okanye yadluliselwa njengoko kumiselwe kwicandelo 65 okanye othatyathwa njengomnini layisenisi njengoko kumiselwe kwicandelo 89; 55
- “**utywala**” lulwelo okanye into ene-1% ye-alkoholi ngokomthamo okanye ngokobunzima, kodwa oko akuzibandakanyi ezi zinto:
- (a) isipirithi;
- (b) amayeza abhaliswa ngokwemimiselo yomThetho wamaYeza nezinto eziNxulumene Noko (umThetho 101 ka-1965) ndawonye; 60

- (c) nemveliso engaveliselwanga ukutyiwa ngabantu;  
**“umThetho woTywala”** ngumThetho woTywala kuZwelonke, 2003 (umThetho 59 ka-2003);  
**“iNkundla yemiCimbi yoTywala”** yiNkundla yeNtshona Koloni yokuLayisenisa uTywala emiselwe licandelo 15(1); 5  
**“umphathi”** ngumntu okuqeshwa kwakhe njengomphathi kuvunywe njengoko kumiselwe kwicandelo 52(1);  
**“ukuvelisa”** kukuvelisa okanye kukugalelwa kotywala embodloleni ngenjongo yokuba buthengiswe;  
**“umvelisi”** ngumntu obhaliswe njengomvelisi njengoko kumiselwe kumThetho woTywala; 10  
**“ilungu”** lilungu leBhodi okanye leNkundla yokuLayisenisa uTywala, nokuba yeyiphi na kwezo zinto;  
**“isipirithi”**—  
 (a) sisipirithi esisunguqulwe ubume ngokwawo nawuphi na umthetho omalunga nokuguqulwa kwesipirithi; 15  
 (b) nasiphi na esinye isipirithi esiguquliweyo, kubandakanywa—  
 (i) isipirithi sonyango; okanye  
 (ii) isipirithi esiguquliweyo esibhengezwe njengesipirithi njengoko kumiselwe kumThetho woTywala; 20  
**“ukusila utywala”** kukusila utywala obumthamo ungaphantsi kwalowo umiselweyo njengoko kumiselwe kwicandelo 4 lomThetho woTywala kanti umsili-tywala unentsingiselo ehambelanayo naleyo;  
**“umPhathiswa”** ngumphathiswa ojongene nemicimbi yezoqoqosho kwiPhondo;  
**“inqwelo-mafutha”** yinqwelo eyakhelwe okanye elungiselelwe ukuthutha umthwalo ngendlela ngokusebenzisa amafutha, irhasi okanye umbane, kubandakanywa itakane okanye isixhobo sezolimo esakhelwe okanye esilungiselelwe ukuba sirhuqwe yiloo nqwelo; 25  
**“umasipala”** ngumasipala omiselwe phantsi komThetho woBume booMasipala, 1998 (umThetho 117 ka-1998); 30  
**“iqumrhu lombuso”** liqumrhu lombuso njengoko lichazwe kwicandelo 239 lomGaqo-siseko;  
**“igosa loxolelwaniso”** lilo naliphi na ipolisa, kwaye ngokunxulumene nayiphi na into, ulwaphulo-mthetho okanye igunya ekubhekiswe kulo kwisaziso esikhutshwe phantsi kwecandelo 334(1) lomThetho weeNkqubo zoTshutshiso, nabani na oligosa loxolelwaniso phantsi kwelo candelo; 35  
**“umntu”** ubandakanya—  
 (a) naliphi na iqumrhu elililungu lombuso;  
 (b) Nayiphi na inkampani okanye iqumrhu lohlobo lwe-close corporation;  
 (c) naliphi na iqumrhu labantu elimiselwe ngokusesikweni okanye elingamiselwanga ngokusesikweni; kunye 40  
 (d) nayiphi na ithrasti;  
**“isiza”** yindawo, ngumhlaba, sisakhiwo, yinxalenye yesakhiwo, sisithuthi esisetyenziselwa ukuthutha abakhenkethi, izikhephe okanye iinqwelo-moya;  
**“umChopheli”** ngumntu otyunjelwe ukuba ngumChopheli weNkundla yokuLayisenisa uTywala ngokwecandelo 16(1)(a); 45  
**“ukuyalela”** kukuyalela ngomgaqo njengoko kumiselwe kulo mThetho;  
**“iPhondo”** ligama elithetha iPhondo leNtshona Koloni;  
**“iKhabhinethi yePhondo”** yiKhabhinethi yePhondo yorhulumente weNtshona Koloni; 50  
**“indlela kawonke-wonke”** yindlela entsingiselo ichazwe kumThetho wezeNdlela weSizwe, 1996 (umThetho 93 ka-1996);  
**“umrhumo wokuhlaziya”** ngumrhumo ohlawulwa qho ngonyaka uhlawulelwa ilayisenisi, ngaphandle kwelayisenisi yotywala yethutyana, ukuze kuqinisekise ukuqhubeka kokusebenza kwelayisenisi leyo; 55  
**“ivenkile ethengisa ukutya”** lishishini elithengisa igrosari / inkinkqa nezinye izinto ezityiwayo;  
**“ukuthengisa”** kubandakanya ukubonelela, ukutshintshiselana, ukuthembisa ukuthengisa, ukubonisa ngenjongo yokuthengisa okanye ukugunyazisa, ukuyalela okanye ukuvumela inkqubo yokuthengisa, yokubonelela, yokutshintshiselana, yokuthembisa ukuthengisa okanye yokubonisela ukuthengisa; 60

- “**umcimbi owodwa**” ngumcimbi wokunyusa ingxowa-mali ngenjongo yokuncedisa iqumrhu lezemfundo okanye elezntlalo-ntle, nawuphi na umboniso, indibano yezemidlalo, indibano yenkcubeko, okanye umcimbi wezobugcisa; 5
- “**ikomiti emiyo**” yikomiti yePalamente yePhondo nesingathe imicimbi yezoqoqosho;
- “**ukubonelela**”, ngokubhekiselele etywaleni kukunika umntu utywala okanye ukumnika igunya lokubulawula;
- “**iwayini yasetafileni**” yiwayini echazwe kwicandelo 1 lomThetho weMveliso ebuTywala, 1989 (umThetho 60 ka-1989);
- “**lo mThetho**” ubandakanya imigaqo equlunqwe njengoko kumiselwe kwicandelo 10 88.

## ISAHLUKO 2

### IBHODI YOTYWALA YENTSHONA KOLONI

#### Ukumiselwa kweBhodi yoTywala yeNtshona Koloni

2. (1) Ngale ndlela kumiselwa iqumrhu elingumntu elizimeleyo ngokomthetho neliza kwaziwa njengeBhodi yoTywala yeNtshona Koloni. 15
- (2) IBhodi leyo inelungelo kambe inawo amandla okuqhuba nokuthabatha inxaxheba kwiinkqubo zomthetho kananjalo imicimbi yayo inakho ukuyiqhuba egameni layo.

#### Ubume beBhodi

3. (1) IBhodi inamalungu asixhenxe atyunjelwe kwizikhundla zethutyana yiKhabhinethi yePhondo ngokwenkqubo eyalelweyo, bhodi leyo ifanele ukuvumela ukubandakanywa koluntu xa kuphakanyiswa amagama abagqatswa abaza kutyunjwa. 20
- (2) Ikomiti emiyo kufuneka icikide bonke abagqatswa ifuna ukuqonda ukufaneleka kwabo ukuba bangatyunjwa kananjalo icebise umPhathiswa ngabagqatswa abo.
- (3) IKhabhinethi yePhondo kufuneka atyumbe amalungu eBhodi emva kokunika ingqwalaselo neengecebiso zekomiti emiyo. 25
- (4) Ilungu leBhodi kufuneka libe ngumntu ofanelekileyo nonolwazi olufanelekileyo okanye amava afanelekileyo eenkqubo zokuqinisekisa ukujongana nomsebenzi wawo, ukuthembeka, ukungafihli xa kuqhutywa umsebenzi wequmrhu.
- (5) Xa kutyunjwa amalungu eBhodi kufuneka kuqwalaselwe nemiba yesini. 30
- (6) UmPhathiswa kufuneka amisele omnye wamalungu njengosiHlalo ukuze omnye ammisele njengoSekela-sihlalo weBhodi.
- (7) USEkela-sihlalo uthabatha indawo kasiHlalo weBhodi xa usiHlalo engekho okanye engenako ukusebenza njengosiHlalo, amalungu akhoyo entlanganisweni kuya kufuneka ukuba akhethe omnye kubo ngevoti yesininzi njengosiHlalo kuloo ntlanganiso. 35
- (8) Ngaphambi kokuba ilungu lityunjwe njengelungu leBhodi, umgqatswa lowo kuya kufuneka afake uxwebhu olufungelweyo kumPhathiswa apho loo mgqatswa abhengeza okokuba—
- (a) usifanele eso sikhundla; kwaye 40
- (b) akukho nto imthintelayo ukuba angabikuso eso sikhundla.
- (9) IKhabhinethi yePhondo okanye umPhathiswa unakho, ebonisene nekomiti emiyo, ngalo naliphi na ixesha, ukufuna ubungqina obuza kumanelisa ngokufaneleka kwalo naliphi na ilungu okanye ilungu eliseza kutyunjelwa kwiBhodi, okanye ukuqhuba okanye ukuyalela ukuba kuqhutywe naluphi na uphando ngokubhekiselele kuloo mcimbi. 45
- (10) Ngaphezu kwaloo malungu ekubhekiswe kuwo kwicandelwana (1), iGosa loLawulo eliyiNtloko lilungu leBhodi ngenxa yesikhundla salo (ex officio), elingenalo ilungelo lokuvota.

#### Ukulungela ukutyunjelwa ubulungu nokuba ngumqeshwa weBhodi 50

4. Ukuze abe nokufanela ukutyunjelwa kwisikhundla sobulungu okanye abenokuqeshwa yiBhodi, kufuneka—
- (a) xa loo mntu ezakuba lilungu leBhodi, abe uneminyaka engamashumi amabini anesihlanu ezelwe okanye xa ezakuba ngumqeshwa abe uneminyaka elishumi elinesibhozo ezelwe; 55

- (b) abe ngummi weRiphabhliki yomZantsi-Afrika kambe abe uhleli isigxina kwiPhondo, kananjalo
- (c) abe ngongathintelwanga njengoko kumiselwe kwicandelo 5.

### Ukungakulungeli ukutyunjelwa ubulungu nokuba ngumqeshwa weBhodi

5. (1) Aba bantu balandelayo abakulungelanga ukutyunjelwa, ukuqhubeka okanye ukusebenza njengamalungu okanye njengabaqeshwa beBhodi:
- (a) nabani na othe kwiminyaka elishumi (10) edlulileyo abe wagwetyelwa ukwaphula umthetho phantsi kwalo mThetho okanye nawuphi na umthetho ofana nawo;
  - (b) nabani na othe kwiminyaka edlulileyo elishumi (10); nokuba kulapha kwiRiphabhliki yomZantsi-Afrika okanye kwenye indawo, wafunyanwa enetyala lobusela, ubuqhethseba, ukuqhinga, ukuguqula uxwebhu olubhalwe ngobuqhinga, ukuxoka efungile okanye naluphi na ulwaphulo-mthetho phantsi komThetho woRhawaphilizo, 1992 (umThetho 94 ka-1992) okanye umThetho wokuThintela kwZenzo zoRhawaphilizo, 2004 (umThetho 12 ka-2004) okanye naluphi na olunye ulwaphulo-mthetho olubandakanya ukungathembeki;
  - (c) ngumntu owatshonayo kwezoshishino waza akabinakho ukubuyela kwimo efanelekileyo okanye ophantsi kokuthintelwa ngumthetho;
  - (d) nabani na othe kwiminyaka elishumi edlulileyo (10) wasuswa kuso nasiphi na isikhundla sentembeko ngenxa yokungaziphathi ngendlela okanye ngenxa yokungathembeki;
  - (e) nabani na obambe isikhundla sopolitiko; kunye
  - (f) nabani na ekuthe kanti, nokuba kungokwakhe okanye kungowakwakhe, kungosapho, ihlakani okanye amanyeneyo naye
    - (i) unenxaxheba yezimali ngokuthe ngqo okanye ngokungathanga ngqo kulo naliphi na ishishini lotywala okanye indawo yotywala, okanye
    - (ii) waba nenxaxheba kulo naliphi na ishishini okanye iqumrhu elinokungquzulana okanye liphazamise ukuwenza ngendlela eyiyo umsebenzi wakhe njengelungu okanye njengomqeshwa weBhodi kuyo nayiphi na ilayisenisi ekhutshwe phantsi kwalo mthetho.
- (2) Ngokunxulumene neli candelo inxaxheba yezimali engathanga ngqo ayibandakanyi inxaxheba engathanga ngqo ekho ngenxa yayo nayiphi na ingxowa-mali okanye utyalo-mali xa umntu onaloo nxaxheba engenalungelo lokulawula izigqibo ezingotyalo-mali ezenziwa ngokunxulumene naloo ngxowa-mali okanye nolo tyalo-mali.

### Ithuba lokuba sesikhundleni

6. Ilungu leBhodi lakuba sesikhundleni ithuba, elingadlulanga iminyaka emine, njengoko kunokumiselwa yiKhabhinethi yePhondo ngethuba lokutyunjwa kwalo yiBhodi, kwaye ilungu leBhodi likulungele ukutyunjwa ngokutsha lakuphelelwa lixesha lokuba lilungu.

### Ukupheliswa kobulungu beBhodi

7. (1) Isikhundla selungu leBhodi asibi namntu xa—
- (a) umPhathiswa efumene isaziso esibhaliweyo sokuyeka kwelo lungu: Phofu xa ukuyeka oko kuza kuqala ngomhla ochazwe kwincwadi yokuyeka okanye ngomnye umhla ekunokuvunyelwana ngawo ngumPhathiswa nelungu elo;
  - (b) elo lungu liyathintelwa ekuqhubekeni njengelungu leBhodi;
  - (c) elo lungu lithe alabikho kwiintlanganiso zeBhodi ezimbini ezilandelelanayo ngaphandle kokuvunyelwa ngencwadi ngusiHlalo, okanye apho kufanelekileyo, nguSekela-sihlalo;
  - (d) elo lungu liphelelwe lixesha lokuba lilungu;
  - (e) iKhabhinethi yePhondo ibuphelisile ubulungu balo; Phofu iKhabhinethi yePhondo ayinakubuphelisa ubulungu belungu ngaphandle kokuba eso senzo isibona njengento engumnqweno woluntu okanye ngaphandle kokuba oko kwakuba luncedo ekulawulweni kwalo mThetho ngendlela; kananjalo
  - (f) xa elo lungu lingasenguye umhlali kwiPhondo.

## Izithuba

8. Xa kuthe kwabakho isithuba njengoko kukhankanywe kwicandelo 7, iKhabhinethi yePhondo kwakufuneka ukuba ityumbe ilungu leBhodi elitsha, ngokwecandelo 3(1), 4, 5 necandelo 6.

### Amagunya nemisebenzi yeBhodi

5

#### 9. IBhodi inala magunya alandelayo—

- (a) elokulawula ukulawulwa kotywala kwiPhondo;
- (b) ukufumana izicelo zeelayisenisi zotywala okanye zokuxolelwa ngokwalo mThetho nokudlulisela izicelo kwiNkundla yemiCimbi yoTywala;
- (c) ukukhupha iilayisenisi kwiimeko xa iNkundla yemiCimbi yoTywala izivumileyo okanye izamkeleyo izicelo; 10
- (d) ukufumana, ukubamba, ukuqesha, ukuqeshisa nokususa ipropati yengqondo, ehambayo nengahambiyo;
- (e) ukuvula nokuba nee-akhawunti zebhanki;
- (f) ukuqesha nokugxotha abasebenzi nokwenza zonke izinto ezinxulumene noko; 15
- (g) ukwenza nokusebenzisa izivumelwano;
- (h) ukwenza nokunyanzelisa imigaqo yokuqhutywa kweentlanganiso;
- (i) ukufumana, ukuchitha nokulawula imali ngokubanzi;
- (j) ukuqokelela nokulawula ngokwemimiselo yalo mThetho imirhumo nezohlwayo ezimiselwe ngokwalo mThetho; 20
- (k) ukungena kwizivumelwano nesebe okanye ukufumana ukuncediswa lilo naliphi na isebe okanye iqumrhu elililungu lombuso, kubandakanywa iNkonzo zamaPolisa oMzantsi-Afrika, lokuqhuba okanye lokuyincedisa ekuqhubeni uphando lwayo; 25
- (l) ukufumana ingcaciso kubanini layisenisi nakwabanye abantu namaqumrhu;
- (m) ukuqhuba uphengululo oluqhubekayo lokuphanda ngemicimbi engokuthengiswa kotywala nokubusila kulo lonke iPhondo nakwezinye iindawo ukuze kuqinisekise ukuba kukho okusilelayo kusini na emThethweni, kananjalo nokufumanisa naluphi na usetyenziso gwenxa okanye ukwaphulwa kweenkqubo eziqulathwe kulo mThetho; 30
- (n) ukumisela iinkqubo zolawulo lwangaphakathi zeBhodi nabanini layisenisi, kubandakanywa ubalo-mali neenkqubo zokwenza ingxelo kunye nazo naziphi na ezinye iinkqubo nokuba zezekhompyutha;
- (o) ukumisela imirhumo neentlawulo ngokubhekiselele kwiingxoxo-matyala, uphando kunye nayo nayiphi na eminye imisebenzi eqhutywa yiBhodi; 35
- (p) ukuseka ii-ofisi zemimandla nezingamagatya;
- (q) ukuseka nokulawula imali zokuwusebenzisa ngendlela eyiyo lo mThetho;
- (r) ukucebisa naye nawuphi na umntu okanye ukuqesha abacebisi malunga nawo nawuphi na umba owayamene nokuqhutywa komsebenzi wayo ngokwemimiselo nemiqathango enokumiselwa yiBhodi; 40
- (s) ukudlulisela naliphi na igunya layo ngokwecandelo 10;
- (t) ukutyumba iikomiti ezinamalungu eBhodi;
- (u) ukusebenzisa amagunya ngokubanzi nokuqhuba imisebenzi echazwe kulo mThetho okanye eyinikwe ngumthetho, kananjalo 45
- (v) ukucebisa umPhathiswa ngawo nawuphi na umba umPhathiswa awubhekise kuyo.

### Ugunyaziso

- 10. (1) IBhodi inakho ukudlulisela naliphi na igunya okanye umsebenzi kwiGosa loLawulo eliyiNtloko ukuze liwuqhuba egameni layo. 50
- (2) Nakuphi na ukunikelwa kwamagunya ekubhekiswe kuko kwicandelwana (1) kungenziwa ngokuxhomekeke kwimiqathango nezithintelo ezinokumiselwa yiBhodi.
- (3) IBhodi ayinakho ukuhluthwa nawaphi na amagunya ewanikiweyo.
- (4) Uganyaziso olwenziwe ngokweli candela linokugunyasia iGosa loLawulo eliyiNtloko ukuba libe nako ukusidlulisela zonke ezo zigunyaziso okanye yonke loo misebenzi. 55
- (5) Nabani na othe akaneliseka sisigqibo esithatyathwe ngokwamagunya adluliselweyo okanye ngokwemisebenzi edluliselweyo, ludluliselo olo kubhekiswe



kulo kwicandelwana (1) unelungelo lokubhenela kwiBhodi ngokuchasene neso sigqibo ngendlela nakwithuba elimiselweyo.

(6) IBhodi inakho ukuluhlomela okanye ukulurhoxisa naluphi na ugunyaziso.

(7) IBhodi ayinakho ukudlulisela naliphi na igunya okanye umsebenzi ekubhekiswe kuwo kwicandelo 9(h), (o), (p) necandelwana (s). 5

### Ukwamkelwa ezikhundleni kwabantu abangatyunjwanga ngokusesikweni

11. (1) IBhodi inakho ukutyumba nabani na ofanelekileyo njengoko kukhankanywe kwicandelo 4, kwaye ngokoluvo lweBhodi, onakho ukuncedisa iBhodi okanye ikomiti yeBhodi ekuqwalaseleni umba othile.

(2) Umntu otyunjwe ngokwecandelwana (10 akanalungelo lakuvota kuyo nayiphi na intlanganisano yeBhodi. 10

(3) Umvuzo wwakhe nawuphi na umntu otyunjwe ngokweli candela uyakumiselwa yiBhodi.

### Ubumfihlelo

12. (1) Akukho lungu okanye mqeshwa weBhodi, kubandakanywa nomntu otyunjiweyo okanye umcebisi oqeshwe yiBhodi, uvumelekileyo ukuba abhengeze nayiphi na ingcaciso ethe yaziwa nguloo mntu ngenxa yokutyunjwa okanye yokuqeshwa kwakhe yiBhodi nenxulumene nomsebenzi okanye imicimbi yeBhodi, yomenzi-sicelo selayisenisi okanye yelayisenisi ngaphandle kwangendlela echazwe kweli candelo nakwicandelo 36(2)(b) necandelwana (c). 15 20

(2) Olu thintelo lungentla apha alusebenzi—

(a) kwizibhengezo enkundleleni xeshikweni inkundla ichophele ityala;

(b) kwizibhengezo ezingenxa yomyalelo wenkundla;

(c) kwizibhengezo ezinxulumene nokulawulwa kotywala ngokubanzi, zibhengezo ezo zingabhekisanaga kumsebenzi okanye kwimicimbi yakhe nawuphi na umenzi-sicelo okanye umnini layisenisi; 25

(d) xa kubhengezwa ingcaciso kumKomishinara weeNkonzo zeNgeniso zoMzantsi-Afrika;

(e) xa kubhengezwa kumPhathiswa; kananjalo

(f) xa kusenziwa isibhengezo nakubani na ofuna ingcaciso ukuze abe nokuqhuba umsebenzi wakhe phantsi kwalo mThetho. 30

### Iindibano zeBhodi

13. (1) (a) IBhodi kufuneka idibane ubuncinane kane kunyaka ngamnye ngendlela nangemihla nangamaxesha nakwiindawo ezimiselwe ngusiHlalo.

(b) UsiHlalo weBhodi unakho nanini na ukubiza indibano eyodwa yeBhodi eza kubanjwa ngexesha nakwindawo emiselwe nguye kwaye kufuneka, ngesicelo esibhaliweyo esisayinwe ubuncinane ngamalungu eBhodi amathathu, abize indibano eyodwa yeBhodi eza kubanjwa kwiveki ezimbini emva komhla wokufunyanwa kweso sicelo, ngexesha nakwindawo emiselwe nguye. 35

(2) UmPhathiswa kufuneka ayalele indlela iindibano zeBhodi emaziqhutywe ngayo. 40

(3) Indlela ekuqhutywa ngayo indibano kufuneka ukuba, xa ithe ayamiselwa, imiselwe nguSihlalo.

(4) Indibano iya kuqhubeka kuphela xa kukho amalungu amahlanu.

(5) Nayiphi na indibano ingamiselwa elinye ixesha, kwenye indawo kananjalo ngezizathu uSihlalo acinga ukuba zifanelekile. 45

(6) Isigqibo seBhodi sithatyathwa sisininzi seevoti zamalungu akhoyo kwindibano yayo, kwaye xa iivoti zithe zalingana malunga nawo nawuphi na umba, uSihlalo kufuneka agqibe ngesigqibo emasithatyathwe.

(7) Akukho sigqibo seBhodi siya kuthatyathwa njengesingasebenziyo ngenxa yokubakho kwesithuba kwiBhodi okanye ngenxa yokuba nabani umntu ongenalungelo lokuhlala njengelungu leBhodi athe wahlala njengelungu ngelo xesha bekuthatyathwa isigqibo. Phofu xa isigqibo eso sithatyathwe sisininzi esiyimfuneko samalungu eBhodi ebekhona nanelungelo lokuhlala njengamalungu eBhodi. 50



**Imizuzu**

**14.** (1) Okuqhubekayo kwindibano yeBhodi kufanele kurekhodishwe ngendlela emiselweyo nguSihlalo weBhodi, xa kuvotiwe kufuneka kubonakaliswe ivoti yelungu ngalinye.

(2) Kufuneka kugcinwe imizuzu yeBhodi kwaye loo mizuzu kufuneka igcinwe kwi-ofisi yeBhodi. 5

**ISAHLUKO 3****INKUNDLA YENTSHONA KOLONI YOKULAYISENISA UTYWALA  
NENKUNDLA YEZIBHENO****UkuMiselwa kweNkundla yokuLayisenisa ukuShishina ngoTywala 10**

**15.** (1) Ngale ndlela kusekwa iNkundla yemiCimbi yoTywala yeNtshona Kolono.

(2) INkundla yemiCimbi yoTywala kufuneka umsebenzi wayo iwuqhuba ngokwemimiselo yalo mThetho, ngaphandle kokukhetha nangaphandle kokoyika, ukwenzelelela nokuphatha kakubi.

(3) IBhodi kufuneka ibeke iliso kulawulo lweNkundla yokuLayisenisa uTywala kodwa ayinakho ukurhoxisa okanye ukuguqula nasiphi na isigqibo senkundla leyo, sigqibo eso sithatyathwe xa ibiqhuba umsebenzi wayo okanye isebenzisa nawaphi na amagunya nemisebenzi emiselwe kwicandelo 20. 15

**Ubume beNkundla yokuLayisenisa uTywala, nokuphakanyiswa kwamagama amalungu eNkundla yokuLayisenisa ukuShishina ngoTywala nokutyunjwa kwaloo malungu 20**

**16.** (1) INkundla yemiCimbi yoTywala inala malungu—

(a) ilungu elinye eliqeqeshelwe ezomthetho, luqeqesho olo lulinganayo nolo lokwamkelwa kubizo lobugqwetha, okanye kubizo lokuba ligqwetha lejaji yeNkundla ePhakamileyo yoMzantsi-Afrika, nelinamava ekusetyenzisweni kobulungisa, nelityunjwe yiBhodi njengeGosa eliChophela imiCimbi yeNkundla; 25

(b) ilungu elinye elineemfanelo ezichazwe kumhlathi (a) nelityunjwe yiBhodi njengeSekela-Gosa eliChophela imiCimbi yeNkundla;

(c) ilungu elinye elimele umbutho woorhulumente beengingqi, elityunjwe yiBhodi ibonisene nomPhathiswa osingathe imicimbi yoorhulumente beengingqi kwiPhondo; 30

(d) ilungu elinye elilipolisa elinguNtsumpa okanye ngaphezulu, elityunjwe yiBhodi ibonisene nomKhomishinara weeNkonzo zamaPolisa omZantsi-Afrika nomPhathiswa osingathe imicimbi yokhuseleko loluntu kwiphondo; 35 kunye;

(e) abemi ababini beRiphabhliki, abahlala isigxina kweli Phondo.

(2) Ukuba iGosa eliChophele imiCimbi yeNkundla alikho yaye alinakuqhuba imisebenzi yalo, okanye xa singenamntu isikhundla sokuba liGosa eliChophela imiCimbi, uSekela-Gosa eliChophela imiCimbi yeNkundla, ngeli xesha angekhoyo umChopheli okanye kude kube kutyunjwe umChopheli weNkundla, kufuneka libambeke iGosa eliChophela imiCimbi yeNkundla kanaanjalo liqhube yonke imisebenzi enikwe umChopheli weNkundla ngulo mThetho. 40

(3) Ngaphambi kokutyunjwa njengelungu leNkundla yokuLayisenisa uTywala, umgqatswa kufuneka afake uxwebhu olufungelweyo kwiBhodi, xwebhu olo umgqatswa abhengeza kulo ukuba akukho nto imthintelayo ekubeni lilungu ngokwecandelo 17. 45

(4) IBhodi, ibonisene nomPhathiswa, inakho nanini na ukufuna ubungqina obuza kuyanelisa bokuba naliphi na ilungu okanye nawuphi na lowo uyakuba lilungu uya kuqhubeka ukulungela le Nkundla yokuLayisenisa uTywala, okanye iqhube okanye iyalele ukuba kuqhutywe uphando ngokubhekiselele kuloo mbandela. 50

### Ukungatyunjelwa ukuba lilungu leNkundla yokuLayisenisa ukuShishina ngoTywala

17. Aba bantu balandelayo abakulungelanga ukutyunjelwa, ukuqhubeka okanye ukusebenza njengamalungu okanye njengabaqeshwa beNkundla yokuLayisenisa uTywala: 5
- (a) nabani na othe kwiminyaka elishumi (10) edlulileyo wafunyanwa enetyala lokwaphula umthetho waza wanikwa isigwebo sokuya entolongweni ngaphandle kwefayini, ngaphandle kokuba iBhodi inoluvo lokuba olo lwaphulo-mthetho aluthethi ukuba loo mntu akafanelanga kubamba isikhundla kwiBhodi; 10
  - (b) nabani na othe kwiminyaka elishumi (10) edlulileyo wafunyanwa enetyala lokwaphula umthetho waza wagwetywa isigwebo sokuya entolongweni ngaphandle kwefayini, ngaphandle kokuba iBhodi inoluvo lokuba olo lwaphulo-mthetho aluthethi ukuba loo mntu akafanelanga kubamba isikhundla kwiBhodi; 15
  - (c) umntu owatshonayo ngokwasezimalini omeko ingekabuyeli siqhelweni nosephantsi komthetho;
  - (d) nabani na ominyaka yobudala ingaphantsi kwamashumi amabini ananye (21)
  - (e) nabani onomdla ngokuthe ngqo ngokubhekiselele kushishino lotywala;
  - (f) nabani na olilungu losapho, lehlakani, leshishini lomntu ochaphazeleka ngqo kurhwebo ngotywala, ngaphandle kokuba iBhodi inoluvo lokuba oko kuchaphazela kwelo lungu losapho kurhwebo ngotywala akuthethi ukuba loo mntu akakufanelanga ukuba sesikhundleni; 20
  - (g) nabani na ongavumelekanga ngokwecandelo 35 ukuba abenelayisenisi yotywala; okanye 25
  - (h) ongengomhlali kweli Phondo.

### Ithuba lokuba sesikhundleni

18. (1) Ilungu leNkundla yokuLayisenisa uTywala liba sesikhundleni ithuba elingadlulanga kwiminyaka emihlanu, kwaye linelungelo lokuba liphinde lityunjelwe kweso sikhundla, kodwa oko kwenzeka kanye kuphela, xa kuphele ixesha. 30
- (2) Isithuba kwiNkundla yemiCimbi yoTywala kufuneka sizaliswe ngokutyunjwa kwelinye ilungu yiBhodi.

### Ukupheliswa kobulungu beNkundla yokuLayisenisa ukuShishina ngoTywala

19. Isikhundla selungu leNkundla yokuLayisenisa uTywala asibi namntu xa— 35
- (a) iBhodi ifumene isaziso esibhaliweyo sokuyeka kwelo lungu: Phofu xa ukuyeka oko kuza kuqala ngomhla ochazwe kwincwadi yokuyeka okanye ngomnye umhla ekunokuvunyelwana ngawo yiBhodi nelungu elo;
  - (b) xa elo lungu lingavumelekanga ukuba liqhubeke njengelungu leNkundla yokuLayisenisa uTywala;
  - (c) elo lungu lithe alabikho kwiintlanganiso zeNkundla yokuLayisenisa uTywala ezintathu ezilandelelanayo ngaphandle kokuvunyelwa ngencwadi liGosa eliChophela imiCimbi yeNkundla, okanye apho kufanelekileyo, liSekela leGosa eliChophela imiCimbi yeNkundla; 40
  - (d) elo lungu liphelelwe lixesha lokuba lilungu;
  - (e) IBhodi ibuphelisileyo ubulungu balo. Phofu iBhodi ayinakubuphelisa ubulungu belungu ngaphandle kokuba leso senzo isibona njengento engumnqweno woluntu okanye ngaphandle kokuba oko kwakuba luncedo ekulawulweni kwalo mThetho ngendlela; kananjalo 45
  - (f) xa elo lungu lingasenguye umhlali kwiPhondo.

### Amagunya nemisebenzi yeNkundla yokuLayisenisa ukuShishina ngoTywala 50

20. (1) INkundla yemiCimbi yoTywala ingaqwalasela nawuphi na umba kule ilandelayo kwiintlanganiso zayo:
- (a) nasiphi na isicelo selayisenisi ekubhekiswe kuso kwicandelo 33, 48 okanye 89(14);
  - (b) nasiphi na isicelo sokudluliselwa kwelayisenisi ngokwecandelo 65(9); 55

- (c) iziphakamiso ezimalunga nokuvunywa kwelayisenisi okanye ukungavunywa kwayo;
- (d) nayiphi na ingxelo engeniswe kulo ligosa lotywala eligunyazisiweyo, ngumhloli okanye ligosa likamasipala;
- (e) nasiphi na isikhalazo esifakiweyo ngokubhekiselele kwindlela ishishini elilayisenisiweyo eliziphethe ngayo; 5
- (f) isiphakamiso esivela kummini-layisenisi okanye komnye umntu ochaphazelekayo malunga nokurhoxiswa kwesigqibo sokunqumamisa ilayisenisi okanye sokususwa okanye sokuhlonyelwa kwawo nawuphi na umqathango omiselwe ilayisenisi; okanye 10
- (g) nawuphi na omnye umcimbi obhekiswe kulo liGosa loLawulo eliyiNtloko okanye elinokuwuqwalasela okanye ekunyanzelekileyo ukuba liwuqwalasela ngokwalo mThetho.
- (2) Ngaphandle kwemiba ekubhekiswe kuyo kwicandelwana (1)(a), (b), (c), (f) necandelwana (g) umChopheli weNkundla unelungelo lokwala ukuyibiza indibano yeNkundla yokuLayisenisa uTywala xa ngokoluvo lwakhe kungekho mfuneko yaloo ntlanganiso ngenxa yengcaciso eyandelwe phambi kwakhe. 15
- (3) INkundla yemiCimbi yoTywala inakho, emva kokuqwalasela kwawo nawuphi na umcimbi okhankanywe—
- (a) kwicandelwana (1)(a), (b), okanye (c), ukwala okanye ukuvuma isicelo phantsi kwemiqathango eliyibona ifanelekile; 20
- (b) icandelwana (1)(d) okanye (e)—
- (i) ukuyichitha ingxelo okanye isikhalazo, nokuba yeyiphi na kwezo zinto;
- (ii) ukuyirhoxisa loo layisenisi ichaphazelekayo;
- (iii) ukunqumamisa ilayisenisi ngendlela eyalelweyo, oko kusenziwa njengesohlwayo okanye isenzo sokulungisa; 25
- (iv) ukumisela ilayisenisi imiqathango ethile ngokokubona kwayo;
- (v) ukuyalela umnini layisenisi ukuba ahlawule ifayini ngokokubona kwayo, phofu kungadluliswanga kumyinge omiselweyo;
- (vi) ukuthabatha naliphi na elinye inyathelo ngokokubona kwayo; 30
- (c) icandelwana (1)(f), ukuchitha iziphakamiso okanye ukurhoxisa ukunqunyanyiswa kwelayisenisi, okanye ukususa okanye ukuhlomela imiqathango emiselwe ilayisenisi;
- (d) icandelwana (1)(g), ukuwuqwalasela umba ukuze ithabathe inyathelo elithile ngokokubona kwayo. 35
- (4) INkundla yokuLayisenisa uTywala inganakho, nangaliphi na ixesha, kwakufakwa isicelo selayisenisi ngumntu, ingasirhoxisa, ingasala okanye ingalungisa nayiphi na imeko egunyaziswayo yiNkundla leyo malunga nelayisenisi leyo kubhekiswe kuyo.
- (5) INkundla yemiCimbi yoTywala inakho ukutyumba, ngokubhekiselele kuwo nawuphi na umba kanaanjalokwithuba elibona lifanelekile, nabani na ngenjongo yokuba makakhonze kwinkundla, mntu lowo embona njengokufaneleyo ukuncedisa ekuqwalaseleni loo mba, phofu phantsi kwemiqathango yecandelo 17. 40
- (6) Umntu otyunjwe ngaloo ndlela akanalungelo lakuvota.
- (7) Umvuzo wakhe nawuphi na umntu otyunjwe ngokwecandelwana (5) uya kumiselwa yiBhodi. 45

### **Iindibano nezigqibo zeQonga lokuLayisenisa ukuShishina ngoTywala**

- 21.** (1) UmChopheli weNkundla kufuneka amisele ixesha nendawo apho kuya kubanjelwa khona iindibano zeNkundla yokuLayisenisa uTywala kwaye unakho ukuzichitha nokuzibiza ngokutsha iindibano ngamaxesha nakwindawo anokugqiba ngayo. 50
- (2) Iindibano yeNkundla yokuLayisenisa uTywala ingahlala kuphela xa kukho amalungu amane, kubandakanywa iGosa eliChophela imiCimibi yeNkundla okanye uSekela-Gosa eliChophela imiCimbi yeNkundla okanye bobabini.
- (3) Isigqibo seNkundla yokuLayisenisa uTywala sithatyathwa sisininzi seevoti zamalungu akhoyo kwindibano yayo, kwaye xa iivoti zithe zalingana malunga nawo nawuphi na umba, umChopheli kufuneka agqibe ngesigqibo emasithatyathwe. 55

### **Ukuzirhoxisa kwamalungu aminqweno ingquzulanayo**

- 22.** (1) Ilungu leNkundla yemiCimbi yoTywala alinakho ukuvota, ukuzimasa okanye nangayiphi na indlela, ukuthabatha inxaxheba kwiingxoxo kuyo nayiphi na indibano

kwaye umChopheli akanakho ukuqwalasela nawuphi na umcimbi ukuba ngokubhekiselele kuloo mba—

- (a) ulilungu losapho, ihlakani okanye ihlakani loshishino lomenzi-sicelo selayisenisi, sokunikwa isatifikethi, okanye naliphi na elinye ilungelo okanye naliphi na ilungelo elinokukhutshwa yiNkundla yemiCimbi yoTywala okanye ngumChopheli nokuba ngowuphi kubo; 5
  - (b) ulilungu losapho, lihlakani okanye ihlakani loshishino, ungumlawuli, lilungu okanye lihlakani, okanye unenxaxheba eyimali okanye enye inxaxheba kwishishini lomenzi-sicelo selayisenisi, sokunikwa isatifikethi, okanye naliphi na elinye ilungelo okanye ilungelo ekufuneka likhutshwe yiNkundla yemiCimbi yoTywala okanye ngumChopheli, nokuba ngubani na kubo; okanye 10
  - (c) unenxaxheba emthintelayo ekuqhubeni imisebenzi yakhe njengelungu leNkundla yemiCimbi yoTywala ngendlela enobulungisa, engenamkhethe nefanelekileyo. 15
- (2) Xa nini na kunokucaca ukuba ilungu okanye umChopheli, nokuba ngowuphi na kubo, unenxaxheba okanye unokuba nenxaxheba ekhankanywe kwicandelwana (1)—
- (a) ngokubhekiselele kumba ofanele ukuqwalaselwa yiNkundla yemiCimbi yoTywala, elo lungu kufuneka ngaphandle kokulibazisa libhengeze ngokupheleleyo uhlobo lwenxaxheba yalo lize liphume kwindibano ukulungiselela ukuba amalungu aseleyo awushukuxe loo mba agqibe ekubeni elo lungu lifanele ukuthintelwa kusini na ekuthabatheni inxaxheba kwiinkqubo zendibano ngenxa yokungquzulana kweminqweno; kananjalo 20
  - (b) ngokubhekiselele kumba ofanele ukuqwalaselwa ngumChopheli, kufuneka ngaphandle kokulibazisa abhengeze ngokupheleleyo uhlobo lwenxaxheba yakhe kwiNkundla yemiCimbi yoTywala apho kufuneka liqwalasele khona loo mba. 25
- (3) Isibhengezo nesigqibo esithatyathiweyo ngamalungu aseleyo eNkundleni yemiCimbi yoTywala, ekubhekiswe kuwo kwicandelwana (2)(a) kufuneka sirekodishwe kwimizuzu yendibano leyo. 30

### UkuQhutywa komSebenzi weNkundla yokuLayisenisa ukuShishina ngoTywala

23. (1) UmChopheli kufuneka, phantsi kwemimiselo yalo mThetho, agqibe ngenkqubo eza kulandelwa yindibano yeNkundla yokuLayisenisa uTywala.

(2) UmChopheli unakho ukwazisa, ngendlela emiselweyo, nabani na onokuba uchaphazeleke ngokungalunganga xa bekuqwalaselwa umba othile yiNkundla yemiCimbi yoTywala, ukuze abekhona kwindibano leyo ekuza kuqwalaselwa kuyo loo mbandela. 35

(3) Umntu othunyelelwe isaziso ngokwecandelwana (2) unakho—

- (a) ukuzimasa indibano ngokwakhe okanye angamelwa apho ligqwetha, igqwetha lejaji okanye nangubani na ongomnye ommeleyo; okanye 40
- (b) ukukhetha ukungayizimasi indibano leyo okanye angamelwa kuyo.

(4) Ukuba umChopheli wanelisekile kukuba loo mntu waziswe ngokufanelekileyo ukuba azokuvela phambi kwindibano yeNkundla yokuLayisenisa uTywala, wabe engekho apho, umChopheli unakho ukuyalela ukuba indibano mayiqhubeke engekho loo mntu okanye unakho ukuthabatha elinye inyathelo alibona lilungile linobulungisa ngokunjalo kwezo meko. 45

(5) UmChopheli unakho ukuyalela ukuba nabani na makathunyelelwe isamani ngendlela emiselweyo yokuba abekhona kwindibano yeNkundla yemiCimbi yoTywala ukuze anike ubungqina okanye azise uxwebhu okanye nantoni na ekuye okanye eselugcinweni lwakhe okanye ephantsi kolawulo lwakhe. 50

(6) UmChopheli unakho ukuyalela ukuba nabani na makathunyelelwe isamani ngendlela emiselweyo yokuba abekhona kwindibano yeNkundla yokuLayisenisa uTywala ukuze anike ubungqina okanye azise uxwebhu okanye nantoni na ekuye okanye eselugcinweni lwakhe okanye ephantsi kolawulo lwakhe kambe afakwe imibuzo yiNkundla yokuLayisenisa uTywala. 55

(7) INkundla yokuLayisenisa uTywala inakho ukuhlola, nokugcina kwithuba elifanelekileyo, naluphi na uxwebhu okanye into eliyinikiweyo.

(8) Umntu onika ubungqina kwindibano yeNkundla yemiCimbi yoTywala kufuneka oko akwenze phantsi kwesifungo okanye isivumo.

(9) Xa iqwalasela umba iNkundla yemiCimbi yoTywala inakho, ngokokuthanda kwayo, ukuthabathela nawuphi na umbandela okanye imeko ingqwalaselo, mbandela 60

lowo okanye meko leyo inokuba nefuthe kwisigqibo seNkundla yemiCimbi yoTywala. Ukuba naliphi na iqela licela ukuba umcimbi mawumiswe ukuze libe nokuzilungiselela ukuxoxa ngokubhekiselele kumba othile, umChopheli unakho ukuwumisa loo mcimbi ewumisela loo nto.

(10) Zonke iindibano zeNkundla yemiCimbi yoTywala zinokuzinyaswa luluntu jikelele nangona umChopheli enakho ngezizathu ezivakalayo ukuyalela ukuba nabani na obukho bakhe kwindibano bunganqwenekiyi makangayizimasi loo ndibano okanye makaphume kuloo ndibano. 5

(11) Uluntu jikelele alunakho ukuthabatha inxaxheba kwiingxoxo zeNkundla yemiCimbi yoTywala lungenakho nokuvota. 10

(12) Ukungayizimasi indibano emva kokukhutshelwa isamani ngokwecandelwana (5) lulwaphulo-mthetho.

### **IiKomiti zeNkundla yokuLayisenisa ukuShishina ngoTywala**

**24.** (1) UmChopheli unakho ukutyumba ikomiti enye okanye ngaphezulu, komiti leyo imalungu anguye, uSekela-mChopheli nalo neliphi na elinye ilungu okanye umntu otyunjwe ngokwecandelo 20(5). 15

(2) Ikomiti, ubuncinane kufuneka ibe namalungu amathathu.

(3) INkundla yeziBheno yokuLayisenisa uTywala inakho ukuyidlulisele kwikomiti imisebenzi yeNkundla yeziBheno yokuLayisenisa uTywala echazwe kwicandelo 64, 65, 71 necandelo 89(14)(b). 20

(4) INkundla yeziBheno yokuLayisenisa uTywala inakho ukukhuphela ikomiti izikhokelo ezimalunga nokusetyenziswa kwegunya okanye ukuqhutywa komsebenzi ewudlulisele kwikomiti.

(5) Ikomiti, xa isebenzisa amagunya adluliselweyo okanye xa isenza umsebenzi odluliselweyo, kufuneka ithobele izikhokelo ekubhekiswe kuzo kwicandelwana (4). 25

(6) Xa kutyunjwa amalungu ekomiti, umChopheli kufuneka aqwalasele ulwazi, ubungcali namava afunekayo ngokubhekiselele kumba lowo ufanele ukuqwalaselwa.

(7) Iikomiti zeNkundla yokuLayisenisa uTywala zilawulwa yimigaqo efanayo naleyo inxulumene neNkundla yokuLayisenisa uTywala.

### **INkundla yeziBheno** 30

**25.** (1) UmPhathiswa kufuneka, kwithuba athe walimisela, atyumbe umntu oneemfanelo zomthetho ezilinganayo nezo zifunekayo xa umntu eza kwamkelwa njengegqwetha, okanye njengegqwetha lejaji yeNkundla ePhakamileyo yomZantsi-Afrika, nonamava ekuphathweni kwemicimbi yobulungisa, asebenze njengeNkundla yeziBheno ukuze kunikwe ingqwalaselo izibheno ezinxulumene okanye izicelo zokuhlaziywa kwezigqibo zeNkundla yemiCimbi yoTywala ngokwalo mThetho. 35

(2) UmPhathiswa kufuneka amisele inkqubo eza kulandelwa yiNkundla yeziBheno.

## **ISIAHLUKO 4**

### **ULAWULO, IMIVUZO NOKUPHATHWA KWEZIMALI**

### **Ukulawulwa kweBhodi, kweNkundla yokuLayisenisa ukuShishina ngoTywala neNkundla yeziBheno** 40

**26.** (1) IBhodi kufuneka ityumbe—

(a) umntu oneemfanelo ezifanelekileyo njengeGosa loLawulo eliyiNtloko ngenjongo yokuba lincedise iBhodi ekuqhubeni yonke imisebenzi yezimali nolawulo lweBhodi, lweNkundla yemiCimbi yeziMali neNkundla yeziBheno, noza kuphendula kwiBhodi ngaloo msebenzi; 45

(b) unobhala weNkundla yemiCimbi yoTywala, oza kujongana—

(i) nokulungisa ii-ajenda;

(ii) ukurekodisha imizuzu;

(iii) Ukugcina imizuzu yeNkundla yemiCimbi yoTywala; kunye 50

(iv) neminye imisebenzi enokumiselwa ngumChopheli; kananjalo

(c) nabanye abasebenzi abayimfuneko ukwenzela ukuba iBhodi, iNkundla yemiCimbi yoTywala neNkundla yeziBheno likwazi ukuqhuba umsebenzi walo.



- (2) Abasebenzi beBhodi, abeNkundla yemiCimbi yoTywala nabeNkundla yeziBhenokufuneka—
- (a) batyunjwe ngokwemimiselo nemiqathango emiselwe yiBhodi kwayekufuneka bavuzwe yiBhodi; kananjalo
- (b) kufuneka umsebenzi wabo bawuqhube ngokwemiyalelo nolawulo lweBhodi. 5
- (3) IBhodi, ibonisene nomPhathiswa kunye nomPhathiswa osingathe ezezimali kweliPhondo:
- (a) kufuneka imisele umgaqo-nkqubo weBhodi, oweNkundla yemiCimbi yoTywala, eyeNkundla yeziBhenoneyabasebenzi bayo; kananjalo
- (b) kufuneka imisele imivuzo yabasebenzi bayo, ngaphandle kwabo basebenzi abasekhondwe/abanikwe omnye umsebenzi ongengowesiqhelo ngokwecandelwana (5). 10
- (4) IBhodi kufuneka, ngokokucetyiswa liGosa loLawulo eliyiNtloko, imisele umgaqowokuziphatha, osebenza kubo bonke abasebenzi beBhodi, abeNkundla yemiCimbi yolawulo nabeNkundla yeziBhenokufuneka— 15
- (a) ukuthotyelwa kwemithetho ephatheleneyo;
- (b) ukusetyenziswa kakuhle nangobulumko kweemali nezinto eziluncedo zeBhodi;
- (c) ukukhuthazwa nokubanokuab kumgangatho ophezulu wokuziphatha;
- (d) ukuthintelwa kongquzulwano lweminqweno; 20
- (e) ukukhusela kwengcaciso eyimfihlelo esezandleni zeBhodi, ezeNkundla yemiCimbi yoTywala neNkundla yeziBhenokufuneka; kananjalo
- (f) inkonzo yobugcisa, ethembekileyo, engenamkhethe, enobulungisa, nekuziphatha kuhle.
- (5) IBhodi inokusebenzisa abantu abasekhondiweyo okanye abadluliselweyo besuka kwinkonzo yoluntu ngokwemimiselo yomThetho weenkonzo zoLuntu, 1994 (isiBhengezo esinguNombolo 103 sika-1994). 25
- (6) IGosa loLawulo eliyiNtloko linokuqhuba imisebenzi emalunga nezimali eyimfuneko ukuze iqumrhu loluntu lisebenze, kubandakanywa, kungaphelelwanga apho, ukuseka amaqumrhu obuhlakani namanye amaqumrhu angamalungu ombuso nokusebenzisa iikontraki nababoneleli ngeenkonzo. 30
- (7) IGosa loLawulo eliyiNtloko linakho ukubhekisa kwindibano yeBhodi okanye yeNkundla yemiCimbi yoTywala, nokuba yeyiphi kwezo zinto, nawuphi na umcimbi osemagunyeni nasemisebenzini yeBhodi ngokwecandelo 9 okanye yeNkundla yemiCimbi yoTywala ngokwecandelo 20. 35
- (8) Imizuzu yeBhodi, yeNkundla yemiCimbi yoTywala neyeNkundla yeziBhenokufuneka igcinwe, kambe igcinwe kwii-ofisi zeBhodi, ibe nokufunyanwa nangubani na ngenjongo yokuyifunda okanye yokuyikopisha, oko kwenziwe ngokuthi umntu ahlawule umrhumo omiselweyo, kunikwe ingqalelo nemimiselo yomThetho wokuKhuthaza ukuFikeleleka kweNgcaciso (umThetho 2 ka-2000). 40
- (9) UmChopheli unakho, phantsi kwemimiselo yomThetho wokuKhuthaza ukuFikeleleka kweNgcaciso, 2000, nangezizathu ezifanelekileyo, ukuyalela ukuba inxalenye okanye yonke irekhodi yeenkqubo zeqonga lemicimbi yoTywala, ingabhengezwa esidlangalaleni, xa kunjalo ke loo rekhodi okanye inxalenye yayo ayinakho ukufundwa okanye ukukupishwa ngaphandle kwemvume yomChopheli. 45

**Umvuzo weGosa loLawulo eliyiNtloko, owamalungu eBhodi, owamalungu eNkundla yokuLayisenisa ukuShishina ngotywala nowamalungu eNkundla yeziBhenokufuneka**

27. IGosa eliyiNtloko yoLawulo, amalungu eBhodi naweNkundla yemiCimbi yoTywala, nomntu otyunjelwe ukuqhuba umsebenzi weNkundla yeziBhenokufuneka, banelungelo lokufumana umvuzo ofanelekileyo ngokokumiselwa ngumPhathiswa, ebonisene nomPhathiswa osingathe imicimbi yezimali kweli Phondo. 50

**Ukuxhaswa kweBhodi ngezimali nokuphathwa kweemali zayo**

28. (1) Imali zeBhodi zibandakanya—
- (a) imali eyabiwe yiPalamente yePhondo; kunye 55
- (b) nemali eqokelelelwe iBhodi ivela kuwo nokuba ngawaphi na amajelo avunye ngumPhathiswa emva kokubonisana nomPhathiswa osingathe imicimbi yezimali kweli Phondo, kubandakanywa imirhumo eqokelelwe ngokwalo mThetho.



- (2) IGosa eliyiNtloko yoLawulo kufuneka lenze ukuba kugcinwe iincwadi ezipheleleyo nezokwenene kunye nazo zonke iirekhodi eziyimfuneko ngokubhekiselele kuzo.
- (3) IGosa eliyiNtloko yoLawulo kufuneka liqinisekise ukuba uhlahlo lwabiwo-mali lonyaka lweBhodi, izicwangciso zomsebenzi, iingxelo-mali zonyaka neengxelo-mali eziphicothiweyo zilungisiwe zaza zafakwa ngokwemimiselo yomThetho wokuPhathwa kweziMali zoluNtu, 1999 (umThetho 1 ka-1999). 5
- (4) IGosa eliyiNtloko yoLawulo kufuneka, ubuncinane kwiinyanga ezintandathu, okanye kwelinye ithuba elimiselwe ngumPhathiswa, ngaphambi kokuqala konyaka-mali weBhodi, lithumele kumPhathiswa ngenjongo yokuba avume— 10
- (a) isicwangciso-msebenzi seBhodi, esinemimiselo elinganisekayo; kunye
- (b) nengxelo yengeniso nenkcitho eqikelelweyo yeBhodi ngokubhekiselele kunyaka-mali olandelayo.
- (5) Nakowuphi unyaka-mali iGosa eliyiNtloko yoLawulo kufuneka, apho kulungayo, lithumele kumPhathiswa ngenjongo yokuba avume iingxelo ezixhasayo zengeniso nenkcitho yaloo nyaka-mali. 15
- (6) IBhodi ayivumelekanga ukuba ingene kwizivumelwano zokuzibophelela ngemali engaphezu kwaleyo ivunyiweyo ikuhlahlo lwabiwo-mali.

### Uphicotho neeNgxelo zoNyaka

- 29.** (1) UmPhicothi Jikelele kufuneka aphicothe iingxelo-mali zeBhodi. 20
- (2) IBhodi kufuneka ifake ingxelo ngemisebenzi yayo kunyaka-mali kumPhathiswa ukuze yandlalwe phambi kwePalamente yePhondo kwiinyanga ezintlanu emva kokuphela konyaka-mali.
- (3) Ingxelo kufuneka—
- (a) ibandakanye ingxelo-bume bezimali, ingxelo yengeniso nenkcitho eqinisekiswa ngumPhicothi Jikelele; 25
- (b) ichaze imimiselo elinganisekayo njengoko kuzichazwe kwisicwangciso-msebenzi ekubhekiswa kuso kwicandelo 28(4)(a) kulo nyaka-mali uchaphazelekayo; kananjalo
- (c) iqulathe ingcaciso emalunga nendlela ekuqhutywe ngayo ngokunxulumene nezozoqosho, ukusetyenziswa ngobuchule nangendlela eyiyo kwezinto eziluncedo ingakumbi uthlekiso phakathi kwezalathisi ezicwangcisiweyo neyona ndlela kuqhutywe ngayo njengoko kuchaziwe kwisicwangciso-msebenzi. 30

### Ingeniso eqokelelelwa iNgxowa-mali yePhondo, iBhodi okanye oomasipala 35

- 30.** (1) Imirhumo, izohlwayo, iifayini neemali ezifunyenwe ekuthengisweni kwezinto ezithinjweyo ekubhekiswa kuzo kwicandelo 20(3)(b)(v), 63(2) necandelo (4), 64(1), 65(16), 82(2)(b), necandelo 87(4) kufuneka ihlawulwe kwiNgxowa-mali yeNgeniso yePhondo, ngaphandle kwepesenti yomrhumo wohlaziyo ngalunye ekubhekiswa kulo kwicandelo 31(3). 40
- (2) Imirhumo ekubhekiswa kuyo kwicandelo 26(8), 36(1)(e), 38, 46, 48, 65(9) necandelo 84(2) kufuneka ihlawulwe kwiBhodi.
- (3) Imirhumo ekubhekiswa kuyo kwicandelo 36(5)(a)(i) necandelo (b)(i) kufuneka ihlawulwe kumasipala ochaphazelekayo.
- (4) Akukho mali ikhankanywe kweli candelo inokubuyezwa. 45

## ISAPHLUKO 5

### UKUMISELWA KWENGXOWA-MALI YEZENTLALO NEZEMFUNDO

#### Ukungeniswa kweengxelo-mali

- 31.** (1) IGosa eliyiNtloko yoLawulo kufuneka limisele ingxowa-mali ngenjongo—
- (a) yokuthintela iziphumo ezingezizo kwintlalo-ntle ngenxa yokusetyenziswa gwenxa kotywala; 50
- (b) yokufundisa abantu ababandakanyekayo ekuthengisweni nasekuboneleleni ngotywala; kunye
- (c) nokufundisa uluntu jikelele ukuthengisa, ukubonelela nokusela utywala ngendlela enengqiqo. 55

(2) IGosa eliyiNtloko yoLawulo, emva kokubonisana neBhodi nasemva kokubonisana nomPhathiswa, kufuneka limisele imiqathango emayijongwe neyokulawula ingxowa-mali ekubhekiswe kuyo kwicandelwana (2).

(3) UmPhathiswa, ebonisene nomPhathiswa osingathe imicimbi yezimali kwiPhondo, kufuneka amisele ipesenti yomrhumo wohlaziyo ngalunye, pesenti leyo ifanele ukwabelwa ingxowa-mali ekubhekiswe kuyo kwicandelwana (2). 5

(4) IGosa eliyiNtloko yoLawulo, libonisene neBhodi nomPhathiswa osingathe imicimbi yezimali kwiPhondo kufuneka—

(a) livule i-akhawunti yengxowa-mali egameni leBhodi liyivula kwiziko elibhaliswe njengebhanki ngokomThetho weeBhanki, 1990 (umThetho 94 ka-1990); kanaanjalo 10

(b) lifake yonke imali eyabiwe ngokwecandelwana (3) kuloo akhawunti.

## ISAPHLUKO 6

### ULAYISENISO

#### Iilayisenisi 15

32. (1) Akukho mntu uvumelekileyo ukuba asile utywala okanye abuthengise ngaphandle kokuba oko ukugunyazisiswe ngokwelayisensisi ekhutshwe ngokwalo mThetho okanye ngokomThetho woTywala, 1989 (umThetho 27 ka-1989).

(2) Umntu ogunyaziselwe ukusila utywala okanye ukubuthengisa, oko makakwenze ngokwemiqathango yelayisenisi leyo. 20

(3) Umntu othe engaxolelwanga ngokwecandelo 89(14), wasila utywala okanye wabuthengisa esaphula imiqathango yecandelwana (1) necandelwana (2) uyakuba netyala lokwaphula umthetho.

#### Iintlelo zeelayisenisi

33. INkundla yemiCimbi yoTywala inokukhupha ezi layisenisi zilandelayo— 25

(a) ilayisenisi yokusila nokuthengisa utywala bokuselwa kwindawo leyo buthengiswa kuyo nangaphandle kwendawo leyo buthengiswa kuyo;

(b) ilayisenisi yokuthengisa utywala bokuselwa kwindawo leyo buthengiswa kuyo;

(c) ilayisenisi yokuthengisa utywala bokuselwa ngaphandle kwendawo leyo buthengiswa kuyo; 30

(d) kwiimeko ezizodwa, ilayisenisi yokuthengisa utywala bokuselwa kwindawo leyo buthengiswa kuyo nangaphandle kwendawo leyo buthengiswa kuyo;

(e) ilayisenisi yokuthengisa utywala bokuselwa kwindawo leyo buthengiswa kuyo nangaphandle kwendawo leyo buthengiswa kuyo kwimicimbi eyodwa. 35

#### Iindlela zokufunyaniswa iilayisenisi

34. INkundla yemiCimbi yoTywala ayinako ukukhupha ilayisenisi ngaphandle kokuba yanelisekile ngokusekelezwe koko kunokwenzeka ukuba—

(a) ukukhutshwa kwayo kwamkelekile eluntwini;

(b) umenzi-sicelo unesimilo esifanelekileyo, kwaye akathintelwanga ekubeni abenayo ilayisenisi ngokwecandelo 35; 40

(c) indawo ekuza kuthengiselwa kuyo utywala okanye ekuza kuselelwa kuyo utywala ifanelekile okanye iyakufanela ukusetyenziselwa loo nto yakugqitywa;

(d) umenzi-sicelo unelungelo lokusebenzisa indawo leyo icetywayo; kwaye 45

(e) ukukhutshwa kwelayisenisi akuthinteli—

(i) abemi bendawo ekuhlalwa kuyo;

(ii) abahlali beziko labadala nababuthathaka;

(iii) abafundi beziko lemfundo abaminyaka yobudala ingaphantsi kweshumi elinesibhozo (18); 50

(iv) izigulana zeziko labantu abaxhomekeke kwiziyobisi nasetywaleni; okanye

(v) irhamente yeziko lezenkolo elikufutshane nendawo leyo icetywayo.

### Ukungalungelwa kwabenzi-zicelo

- 35.** (1) Aba bantu balandelayo abavumelekanga ukuba babenazo iilayisenisi zotywala—
- (a) nabani na othe kwiinyanga ezingamashumi amathandathu (60) ngaphambi kokufakwa kwesicelo selayisenisi wagwetyelwa ukuya entolongweni ngaphandle kwefayini; 5
  - (b) nabani na othe kwiinyanag ezingamashumi amathandathu (60) ngaphambi kokufaka isicelo selayisenisi wabhengezwa njengomntu ongakufanelenga ukubhaliswa liGunya leSizwe loTywala okanye ukubhaliselwa ilayisenisi yibhodi yotywala yephondo okanye ligunya lotywala; 10
  - (c) nabani na owatshonayo ngokwasezimalini akabinakho ukubuyela kwimeko yesiqhelo;
  - (d) nabani ominyaka yobudala ingaphantsi kwaleyo ivumelekilyo ngexesha kuqwalaselwa isicelo sakhe;
  - (e) nabani owayesakuba ngumnini-layisenisi eyacinywayo ngokwemimiselo yalo mThetho, okanye umThetho omisela iilayisenisi zotywala imiqathango kwelinye iphondo, kwithuba leenyanga ezilishumi elinesibini (12) ngaphambi kokufakwa kwesicelo selayisenisi; 15
  - (f) nabani na oliqabane okanye ihlakani lobomi lomntu ochazwe ku-(a), (b) okanye (e) ngasentla apha; kananjalo 20
  - (g) nabani na ogula ngenqondo njengoko kuchazwe kumThetho weMpilo yeNgqondo, 2002 (uMthetho 17 ka-2002).
- (2) Xa umntu athe akavumeleka ngokwecandelwana (1)(a) ukuya kwicandelwana (e) okanye (g), naliphi na iqumrhu okanye iqumrhu lohlobo lwe-close corporation okanye ukopolotyeni apho anesabelo khona okanye anenxaxheba yobulungu okanye isabelo sobulungu okanye nayiphi na ithrasti apho angunondyebo khona okanye umxhamli, nalo naliphi iqumrhu lamahlakani apho alihlakani khona, akayi kuvumeleka ngokunjalo. 25
- (3) INkundla yemiCimbi yoTywala, kwiimeko ezizodwa nangezizathu ezivakalayo, inakho ukugqiba ekubeni umntu obengavumelekanga ngokwecandelwana (1) necandelwana (2) uthatyathwa njengovumelekileyo ngokubhekiselele kwisicelo esithile okanye kwilayisenisi ethile. 30

### Inkqubo yokwenza isicelo

- 36.** (1) Isicelo selayisenisi okanye uhlelo lwelayisenisi ekubhekiswe kulo kwicandelo 33, kufuneka senzwe iBhodi ngokusifaka kuyo ngomhla okanye ngaphambi komhla omisiweyo— 35
- (a) ifomu eyalelweyo yokwenza isicelo izaliswe ngeenkukacha ngokufanelekileyo;
  - (b) ibe nesatifikethi sokusikwa komhlaba;
  - (c) apho kukho imfuneko, ikopi yesicelo socwangciso esifakwe kuloo masipala ngokwemithetho yocwangciso enokusetyenziswa; 40
  - (d) enye ingcaciso enokufunwa yiNkundla yemiCimbi yoTywala ukwenzela ukuba ikwazi ukugqiba ekubeni umenzi-sicelo uyayifezekisa kusini na imiqathango emiselweyo yokunikwa ilayisenisi; kunye
  - (e) nomrhumo omiselweyo ofanele ukuhlawulwa ngendlela emiselweyo. 45
- (2) Ngokufaka isicelo selayisenisi, umenzi-sicelo uyavuma ukuba iNkundla yemiCimbi yoTywala okanye naliphi na elinye ilungu okanye umqeshwa ogunyazisiweyo weBhodi unakho—
- (a) ukuqhuba nayiphi na inkqubo yeengxoxo, uphengululo okanye uphando oluphathelele nentembeko, ukuziphatha, igama elihle, ukuziphatha kwangaphambili, izimbo, ukuzimanyanisa, ubume ngokwezimali kunye nesakhono, irekhodi yolwaphulo-mthetho, ubuchule, amava, nokufaneleka—
    - (i) komenzi-sicelo okanye ukuba ilayisenisi sele ikhutshiwe, komnini layisenisi;
    - (ii) nawuphi na umlawuli okanye umnini-zabelo, ilungu, unondyebo okanye umxhamli, okanye umntu onesabelo sobulungu, apho umenzi-sicelo ayinkampani, aliqumrhu lohlobo lwe-close corporation, ithrasti okanye ukopolotyeni; kunye 55

- (iii) naye nawuphi na umntu obandakanyeka ngokuthe ngqo okanye ngokungathanga ngqo kwimicimbi yakhe nawuphi na umenzi-sicelo okanye, ukuba ilayisenisi ikhutshiwe, umnini-layisenisi;
- (b) ukubhengeza naluphi na uxwebhu okanye ingcaciso efakwe njengxalenye okanye kunye nesicelo kuye nawuphi na umntu ngokunxulumene naloo ngxoxo, nolo phando nolo phengululo; kananjalo; 5
- (c) afumane kananjalo abhengeze kuzo naziphi na iziphathamandla zonyanzeliso-mthetho okanye naliphi na iqumrhu elimisela imiqathango okanye naliphi na iqumrhu, naphi na ehlabathini ingcaciso yomenzi-sicelo okanye echaphazela umenzi-sicelo ngenjongo yokuqhuba iingxoxo, uphando okanye uphengululo. 10
- (3) Umntu ongumsebenzi weBhodi kufuneka, kwithuba elimiselweyo ukususela kumhla wokufunyanwa kwesicelo, axilonge isicelo ukuze kugqitywe ekubeni iyahambelana kusini na necandelwana (1).
- (4) Ukuba umsebenzi ekubhekiswe kuye kwicandelwana (3) ugqiba ekubeni isicelo asiphelelanga okanye sineziphene, yena kufuneka, kwithuba eliyalelweyo ukususela kumhla wokufunyanwa kwesicelo, akhuphe isaziso esichaza ukungapheleli kwesicelo okanye ukuba neziphene kwesicelo njengoko kumiselwe, esithi umenzi-sicelo kufuneka ongeze oko kusilelayo, okanye alungise oko kususiphene, kwisicelo eso kwithuba elo limiselweyo ukususela kumhla wesicelo. 20
- (5) IBhodi kufuneka, kwithuba elimiselweyo emva kokufumanisa ukuba isicelo siyahambelana nemimiselo yecandelwana (1)—
- (a) apho kusebenza khona icandelwana (1)(c) iya kuthumela isicelo eso kumasipala uchaphazelekayo ukuze umasipala lowo—
- (i) avumele uluntu ukuba malufikelele ekuhloleni okanye, emva kokuhlawula intlawulo emiselweyo, lufumana ikopi yesicelo; 25
- (ii) afumane uluvo lukaceba wewadi;
- (iii) uluvo malunga nesicelo; kananjalo
- (iv) avumele ukuqwalaselwa kwesicelo socwangciso ukulungiselela ukuqwalaselwa kwesicelo socwangciso ngokunxulumene nesicelo sokuba nelayisenisi yotywala. 30
- (b) apho icandelwana (1)(c) lingasebenziyo, ithumele isicelo kumasipala ochaphazelekayo ukuze loo masipala—
- (i) avumele uluntu ukuba lube nokufikelela, nokuhlola okanye, emva kokuhlawula umrhumo oyalelweyo, afumane ikopi yesicelo; 35
- (ii) makafumane iimbono zikaceba wewadi; kunye
- (iii) nezimvo ngokunxulumene nesicelo eso.

### Isaziso sesicelo

37. (1) IBhodi kufuneka, ngendlela eyalelweyo, ipapashe izaziso, ngeelwimi ezintathu zaseburhulumenteni zephondo kwiGazethi yephondo nangeelwimi ezimbini ubuncinane kwiphepha lasekuhlaleni elijikeleziswa kuloo mmandla ekukho kuwo indawo leyo yenzelweisicelo selayisenisi, kwaye apho lingekhoyo iphephandaba lasekuhlaleni, ubuncinane kwiphepha elinye ubuncinane elijikeleziswa kuloo mmandla ekukho kuwo indawo leyo ilayisenisiweyo. 40
- (2) Umenzi-sicelo kufuneka axhome isaziso, njengoko kuyalelwe, ngeelwimi ezintathu zaseburhulumenteni bePhondo kwindawo esekuhleni kwindawo leyo icetywayo ukuze sibonwe ngabantu abadlulayo. Phofu xa iNkundla yemiCimbi yoTywala inokukuxolela ngezizathu ezivakalayo ukungayithobeli loo mimiselo. 45
- (3) Isaziso ngokwecandelwana (2) kufuneka sihlale sikhona ngalo lonke ithuba elimiselweyo ukususela kumhla wokufakwa kwesicelo. 50
- (4) IBhodi kufuneka, kwithuba elimiselweyo ukususela kumhla wokufakwa kwesicelo, ifake isaziso sesicelo ngendlela eyalelweyo malunga nento nganye kwezi zilandelayo—
- (a) igosa lotywala eligunyazisiweyo indawo elayisenisiweyo ekummandla walo, ekufuneka ukuba, kwithuba elimisiweyo, lifake isaziso sesicelo— 55
- (i) kubemi abangabamelwane okanye kubantu elibona ukuba baya kuchatshazelwa, okanye banenxaxheba, ekuvunyweni okanye ekwaliweni kwesicelo eso, kananjalo
- (ii) nakwigqiza elijongene nolwaphulo-mthetho, ukuba likho, lommandla lowo ekukho kuwo indawo leyo, kananjalo 60

- (b) nakumasipala ekukho kummandla wakhe indawo leyo ilayisenisiweyo, ekufuneka ukuba, kwithuba elimisiweyo, akhuphe isaziso sesicelo kuceba wewadi, ukuba ukho, ogunyaziselwe ukujongana naloo wadi ekukho kuyo indawo leyo ilayisenisiweyo.

(5) Lingatyeshelwanga icandelwana (1), apho umenzi-sicelo kufuneka ukuba athobeke icandelo 36(1)(c), isaziso esikhutshwe ngokomthetho wocwangciso ochaphazelekayo sithatyathwa njengokuthotyelwa kwemiqathango enxulumene neli candelo: Phofu xa iNkundla yemiCimbi yoTywala inokuqonda ukuba oko kuphindwa kokukhutshwa kwesaziso ikubona kufanelekile. 5

#### **Izicelo ezandlwe kwiBhodi ukuze zihlolwe** 10

**38.** IBhodi kufuneka kwakwelo thuba limiselweyo lokufumanisa ukuba isicelo eso siyahambelana nemimiselo yecandelo 36(1), yenze ukuba uluntu lubenakho ukufikelela, ukuhlola, emva kokukhupha intlawulo engumrhumo omiselweyo, ukufumana ikopi yesicelo kunye nawo nawaphina amaxwebhu afakwe ngokunxulumene naso, kwii-ofisi zeBhodi kude kube ngumhla ekuza kuqwalaselwa ngawo isicelo eso yiNkundla yemiCimbi yoTywala. 15

#### **Uzathuzo**

**39.** (1) Umntu onenxaxheba ekukhutshweni nasekwaliweni kwesicelo unakho, kwithuba elimiselweyo, ukwenza iziphakamiso ezibhaliweyo kwiNkundla yemiCimbi yoTywala, ziphakamiso ezo zixhasa okanye zichasa isicelo eso. 20

(2) Iziphakamiso ezo kufuneka zithunyelwe kwiBhodi okanye kumasipala ochaphazelekayo.

(3) Ikopi kufuneka ithunyelwe kumenzi-sicelo okanye kummeli wakhe nakwigosa eligunyazisiweyo lemicimbi yotyala ngumntu lowo wenza iziphakamiso.

(4) Ubungqina bokuthunyelwa kwekopi kufuneka bufakwe kunye neziphakamiso. 25

(5) Umntu lowo wenza iziphakamiso kufuneka achaze oku kulandelayo:

(a) igama lakhe elipheleleyo nedilesi;

(b) inombolo yakhe yesazisi okanye ukuba uyinkampani okanye isisi/ungukopolotyeni inombolo yakhe yokubhaliswa;

(c) ukuba kukho imfuneko, igama nedilesi yommeli wakhe; 30

(d) uhlobo lwenxaxheba yakhe ekukhutshweni okanye ekwaliweni kwesicelo eso; kunye

(e) nezizathu ezivakalayo zenkcaso okanye inkxaso.

(6) Umenzi-sicelo unakho ukufaka impendulo yakhe kwiziphakamiso ezichasa isicelo kwithuba elimiselweyo. 35

#### **Ukuthunyelwa kwamaxwebhu**

**40.** Umasipala kufuneka, kwithuba elimiselweyo, athumele oku kulandelayo kwiBhodi—

(a) isigqibo sayo ngokubhekiselele kwisicelo socwangciso ekubhekiswe kuso kwicandelo 36(1)(c); 40

(b) ingcaciso ngokubhekiselele kwinkqubo echaza ukuba uluntu luthabathe inxaxheba kangakanani ngokubhekiselele kwesi sicelo;

(c) izimvo zoceba wewadi;

(d) izimvo zakhe, ukuba zikhona, ngokubhekiselele kwisicelo selayisenisi; kananjalo 45

(e) nalo naluphi na olunye uxwebhu olufakwe ngokubhekiselele kwesi sicelo sokufunyaniswa ilayisenisi yotywala.

#### **Ukuqwalaselwa kwezicelo**

**41.** (1) ukuba umenzi-sicelo uthe wasilela ekusithobeleni ngokwaneleyo isaziso ekubhekiswe kuso kwicandelo 36(4) kwithuba elimisiweyo, iNkundla yemiCimbi yoTywala inakho: 50

(a) ukwala ukusiqwalasela isaziso;

(b) ukuwumisa umcimbi wokuqwalasela isicelo eso kude kuthotyelwe isaziso;

(c) ukusala isicelo.

- (2) INkundla yokuLayisenisa uTywala inakho, xa iqwalasela isicelo, ukuthabathela oku kulandelayo ingqalelo—
- (a) isicelo nayo nayiphi na ingxelo efakwe njengempendulo yesicelo;
  - (b) iziphakamiso ezixhasa okanye ezichasa isicelo, nayiphi na impendulo yezo ziphakamiso zichasene nezicelo kunye nawo lweNkundla yemiCimbi yoTywala kufuneka ithathelwe ingqalalelo. 5
- (3) Ukuba kukho iziphene kwisicelo, kuxwebhu olusiphelekayo, kwiziphakamiso okanye kwingxelo ngayo nayiphi na indlela okanye ukuba umntu usilele ekufakeni naluphi na uxwebhu okanye ekubambeeleni kwithuba elifanelekileyo, iNkundla yemiCimbi yoTywala inakho ukuxolela isiphene eso okanye ukusilela oko ukuba kubekho ukuthotyelwa komThetho okubonakalayo naxa oko kuxolela kungenakuphatha kakubi omnye umntu. 10

### Ukufunyaniswa ilayisenisi phantsi kwemiqathango ethile

42. (1) INkundla yemiCimbi yoTywala inakho ukukhupha ilayisenisi emiselwe imiqathango ethile. 15
- (2) Ilayisenisi ekhutshwe yiNkundla yemiCimbi yoTywala ngokwecandelwana (1) ayinakho ukukhutshwa ngaphandle kokuba umenzi-sicelo ude wayithobela imiqathango emiselweyo ngelo xesha lokuvunywa kwayo.
- (3) INkundla yemiCimbi yoTywala kufuneka, xa ivuma ilayisenisi phantsi kwemiqathango ethile, mayimisele ithuba lokuba umenzi-sicelo makayithobele imiqathango ekubhekiswe kuyo kwicandelwana (2). 20

### Uzathuzo

39. (1) Umntu onenxaxheba ekukhutshweni nasekwaliweni kwesicelo unakho, kwithuba elimiselweyo, ukwenza iziphakamiso ezibhaliweyo kwiNkundla yemiCimbi yoTywala, ziphakamiso ezo zixhasa okanye zichasa isicelo eso. 25
- (2) Iziphakamiso ezo kufuneka zithunyelwe kwiBhodi okanye kumasipala ochaphazelekayo.
- (3) Ikopi kufuneka ithunyelwe kumenzi-sicelo okanye kummeli wakhe nakwigosa eligunyazisiweyo lemicimbi yotyala ngumntu lowo wenza iziphakamiso.
- (4) Ubungqina bokuthunyelwa kwekopi kufuneka bufakwe kunye neziphakamiso. 30
- (5) Umntu lowo wenza iziphakamiso kufuneka achaze oku kulandelayo—
- (a) igama lakhe elipheleleyo nedilesi;
  - (b) inombolo yakhe yesazisi okanye ukuba uyinkampani okanye ukopolotyeni (oko kukuthi i-cc), inombolo yakhe yokubhaliswa;
  - (c) ukuba kukho imfuneko, igama nedilesi yommeli wakhe; 35
  - (d) uhlobo lwenxaxheba yakhe ekukhutshweni okanye ekwaliweni kwesicelo eso; kunye
  - (e) nezizathu ezivakalayo zenkcaso okanye inkxaso.
- (6) Umenzi-sicelo unakho ukufaka impendulo yakhe kwiziphakamiso ezichasa isicelo kwithuba elimiselweyo. 40

### Ukuthunyelwa kwamaxwebhu

40. Umasipala kufuneka, kwithuba elimiselweyo, athumele oku kulandelayo kwiBhodi—
- (a) isigqibo sayo ngokubhekiselele kwisicelo socwangciso ekubhekiswe kuso kwicandelo 36(1)(c); 45
  - (b) ingcaciso ngokubhekiselele kwinkqubo echaza ukuba uluntu luthabathe inxaxheba kangakanani ngokubhekiselele kwesi sicelo;
  - (c) izimvo zoceba wewadi;
  - (d) izimvo zakhe, ukuba zikhona, ngokubhekiselele kwisicelo selayisenisi; kananjalo 50
  - (e) nalo naluphi na olunye uxwebhu olufakwe ngokubhekiselele kwesi sicelo sokufunyaniswa ilayisenisi yotywala.



### Ukuqwalaselwa kwezicelo

- 41.** (1) Ukuba umenzi-sicelo uthe wasilela ekusithobeleni ngokwaneleyo isaziso ekubhekiswe kuso kwicandelo 36(4) kwithuba elimisiweyo, iNkundla yemiCimbi yoTywala inakho—
- (a) ukwala ukusiqwalasela isaziso; 5
  - (b) ukuwumisa umcimbi wokuqwalasela isicelo eso de kuthotyelwe isaziso;
  - (c) ukusala isicelo.
- (2) INkundla yemiCimbi yoTywala inakho, xa iqwalasela isicelo, ukuthabathela oku kulandelayo ingqalelo—
- (a) isicelo nayo nayiphi na ingxelo efakwe njengempendulo yesicelo; 10
  - (b) iziphakamiso ezixhasa okanye ezichasa isicelo, nayiphi na impendulo yezo ziphakamiso zichasene nezicelo kunye nawo nawaphi na amaxwebhu okanye udatyana olufakwe ngokunxulumene nesicelo eso; kanti
  - (c) ngokwemiqathango yecandelo 23(9), nawuphi na umcimbi, ngokoluvo lweNkundla yemiCimbi yoTywala kufuneka inikwe ingqalale. 15
- (3) Ukuba isicelo, uxwebhu olusiphelekayo, iziphakamiso okanye ingxelo zineziphene ngayo nayiphi na indlela okanye ukuba umntu usilele ekufakeni naluphi na uxwebhu okanye ekubambeleni kwithuba elifanelekileyo, iNkundla yemiCimbi yoTywala inakho ukuxolela isiphene eso okanye ukusilela oko ukuba kubekho ukuthotyelwa komThetho okubonakalayo naxa oko kuxolela kungenakuphatha kakubi omnye umntu. 20

### Ukufunyaniswa ilayisenisi phantsi kwemiqathango ethile

- 42.** (1) INkundla yemiCimbi yoTywala inakho ukukhupha ilayisenisi emiselwe imiqathango ethile.
- (2) Ilayisenisi ekhutshwe yiNkundla yemiCimbi yoTywala ngokwecandelwana (1) ayinakho ukukhutshwa ade umenzi-sicelo athobele imiqathango emiselweyo ngelo xesha lokuvunywa kwayo. 25
- (3) INkundla yemiCimbi yoTywala kufuneka, xa ivuma/inikezela ilayisenisi emiselwe imiqathango, mayichaze ithuba umenzi-sicelo ekufuneka abe uyithobele ngayo imiqathango ekubhekiswe kuyo kwicandelwana (2). 30
- (4) INkundla yemiCimbi yoTywala inakho ngalo naliphi na ixesha, emva kokwenziwa kwesicelo ngumenzi-sicelo, ukuhlomela okanye ukuyirhoxisa loo miqathango. 35
- (5) IGosa eliChophela imiCimbi linakho nanini na, xa umenzi-sicelo efake isicelo—
- (a) ukwandisa ithuba elichaziweyo, okanye
  - (b) ukuvuma ukuhlonyelwa kwesicwangciso sendawo. 35
- (6) Ukuba umenzi-sicelo uthe wasilela ekuthobeleni imiqathango ekubhekiswe kuyo kwicandelwana (2) kwithuba ekubhekiswe kulo kwicandelwana (3) okanye elongezwe ngokwecandelwana (5), ukuvunywa kwelayisenisi kuyaphelelwa kwaye ilayisenisi yona ithatyathwa njengengavunywanga. 40
- (7) Xa isicelo sihambelana nemiqathango echazwe yiNkundla yemiCimbi yoTywala, iBhodi kufuneka ikhuphe ilayisenisi njengoko kumiselwe, ngokwemiqathango yecandelo 46.

### Ilungelo lokusebenzisa indawo yokushishina

- 43.** INkundla yemiCimbi yoTywala inakho ngaphantsi kwemiqathango ethile ukukhupha ilayisenisi kananjalo iyalele ukuba ilayisenisi leyo ingakhutshwa ide ibe yanelisekile ukuba umenzi-sicelo unelungelo lokusebenzisa indawo leyo ngeenjongo eziza kugunyaziswa yilayisenisi. 45

### Indawo yokushishina engagqitywanga

- 44.** INkundla yemiCimbi yoTywala inakho ukuvuma ilayisenisi okwethutyana ngokubhekiselele kwindawo engekakhiwa, okanye kwindawo efuna ukuguqulwa ubume bayo, ukongezwa okanye ukwakhiwa ngokutsha ukuze loo ndawo yenziwe ukuba ifanele ukusetyenziselwa izizathu eza kusetyenziselwa zona phantsi kwemiqathango yelayisenisi kananjalo inakho ukuyalela ukuba ilayisenisi ayinakusetyenziswa ade umenzi-sicelo afezekise imiqathango emiselwe yinkundla leyo ngokubhekiselele ekugqityweni kwendawo. 55

### Imfundo noqeqesho

45. INkundla yemiCimbi yoTywala inakho ukuvuma ilayisenisi okwethutyana kanaanalo iyalele ukuba ilayisenisi leyo ayinakusetyenziswa ade umenzi-sicelo okanye umqeshwa okanye abaqeshwa bomenzi-sicelo babe balungenele uqeqesho okanye izifundo ezifunwayo yiNkundla yemiCimbi yoTywala. 5

### Ukukhutshwa kweelayisenisi

46. (1) IBhodi, kwithuba elimiselweyo emva kokuba iNkundla yemiCimbi yoTywala ivume isicelo esenziwe ngokwecandelo 36, kufuneka yazise umenzi-sicelo ngencwadi ukuba isicelo sivunyiwe.

(2) Umenzi-sicelo kufuneka ahlawule umrhumo omiselweyo kwiintsuku ezingamashumi amathandathu (60) ukususela kumhla wokukhutshwa kwesaziso esikhankanywe kwicandelwana (1).

(3) IBhodi, kwithuba elimiselweyo emva kokuhlawulwa komrhumo omiselweyo ekubhekiswe kuwo kwicandelwana (2), phantsi kwemiqathango yecandelo 42, 43, 44 necandelo 45, kufuneka ikhuphele umenzi-sicelo ilayisenisi ngendlela emiselweyo, ichaza imiqathango yelayisenisi njengoko imiselwe yiNkundla yemiCimbi yoTywala. 15

(4) Ilayisenisi kufuneka ikhutshwe egameni lomntu osebenzisa, oqhuba noza kuxhamla kumsebenzi weshishini elo lilyisenisiweyo kwaye ayinakho ukukhutshwa egameni lomtyunjwa okanye le-arhente.

(5) Ukuba umenzi-sicelo uyasilela ekuhlawuleni umrhumo ekubhekiswe kuwo kwicandelwana (2), ukuvunywa kwesicelo kuya kuphelelwa, phantsi kwecandelwana (6). 20

(6) Umenzi-sicelo unakho, kwiintsuku ezingamashumi amathandathu (60) emva kokuphela kwithuba ekubhekiswe kulo kwicandelwana (2), ukucela ngencwadi kwiGosa loLawulo eliyiNtloko ukuba axolelwe ngokusilela ukuhlawula umrhumo omiselweyo ekubhekiswe kuwo kwicandelwana (2) kwaye iGosa loLawulo eliyiNtloko linakho ukukuxolela ukusilela oko livumele ukuhlawulwa komrhumo emva kwexesha ngomhla omiselwe liGosa loLawulo eliyiNtloko, ngokuxhomekeke ekubeni kuhlawulwe isohlwayo esilingana ne-100% yomrhumo lowo. 25

### Ukufa okanye ukusilela komenzi-sicelo

30

47. Ukuba umenzi-sicelo selayisenisi—

(a) ubhubhile;

(b) utshonile ngamatyala;

(c) ufunyaniswe yinkundla ukuba akakwazi ukulawula imicimbi yakhe; okanye

(d) ukuba njengenkampani, isisi/i-cc, ithrasti okanye ukopolotyeni, utshonile ngamatyala, 35

ngaphambi komhla wokuqwalaselwa kwesicelo sakhe, umphathi-lifa, unondyebo, okanye umabi-lifa otyunjweyo angasebenzisa onke amagunya namalungelo umenzi-sicelo ebeya kubanawo ukuba ebengabhubhanga, engatshonanga ngamatyala, engabhengezanga njengotshonileyo ngamatyala. 40

### Ilayisenisi zotywala zethutyana neelayisenisi zotywala bemicimbi eyodwa

48. (1) UmChopheli-miCimbi, akufumana isicelo esivela kumnini-layisenisi ekubhekiswe kuye kwicandelo 33(b) okanye kwicandelo 33(d), kambe nasemva kokuhlawula umrhumo omiselweyo, angakhupha ilayisenisi yotywala yethutyana yokusetyenziswa ngumnini-layisenisi kuphela: Nangona kumba onxulumene necandelo 33(d), ilayisenisi yethutyana yotywala imiselwe imiqathango ethi ingasetyenziselwa ukuthengiswa nokuselwa kotywala kwindawo leyo kuthengiswa kuyo utywala. 45

(2) IGosa eliChophela imiCimbi alinakho ukukhupha ilayisenisi yethutyana phantsi kwecandelwana (1) liyikhuphela umntu othile ithuba elidlula iintsuku ezilandelelanayo ezisibhozo neentsuku ezingaphezu kwezingamashumi amathathu (30) ngonyaka ukususela kumhla woku-1 kuJanyuwari. 50

(3) Ilayisenisi yotywala yethutyana kufuneka yenziwe ngokuxhomekeke kwimiqathango emiselweyo, neminye imiqathango nezithintelo ezinokumiselwa liGosa eliChophela imiCimbi.

(4) IGosa eliChophela imiCimbi lingathi kwakwenziwa isicelo—

(a) liziko lezemfundo; 55

- (b) ngumbutho wezentlalo-ntle okanye wezenkcubeko;
- (c) ngumququzeleli womboniso;
- (d) ngunobhala, ngumphathi okanye ligosa eliyintloko lendibano yemidyarho okanye yemidlalo okanye yomcimbi ofanayo naleyo; okanye
- (e) ngumququzeleli wemidlalo yobugcisa, 5
- ngendlela emiselweyo nasemva kokuhlawula umrhumo omiselweyo, ukuvuma ukukhupha ilayisenisi yotywala bomcimbi owodwa obuthengiselwa ukuselelwa kwindawo okanye ngaphandle kwindawo ekuthengiselwa kuyo utywala kumcimbi owodwa.
- (5) Isicelo sotywala bomcimbi owodwa kufuneka senziwe ubuncinane kwiintsuku 10 ezilishumi elinesine (14) ngaphambi komhla womcimbi lowo uwodwa.
- (6) Ilayisenisi yotywala yomcimbi owodwa isenkunganikelwa ithuba elingaphezulu kobude bethuba elo lomcimbi owodwa.
- (7) Ilayisenisi yotywala yomcimbi owodwa ikhutshwa phantsi kwemiqathango ekubhekiswe kuyo kwicandelo 49, apho kulungayo, kananjalo ikhutshwa phantsi 15 kwemiqathango nezithintelo ezinokumiselwa yiNkundla yemiCimbi yoTywala.

## ISAHLUKO 7

### IMIQATHANGO YEELAYISENISI

#### Imiqathango eqhelekileyo yeelayisenisi

49. (1) Kufuneka ibe ngumqathango welayisenisi nganye yokuselwa kotywala 20 kwindawo apho buthengiselwa khona ukuba bonke utywala obuthengisiweyo kunokuphunywa nabo kwindawo elayisenisiweyo.
- (2) Kufuneka ibe ngumqathango wazo zonke ilayisenisi zokuselwa kotywala ngaphandle kwindawo elayisenisiweyo ukuba kungabikho siphatho siphethe utywala siya kuvulwa kwaye kungekho tywala buya kuselwa kwindawo elayisenisiweyo 25 ngaphandle kokuba buyangcanyulwa nje ngokuvunyelwa yiNkundla yemiCimbi yoTywala okanye liGosa eliChophela imiCimbi.
- (3) Ukuba iindawo ezithengisa utywala zilayiseniselwe ukuselwa kotywala kwindawo leyo ilayisenisiweyo nangaphandle kwayo, icandelwana (1) necandelwana (2) alisebenzi kwiindawo ezinjalo. 30
- (4) Umnini-layisenisi onendawo enelayisenisi yevenkile ethengisa ukutya akanakho ukuthengisa utywala ngaphandle kwewayini yasetafileni.
- (5) Ivenkile ethengisa ukutya ekubhekiswe kuyo kwicandelo (4) kufuneka utywala bayo ibuthengisele kwindawo ebucala, ekufuneka itshixwe ngendlela apha eyakwenza ukuba ingafikelelwa luluntu ngawo wonke amaxesha utywala ekungafunekanga 35 buthengiswe ngawo.
- (6) Indawo leyo kuthengiselwa kuyo utywala ngokwelayisenisi yotywala kwindawo obuthengiselwa kuyo kufuneka itshixwe ngendlela apaha eyakwenza ukuba ingafikeleleki kuluntu ngawo wonke amaxesha utywala ekufuneka bungathengiswa ngawo. 40
- (7) IGosa eliChophela imiCimbi linakho nanini na emva kokukhupha ilayisenisi phantsi kwecandelo 46, kwakwenziwa isicelo ngumnini-layisenisi okanye nabani na omnye obandakanyekayo, ngesaziso esithunyelwe okanye esinikwe umnini-layisenisi lowo—
- (a) ukubhengeza ukuba ilayisenisi leyo iphantsi kwemiqathango okanye phantsi 45 kweminye imiqathango njengoko kuchazwe kwisaziso ngokokumisela kwakhe ngokokuqonda kwakhe; okanye
- (b) ukunqumamisa, ukurhoxisa okanye ukuhlomela nawuphi na umqathango okanye isibhengezo esimiselwe okanye esenziwe nguye okanye yiNkundla 50 yemiCimbi yoTywala.
- (8) Ukwaphulwa okanye ukusilela ekuthobeleni imiqathango echazwe kwicandelwana (1), (2), (4), (5) okanye (6) lulwaphulo-mthetho.

#### Ukuthuthwa

50. (1) Kufuneka ibe ngumqathango wazo zonke ilayisenisi ezikhutshiweyo zokuselwa kotywala ngaphandle kwindawo obuthengiswa kuyo— 55
- (a) ukuba utywala bungathuthwa ukusuka kuso nasiphi na isithuthi ngaphandle kokuba utywala obo bebu-odolwe kwindawo elayisenisiweyo ngaphambi

- kokuthunyelwa kotywala kambe kukhutshwe nemvoyisi (invoice) ngendlela eyalelweyo, yaza ikopi yokuqala yashiywa kwindawo leyo ilayisenisiweyo;
- (b) utywala bungathunyelwa kuphela kwidilesi ebhalwe kwimvoyisi echazwe kumhlathi (a); kwaye
- (c) ikopi ebhalwe ngokucacileyo yemvoyisi echazwe kumhlathi (a) kufuneka igcinwe kwisithuthi eso ukususela kwithuba lokuthunyelwa kwaso ukuya kwithuba lokuthunyelwa kotywala, apho kuya kufuneka ukuba sinikwe umntu lowo wamkela utywala obo.
- (2) Ukusilela komnini-layisenisi ekuthobeleni imiqathango ekhankanywe kwicandelwana (1) lulwaphulo-mthetho. 10
- (3) Ukwamkela utywala obuthengwe kumboneleli bungaphelekwanga yimvoyisi echaza igama, idilesi nenombolo yelayisenisi yomboneleli kunye nohlobo, umyinge nexabiso lokuthenga lotywala ekubonelelwe ngabo, lulwaphulo-mthetho.

### **Inxaxheba yezimali nokuqeshiswa kweendawo ezineelayisenisi**

- 51.** (1) Umnini-layisenisi akanakho, ngaphandle kokufumana imvume kuqala kwiGosa eliChophela imiCimbi, ukudlulisela inxaxheba yezimali engaphezu kwe-5% kwishishini elo lilyayisenisiweyo kuye nawuphi na umntu. 15
- (2) Umnini-layisenisi onqwenela ukudlulisela inxaxheba yakhe eyimali engaphezu kwe-5% kwishishini elilyayisenisiweyo kuye nawuphi na umntu ongomnye kufuneka afake isicelo, ngendlela emiselweyo, kwiGosa eliChophela imiCimbi yemvume yokwenza njalo. 20
- (3) IGosa eliChophela imiCimbi yoTywala alinakho ukunika imvume ngokwecandelwana (2) ukuba umntu lowo inxaxheba yemali ifanele ukudluliselwa kuye—
- (a) egavumelekanga ngokwecandelo 35 ukubanayo ilayisenisi; okanye
- (b) esimilo singancomekiyo. 25
- (4) IBhodi kufuneka ngendlela emiselweyo yazise igosa lezotywala eligunyazisiweyo ngesicelo eso, kananjalo icele kulo ingxelo emalunga nokuvumeleka nokufaneleka kwaloo mntu inxaxheba yezimali efanele ukudluliselwa kuye.
- (5) IGosa elijongene nemicimbi yotywala kufuneka, kwithuba elimiselweyo, lifake ingxelo njengoko kumiselwe licandelwana (40), kwaye linakho ukubandakanya apho nawuphi na omnye umbandela eliwubonayo ukuba ujongene neso sicelo. 30
- (6) IGosa eliChophela imiCimbi kufuneka kwithuba elimiselweyo, lisale isicelo okanye lisivume.
- (7) Umnini-layisenisi akanakho ukuyiqeshisela omnye umntu ilayisenisi ngenjongo yokuba ashishine ngayo ngokwelayisenisi leyo. Phofu umnini-layisenisi onelayisenisi ebandakanya ilungelo lokusila utywala unakho ukwenza isicelo kwiNkundla yemiCimbi yoTywala, sicelo sokuqeshisa indawo leyo ilayisenisiweyo komnye umntu ngenjongo yokuba asile utywala ngokuthi afake isicelo sokwenza oko kwiBhodi ngendlela emiselweyo kambe nangokuhlawula umrhumo omiselweyo. 35
- (8) IGosa eliChophela imiCimbi yoTywala linakho ukungasivumi isicelo sokuqeshisa ngaphandle kokuba lanelisekile ukuba umntu lowo uza kuqeshiselwa indawo leyo ilayisenisiweyo okanye inxalenye yayo—
- (a) asingomntu ungavumelekanga ukuba nelayisenisi ngokwecandelo 35;
- (b) unesimilo esincomekayo;
- (c) ufundile kananjalo uqeqeshwe ngokufanelekileyo okanye uya kufunda kananjalo aqeqeshwe ngokufanelekileyo okanye uyakuba nomsebenzi omnye okanye ngaphezulu abafunde ngokufanelekileyo kananjalo beqeqeshwe ngokufanelekileyo ngenjongo yokulawula ishishini elo. 45
- (9) Ukwaphula okanye ukusilela ekuthobeleni imimiselo yecandelo (1) okanye yecandelo (7) kukwaphula umthetho. 50

### **ULawulo**

- 52.** (1) IGosa lemiCimbi yoTywala kufuneka, ngaphandle kokuba umenzi-sicelo ungumntu wendalo, xa livuma ilayisenisi, livume ukutyunjwa komntu wendalo otyunjwe ngumenzi-sicelo nohlala kwiphondo, njengomphathi weshishini elilyayisenisiweyo. 55
- (2) Umnini-layisenisi ongenguye umntu wendalo unako nanini na, ngendlela emiselweyo ukutyumba umntu wendalo ohlala kwiPhondo ukuba abe ngumphathi weshishini elilyayisenisiweyo, apho iNkundla yemiCimbi yoTywala inakho ukuvuma ukutyunjwa kwaloo mntu njengomphathi.

(3) Igosa elijongene nemicimbi yotywala kufuneka kwithuba elimiselweyo, lifake ingxelo engokufaneleka kwaloo mntu utyunjiweyo.

(4) INkundla yemiCimbi yoTywala isenokungakuvumi ukutyunjwa njengomphathi kwaloo mntu ungavumelekanga ukuba abe nelayisenisi ngokwecandelo 35 okanye usimilo singancomekiyo. 5

(5) INkundla yemiCimbi yoTywala lisenakho ukuyalela ukuba umphathi ocetywayo makayokuqeqeshwa kananjalo ayokufundiswa njengoko kuchazwe yiNkundla yemiCimbi yoTywala njengomqathango wokuqala phambi kokuvunywa kolo tyumbo.

(6) Umphathi okutyunjwa kuvunywe ngokweli candelo unoxanduva lokuphatha ishishini kwaye unoxanduva lokuqhuba imisebenzi efanayo naleyo yomnini-layisenisi kambe ekwanezibophelelo nobutyala obufanayo. 10

(7) Ukuvunywa kokutyunjwa komphathi ngokweli candelo akumkhululi umnini-layisenisi nakowuphi na umsebenzi, ekuzibopheleleni nasebutyaleni bakhe obumiselwe ngulo mThetho ngokwemiqathango yelayisenisi.

(8) Ukuvunywa kokutyunjwa komphathi ngokwecandelwana (1) okanye ngokwecandelwana (2) kuya kuhlala kusebenza kude kutyunjwe umphathi omtsha. 15

(9) Ukuba umntu, okutyunjwa kwakhe njengomphathi kuvunyiweyo ngokwecandelwana (1) okanye (2), uyayeka ukuphatha ishishini elilayisenisiweyo okanye uba kwimo yokungavumeleki ukuba enze njalo, umnini-layisenisi kufuneka, kwiintsuku ezingamashumi amathathu (30) ukususela kumhla wokwenzeka oko, acele ngokwecandelwana (1) okanye (2) ukuba kuvunywe ukutyunjwa komphathi endaweni yakhe. 20

(10) Ukuba umnini-layisenisi uyasilela ekuthobeleni icandelwana (9), ilayisenisi yakhe inganqunyanyiswa ngokwecandelo 20(3)(b)(iii).

#### **Ukuguqulwa kwendawo elayiseniweyo okanye kohlobo loshishino**

25

**53.** (1) Ngaphandle kokuvuma kwangaphambili kweGosa eliChophela imiCimbi okuvunywe xa bekusenziwa isicelo ngendlela emiselweyo, umnini-layisenisi akanakho—

(a) ukuqhuba nawuphi na umsebenzi ongobume, wokongeza, wokwakha ngokutsha okanye wokwandisa indawo elayisenisiweyo; 30

(b) ukuguqula ngokubonakalayo uhlobo lweshishini elinikwe ilayisenisi ukusuka kuhlobo oluchazwe kwisicelo esiqwalaselwe yiNkundla yemiCimbi yoTywala xa belivuma ilayisenisi; okanye

(c) ukuqhuba ishishin lakhe phantsi kwelayisenisi kwindawo ekukho kuyo elinye ishishini elinenye ilayisenisi, okanye apho kuqhutywa khona naluphi na urhwebo okanye umsebenzi. 35

(2) Iindawo ezimbini nangaphezulu eziphantsi kophahla olunye zithatyathwa njengendawo enye ngokwecandelwana (1)(c), ukuba ezo ndawo azahlulwanga enye kwenye ngodonga okanye ngeendonga ekukho kulo umnyango, ifestile okanye omnye umngxuma, ngaphandle kokuba iNkundla yemiCimbi yoTywala, nangaliphi na ixesha xa loo mba uphakanyiswa ngokufanelekileyo ngokubona kwalo, ligqiba ngenye indlela. 40

(3) Ukuvunywa ngokwecandelwana (1)(a) akufunekanga kusetyenziswe ade umenzi-sicelo, kwithuba elimiselweyo, afake ubungqina obanelisayo kwiGosa eliChophela imiCimbi bokuba unelungelo lokuguqula indawo leyo ngenjongo echazwe kwisicelo.

(4) Ukwaphula okanye ukusilela ekuthobeleni icandelwana (1) kukwaphula umthetho. 45

#### **Abantwana**

**54.** (1) Akukho mntu uya kuvumeleka ukuba athengisele umntu ominyaka yobudala ingaphantsi kweshumi elinesibhozo (18) utywala.

(2) Akukho mntu uya kuvumeleka ukuba anike okanye abonelele umntu ominyaka ingaphantsi kwelishumi elinesibhozo (18) utywala okanye uya kuvumela ukuba loo mntu asele utywala, ngaphandle xa ibutywala obumyinge ungephi kukho umzali okanye umgadi waloo mntu. 50

(3) Umnini-layisenisi okanye umphathi, nokuba ngowuphi kwabo bantu, akavumelekanga ukuba avumele umntu ominyaka ingaphantsi kweshumi elinesibhozo (18) ukuba asele utywala kwindawo elayisenisiweyo. 55

(4) Umnini-layisenisi okanye umlawuli akavumelekanga ukuba avumele umntu ominyaka ingaphantsi kweshumi elinesibhozo (18) abe kwinxalenye yendawo



elayisenisiweyo apho loo mntu angafanelekanga kubakhona ngokwalo mThetho okanye ngokomqathango welayisenisi.

(5) Umntu ominyaka ingaphantsi kweshumi elinesibhozo (18) akavumelakanga ukuba afumane okanye asele utywala okanye angene kwiindawo zendawo eziyinxalenye yendawo elayisenisiweyo loo mntu ekungavumelekanga ukuba angene kuzo. 5

(6) Nakuphi na ukwaphula okanye ukusilela ekuthobeleni icandelwana (1), (2), (3), (4) necandelwana (5) kukwaphula umthetho.

### **AbaQeshi nabaQeshwa**

**55.** (1) Umntu akavumelekanga ukuba aqeshe umntu ominyaka ingaphantsi kweshumi elinesibhozo (18) ngokwayamene nokuthengisa okanye nokubonelela 10 ngotywala ngaphandle kokuba loo mntu—

- (a) uminyaka ilishumi elinesithandathu (16) okanye ngaphezulu;
- (b) uqhuba izifundo zokuqeqeshelwa ukukhathalela iindwendwe; naxa
- (c) engumqeqeshwa womnini-layisenisi.

(2) Umqeshi akavumelekanga ukuba— 15

- (a) abonelele umntu ngotywala ngenjongo yokumcengela ukumsebenzela;
- (b) abonelele umqeshwa ngotywala endaweni yokumnika umvuzo;
- (c) axhuzule emvuzweni womqeshwa imali elixabiso lotywala obunikwe loo mqeshwa; okanye nabani na egameni lakhe; okanye
- (d) abambe ukuhlawulwa komvuzo womqeshwa ngenxa yemali etyalwayo 20 ngokunxulumene nokubonelelwa ngotywala.

(3) Nakuphi na ukwaphula okanye ukusilela ekuthobeleni icandelwana (1) necandelwana (2), kukwaphula umthetho.

### **Ukungena kwindawo elayisenisiweyo**

**56.** (1) Ngaphandle kokuba kumiselwe kwicandelo 55(1) nakwicandelwana (3) leli 25 candelo, umnini-layisenisi akavumelekanga ukuba avumele umntu ominyaka ingaphantsi kwelishumi elinesibhozo (18) ukuba angene kwindawo ekungangenwayo kuyo.

(2) Indawo ekungangenwayo kuyo—

- (a) ligumbi okanye indawo kwindawo elayisenisiweyo apho kuthengiswa khona 30 utywala ekhawuntareni, ngaphandle xa kuthengiselwa abantu abahlala phantsi ezitafileni batye kwelo gumbi okanye kuloo ndawo;
- (b) igumbi okanye indawo iNkundla yemiCimbi yoTywala eyichonge njengendawo apho abantu abaminyaka ingaphantsi kweshumi elinesibhozo 35 (1) bengavumelekanga khona; kunye
- (c) nendawo, engeyiyo ivenkile yokutywala, elayiseniselwe ukuthengisa utywala kuphela bokuselwa ngaphandle kwendawo obuthengiselwa kuyo.

(3) Umntu ominyaka ingaphantsi kwelishumi elinesibhozo (18) angangena kwindawo ekungangenwayo kuyo xa ephilekwa ngumzali okanye ngumgadi wakhe okanye ngumntu omkhulu ngemvume yomzali okanye yomgadi wakhe. 40

(4) Nayiphi na indawo ekungangenwa nje kuyo kufuneka ichazwe ngendlela emiselweyo.

(5) Nakuphi na ukwaphula okanye ukusilela ekuthobeleni icandelwana (1) necandelwana (4), kukwaphula umthetho.

### **Ukugcinwa kotywala**

45

**57.** (1) Umnini-layisenisi kufuneka ukuba utywala bakhe abugcine kwindawo elayisenisiweyo okanye kwindawo eyenye okanye eyongeziweyo kwiPhondo ngokokuvunywa kwayo yiNkundla yemiCimbi yoTywala xa ibikhupha ilayisenisi okanye ngumChopheli wemiCimbi, xa bekusenziwa isicelo, nanini na emva koko.

(2) Umnini-layisenisi akavumelekanga ukuba athengise, abonelele okanye avumele 50 ukuselwa kotywala kuloo ndawo okanye kuloo ndawo yokugcina utywala yongeziweyo.

(3) Nakuphi na ukwaphula okanye ukusilela ekuthobeleni icandelwana (1) necandelwana (2), kukwaphula umthetho.



### Indawo yokuthengisela

**58.** (1) Umnini layisenisi akavumelekanga ukuba athengise okanye abonelele ngotywala kwindawo engeyiyo leyo ilayisenisiweyo.

(2) Ingatyeshelwanga imimiselo yeli candelo, umnini-layisenisi uvumelekile ukuba azise ngentengiso yotywala kambe afune kananjalo afumane ii-odolo zokuthenga utywala kwenye indawo engeyiyo leyo ilayisenisiweyo. 5

(3) Nakuphi na ukwaphula okanye ukusilela ekuthobeleni icandelwana (1) kukwaphula umthetho.

### Amaxesha okurhweba

**59.** (1) Ngokuxhomekeke kwimiqathango emiselwe yiNkundla yemiCimbi yoTywala xa ibikhupha ilayisenisi okanye emva kwendibano ngokwecandelo 20, umnini-layisenisi uvumelekile ukuba athengise utywala kwiintsuku okanye kwiyure zokurhweba ezinokumiselwa yiNkundla yemiCimbi yoTywala, iyimisela amashishini alayisenisiweyo. 10

(2) (a) Ngokuxhomekeke kwimiqathango emiselwe yiNkundla yemiCimbi yoTywala, umnini-layisenisi yendawo ekuthengiswa kuyo utywala ngenjongo yokuba buselwe ngaphandle kwendawo elayisenisiweyo unako uvumelekile ukuba athengise utywala ngalo naluphi na usuku phakathi kwentsimbi yesi-08:00 nentsimbi yama-20:00. 15

(b) Ngokuxhomekeke kwimiqathango emiselwe yiNkundla yemiCimbi yoTywala, umnini-layisenisi yendawo ekuthengiswa kuyo utywala ngenjongo yokuba buselwe kwindawo elayisenisiweyo uvumelekile ukuba athengise utywala ngalo naluphi na usuku phakathi kwentsimbi yesi-08:00 nentsimbi yesi-04:00 ngosuku olulandelayo. 20

(c) Ukuba umnini-layisenisi unelayisenisi yokuselwa kotywala kwindawo obuthengiselwa kuyo nangaphandle kwayo, umhlathi (a) usebenza ngokubhekiselele ekuthengisweni kotywala bokuselwa ngaphandle kwendawo elayisenisiweyo ukuze umhlathi (c) usebenze ekuthengisweni kotywala bokuselwa kwindawo elayisenisi-sweyo. 25

(3) Ngokuxhomeke kwicandelo 89(10), umnini-layisenisi othengisa okanye obonelela ngotywala okanye ovumela ukuselwa kotywala kwindawo elayisenisiweyo ngexesha ukuthengiswa kotywala kungavunyelwanga yilayisenisi, uyakuba netyala lokwaphula umthetho. 30

### Ubungakanani botywala obuthengisiweyo nokugcinwa kweerekhodi

**60.** (1) Umnini-layisenisi kufuneka agcine, ngendlela emiselweyo, irekhodi yabo bonke utywala obuthengiselwe ukuselwa ngaphandle kwendawo elayisenisiweyo.

(2) Akukho mntu, ngaphandle komnini-layisenisi ovumeleke ukuba athenge, kwaye umnini-layisenisi akavumelekanga ukuba athengisele umntu omnye ngosuku olunye utywala bokuselwa ngaphandle kwendawo elayisenisiweyo obumyinge ungaphezulu kwalowo unokumiselwa ngumPhathiswa, ngaphandle kwemvume ebhaliweyo yomChopheli wemiCimbi yoTywala. 35

(3) Umntu ongalayiseniswanga okanye ongagunyaziselwanga ukuthengisa utywala akavumelekanga nanini na ukuba abe notywala kuye obungaphezulu komyinge omiselwe ngokwecandelwana (2), ngaphandle kokuba oko kwenzeka ngemvume echazwe kwelo candelwana. 40

(4) Nakuphi na ukwaphula okanye ukusilela ukuthobela icandelwana (1), (2) necandelwana (3), kukwaphula umthetho. 45

### Izinto ezingavumelekanga

**61.** (1) Umntu akavumelananga ukuba asile, athengise okanye abonelele ngento egameni lotywala ukuba loo nto ayibubo utywala njengoko buchazwe kulo mThetho.

(2) Umntu akavumelekanga ukuba asile, athengise okanye abonelele ngento njengento engaselwayo njengotywala, agalele into engaselwayo etywaleni, athengise okanye abonelele ngabo nabuphi na utywala ekugalelwe kubo into engaselwayo. 50

(3) Ukwaphula okanye ukusilela ukuthobela icandelwana (1) okanye icandelwana (2) kukwaphula umthetho.

## ISAHLUKO 8

## UKUSEBENZA NOKUHLAZIYWA KWEELAYISENISI

**Ukusebenza kweelayisenisi**

- 62.** (1) Ilayisenisi isebenza ukususela ngomhla ekhutshwe ngawo.
- (2) Ilayisenisi iphelelwa— 5
- (a) ngomhla umnini layisenisi athe wazisa ngencwadi ukuyeka kwakhe ukuyisebenzisa;
- (b) ngomhla woku-1 kuJanawari wonyaka ekungahlawulwanga ngawo umrhumo onxulumene noko okanye ngomhla okanye ngaphambi komhla wama-31 kuDisemba wonyaka odlulileyo; 10
- (c) ngomhla omiselwe yiNkundla yemiCimbi yoTywala xa ithe yayirhoxisa ilayisenisi;
- (d) apho ilayisenisi sele ifumene ukulungela ukusebenza, ngomhla inkundla ethe ngawo yasichitha isigqibo sokunikwa okanye ukukhutshwa kwelayisenisi; okanye 15
- (e) ngomhla ilayisenisi egulwe ngawo yaba yenye ilayisenisi ngokwecandelo 89.
- (3) Ilayisenisi ephelelweyo, namalungelo, izibophelelo nobutyala obebayanyanise kuloo layisenisi ngaphambi komhla wokuphelelwa kwayo, iphinda isebenze ngomhla—
- (a) ilayisenisi ethe yaphelelwa ngalo phantsi kweemeko ezikhankanywe kwicandelwana (2)(b), imirhumo ekhankanyiweyo 20
- (i) kunye nesohlwayo esiyi-50% sihlawulwa ngomhla wama-31 kuJanawari okanye ngaphambi kwawo; okanye
- (ii) kunye nesohlwayo se-100% esihlawulwe ngaphambi komhla wokuqala nomhla wokugqibela kaFebhruwari wonyaka loo mirhumo ebekufanele ihlawulwe ngayo; 25
- (b) apho ilayisenisi ithe yaphelelwa phantsi kweemeko ezichazwe kwicandelwana (2)(c), isigqibo seNkundla yemiCimbi yoTywala sokurhoxisa ilayisenisi siyachithwa yinkundla; okanye
- (c) apho ilayisenisi ithe yaphelelwa phantsi kweemeko ezichazwe kwicandelwana (2)(d), isigqibo senkundla sokuchitha isigqibo sokunikela okanye sokukhupha ilayisenisi siyachithwa kwakubhenwa. 30
- (4) IGosa eliChophela imiCimbi livumelekile ukuba, lakufumana ingxelo ethi umnini layisenisi uyishiyile loo ndawo ilayisenisiweyo, ayinqumamise ilayisenisi ngendlela eyalelweyo ngoko nangoko.
- (5) Ukunqunyanyiswa kwelayisenisi ngokwecandelwana (4) kuyaphelelwa xa iGosa eliChophela imiCimbi litha lafumana ubungqina bokuba indawo elayisenisiweyo iyekiwe ngumnini layisenisi okanye iphnde yasetyenziswa kwanguloo mnini layisenisi. 35

**Ukuhlaziywa kweelayisenisi kungenziwanga sicelo**

- 63.** (1) IBhodi kufuneka ikhuphe isaziso sohlaziyo sonyaka, ngendlela emiselweyo, kungadlulanga umhla wama-31 kuOktobha wonyaka ongaphambi konyaka ekufanele kuhlululwa ngawo imirhumo emiselweyo yokuhlaziya ilayisenisi. 40
- (2) Emva kokuhlululwa imirhumo emiselweyo yokuhlaziya ilayisenisi, ilayisenisi ihlaziya ngoko nangoko de kube ngumhla wama-31 kuDisemba wonyaka lowo loo mirhumo ehlawulelwe wona. 45
- (3) Umnini-layisenisi akaphuncuki kwizibophelelo zakhe zokuhlululwa ngexesha umrhumo omiselweyo wokuhlaziya kwelayisenisi ukuba ebengasithunyelelwanga isaziso okanye engasifumananga.
- (4) Umnini-layisenisi othe wasilela ekuhlululweni umrhumo omiselweyo phambi kosuku lokugqibela likaFebhruwari okanye ngalo lona olo suku, mirhumo lowo ubufanele ukuhlululwa, uvumelekile ukuba ngomhla wama-31 kuMatshi waloo nyaka, ukucela ngencwadi kwiGosa eliyiNtloko yoLawulo ukuba axolelwe koko kusilela, kanajalo iGosa eliyiNtloko yoLawulo livumelekile ukuba likuxolele oko kusilela livumele ukuhlululwa emva kwexesha komrhumo omiselweyo wokuhlaziya ilayisenisi ngomhla oya kumiselwa yiBhodi, ngokuxhomekek ekihlawulweni kwesohlwayo se-150%. 50
- (5) Ukuba iGosa eliyiNtloko yoLawulo litha ngokwecandelo (4) lawisa uxolelo naxa umrhumo omiselweyo nesohlwayo sihlawuliwe, ilayisenisi ithatyathwa 55

njengehlaziyiweyo ukususela ngomhla wama-31 kuDisemba wonyaka ongaphambi kwalowo ekufanele kuhlawulwe ngawo imirhumo yokuhlaziya ilayisenisi.

(6) Ukuba umnini-layisenisi uyasilela ekuhlawuleni umrhumo omiselweyo wokuhlaziya ilayisenisi nowesohlwayo esimiselwe ngokwecandelo (4), ilayisenisi iya kuthatyathwa njenegephelelwe ngomhla woku-1 kuJanyuwari wonyaka ebekufanele kuhlawulwe ngawo umrhumo omiselweyo wokuhlaziya ilayisenisi. 5

#### **Izicelo zokuhlaziya kweelayisenisi**

**64.** (1) Ukuba umnini-layisenisi uthe ukususela kumhla wokukhutshwa kwelayisenisi okanye, ukuba ilayisenisi ithe yahlaziywa, ukususela ngohla wokugqibela wokuhlaziywa kwelayisenisi— 10

(a) wahluthwa ilungelo lokuba nelayisenisi ngokwecandelo 35;

(b) wafunyanwa angakulungelanga ukuba nelayisenisi yotywala yiNkundla yemiCimbi yoTywala;

(c) wasilela ukuthobela isaziso sokuthobela esikhutshwe ngokwemiqathango yalo mThetho; okanye 15

(d) wabandakanyeka kwingxelo ngokwe candela 73(7)(c) okanye (d), ilayisenisi leyo ayinakho ukuhlaziywa ngoko nangoko ngokwecandelo 63, kodwa ingahlaziywa yiBhodi xa umnini-layisenisi efake isicelo ngendlela emiselweyo nasemva kokuhlawula umrhumo omiselweyo.

(2) IBhodi kufuneka, ngaphambi komhla wama-31 kuJulayi kunyaka ekufanele kukhutshwe ngawo isaziso sokuhlaziya ilayisenisi ithumele isaziso kumnini layisenisi ekubhekiswe kuso kwicandelo (1)— 20

(a) apho kucazelwa umnini layisenisi ukuba ilayisenisi ayiyi kuhlaziywa ngoko nangoko; kanaanjala

(b) nesithi umnini-layisenisi makenze isicelo ngendlela emiselweyo sokuhlaziywa kwelayisenisi kungadlulanga umhla wama-30 kuSeptemba kuloo nyaka. 25

(3) Ukuba umnini-layisenisi uyasilela ekuthobeleni isaziso esichazwe kwicandelwana (2), loo layisenisi iya kuphelelwa ngomhla wama-31 kuDisemba waloo nyaka ngokuxhomekeke kwicandelwana (4). 30

(4) Ukuba umnini layisenisi wenze isicelo njengoko kukhankanywe kwicandelwana (2)(b) emva komhla wama-30 kuSeptemba kodwa ngaphambi komhla wama-31 kuDisemba kuloo nyaka ekufanele kukhutshwe isaziso sokuhlaziywa kwelayisenisi, umnini layisenisi angenza isicelo esibhaliweyo kwiNkundla yemiCimbi yoTywala sokuba kuxolelwe oko kusilela, kwaye iNkundla yemiCimbi yoTywala ivumelekile ukuba ikuxolele oko kusilela ivumele ukuba kwenziwe intlawulo yomrhumo omiselweyo wokuhlaziywa kwelayisenisi emva kwexesha ngomhla oya kumiselwa yiNkundla yemiCimbi yoTywala, ngokuxhomekeke ekubeni kuhlawulwe isohlwayo esiyi-150% yomrhumo. 35

(5) Ukuba umnini-layisenisi usithobele isaziso, ilayisenisi iya kuhlala isebenza ide iNkundla yemiCimbi yoTywala igqibe ukuqwalasela isicelo sokuhlaziya ilayisenisi. 40

(6) Xa iqwalasela isicelo sokuhlaziywa kwelayisenisi iNkundla yemiCimbi yoTywala inemisebenzi namagunya afanayo nalawo inawo xa iqwalasela isicelo selayisenisi entsha, kubandakanywa ilungelo lokwala okanye lokuvuma ilayisenisi, ngokuxhomekeke kwimiqathango enokuyibona ifanelekile. 45

(7) Ukuba iNkundla yemiCimbi yoTywala inike isicelo sokuhlaziywa kwelayisenisi, ilayisenisi leyo iya kuthatyathwa njengehlaziyiweyo ngokwecandelo 63(2).

(8) Ukuba iNkundla yemiCimbi yoTywala iyasala isicelo sokuhlaziywa kwelayisenisi, loo layisenisi iyaphelelwa ngoko nangoko okanye ngomhla omiselwe yiNkundla yemiCimbi yoTywala. 50

### **ISAHLUKO 9**

#### **UKUHLUTHWA, UKUDLULISELWA NOKURHOXISWA KWEELAYISENISI**

#### **Ukuhluthwa nokudluliselwa kweelayisenisi**

**65.** (1) Umnini-layisenisi ophelisa ishishini elilayisenisiweyo kufuneka, kwiintsuku ezingamashumi amathathu (30) ukususela kumhla wokupheliswa kwalo, azise iBhodi ngencwadi nangendlela emiselweyo ngomhla nangohlobo lokuphelisa oko. 55

(2) Ukusilela ukwazisa iBhodi ngoko kupheliswa kukwaphula umthetho.

- (3) Umntu othenge ishishini elilayisenisiweyo uvumelekile ukuba enze isicelo kwiGosa eliChophela imiCimbi yokuvunyelwa ukusebenzisa nokuqhuba ishishini elo lilayisenisiweyo kude kudluliselwe ilayisenisi leyo kuye.
- (4) Isicelo esenziwe ngokwecandelwana (3) kufuneka senziwe ngokufakwa kwaso ngendlela emiselweyo kwiGosa eliChophela imiCimbi. 5
- (5) IGosa eliChophela imiCimbi linakho ukunika imvume egunyazisa umthengi weshishini ukuba aziqhubele ishishini elo ithuba elichaziweyo, thuba elo kungavumelekanga ukuba libe ngaphezu kweenyanga ezintandathu ukususela kumhla ekwanikwa ngawo imvume.
- (6) IGosa eliChophela imiCimbi livumelekile ukuba nanaini na lirhoxise okanye kwakwenziwa isicelo ngumthengi ligqithisele oko kuvuma ngokwecandelwana (5).
- (7) Umntu onikwe imvume ngokwecandelwana (5) uvumelekile ukuba asebenze kananjalo aziqhubele ishishini elilayisenisiweyo ngokwelayisenisi, kwaye unamalungelo afanayo kwaye uphantsi kwemisebenzi efanayo naleyo yomnini-layisenisi. 15
- (8) Ukunikwa kwemvume ngokwecandelwana (5) akumkhululi umnini-layisenisi kuyo nayiphi na imisebenzi okanye izibophelelo ezimalunga nelayisenisi leyo.
- (9) Umnini-layisenisi uvumelekile ukuba adlulisele ilayisenisi komnye umntu ngokufaka isicelo kwiBhodi, ngendlela emiselweyo, naxa kuthe kwahlawulwa umrhumo omiselweyo. 20
- (10) IBhodi kufuneka, ngendlela emiselweyo, yazise igosa elijongene nemicimbi yotywala ngesicelo eso, kananjalo imcele ukuba ayinike ingxelo emalunga nokungavumeleka nokufaneleka kumnini-layisenisi ocetywayo ukuba nelayisenisi.
- (11) Igosa elijongene nemicimbi yotywala kufuneka, ngendlela emiselweyo, lifake ingxelo njengoko kufuneka ngokwecandelwana 10, kwaye livumelekile ukuba libandakanye kuloo ngxelo nawuphi na umba igosa elijongene nemicimbi yotywala elinokuyifumana imalunga nesicelo eso. 25
- (12) INkundla yemiCimbi yoTywala kufuneka, kwithuba elimiselweyo, isale okanye isivume isicelo eso.
- (13) INkundla yemCimbi yoTywala ayivumelekanga ukuba ivume isicelo sokudluliselwa kwelayisenisi ngaphandle kokuba yanelisekile ukuba umnini-layisenisi ocetywayo— 30
- (a) akathintelwanga ukuba abenelayisenisi ngokwecandelo 35;
- (b) ungonessimilo esifanelekileyo; kwaye
- (c) ufunde kwaye uqeqeshwe okanye uya kufunda kwaye uya kuqeqeshwa ngokufanelekileyo, okanye unomsebenzi omnye okanye ngaphezulu abangafundanga bengakuqeqeshelwanga ngokufanelekileyo ukuphatha ishishini elilayisenisiweyo. 35
- (14) INkundla yemiCimbi yoTywala ivumelekile, xa ivuma isicelo sokudluliselwa, ukuyalela umnini-layisenisi ocetywayo, okanye umqeshwa omnye okanye ngaphezulu baloo mntu, ukuba ayokungenela izifundo okanye uqeqesho njengoko kunokuyalelwa yiNkundla yemiCimbi yoTywala. 40
- (15) IBhodi kufuneka yazise umnini-layisenisi ocetywayo, kwithuba elimiselweyo emva kokuvunywa kwesicelo sokudluliselwa kwelayisenisi, ngencwadi ukuba ilayisenisi leyo ivunyiwe. 45
- (16) Umnini-layisenisi ocetywayo kufuneka ahlawule umrhumo omiselweyo kwiintsuku ezingamashumi amabini (60) ukususela kumhla wokukhutsha kwesaziso esikhankanywe kwicandelwana (15).
- (17) IBhodi kufuneka, kwithuba elimiselweyo emva kokuhlawula umrhumo omiselweyo okhankanywe kwicandelwana (9), naphantsi kwecandelo 42 ukuya kwelama 45 necandelo 53(1) kunye necandelwana (2), ikhuphe isatifikethi sokudlulisela kumnini-layisenisi ocetywayo ngendlela emiselweyo, esichaza imiqathango yelayisenisi emiselwe yiNkundla yemiCimbi yoTywala. 50
- (18) Ukuba umnini-layisenisi ocetywayo uthethe wasilela ekuhlawuleni umrhumo ekubhekiswe kuwo kwicandelwana (16), ukukhutshwa kwelayisenisi kuya kuphelelwa, phantsi kwecandelwana (19). 55
- (19) Umnini-layisenisi ocetywayo uvumelekile, kwithuba elimisiweyo, kwiintsuku ezingamashumi amathandathu (60) emva kokuphela kwethuba ekubhekiswe kulo kwicandelwana (16), ukuba afake isicelo esibhaliweyo kwiGosa eliyiNtloko yoLawulo sokuxolelwa ngokusilela ekuhlawuleni umrhumo omiselweyo ekubhekiswe kuwo kwicandelwana (16), kwaye iGosa eliyiNtloko yoLawulo livumelekile ukuba likuxolele ukusilela oko livume ukuba umrhumo uhlawulwe emva kwexesha ngomhla oya 60

kumiselwa liGosa eliyiNtloko yoLawulo, nangona kuya kufuneka ukuba kuhlawulwe isohlwayo esiyi-100% yomrhumo.

(20) Ukuba umnini-layisenisi ocetywayo uthe wabhubha, watshona ematyaleni okanye wabhengezwa njengotshonileyo okanye njengongakwaziyo ukuziphathela imicimbi yakhe yinkundla, okanye inkampani, ithrasti, ukopolotyeni okanye isisi, idliwe ngaphambi komhla ekuqwalaselwe ngawo isicelo sokudluliselwa, umlawuli-mafa, unondyebo, umphathi-mafa nomabi-mafa, nokuba ngowuphi na umntu kwabo bantu, uvumelekile ukusebenzisa onke amagunya namalungelo loo mntu, loo nkampani, loothrasti, loo kopolotyeni okanye loo close corporation ibiyakuba nawo ukuba ebengabhubhanga, engatshonanga ngamatyala kungenziwanga sibhengezo ngaye okanye engadliwanga. 5

(21) INkundla yemiCimbi yoTywala ivumelekile ukuba ngokokubona kwayo inganikela ngelayisenisi yokudluliselwa egameni lomlawuli-mafa, lonondyebo, lomphathi-mafa okanye lomabi-mafa kuloo mntu ungomnye ngokokubona kweNkundla yemiCimbi yoTywala. 10 15

### Ukurhoxiswa kweelayisenisi

**66.** (1) Ilayisenisi yethutyana yotywala okanye yomcimbi owodwa ayinakususwa kwindawo elayisenisiweyo isiwe kwenye indawo.

(2) Umnini-layisenisi yotywala, ngaphandle komnini-layisenisi yethutyana neyomcimbi owodwa akavumelekanga ukuba nanini na acele ukususwa, nokuba oko uthi makwenziwe isigxina okanye okwethutyana, kwelayisenisi kwindawo elayisenisiweyo isiwe kuyo nayiphi na enye indawo ekwiPhondo. 20

(3) Isicelo esenziwe ngokwecandelwana (2), esiya kuthi sakuvunywa senze ukuba ilayisenisi isiwe kwenye indawo ephantsi kwelinye igosa elijongene nemicimbi yotywala, kufuneka iphelelwe yingxelo, njengoko kuyalelwe, evela kwigosa elo lijongene nemicimbi yotywala: 25

(a) elijongene nendawo leyo ilayisenisi ikuyo ngelo xesha; kananjalo

(b) nelijongene nendawo leyo iyalelwe kuyo.

(4) INkundla yemiCimbi yoTywala kufuneka inike ingqwalasela isicelo ngasinye sokususwa kwelayisenisi kwaye ivumelekile ukuba— 30

(a) isale isicelo;

(b) isivume isicelo.

(5) IBhodi kufuneka yazise umnini-layisenisi ocetywayo, kwithuba elimiselweyo emva kokuvunywa kwesicelo sokudluliselwa kwelayisenisi, ngenzwadi ukuba ilayisenisi leyo ivunyiwe. 35

(6) IBhodi kufuneka, ngokuxhomekeke ekuhlawulweni komrhumo omiselweyo kwiintsuku ezingamashumi amathandathu (60) ukususela ekukhutshweni kwesaziso esikhankanywe kwicandelwana (5), ikhuphele umnini-layisenisi isatifikethi sokususwa ngendlela emiselweyo.

(7) Ukuba umnini-layisenisi ocetywayo uthe wasilela ekuhlawuleni umrhumo ekubhekiswe kuwo kwicandelwana (6), ukukhutshwa kwelayisenisi kuya kuphelelwa, phantsi kwecandelwana (8). 40

(8) Umnini-layisenisi ocetywayo uvumelekile, kwithuba elimisiweyo, kwiintsuku ezingamashumi amathandathu (60) emva kokuphela kwethuba ekubhekiswe kulo kwicandelwana (6), ukuba afake isicelo esibhaliweyo kwiGosa eliyiNtloko yoLawulo sokuxolelwa ngokusilela ekuhlawuleni umrhumo omiselweyo ekubhekiswe kuwo kwicandelwana (6), kwaye iGosa eliyiNtloko yoLawulo livumelekile ukuba likuxolele ukusilela oko livume ukuba umrhumo uhlawulwe emva kwexesha ngomhla oya kumiselwa liGosa eliyiNtloko yoLawulo, nangona kuya kufuneka ukuba kuhlawulwe isohlwayo esiyi-100% yomrhumo. 45 50

(9) Isatifikethi sokususwa sixhomekeke kwimiqathango ecazwe kwisatifikethi eso njengoko iGosa loChophelo miCimbi okanye iQonga lemiCimbi yoTywala, nokuba yiyiphi na kwezo zinto, linokumisela ngokokubona kwalo.

(10) IGosa eliChophela imiCimbi linakho nanini na emva kokukhutshwa kwesatifikethi sokususwa, ngesaziso esithunyelwe okanye esinikwe umnini-layisenisi, ukurhoxisa okanye ukuhlomela nawuphi na umqathango omiselwe lilo okanye yiNkundla yemiCimbi yoTywala phantsi kwecandelwana (9). 55

(11) Isiphumo sokukhutshwa kwesatifikethi sokususwa sakuba sesokuba Umnini-layisenisi anganakho kwithuba elisisigxina okanye kwithuba elimiselwe liGosa eliChophela imiCimbi okanye yiNkundla yemiCimbi yoTywala, nokuba yeyiphi na kwezo zinto, njengoko kukhankanywe kwisatifikethi, ukuqhuba ishishini elo ilayisenisi 60



enxulumene nalo, kwindawo, esicwangciso sayo sivunyiweyo liGosa eliChophela imiCimbi okanye yiNkundla yemiCimbi yoTywala, nokuba yeyiphi kwezo zinto, kodwa ndawo leyo ingenakho ngokwelayisenisi eyenzelwe isicelo eso, ukubandakanya indawo okanye iindawo athe okanye ethe ngokokubona kwayo yangazibandakanyi.

(12) Apho isatifikethi sokususwa sivumela ukususwa kwelayisenisi kwithuba elimiselweyo, iGosa eliChophela imiCimbi livumelekile nanini ngaphambi kokuphela kwelo thuba, ngesicelo esenziwe ngumnini layisenisi lowo—

- (a) ukuba lingalandisa elo thuba; okanye
- (b) ukuba lingasirhoxisa isatifikethi.

(13) Ukuba isicelo sokususwa kwelayisenisi sivunyiwe yiNkundla yemiCimbi yoTywala ngokubhekiselele kwindawo engekakhiwa, okanye kwindawo efuna ukuguqulwa kwesakhiwo, ukongezwa okanye ukwakhiwa ngokutsha ukuze yenziwe ifanele loo msebenzi eza kusetyenziselwa wona phantsi kwelayisenisi, iBhodi kufuneka, kwisaziso esikhankanywe kwicandelwana (5), iyalele umnini-layisenisi ukuba athobele loo miqathango okanye ezo mfuno, kubhekiswe kuzo kwisaziso, ngokubhekiselele kuloo ndawo enokumiselwa liGosa eliChophela imiCimbi yoTywala, kwithuba elinokumiselwa liGosa eliChophela imiCimbi yotywala.

(14) IGosa eliChophela imiCimbi livumelekile nanini na emva kokukhupha eso saziso, ngokwesicelo saloo menzi-sicelo—

- (a) ukurhoxisa okanye ukuhlomela nawuphi na umqathango okanye imfuno emiselwe phantsi kwecandelwana (13);
- (b) ukwandisa ithuba elimiselwe phantsi kwecandelwana (13);
- (c) ukwandisa ithuba elimiselweyo nelandiswe phantsi komhlathi (b) ngokubhekiselele kwindawo engekakhiwa ngexesha lokukhutshwa kwesaziso, ukuba lanelisekile ukuba inxalenye enkulu yendawo sele yakhiwe; okanye
- (d) ukuvuma isicwangciso esihlonyelweyo ngokubhekiselele kwindawo.

(15) Ithuba elimiselwe phantsi kwecandelwana (13) okanye ithuba elimiselwe ngaloo ndlela laza landiswa phantsi kwecandelwana (14)(b), nokuba yeyiphi kwezo zinto, alifanelanga kuba lide ukugqitha ithuba elingangeenyanga ezingamashumi amabini anane (24), kwaye ithuba elandisiweyo okanye eliphinde landiswa phantsi kwecandelwana (14)(c), nokuba yeyiphi kwezo zinto, aliyikuba lide ukudlula iinyanga ezilishumi elinambini (12).

(16) Xa iGosa eliChophela imiCimbi lanelisekile kukuba indawo ekhutshelwe isaziso phantsi kwecandelwana (13), igqityiwe ngokuhambelana nesicwangciso sayo esivunyiwe liGosa eliChophela imiCimbi okanye yiNkundla yemiCimbi yoTywala, nokuba yeyiphi na kwezo zinto, imiqathango neemfuno ezimiselwe liGosa eliChophela imiCimbi zithotyelwe kwaye indawo leyo iwufanele umsebenzi eza kusetyenziselwa wona phantsi kwelayisenisi leyo, iBhodi kufuneka ikhuphe isatifikethi sokususwa ngokwecandelwana (6).

(17) Ukuba isatifikethi sokususwa asikhutshwanga ngaphambi kokuphelelwa kwethuba elimiselwe phantsi kwecandelwana (13) okanye elandiswe phantsi kwecandelwana (14)(b) okanye laphinda landiswa phantsi kwecandelwana (14)(c), nokuba yeyiphi na kwezo zinto, isaziso eso siya kuphelelwa kwaye isicelo sokususwa kwelayisenisi sakuthatyathwa njengesinganikwanga.

#### **Ukushiywa kwendawo yokushishina nokufa okanye ukukhubazeka komnini-layisenisi**

**67.** (1) INkundla yemiCimbi yoTywala ivumelekile ukuba, ukuba yanelisekile—

- (a) ukuba ishishini elilayisenisisweyo liyeekiwe ngumnini-layisenisi; okanye
- (b) umnini-layisenisi ngumntu ochazwe kwicandelwana (3), kwaye umlawuli-mafa, umlawuli, unondyebo, umgcini-mafa okanye umabi-mafa akakatyunjwa,

ingatyumba umntu oza kugcina ilayisenisisi aqhube ishishini elo lilayisenisiweyo kude kutyunjwe umlawuli-mafa, umlawuli, unondyebo, umgcini-mafa okanye umabi-mafa, okanye apho ishishini lithe layekwa umphathi.

(2) Umntu otyunjwe ngokwecandelwana (1)(b) uthatyathwa njengomnini-layisenisi.

(3) Xa umnini-layisenisi athe wabhubha, watshona ngamatyala okanye wafakwa phantsi kolawulo lomthetho okanye xa athe wabhengezwa njengomntu ongakwaziyo ukuziphathela imicimbi yakhe yinkundla, okanye eyinkampani, ithrasti, ukopolotiyeni okanye isisi (cc), waza wadliwa—

- (a) ilayisenisi iyakuba sezandleni zomlawuli-lifa lalowo ungasekhoyo, zomlawuli welifa elitshonileyo ngamatyala, zomphathi wasemthethweni,



zomgcini-mafa okanye zomabi-mafa, nokuba yeyiphi na kwezo zinto, ukususela ngomhla wokutyunjwa;

- (b) umlawuli-lifa lomntu lowo ungasekhoyo, umlawuli welifa elitshonileyo ngamatyala, umphathi wasemthethweni, umgcini-mafa okanye umabi-mafa uvumelekile ukuba aqhube ishishini elo lilayisenisiweyo ngendlela efanayo naphantsi kwemiqathango efanayo ebiya kusetyenziswa ngumnini-layisenisi ukuba ebengabhuhanga, engatshonanga ngamatyala, engabhengezwanga ngaloo ndlela okanye engadliwanga; kananjalo 5
- (c) umlawuli-lifa lalowo ungasekhoyo, umlawuli welifa elitshonileyo ngamatyala, umphathi wasemthethweni, umgcini-mafa okanye umabi-mafa uvumelekile ukuba enze isicelo sokudluliselwa kwelayisenisi ngokwecandelo 10  
65 kwaye ngokweso sicelo uthatyathwa njengomnini- layisenisi.

## ISAHLUKO 10

### IINKQUBO ZOKUBHENA NOKUNIKA INGQWALASELO

#### **Ukuthunyelwa kwezibheno nezicelo zokunika ingqwalaselo kwiNkundla yeziBheno 15**

**68.** (1) INkundla yeziBheno kufuneka iqwalasele nasiphi na isibheno esichaseneyo okanye isicelo sokuhlaziya, isigqibo seNkundla yemiCimbi yoTywala ngokwecandelo 20(3).

(2) INkundla yemiCimbi yoTywala ivumelekile ukuba iqinisekise, ihlomele okanye ukuchitha isigqibo okanye umyalelo ongumcimbi ophantsi kwesibheno okanye ophantsi kohlaziyo isiguqule eso sigqibo okanye loo myalelo ngokokufuna kweemeko. 20

(3) Umenzi-sicelo okanye umntu obandakanyekayo onganelisekanga sisigqibo seNkundla yemiCimbi yoTywala unakho, kwithuba elimiswelweyo emva kokufumana izingathu zesigqibo eso seNkundla yemiCimbi yoTywala, ukufaka kwiNkundla yemiCimbi yoTywala isaziso sokubhena okanye sokuhlaziya njengoko kumiselwe. 25

(4) Isibheno okanye uhlaziyo kufuneka luphulaphulwe ngokungathi sisibheno esenziwa kwiNkundla ePhakamileyo ngokuchasene nesigwebo senkundla kamantyi kumcimbi wembambano kwaye nawuphi na umgaqo osebenza kwizibheno zembambano uya kusebenza ngeengulelo eziyimfuneko. 30

(5) Ngaphandle kwalapho umenzi-sicelo okanye lowo ubandakanyekayo athe waxolelwa ekuhlawuleni imali yokubambisa ngokwecandelwana (6), umntu onganelisekanga sisigqibo seNkundla yemiCimbi yoTywala kufuneka ngaxeshanye nokufakwa kwesaziso sokubhena okanye sokuhlaziya ngokwecandelo (3), unakho ukuhlawula imali emiselweyo njengesibambiso seendleko ezilindelekileyo zeNkundla yemiCimbi yoTywala okanye zabo bachasayo. 35

(6) INkundla yeziBheno inakho, xa umenzi-sicelo okanye lowo ubandakanyekayo othe wanganeliswa sisigqibo seNkundla yemiCimbi yoTywala, ukuphungula imali yokubambisa okanye ukuxolela umenzi-sicelo okanye lowo ubandakanyeka ekuhlawuleni imali yokubambisa. 40

(7) Imali ehlawulwe njengemali yokubambisa ngokweli candelo kufuneka ihlawulwe kwiGosa eliyiNtloko yoLawulo, lona kufuneka liyivalele kwi-akhawunti yasebhankini kude kuphunyezwe isibheno okanye uhlaziyo olo, xa eza kuhlawula ngayo ngendlela eyalelwe yiNkundla yeziBheno.

(8) INkundla yeziBheno inokukhupha umyalelo omalunga nokuhlawulwa kweendleko zamaqela abandakanyeka kuloo mcimbi okanye ezeNkundla yemiCimbi yoTywala, ngokokubona kwalo kwezo meko. 45

(9) Umenzi-sicelo okanye lowo ubandakanyekayo unganelisekanga sisigqibo seNkundla yemiCimbi yoTywala unakho ukuzimela ngokwakhe phambi kweNkundla yeziBheno okanye unakho ukumelwa apho ligqwetha lejaji, ligqwetha okanye nguye nabani na ongomnye oza kuma endaweni yakhe. 50

(10) Xa umntu, athe waziswa ngokufanelekileyo ukuba abekhona kwindibano yeNkundla yeziBheno waza akaphumelela ukuyizimasa loo ndibano okanye wazikhethela ukungabikho kuyo ngaphandle kwemvume yeNkundla yeziBheno, indibano leyo inokuqhubeka engekho loo mntu okanye iNkundla yeziBheno inokuthabatha nokuba lelaphi inyathelo elilibona lifanelekile kwimeko enjalo. 55

(11) Isigqibo seNkundla yeziBheno malunga nokufaneleka nokungafaneleki komba lowo asinakuguqulwa.

## ISAHLUKO 11

## UTHOTYELO

**Izaziso zokuthobela**

**69.** (1) Umhloli unakho ukukhupha kananjalo athumele isaziso sothotyelo kumnini-layisenisi okanye kuye nawuphi na umntu ophethe indawo elayisenisiweyo eyalela loo mntu ukuba athobele imimiselo yalo mThetho okanye umqathango welayisenisi. 5

(2) Isaziso sothotyelo kufuneka sichaze—

- (a) imimiselo yalo mThetho okanye imiqathango yelayisenisi ekufuneka ithotyelwe;
- (b) isenzo okanye ukungezi okunentsingiselo yokungathobeli; 10
- (c) amanyathelo afanele ukuthotyelwa;
- (d) umhla uthotyelo ekufanele lugqitywe ngawo; kunye
- (e) neziphumo ezonokubakho ngenxa yokungathobeli.

(3) Igosa elijongene nemicimbi yotywala linakho, xa kungekho mhloli okanye apho umhloli angafumaneki lula khona, ukukhupha nokuthumela isaziso ekubhekiswe kuso kwicandelwana (1) kwaye kufuneka lazise iGosa eliyiNtloko yoLawulo ngokukhutshwa nokuthunyelwa kwesaziso ngomhla oyalelelweyo okanye ngaphambi kwawo. 15

(4) Umhloli okanye igosa elijongene nemicimbi yotywala, nokuba ngowuphi kwabo bantu, unakho, ngokucelwa ngumntu lowo kuthunyelwe kuye isaziso sothotyelo, ukulandisa ithuba lothotyelo, ngezizathu ezivakalayo, ngokukhupha isaziso sothotyelo esihlonyelweyo. 20

(5) Isaziso sothotyelo sihlala sisebenza kude kufike usuku lokuthobela okanye naluphina ulwandiso lwalo, okanye ukukhutshwa ngumhloli okanye ligosa elijongene notywala, nokuba ngowuphi na kwabo bantu, kwesatifikethi sothotyelo, nokuba yeyiphi kwezo zinto efike kuqala. 25

(6) Ukuba umntu othunyelwe isaziso sothotyelo usithobele eso saziso, umhloli okanye igosa elijongene nemicimbi yotywala, nokuba ngowuphi kwabo bantu, unokukhupha isatifikethi sothotyelo.

(7) Umntu othunyelwe isaziso sothotyelo unakho ukufaka, ngendlela emiselweyo, kumhloli okanye kwigosa elijongene nemicimbi yotywala, nokuba ngubani na kwabo bantu, ingxelo ephikisana nesaziso eso kananjalo echaza izizathu ekuphikiswa phezu kwazo. 30

(8) Umhloli okanye igosa elijongene nemicimbi yotywala, nokuba ngowuphi kwabo bantu, elifumene ingxelo ngokwecandelwana (7) kufuneka, kwithuba elimiselweyo, lifake isaziso sothotyelo, ingxelo ngokwecandelwana (7) kunye nalo naluphi olunye uxwebhu alubona luphathelene, kwiGosa eliyiNtloko yoLawulo, lona kuya kufuneka ukuba ligqibe ekubeni isenzo okanye ukungenzi oko ekubhekiswe kuko kwicandelwana (2)(b) kuya kufuna ukukhutshwa kwesenzo sothotyelo kusini na. 35

(9) IGosa eliyiNtloko yoLawulo linakho, ukuba ligqibe ekubeni ukukhutshwa kwesaziso sothotyelo kufanelekile kusini na, ukusichitha okanye, ukuba lifumanise ukuba asifanelekanga, ukuyalela ukuba isaziso sothotyelo sithotyelwe ngomhla uthotyelo ekufanele lugqitywe ngawo njengoko kuchazwe kwicandelwana (2)(d) okanye ngomnye umhla elinokugqiba ngawo. 40

(10) IGosa eliyiNtloko yoLawulo linakho ukudlulisela umsebenzi ekubhekiswe kuwo kwicandelwana (9) kumqeshwa weBhodi. 45

(11) Ukusilela ekuthobeleni isaziso sothotyelo kukwaphula umthetho.

(12) Ubungqina bokungathobeli isaziso sothotyelo, kwindibano yeNkundla yemiCimbi yoTywala, bubungqina obucace gca bokwaphulwa komthetho okanye bokutyeshela imiqathango yelayisenisi echazwe kwisaziso sothotyelo.

**Ukuvalwa kwendawo elayisenisiweyo** 50

**70.** (1) Umhloli, igosa elijongene nemicimbi yotywala, okanye naliphi na ipolisa elikwinqanaba elingaphezulu kokuba ngumhloli linakho, xa kukho ukuphazanyiswa koluntu, ingxushungxushu okanye udushe okanye xa kukho isikrokro sokuba zingenzeka ezo zinto kwindawo elayisenisiweyo, ukuyalela umnini-layisenisi okanye nabani na olawula indawo elayisenisiweyo, ukuba ayivale indawo leyo ithuba elingadlulanga kwinani leeyure eziseleyo zokurhweba ngolo suku. 55

(2) Umnini-layisenisi okanye nabani na omnye umntu olawula indawo leyo ilayisenisiweyo, kufuneka, akufumana umyalelo okhutshwe phantsi kwecandelwana

(1), athobele ngoko nangoko, kananjalo, ukuba akakwenzi oko, umntu lowo ukhuphe umyalelo angathabatha amanyathelo kananjalo asebenzise okanye enze ukuba kusetyenziswe amandla afanele imeko leyo okuvala indawo leyo.

(3) Nawuphi na umyalelo okhutshwe phantsi kwecandelwana (1), ungarhoxiswa nanini na— 5

(a) ligosa elijongene nemicimbi yotywala, ngumhloli okanye lipolisa elikhuphe loo myalelo;

(b) xa loo myalelo ukutshwe lipolisa, lipolisa elisesikhundleni esiphezulu nangakumbi; okanye

(c) yiNkundla yemiCimbi yoTywala. 10

### Imiyalelo yethutyana

**71.** (1) INkundla yemiCimbi yoTywala inakho ukukhupha umyalelo wethutyana onqumamisa ilayisenisi ngokucelwa ngumhloli okanye ligosa elijongene nemicimbi yotywala ukuba kukho uloyiko lokuchaphazelelka kwempilo, kwentlalo-ntle nokhuseleko loluntu. 15

(2) Isicelo ngokwecandelwana (1) sinokungavunywa ngaphandle kokuba—

(a) oko kuxhaswa yingxelo efungelweyo echaza iinkcukacha ezinxulumene nalo mba;

(b) kufakwe ubungqina bokuba isicelo nengxelo efungelweyo ithunyelwe kumnini-layisenisi ubuncinane kwiinyure ezingamashumi amane anesibhozo (48) ngaphambi kokufakwa kwesicelo; kananjalo 20

(c) kuyabonakala kwisicelo ukuba lo mba ungxamisekile.

(3) Umyalelo okhutshwe ngokwecandelwana (1) kufuneka uthunyelwe kumnini layisenisi ngendlela eyalelwe yiNkundla yemiCimbi yoTywala kwaye uya kuqala ukusebenza ngomhla nangexesha othunyelwe ngawo. 25

(4) Umyalelo okhutshwe ngokwecandelwana (1) kufuneka uchaze umhla umnini-layisenisi afanele ukuya kuvela ngawo phambi kweNkundla yemiCimbi yoTywala ukuya kuchaza ukuba kungani umyalelo lowo ungenakwenziwa onagaguqukiyo.

(5) Umnini-layisenisi unakho, ngaphambi komhla ochazwe kwicandelwana (4), ukufaka kwiNkundla yemiCimbi yoTywala isaziso sokuchasa kwaye kufuneka emva koko afake iingxelo ezifungelweyo apho achaza khona izizathu zokuchasa isicelo kananjalo kufuneka kwangaxeshanye athumela ikopi yeso saziyo nezo ngxelo zifungelweyo kumhloli okanye kwigosa elijongene nemicimbi yotywala ekubhekiswe kulo kwicandelwana (1). 30

(6) Umnini-layisenisi unakho nanini na phambi komhla ochazwe kwicandelwana (4) ukufaka isicelo kwiGosa eliChophela imiCimbi sokuba loo mba ubekelwe umhla wokuxoxwa ngomhla ongaphambili kwaye kufuneka kwangaxeshanye kuthunyelwe ikopi yeso sicelo kumhloli okanye kwigosa elijongene nemicimbi yotywala ekubhekiswe kuye kwicandelo (1). 35

(7) IGosa eliChophela imiCimbi lianko ukuyalela ukuba ususku lokuphendula kubuyiselwe umva. 40

(8) Ngomhla wokuchotshelwa kwesicelo iNkundla yemiCimbi yoTywala inakho ukuphumeza umyalelo wethutyana okanye iwuvume, ngokuxhomekeke kwizihlomo elinokuyibona ifanelekile.

### Ukunqunyanyiswa, ukucinywa nokuphelelwa kweelayisenisi 45

**72.** (1) Ilayisenisi enqunyanyisiweyo ngokwawo nawuphi na ummiselo womThetho iya kuhlala isebenza kuzo zonke iimeko, ngaphandle kokuba loo mnini-layisenisi engenakhao ukuthengisa utywala ngalo loo layisensisi ngexesha esanqunyanyiswe ngalo.

(2) Ilayisenisi ecinyiweyo yiNkundla yemiCimbi yoTywala ayisebenzi ukususela ngomhla wokucinywa kwayo, okanye ukususela komnye umhla omiselwe yiNkundla yemiCimbi yoTywala. 50

(3) Ilayisenisi ephelwe lixesha ngokwecandelo 62, 63 okanye 64 ayisebenzi ukususela ngomhla wokuphelelwa kwayo.

(4) Umnini-layisenisi welayisenisi enqunyanyisiweyo, ecinyiweyo okanye ephelwe lixesha unakho kwiintsuku ezingamashumi amathathu (30) ukususela kumhla wokunqunyanyiswa, wokucinywa okanye wokuphelelwa kwayo ukuthengisa ngefandesi nabuphi na utywala obebukwindawo elayisenisiweyo ngomhla wokunqunyanyiswa, wokucinywa okanye wokuphelelwa kwayo. 55

## ISAHLUKO 12

## UKUNYANZELISWA KOMTHETHO

**Izikhundla nemisebenzi yamagosa nabahloli abagunyazisiweyo bemicimbi engotywala**

73. (1) UmKhomishinara wePhondo leNtshona Koloni weeNkonzo zamaPolisa oMzantsi-Afrika unakho ngokubhekiselele kwisitishi samapolisa ngasinye ukumisela ipolisa okanye igosa elikwinqanaba loBuhloli ngenjongo yokuba maliqhube umsebenzi wegosa elijongene nemicimbi yotywala ngokwalo mThetho. 5

(2) Ipolisa elithe ngokwemimiselo yecandelo 139 yomThetho woTywala, 1989 (umThetho 27 ka-1989) latyunjwa njengegosa elijongene nemicimbi yotywala lakuba ligosa elijongene nemicimbi yotywala ngokwalo mThetho kwaye lithatyathwa njengelityunjwe ngokwecandelwana (1). 10

(3) UmKhomishinara wePhondo leNtshona Koloni weeNkonzo zamaPolisa oMzantsi-Afrika unakho nanini na ukukuphelisa ukutyunjwa okwenziwe nokuthatyathwa njengokwenziwe ngokwemimiselo yecandelwana (1). 15

(4) IBhodi inakho ukutyumba umntu oqeshwe yiBhodi ukuba abengumhloli ngeenjongo zokuphumeza imimiselo yalo mThetho.

(5) UmKhomishinara kufuneka ukuba, xa emisela igosa lemicimbi yotywala ngokwecandelwana (1), kwaye iBhodi kufuneka, xa ityumba umhloli ngokwecandelwana (4), ikhuphe isatifikethi sokutyunjwa okanye sokumiselwa esisayinwe ngumKhomishinara okanye liGosa eliyiNtloko yolawulo egameni leBhodi, nokuba yiyiphi na kwezo zinto. 20

(6) Igosa elijongene nemicimbi yotywala okanye umhloli kufuneka, xa liqhuba umsebenzi walo ngokwemimiselo yalo mthetho, xa oko kufunwa nguye nabani na ochatshazelwa kukuqhutywa kwaloo msebenzi, ukuba likhuphe ubungqina bokutyunjwa njengegosa elijongene nemicimbi yotywala okanye umhloli. 25

(7) Igosa elijongene nemicimbi yotywala okanye umhloli kufuneka—

(a) ngokubhekiselele kuso nasiphi na isicelo esenziwe ngokwalo mthetho, lenze ingxelo kwiNkundla yemiCimbi yoTywala malunga naloo miba njengoko kunokuyalelwa okanye njengoko ngokokubona kwegosa elo okanye umhloli lowo kufuneka kunikwe ingqwalaselo kwisicelo; 30

(b) ngokucelwa yiNkundla yemiCimbi yoTywala, lenze ingxelo okanye linikele ngengcaciso emalunga nombona onokufunwa yiNkundla yemiCimbi yoTywala;

(c) ngokukhawuleza emva kokufikelela koku ezindlebeni zakhe enze ingxelo kwiGosa eliyiNtloko yoLawulo malunga nokusilela ekuthobeleni imiqathango yelayisenisi yakhe, isaziso sothotyelo okanye imimiselo yalo mThetho; 35

(d) axele kwiGosa eliyiNtloko yoLawulo into yokuba umnini-layisenisi uphelelwe ziimfanelo okanye akasafanele ukuba ngumnini-layisenisi;

(e) ukuba unoluvo lokuba indawo elayisenisiweyo iyekiwe okanye ayisakufanelanga ukusetyenziselwa umsebenzi wayo njegeshishini elilayisenisiweyo, akuxele oko kwiGosa eliyiNtloko yoLawulo; kananjalo 40

(f) ukuba umnini-layisenisi ukhe wafunyanwa enetyala lokwaphula umthetho, kufuneka axele kwiGosa eliyiNtloko yoLawulo iimeko olwenzeka phantsi kwazo olo lwaphulo-mthetho nokufunyanwa enetyala. 45

**Amagunya amagosa nabahloli abagunyazisiweyo bemicimbi engotywala**

74. (1) Ngokuxhomekeke kwicandelo 75, igosa elijongene notywala okanye umhloli unakho ekuqhubeni kwakhe umsebenzi wakhe—

(a) ngawo wonke amaxesha afanelekileyo ukungena—

(i) kuyo nayiphi na indawo elayisenisiweyo; 50

(ii) kuyo nayiphi na indawo ekwenziwe isicelo malunga nayo ngokwemimiselo yalo mThetho; kananjalo

(iii) kuyo nayiphi na indawo okanye isithuthi akrokrela ngezizathu eziva-kalayo ukuba igcina utywala okanye ithengisa utywala ngokuphiki-sanayo nemimiselo yalo mThetho, 55

kananjalo enze uphando, uphengululo okanye ukuhlola ngokokubona kwakhe ukubakho kwemfuneko yoko;

- (b) ngalo naliphi na ixesha nakuyo nayiphi na indawo isicelo esivela kuye nawuphi na umntu esithi ngoko nangoko, okanye ngomhla nexesha elichaziweyo ligosa elijongene nemicimbi yotywala okanye umhloli uya kumvezela nayiphi na ilayisenisi, irekhodi okanye olunye uxwebhu analo, oluselugcinweni lwakhe okanye kulawulo lwaloo mntu okanye nawuphi na omnye umntu egameni lakhe; 5
- (c) ahlole naluphi na uxwebhu ekubhekiswe kulo kumhlathi (b), enze iikopi zezicatshulwa ezivela apho, kanajalo acele kumntu okhankanywe kuloo mhlathi ukucaciselwa ngayo nayiphi na inxalenye yalo; 10
- (d) athimbe kananjalo asuse nantoni na ngokoluvo lwakhe enokuba bubungqina bokwaphulwa komthetho ngokwemimiselo yalo mThetho, okanye ukwaphula nawuphi na umqathango welayisenisi; 10
- (e) afake imibuze kumnini-layisenisi okanye kubaqeshwa bakhe, umenzi wesicelo, okanye nabani na okhoyo kuloo ndawo xa ekrokrela ukuba umqeshwa, umenzi-sicelo okanye loo mntu unoxwebhu kuye okanye phantsi kolawulo lwakhe, luxwebhu olo olunokunxulumana nombamba awuphandayo; kananjalo 15
- (f) ayalele ukuba nawuphi na umnini-layisenisi okanye umqeshwa wakhe, azokubela ngaphambi kwakhe ngexesha nakwindawo echazwe nguye ukuza kuphendula imibuzo emalunga nombamba lowo uphandwayo. 20
- (2) Nabani na ophetheyo kuloo ndawo ichazwe kwicandelwana (10) kufuneka abonelele ngoncedo olunokucelwa ligosa elijongene nemicimbi yotywala okanye ngumhloli.
- (3) Nawuphi na umntu ofakwe imibuzo ligosa elijongene nemicimbi yotywala okanye nomhloli ngokwemimiselo yalo mThetho kufuneka kuqala achazelwe ngamalungelo akhe ngokomgaqo-siseko ngaphambi kokuba kuqaliswe inkqubo yokufakwa imibuzo kwaye nayiphi na impendulo emva koko yaloo mntu kufuneka inyaniseke kambe ibe yeyona mpendulo akwazi kangangoko ukuyinika. 25
- (4) Impendulo okanye ingcaciso enikwa igosa elijongene nemicimbi yotywala okanye umhloli ayifanelanga kusteyneziswa okanye kwamkelwa kwiinkqubo zokuchotshelwa kwamatyala olwaphulo-mthetho ngokuchasene nalo mntu utyholwa— 30
- (a) ngokufungisa okanye ukufunga;
- (b) ukwenziwa kweengxelo ezingeyonyani; okanye
- (c) ukungawuphenduli ngokupheleleyo okanye ngokwanelisayo umbuzo. 35

#### **Ukusetyenziswa kwamagunya okungena nokusetsha okanye awokuhlola**

- 75.** (1) Igosa elijongene nemicimbi yotywala okanye umhloli unakho ukusebenzisa amagunya ekubhekiswe kuwo kwicandelo 74 ngokubhekiselele ekungeneni, ekusetsheni okanye ekuhloleni indawo ukuba ligunyaziswe ngesigunyaziso esikhutshwe ngumantyi ngokwecandelwana (3). 40
- (2) Umhloli okanye igosa elijongene nemicimbi yotywala linakho, ekuqhubeni kwalo nasekusebenziseni kwalo nawuphi na amagunya okanye umsebenzi okhankanywe kwicandelwana (1), ukuphelekwa ligosa loxolo okanye ngamagosa oxolo.
- (3) Umantyi unakho ukukhupha isigunyaziso sokungena nokuhlola nayiphi na indawo, ukuba, ngokwengcaciso ebhaliweyo nefungelweyo ayinikiweyo, umantyi unesizathu sokukholelwa ukuba— 45
- (a) lo mThetho awuthotyelwa; kwaye
- (b) ukungena nokuhlola kuyimfuneko, kusemdleni woluntu, ukuze kufumaneke ingcaciso—
- (i) enxulumene koko kusilela ukuthobela lo mThetho; kananjalo 50
- (ii) engenakufunyanwa kungangenwanga kuloo ndawo.
- (4) Igosa elijongene nemicimbi yotywala okanye umhloli unokusebenzisa amagunya akhe ekubhekiswe kuwo kwicandelwana (1) ngaphandle kwesigunyaziso—
- (a) ngokuvunyelwa ngumnini-ndawo okanye ngumntu ophethe indawo leyo;
- (b) ukuba kukho isaziso sothotyelo esingekasetyenzwa nesikhutshwe ngokwecandelo 69, ngenjongo yokufumanisa ukuba isaziso eso sithotyelwe kusini na; okanye 55
- (c) ukuba igosa elijongene nemicimbi yotywala okanye umhloli ngezizathu ezivakalayo ukholelwa ekubeni—
- (i) kuza kukhutshwa isigunyaziso ngokwemimiselo yecandelo (3) ukuba ufake isicelo saso; kananjalo 60



- (ii) ukulibaziseka ekufunyanweni kwesigunyaziso kuya kuphazamisa iinjongo zokusetsha nokuhlola.
- (5) Xa lingena kwindawo ngokweli candelo igosa elijongene notywala okanye umhloli kufuneka—
- (a) azazise kumntu ophethe loo ndawo; 5
- (b) abonise loo mntu isigunyaziso, ukuba sikhona;
- (c) achaze igunya analo lokuqhuba umsebenzi wokuhlola; kanaanjalo
- (d) aqhube inkqubo yokuhlola ngendlela engamphazamisi kangako umnini layisenisi okanye abathengi bakhe kambe engaliphazamisanga kangako ishishini elilayisenisiweyo. 10
- (6) Igosa elijongene nemicimbi yotywala okanye umhloli kufuneka, xa ethimba nantoni na ngokweli candelo, akhuphele loo mntu ekuthinjwe kuye into irisiti echaza into okanye izinto ezo zithinjweyo nechaza izizathu zokuzithimba.
- (7) Nantoni na ethinjweyo ngokweli candelo kufuneka igcinwe kanaanjalo ilondolozwe ide inkundla yenze umyalelo malunga nokuchithwa kwezo zinto. 15
- (8) Ngaphandle kokuba umnini-layisenisi okanye umqeshwa wakhe osemagxeni akhe ngokwalo mThetho utyholwa ngolwaphulo-mthetho kwinkundla okanye ubizelwe ukuza kuvela kwindibano yeNkundla yemiCimbi yoTywala kwiintsuku ezingamashumi amathathu (30) ukususela kumhla wokuthinjwa, into leyo ithinjweyo kufuneka ibuyiselwe kumntu lowo ibithinjwe kuye. 20

### Ulwaphulo-mthetho ngokubanzi

#### 76. (1) Umntu—

- (a) (i) onxilileyo nongenalucwangco kuyo nayiphi na indawo ethengisa utywala; okanye
- (ii) onxile kuyo nayiphi na indawo efikelelwa luluntu; 25
- (b) othengisela okanye obonelela umntu onxilileyo ngotywala, engumni layisenisi okanye umntu ophethe indawo eliyisenisiweyo, ovumela umntu onxilileyo nongenalucwangco ukuba ahlale kuloo ndawo;
- (c) othengisa okanye obonelela ngotywala kwisiphatho esingahambelaniyo nemimiselo nemiqathango emiselwe ngumPhathiswa ngesaziso esikhutshwe kwiGazethi yePhondo; 30
- (d) othenga utywala nakubani na esazi, okanye enamagunya afanelekileyo okukrokrela loo mntu ukuba akanalayisenisi okanye akavunyelwanga ukuba abuthengise utywala ngokumalunga nalo mThetho;
- (e) othengisa utywala emntwini esazi okanye enezizathu ezivakalayo zokukokrela ukuba loo mntu uza kusuka abuthengise obo tywala nokuba oko akuvumelekanga ngokwemimiselo yalo mThetho; 35
- (f) njengomnini-layisenisi, wavumela ukuba indawo elayisenisiweyo mayisetyenziselwe njengendawo yokuhenyuza okanye njengendawo esoloko indwendwelwa ngamahenyukazi; 40
- (g) engumnini-layisenisi wavumela obonelela ngeziyobisi ezingekho mthethweni ukuba ahlale kuloo ndawo ilayisenisiweyo;
- (h) engumnini-layisenisi wavumela ukuthengiswa okanye ukusetyenziswa okanye ukuba neziyobisi kwindawo leyo ngokwaphula nawuphi na umthetho osebenza ngentengiso enjalo, ukusetyenziswa nokuba neziyobisi; okanye 45
- (i) engumnini-layisenisi, okanye umntu ommeleyo afumane okanye abenalo naluphi na uxwebhu okanye ipropati ehambayo njengesibambiso okanye njengesithembiso sokuhlawula ityala elinxulumene nokuthengiswa kotywala, unetyala lokwaphula umthetho.

### Ulwaphulo-mthetho olumalunga nengcaciso

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#### 77. Umntu othe ngokunxulumene nesicelo, nenkcaso okanye nesiphakamiso—

- (a) weza okanye wabonelela ngengcaciso ayaziyo ukuba asiyinyaniso okanye iyalahlekisa okanye angaziyo ukuba asiyonyaniso okanye xa esiza noxwebhu olunyangiweyo okanye oluzenza libe lingeyiyo ikopi yokwenene yoxwebhu ngokwalo; 55
- (b) athe waphendula inkcaso okanye isiphakamiso okanye isikhalazo ngendlela aziyo ukuba ayinyaniso okanye iyalahlekisa, okanye angayaziyo ukuba iyinyaniso; okanye



- (c) xa ephendula umbuzo wegosa elijongene nemicimbi yotywala, womhloli, wegosa loxolo, wegosa likamasipala okanye weNkundla lemiCimbi yoTywala, athe wanikela okanye wabonelela ngengcaciso aziyo ukuba ayiyonyaniso okanye iyalahlekisa, okanye angaziyo ukuba asiyonyaniso okanye eze noxwebhu lwenkohliso okanye oluzenza ikopi lingeyiyo ikopi eyinyaniso yoxwebhu ngokwalo. Ekuphenduleni umbuzo wegosa lotywala eligunyazisiweyo, umhloli, igosa loxolo, igosa lakwamasipala okanye iNkundla yokuLayisenisa ngoTywala izisa okanye ibonelela ngeenkukacha elaziyo ukuba zibubuxoki okanye ziyalahlekisa, orkanye elingazaziyo nokuba ziyinyaniso okanye elingenisa uxwebhu lwenkohliso okanye elungathi luyinkohliso nolungeyiyo ikopi yokwenene yombhalo wakuqala, unetyala lokwaphula umthetho. 5 10

**Ulwaphulo-mthetho ngokubhekiselele kwiindibano zeNkundla yokuLayisenisa iShishini loTywala neNkundla yeziBheno**

- 78. (1) Umntu—** 15
- (a) owaziswe ngokufanelekileyo ukuba avele phambi kweNkundla yemiCimbi yoTywala, waza wasilela ukwenza oko ngokwakhe okanye ngokumelwa nguye nawuphi na umntu, igqwetha okanye igqwetha lejaji;
- (b) ovela phambi kweNkundla yokuLayisenisa ngoTywala, kodwa ngaphandle kokuvunyelwa kokungabikho kwakhe liGosa eliLawulayo, asuke angabikho entlanganisweni kungekafikelelwa kwisigqibo; 20
- (c) othe waziswa kwindibano liGosa eliChophela imiCimbi ukuba azimase indibano ngomhla indibano emiselwe wona, wasilela ekuyeni apho;
- (d) othe eyalelwe liGosa eliChophela imiCimbi ukuba aze kunika ubungqina okanye azise uxwebhu, ale okanye asilele ukuwenza njalo; 25
- (e) othe wafungiswa okanye wavunyiswa waza wala ukufungiswa okanye ukuvunyiswa;
- (f) othe efungisiwe okanye evunyisiwe wasilela ukuphendula kangangoko anolwazi ngako kwimibuzo ayibuziweyo okanye anike ubungqina obungeyonyaniso okanye obulahlekisayo eyazi into yokuba obo bungqina abuyonyaniso okanye buyalahlekisa; 30
- (g) othe waphazamisana ngabom neenkqubo zeNkundla yemiCimbi yoTywala; okanye
- (h) wala ukuphuma kwindibano xa eyalelwa ukuba enze njalo liGosa eliChophela imiCimbi, unetyala lokwaphula umthetho. 35
- (2) Umntu owaziswe ngokufanelekileyo ukuba aze kuvela phambi kweNkundla yemiCimbi yoTywala kufuneka—
- (a) azise iGosa eliChophela imiCimbi ngencwadi kwiintsuku ezintlanu ngaphambi komhla wokubela ukuba akazokubanakho ukuvela ngaloo mhla; kananjalo 40
- (b) achaze nezizathu zokungaphumeleli ukuza kuvela ngaloo mhla.
- (3) Ukwaphula okanye ukusilela ukuthobela icandelwana (1) okanye icandelwana (2) kukwaphula umthetho.
- (4) Imimiselo yecandelwana (1) necandelwana (2), neenguqu eziyimfuneko, kwiindibano zeNkundla yeziBheno. 45

**Ulwaphulo-mthetho olumalunga namagosa nabahloli bemicimbi engotywala abagunyazisiweyo**

- 79. Umntu—**
- (a) ozenza igosa elijongene nemicimbi yotywala okanye umhloli;
- (b) ophazamisa igosa elijongene nemicimbi yotywala okanye umhloli ekuqhubeni imisebenzi yakhe; 50
- (c) owalayo okanye osilelayo ekuthobeleni imiyalelo ayinikwa ligosa elijongene nemicimbi yotywala okanye ngumhloli;
- (d) xa efakwa imibuzo ligosa elijongene nemicimbi yotywala okanye ngumhloli, anike impendulo engeyonyaniso okanye elahlekisayo eyazi loo nto; okanye 55
- (e) xa esilela ukuthobela isicelo esivakalayo segosa elijongene nemicimbi yotywala okanye umhloli ngokwemimiselo yecandelo 74, unetyala lokwaphula umthetho.

### Ulwaphulo-mthetho olumalunga neenqwelo-mafutha

**80.** (1) Umntu—

- (a) osela utywala emotweni eqhutywa okanye emiswe kwindlela kawonkewonke;
- (b) ovumela ukuba kuselwe utywala kwimoto ayiqhubayo okanye ephantsi 5 kolawulo lwakhe ngeli xesha iqhutywa kwindlela kawonkewonke; okanye
- (c) ovumela ukuba utywala obukwisiphatho esivulekileyo bubekhona emotweni ngeli xesha iqhutywayo kwindlela kawonkewonke,

unetyala lokwaphula umthetho.

(2) Icandelwana (1) alisebenzi ekuselweni kotywala kwimoto elayiseniselwe 10 ukuthengisa nokuselwa kotywala.

### Ulwaphulo-mthetho olumalunga namaziko eenkonzo

**81.** (1) Akuvumelekanga ukuba kuthengiswe, kubonelelwe okanye kuselwe utywala kwindawo ekukho kuyo ishishini elisisikhululo sokuthengisela uluntu ipetyula, idizili nezinye iimveliso zepetyula. 15

(2) Icandelwana (1) alisebenzi kwindawo esele ilayisenisiwe.

(3) Ngaphandle kwakwiimeko ezizodwa, iNkundla yemiCimbi yoTywala inokungavumi ukukhuphela indawo efana naleyo ikhankanywe kwicandelwana (1) ilayisenisi.

(4) Ukwaphula okanye ukusilela ekuthobeleni icandelwana (1) kukwaphula 20 umthetho.

### Ukusilela ekuthobeleni umyalelo weNkundla yemiCimbi yoTywala

**82.** (1) Ukusilela komnini-layisenisi ekuthobeleni umyalelo weNkundla yemiCimbi yoTywala ngokunxulemene nelayisenisi yendawo elayisenisiweyo kukwaphula umthetho. 25

(2) Ukuba umntu uthe wasilela ekuthobeleni umyalelo weNkundla yemiCimbi yoTywala, iNkundla yemiCimbi yoTywala inakho, emva kophando olululo—

- (a) ukunqumamisa ilayisenisi leyo kude kuthotyelwe umyalelo;
- (b) ukumisela ifayini, ekuhlawulwa kwayo kungagunyaziswa unqumamiso kude kubekho ukuthotyelwa komyalelo; 30
- (c) ukubhekisa umba lowo kwiiNkonzo zamaPolisa oMzantsi-Afrika ukuze kutshutshiswe lowo waphule umthetho; okanye
- (d) kucinywe ilayisenisi leyo.

### Uxanduva olugunyazisiweyo

**83.** (1) Ukuba umphathi, i-arhente okanye umqeshwa womnini-layisenisi wenza okanye akenzi nantoni na, ebiya, ukuba ibiyenziwe okanye ingenziwanga ngumnini-layisenisi, kuba kukwaphula umthetho ngokwemimiselo yalo mThetho, umnini-layisenisi uthatyathwa njengokwenzileyo okanye ongakwenzanga oko, ngaphandle kwalapho—

- (a) umnini-layisenisi engakhange ayekelele okanye avumele okanye avume 40 ukuba kwenziwe okanye kungenziwa;
- (b) umnini-layisenisi athabathe amanyathelo akwazileyo ukuwathabatha ukuze kuthintelwe oko kwenza okanye kungenzi; kananjalo
- (c) ukwenza okanye ukungezi kungawelanga kwimida yengqesho okanye yegunya lomphathi, le-arhente okanye lomqeshwa. 45

(2) Into yokuba umnini-layisenisi abe ukhuphe imiyalelo ethintela ukwenza okanye ukungenzi akwanelanga njengento yokungqina ukuba umnini-layisenisi uthabathe amanyathelo ayimfuneko njengoko kumiselwe licandelwana (1)(b).

(3) Xa umnini-layisenisi enobutyala bokwenza okanye bokungenzi komye umntu ngokwemimiselo yecandelwana (1) loo mntu ungomnye naye unobutyala ke ngoko ngokungathi ebengumnini-layisenisi. 50

(4) Umphathi, i-arhente okanye umqeshwa akakhululwanga butyaleni bakhe anokuba ubufumene ngokungadibananga nobutyala abelana ngabo nomnini-layisenisi ngokwecandelwana (1).

**Uxolelo**

- 84.** (1) Aba bantu balandelayo abachatshazelwa kukusebenza kwalo mThetho—
- (a) igosa njengoko lichazwe kwicandelo 1(1) lomthethi i-Customs and Excise Act, 1964 (umThetho 91 ka-1964), xa liqhuba umsebenzi walo; 5
  - (b) unothimba okanye umqeshwa wakhe okanye nalo naliphi na elinye igosa elisebenza ngokomyalelo wenkundla ekuqhubeni umsebenzi walo; 5
  - (c) umntu ekubhekiswe kuye kwisicelo phantsi kwecandelo 10 lomThetho weMveliso ebuTywala, 1989 (umThetho 60 ka-1989), ngokubhekiselele ekuthengisweni kweziselo zesakramente phantsi kweso saziso; kunye 10
  - (d) nomntu ovelisa okanye othengisa amayeza njengoko echazwe kumthetho iMedicines and Related Substances Act, 1965 (umThetho 101 ka-1965). 10
- (2) INkundla yemiCimbi yoTywala inakho, xa kwenziwe isicelo naxa kuhlawulwe umrhumo omiselweyo naxa iimeko zikuvuma oko, ukubhengeza ukuba lo mThetho, ingabandakanywanga imimiselo enokumiselwa nguwo, awusebenzi—
- (a) kumqokeleli wotywala; 15
  - (b) nakumntu ovelisa okanye othengisa izinongo ezibuspiriti. 15
- (3) INkundla yemiCimbi yoTywala okanye iGosa eliChophela imiCimbi linakho nanini na emva kokukhupha isibhengezo phantsi kwecandelwana (2), ngesaziso esithunyelwe okanye esinikwe umntu obhalwe kwisibhengezo eso—
- (a) ngokokubona kwalo ukumisela imiqathango okanye eminye imiqathango 20 enokuba ichaziwe kwisaziso esinxulumene nesibhengezo eso;
  - (b) ukurhoxisa okanye ukuhlomla nawuphi na umqathango walo phantsi kweli candelo; okanye 20
  - (c) ukurhoxisa okanye ukuhlomla isibhengezo eso. 20

**Ubungqina**

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- 85.** (1) Ukuba nakwiyiphi inkqubo yolwaphulo-mthetho okanye kwindibano yeNkundla yemiCimbi yoTywala kungeniswe ubungqina bokuba umntu ongenalayisenisi okanye ongavumelekanga ukuba athengise utywala ngokwemimiselo yalo mThetho okanye omnye umthetho—
- (a) ebenesalathisi okanye isaziso kwindawo yakhe okanye kufutshane nayo 30 esichaza ukuba kuthengiswa utywala apho;
  - (b) ebesebenzisa indawo elungiselelwe ngendlela apha eyenza ekubeni ugqibe ekubeni kuthengiswa utywala kuloo ndawo; 30
  - (c) kwindawo yakhe okanye kwindawo ephantsi kolawulo lwakhe ebenotywala obungaphezulu kobo bumiselweyo ngokomthamo ekubhekiswe kuwo 35 kwicandelo 60 ngaphandle kwemvume efunwa lelo candelo; okanye
  - (d) uthenge utywala obungaphezulu kobo bumiselweyo ngokomthamo ekubhekiswe kuwo kwicandelo 60 ngaphandle kokufumana imvume kuqala efunwa lelo candelo, bubungqina obucace gca bokuthengiswa kotywala. 35
- (2) Ukuba nayiphi na inkqubo yokuxoxwa kwetyala lolwaphulo-mthetho okanye indibano yeNkundla yemiCimbi yoTywala—
- (a) kuveliswe kuyo njengobungqina isiphatho esitywiniweyo esiquathe ulwelo, kwaye kweso siphatho kukho ileyibhuli okanye isixhobo esichaza umyinge we-alkoholi kulwelo olo, bubungqina obucace gca bokuba ulwelo olo lune-alkoholi echaziweyo kwaye, ukuba i-alkoholi echaziweyo ingaphezulu 45 kwe-1% ye-alkoholi ngomthamo, olo lwelo lubutywala.
  - (b) kuveliswe njengobungqina iziphatho ezingaphezu kwesinye, siphatho ngasinye esiyinxalenye yempahla yotywala obufunyenwe kwindawo enye ngaxeshanye kwaye kufunyaniswe ukuba isiphatho esinye okanye ngaphezulu sinotywala, obo bubungqina obucace gca bokuba zonke iziphatho 50 zinotywala;
  - (c) kuveliswe njengobungqina uxwebhu oluyikopi yelayisenisi, ukuveliswa kwalo bubungqina obucace gca belayisenisi okanye bephepha-mvume kunye nawo nawuphi na umqathango okanye okubhalwe kuyo okanye okuqhotyoshelwe kuyo buthatyathwa njengomqathango okanye 55 okubhaliweyo okumiselwe ngokomThetho;
  - (d) kuveliswe njengobungqina ingxelo okanye isatifikethi esisayinwe ngumhlalutyi okanye usomichiza oqeshwe nguRhulumente weRiphabhliki, okanye oqeshwe yiyunivesithi okanye liziko lophando lwezamayeza, owenze uhlalutyi lolwelo okanye lwento ekujolise kuyo iinkqubo zolwaphulo- 60

- mithetho okanye indibano, ngxelo leyo okanye satifikethi eso sibungqina obucace gca bokuqulathwe kwingxelo okanye kwisatifikethi; okanye
- (e) kuveliswe ubungqina bokuba umnini-layisenisi otyholwa ngokwaphula imimiselo yecandelo 54 usilele ekufumaneni kumntu ominyaka yobudala ingaphantsi kweshumi elinseibhozo (18) nokuba— 5
- (i) sisazisi sakhe esisebenzayo;
- (ii) yilayisenisi yakhe yokuqhuba esebenzayo; okanye
- (iii) ipasipoti yakhe esebenzayo;
- obo bungqina bubungqina obucace gca bokuba umnini layisenisi ebenolwazi lokuba loo mntu ebeminyaka yobudala ingaphantsi kweminyaka elishumi elinesibhozo (18). 10

### Izaziso

- 86.** (1) UmPhathiswa unakho, phantsi kwemiqathango yecandelo 41 lomThetho woTywala, ukuyalela—
- (a) okuqulathwe zizaziso zoluntu ekufuneka kubekwe ekuhlени; kanaanjalo 15
- (b) nendlela ezo zaziso ekufuneka zibekwe ekuhlени gayo, kwindawo elayisenisiweyo.
- (2) Ukwaphula okanye ukusilela ukubeka ekuhlени isaziso ekubhekiswe kukko kwicandelwana (1) kukwaphula umthetho.

### Izohlwayo

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- 87.** (1) Umntu obekwe ityala lokwaphula umthetho ekubhekiswe kulo—
- (a) sections 32(3), 54, 55, 76(g) or 76(h) is liable on conviction to a fine not exceeding R1 000 000,00 or to imprisonment for a period not exceeding five years or to both such fine or such period of imprisonment;
- (b) kwicandelo 32(3), 54, 55, 76(g) okanye 76(h) akufunyanwa enetyala uya 25 kuhlawuliswa ifayini engadlulanga kwi-R1 000 000,00 okanye athunyewe intlongweni ithuba elingadlulanga kwiminyaka emihlanu okanye agwetywe ifayini nokuthunyelwa entolongweni ngokunjalo;
- (c) icandelo 32(3), 54, 55, 76(g) okanye 76(h) akufunyanwa enetyala unokugqwetywa ifayini engadlulanga kwi-R1 000 000,00 okanye athunyelwe 30 entlongweni ithuba engadlulanga kwiminyaka emihlanu okanye agwetywe ifayini kunye nokuthunyelwa entolongweni;
- (d) icandelo 23(12), 56(5), 76(a), 77, 78(1), 78(3), 79 okanye 86(2) akufunyanwa enetyala unokugqwetywa ifayini engadlulanga kwi-R1 000 000,00 okanye 35 athunyelwe entlongweni ithuba engadlulanga kwiinyanga ezintandathu okanye agwetywe ifayini kunye nokuthunyelwa entolongweni.
- (2) Inkundla ifumene umntu enetyala lokwaphula umthetho ekubhekiswe kulo kwicandelwana (1), kufuneka ukuba ngokubhekiselele kulwaphulo-mthetho ekubhekiswe kulo kumhlathi (b), (c) okanye (d) welo candelwana, ukongeza kwisohlwayo, umyalelo wokuthimbela emBusweni nayiphi na into ethinjwe 40 ngokwemimiselo yomThetho weeNkqubo zolwaphulo-mthetho.
- (3) Umntu akuhlawula intlawulo yokuvuma ityala ngokwemimiselo yecandelo 57 lomThetho weeNkqubo zoLwaphulo-mthetho, inkundla—
- (a) kufuneka, apho intlawulo leyo inxulumene nesityholo sokwaphula imimiselo yecandelo 32(1), 54(1) to (4), 55(1), 55(2), 76(h) okanye 76(i) lalo mThetho, 45 iyalele ukuba nayiphi na into ethinjiwe ngokwemimiselo yalo mThetho okanye yomThetho weeNkqubo zoLwaphulo-mthetho ithinjelwe umBuso; okanye
- (b) kufuneka, apho intlawulo leyo inxulumene nesityholo sokwaphula imimiselo yecandelo 49(4) to (6), 50(1), 51(1), 51(7), 52(9), 56(1), 56(4), 57(1), 57(2), 58(1), 59, 60(1) to (3), 65(1), 69, 75, 77, 78(1), 78(2), 79, 80(1), 81(1), 82(1) okanye 86(2) lalo mThetho, iyalele ukuba nayiphi na into ethinjiwe 50 ngokwemimiselo yalo mThetho okanye yomThetho weeNkqubo zoLwaphulo-mthetho ithinjelwe umBuso,
- apho icandelo 35 lomThetho weeNkqubo zoLwaphulo-mthetho liya kusebenza khona, 55 neenguqu eziyimfuneko, kuyo nayiphi na into ethinjiwe ngokweli candelo.
- (4) Nabuphi na utywala obuthinjelwe umBuso ngokwemimiselo yeli candelo kuya kufuneka ukuba buchithwe ngendlela emiselweyo.

## ISAHLUKO 13

## IMIGAQO, IMIMISELO YETHUTYANA NESIHLOKO ESIFUTSHANISIWEYO

**Imigaqo**

- 88.** (1) UmPhathiswa kufuneka enze imigaqo emalunga nemiba ekufuneka iyalelwe ngokwemimiselo yalo mThetho, kwaye unokuqulunqa imigaqo emalunga— 5
- (a) nawo nawuphi na umba onokuyalelwa ngokwemimiselo yalo mThetho;
  - (b) ukuthengiswa nokuveliswa kwesipiriti;
  - (c) ukumiselwa kwepesenti yomrhumo ngamnye wokuhlaziya efanele yabelwe ingxowa-mali ngokwemimiselo yecandelo 31(3);
  - (d) ukuchithwa kotywala obuthinjelwe umBuso ngokwemimiselo yecandelo 10 87(2); okanye
  - (e) nawuphi na umba umPhathiswa anokuwubona njengoyimfuneko okanye onyanzelekileyo ukuba wenziwe ukuze kuphunyezwe iinjongo zalo mThetho.
- (2) Umgaqo owenziwe ngokweli candelo ngokubhekiselele kwimirhumo okanye imali efanele ukuhlululwa kuboniswene nomPhathiswa osingete imicimbi yezimali 15 kweli Phondo.

**Imimiselo yethutyana**

- 89.** (1) IBhodi yoTywala emiselwe iPhondo licandelo 5 lomThetho woTywala, 1989 (umThetho 27 ka-1989) usekhona kwaye usasebenza phantsi kwegama elithi iQonga lemiCimbi yoTywala leNtshona Koloni, ngokwemimiselo yalo mThetho, ngokunga 20 yasekwa ngokwecandelo 15(1) lalo mThetho.
- (2) Nayiphi na ilayisenisi yohlobo oludweliswe ngezantsi apha eyayisebenza ngaphambi komhla wokusungulwa kwalo mThetho ithatyathwa njengelayisenisi yokuthengisa utywala bokuselwa kwindawo elayisenisiweyo—
- (a) ilayisenisi yehotele yotywala; 25
  - (b) ilayisenisi yerestyu ethengisa utywala;
  - (c) ilayisenisi yomzi wewayini;
  - (d) ilayisenisi yotywala bamazimba yokuselela kwindawo elayisenisiweyo;
  - (e) ilayisenisi yomzi wemidlalo yeqonga;
  - (f) ilayisenisi yotywala yeklabhu; kunye 30
  - (g) nelayisenisi yotywala bokuselela kwindawo elayisenisiweyo.
- (3) Nayiphi na ilayisenisi yohlobo oludweliswe ngezantsi apha eyayisebenza ngaphambi komhla wokusungulwa kwalo mThetho ithatyathwa njengelayisenisi yokuthengisa utywala bokuselwa kwindawo elayisenisiweyo—
- (a) ilayisenisi yevenkile yotywala; 35
  - (b) ilayisenisi yewayini ethengiswa ezivenkileni;
  - (c) ilayisenisi yotywala bamazimba yokuselela ngaphandle kwendawo elayisenisiweyo;
  - (d) ilayisenisi yefama yewayini;
  - (e) ilayisenisi yotywala eyodwa bokuselwa ngaphandle kwendawo 40 elayisenisiweyo engabandakanyi ilungelo lokusila utywala; kunye
  - (f) nelayisenisi yotywala obuthengiselwa uqonkewonke, evunywe phantsi komThetho woTywala.
- (4) Ilayisenisi edweliswe apha ngezantsi eyayisebenza ngaphambi komhla wokusungulwa kwalo mThetho nemalunga nomthamo wotywala obuveliswe 45 kwiinyanga ezilishumi elinesibini (12) ezidlulileyo ongadlulanga umthamo omiselwe ngokwecandelo 4(10) lomThetho woTywala, ithatyathwa njengelayisenisi yokusila utyawla nokuthenga utywala obuza kuselwa ngaphandle kwendawo elayisenisiweyo—
- (a) ilayisenisi yotywala yendawo kawonkewonke;
  - (b) ilayisenisi yomvelisi; 50
  - (c) ilayisenisi yomdiyeli;
  - (d) ilayisenisi yomdiyeli wotywala bamazimba; kunye
  - (e) nelayisenisi eyodwa yokuselwa kotywala ngaphandle kwendawo elayisenisiweyo, ebandakanya ilungelo lokusila utywala.
- (5) Ilayisenisi edweliswe ngezantsi apha, enika umniniyo ilungelo lokuthengisa 55 utywala bokuselwa ngaphandle kwendawo elayisenisiweyo, iguquliwe ngokwemimiselo yomThetho woTywala, neyayisebenza ngaphambi komhla wokusungulwa



kwalo mThetho umnini layisenisi akwenza isicelo inokuguqulwa ibeyilayisenisi yokuthengisa utywala obuselwa ngaphandle kwendawo elayisenisiweyo—

- (a) ilayisenisi yotywala yendawo kawonkewonke;
- (b) ilayisenisi yomvelisi;
- (c) ilayisenisi yomdidiyeli; kunye 5
- (d) nelayisenisi yomdidiyeli wotywala bamazimba.

(6) Isaziso esikhutshwe ngokwecandelo 33 lomThetho woTywala, 1989 (umThetho 27 ka-1989), nesasisebenza ngaphambi kokusungulwa kwalo mThetho sithatyathwa njengesiyimiqathango echazwe ngencwadi ngokwecandelo 44 lalo mThetho.

(7) Nokuba lo mThetho utshitshisa nawuphi na umthetho, nakuphi na ukusetyenziswa kwawo phambi kokusungulwa kwalo mThetho kufuneka kuthatyathwe kwaye kusetyenzwe ngokwemimiselo yomthetho owawiswa ngawo.

(8) Imimiselo yecandelwana (2) necandelwana (3) nayo iyasebenza kwiilayisenisi ezakhutshwa ngokwemimiselo yomThetho woTywala, 1989 emva komhla wokusungulwa kwalo mThetho. 15

(9) Ngaphandle kokuba kumiswele ngenye indlela liQonga lemiCimbi yoTywala kwakwenziwa isicelo, ilayisenisi ekhutshwe ngokubhekiselele kwindawo ekumhlaba ekukho kuwo isikhululo sokuthengisa ipetyula, idazilina nenye imveliso yepetyula ngethuba lokusungulwa kwalo mThetho, iphelelwa kwiminyaka emihlanu ukususela kumhla wokusungulwa kwalo mThetho. 20

(10) Nayiphi na ilayisenisi ekhutshwe ngaphambi komhla wokusungulwa kwalo mThetho yendawo ekunokuthengiselwa kuyo utywala ukuze buselwe kwalapho okanye ngaphandle kwendawo elayisenisiweyo egunyazisa ukuthengisa kude kudlule amaxesha okurhweba achazwe kwicandelo 59(2) isemva kweenyanga ezilishumi elinesibini (12) ukususela kumhla wokusungulwa kwalo mThetho ngokuxhomekeke kwicandelo 59. 25

(11) Nakuphi na ukuvuma, ukuvunywa okanye ilungelo elinikelwe umnini-layisenisi ngokwemimiselo yomThetho woTywala okanye nawo nawuphi na umThetho owatshitshiswayo ngenxa yawo, ongaphikisaniyo nemimiselo yalo mThetho, kuthatyathwa njengokuvuma, ukuvunywa okanye ilungelo elinikelwe ngokwalo mThetho. 30

(12) Nawuphi na umqathango omiselwe ilayisenisi ngokwemimiselo yomThetho woTywala okanye nawuphi na umThetho owatshitshiswa nguwo, ongaphikisaniyo nemimiselo yomThetho, uya kuthatyathwa njengomqathango omiselwe ngokwalo mThetho. 35

(13) Umnini-layisenisi wendawo elayiseniswe ngaphambi kokusungulwa kwalo mThetho nekubhekiswe kuwo kwicandelo 49(5) necandelwana (6) kufuneka kwiinyanga ezilishumi elinesibhozo (18) ukususela kumhla wokusungulwa kwalo mThetho athobele imiqathango ekubhekiswe kuyo kuloo macandelwana.

(14) (a) Inkundla yemiCimbi yoTywala inakho, kwakwenziwa isicelo, esenziwe kwiinyanga ezilishumi elinesibini (12) ukususela kumhla wokusungulwa kwalo mThetho, ngumntu owenze isicelo selayisenisi, ukubhengeza ukuba loo mntu ndawo ayichatshazelwa kukusetyenziswa kwecandelo 32 lalo mThetho, ukuba lanelisekile koko kwandlalwe phambi kwalo—

- (i) kwenziwe isicelo selayisenisi ngokwecandelo 36 leendawo nomntu lowo uchaphazelekayo; 45
- (ii) isicelo ekubhekiswe kuso kumhlathana (i), siyahambelana nemiqathango esesikweni;
- (iii) umntu lowo urhwebe ngaphandle kwelayisenisi yotywala ngomhla wokusungulwa kwalo mThetho; 50
- (iv) indawo leyo icetywayo ikummandla—
  - (aa) owawumiselwe njengommandla wokuhlala abangemHlophe ngokomThetho iBlack Communities Development Act, 1984 (umThetho 4 ka-1984) okanye iGroup Areas Act, 1950 (umThetho 41 ka-1950); okanye 55
  - (bb) uxhomekeke kwi-Less Formal Township Establishment Act, 1991 (umThetho 113 ka 1991);
- (v) umntu lwowo ulilungu loluntu ekusebenza kulo loo miThetho;
- (vi) umntu lowo uhlala kumhlaba ochaphazelekayo;
- (vii) eyona nto loo ndawo eza kusetyenziselwa yona yindawo yokuhlala; 60
- (viii) loo mntu wayesakuvinjwa amathuba ngaphambili ngenxa yemithetho ekubhekiswe kuyo kwicandelwana (iii);



- (ix) loo mntu akanamvume iyimfuneko ivela kwamasipala yokusebenzisa indawo leyo ngenjongo eza kugunyaziswa yilayisenisi; kwaye
- (x) akukho nto yimbi enokuthintela ukuvunywa kwelayisenisi yaloo mntu.
- (b) Ukuxolelwa ngokomhlathi (a) kungenziwa ngokuxhomekeke kwimiqathango nezithintelo ezinokumiselwa yiNkundla yemiCimbi yoTywala. 5
- (c) Ukuxolelwa ngokomhlathi (a)—
- (i) kuqala ngomhla ochazwe kwisatifikethi sokuxolelwa esikhutshwa yiBhodi; kananjalo
- (ii) siyeka ukusebenza—
- (aa) kwakuphela ithuba leeyure ezingamashumi amabini anane (24) 10 ukususela ngomhla ekubhekiswe kuwo kumhlathana (i);
- (bb) xa kukutshwa ilayisenisi, ukwaliwa kwesicelo ekubhekiswe kuso kumhlathi (a)(i), okanye ngomhla echazwe kwicandelo 42(6) necandelo 46(5) ngokubhekiselele kwindawo enxulumene nezatifikethi; okanye
- (cc) ekuyekweni okanye ekucinyweni koxolelo, nokuba yiyiphi kwezo zinto 15 eyenzeka kuqala.
- (d) Lo mThetho usebenza kumntu oxolelweyo ngokomhlathi (a) ngokungathi loo mntu ebengumnini-layisenisi ngokwecandelo 31.
- (e) IBhodi inakho nanini na ukuhlomela okanye ukurhoxisa uxolelo ngokomhlathi (a) okanye ukuhlomela imiqathango okanye izithintelo ezimiselwe ngokomhlathi (b). 20

### **Imimiselo yotshitshiso**

**90.** Umthethi iLiquor Act, 1989 (umThetho 27 ka-1989) uyatshitshiswa kweli Phondo apho kwizinto osebenza kuzo kulo.

### **ISihloko esifutshaniweyo nomhla wokusungulwa**

**91.** Lo mThetho kuthiwa ngumThetho woTywala weNtshona Koloni, 2008 kwaye 25 uya kuqala ukusebenza ngomhla oya kumiselwa yiNkulumbuso ngesibhengezo kwiGazethi yePhondo.

## IPHONDO LASENTSHONA KOLONI

### UMTHETHO OYILWAYO WOTYWALA WASENTSHONA KOLONI, 2008

#### ISAZISO SOBURHULUMENTE ESICHAZAYO

##### (i) Intshayelelo nezizathu zalo Mthetho uyilwayo

Ishedyuli 5 iCandelo A loMgaqo-siseko weRiphabhlikhi yaseMzantsi Afrika, 1996, libalula ukuba ukunika iphepha-mvume lokuthengisa utywala sisiza esisebenzayo sobuchule obubodwa bomthetho wephondo. Nangona kunjalo, iNkundla yoMgaqo-siseko iye yabonisa ukuba iimeko kushishino lotywala zimisa ukwaziswa komThetho wokuthengisa utywala, 2003 (umThetho 59 wonyaka wama-2003) (“umThetho wokuthengisa utywala, 2003”). UmThetho wokuthengisa utywala, 2003, unyanzela inkqubo emanqanaba mathathu kushishino lotywala, kuqukwa ukuvelisa (kuqukwa ukuvelisa okuncinane okuncinane), ukwabiwa (*ukuhanjiswa*) kunye nokuthengiswa ngemiyinge emincinci kotywala, kwaye ulawula amanqanaba okuvelisa (ukuvelisa okuncinane kona akuqukwa) nawokuhambisa oshishino, ekubeni ulawulo lwamaphondo lugcina ubuchule obubodwa bokulawula ukwenza okuncinane kunye namanqanaba okuthengisa oshishino.

UmThetho wokuthengisa utywala ubhangise umThetho wokuthengisa utywala, 1989 (umThetho 27 wonyaka we-1989) (“UmThetho wokuthengisa utywala, 1989”) oye kwada kwalixesha lokubhangiswa kwawo walawula onke amanqanaba amathathu olu shishino, kodwa ube umisa ukuba loo Mthetho uhlala usebenza kumaphondo angekawazisi umthetho wawo wephondo wokuthengisa utywala, ade oko akwenze.

Kuye kwavunywa ngokubanzi ukuba kuyimfuneko ukuba kulawulwe ushishino lokuthengisa utywala ngenxa yokuba nobungozi bale mveliso. Iindlela ezahlukeneyo zolawulo ziye zanyanzeliswa kolu shishino kwixesha elingaphambili ngokweemfuno zoluntu nezopolitiko zorhulumente wanamhla. Nangona kunjalo, inxalenye enkulu yoshishino lotywala ayilawulwa ngenxa yezizathu zezembali, ingakumbi ukuchwethelwa bucala kwabantu ababengafumani mathuba ngokwembali kushishino olundilisekileyo lotywala. Oku kuye kwakhokelela kulwakhiwo lwenani elikhulu lweevenkile ezithengisa utywala ezingenawo amaphepha —mvume, kwiindawo ezihlala abantu abantsundu ngokwamandulo. Ezi venkile zotywala zithobela nocwangciso lwesithuba kunye nezinye iimfuno zolawulo. Utywala buphinda bunxulunyaniswe kunye nokwenzeka kolwaphulo-mthetho, kumacandelo omabini, alawulwayo nangalawulwayo olu shishino, kwaye iindlela zangaphambili zokuphatha oku ziye zafezekiswa kuphela ngentwana yempumelelo.

Kuyafuneka ukuba kubekho iindlela zolawulo ngaphakathi kwicandelo lorhulumente wephondo ngokwaloo macandelo oMgaqo-siseko abonisa iimfuneko zoshishino lotywala olulawulwayo.

Ngokwakaloku nje, kuya kuba luncedo ukunika intshayelelo emfutshane yembali yolawulo lwalo Mthetho oyilwayo kude kube ngoku.

Urhulumente wephondo laseNtshona Koloni uye waqalisa ukubhala umthetho wolawulo lokuthengiswa kotywala kwiphondo ngonyaka wama-2003, kunye nokunikeza iPhepha loGayo-zimvo (*Green paper*) elingokuthengiswa kotywala. Oku kuye kwaphelela kulwamkelo loxwebhu lomgaqo-siseko othi ‘Umgaqo-nkqubo wokuthengiswa kotywala weNtshona Koloni’ (Iphepha leNgcaciso yoMgaqo-nkqubo White Paper) lokuthengiswa kotywala) liGunya loLawulo lwePhondo ngowama-2005.

UmThetho oyilwayo waseNtshona Koloni wokuthengiswa kotywala, 2005 [B8 — 2005] washicilelwa ukuze kunikwe izimvo ngawo ngomhla wesi-3 kuFebhruwari 2006. Iiseti ezilishumi elinesithandathu lezimvo ezibhaliweyo, zaya zanda zaba ngaphezulu kwamaphepha angama-550, ezafunyanwa ngaphambi kwexesha lokuphelelwa kokungena kwezimvo ngomhla wama-31 kuMatshi 2006. Ikomiti emileyo enoxanduva loku yaye yaziswa ngokumandla ngezi zimvo, yaza yagqiba kwelokuba ive ubungqina obuvakalayo ngexesha lokubanjwa kweembizo zoluntu, eziye zabanjwa ngoJanuwari ukuya kuMatshi 2007. Lo mThetho uyilwayo waye waziswa kwiGunya loLawulo waza wamkelwa lilo ngomhla wama-27 kuMatshi 2007.

Inqaku 2(2) leCandelo 1 lomThetho wokuthengiswa kotywala, 2003 limisa ukuba kufuneka kubekho inkqubo yoqhagamshelwano (engokuthotyelwa komThetho oyilwayo oneemfuno eziphambili zokugweba ezithile ezimiselwe kumthetho kazwelonke) phakathi kweNkulumbuso yePhondo kunye noMphathiswa kaZwelonke

wezoRhwebo noShishino emva kokuba umthetho wephondo wenziwe (oko kukuthi, xa sele upasisiwe liGunya loLawulo, waza wavunywa wasayinwa yiNkulumbuso yePhondo).

Le nkqubo yoqhagamshelwano inokuqaliswa kuphela emva kokupasiswa komThetho oyilwayo, ngenxa yokuba lo mThetho uyilwayo waqinisekiswa ngomhla we-14 kuMatshi 2007, waza kwakamsinya emva koko wangeniswa yikomiti emileyo ukuze wamkelwe liGunya eliLawulayo.

Inkqubo yoqhagamshelwano yathatha ixesha elide kunoko bekucingelwa, ngenxa yemiba ethile yomthetho efuna uthetha-thethwano olumandla ukuze ube nokumiswa. Ngenxa yokunika imbeko abanye, kuye kwafuneka ukuba kwenziwa izilungiso.

Bekungakwazeki ke ngoko ukugqiba loo nkqubo ngaphakathi kweentsuku ezingama-45 apho iNkulumbuso yePhondo kufuneka ukuba, ngokwecandelo 31 (2) loMgaqo-siseko waseNtshona Koloni, ivume ize isayine umThetho oyilwayo owamkelwe liGunya elilawulayo lePhondo. Kungenxa yesi sizathu ukuba umthetho ondululweyo ube uyaziswa ngoku kwakhona njengomThetho wokuthengiswa kotywala waseNtshona Koloni, 2008, kwaye kwenziwe notshintsho olufunekayo.

Mhlawumbi utshintsho kumthetho oYilwayo lunxulumene nobume beBhodi yoTywala. Nangona uMthetho oYiwayo odlulileyo ubuwenzele iBhodi amalungiselelo ebefanele ukukhutshwa kumagunya olawulo kunye nemisebenzi kwelinye icala kunye namagunya othethathethwano olusemthethweni kwelinye, lo Mthetho uyilwayo wenzela iBhodi engesosigxina amalungiselelo apho izakuthi idibene neGosa eliPhetheyo eliyiNtloko, lilawule la magunya nemisebenzi esele ikhankanyiwe, ngelixsha iNkundla yeLayisenisi yoTywala izakuba noxanduva lokujonga izicelo zelayisenisi yotywala kunye nezinye izicelo ezinxulumene noku.

Ezinye izilungiso zinxulumene nokucokiswa nokufezekiswa kweenkqubo ezinxulumene nokwazisa kamalungu asekuhlaleni, ingakumbi amalungu anomdla, kuba isicelo selayisenisi yotywala sifakiwe kwiBhodi yoTywala.

## **(ii) Impembelelo yezentlalo yalo mThetho oyilwayo**

Lo mThetho oyilwayo wenza ukuba iBhodi yokuthengiswa kotywala yaseNtshona Koloni ibe yibhodi yolawulo ezimeleyo ngokwemigaqo yomThetho wolawulo lwemali yoLuntu, 1999 (umThetho 1 wonyaka we-1999) enezibonelelo ezizizo ukuqinisekisa ulawulo lwenkqubo yokunika amaphepha-mvume, ukunyanzelisa nokuqwalasela iindawo ezinamaphepha-mvume kunye noqeqesho olugunyazisiweyo lwabathengisi botywala, kwakunye nezinye iindlela ezifundisayo ukuze kuncitshiswe impembelelo engalunganga yoshishino lotywala. Lo mThetho oyilwayo wenza ukuqonda nokuthabatha inxaxheba okwandileyo koluntu kwinkqubo yokunika kwamaphepha-mvume, kunye neendlela zokuphatha izikhalazo ezimayela neevenkile ezithengisa utywala ezinamaphepha-mvume. Kwenziwa indlela yothatho-nxaxheba lukarhulumente wengingqi kwinkqubo yokunika amaphepha-mvume: IBhodi yokuthengiswa kotywala (“IBhodi”) ngokwemigaqo yalo mthetho, kuza kufuneka ukuba yazise umasipala lowo ngazo naziphina izicelo zemvume yokuthengisa utywala ezifakwe kwiindawo zesiza somasipala lowo, oko kusenza ukuba umasipala lowo afumane ithuba lokunika izimvo zakhe ngesicelo eso nangemiba yendawo oluza kuba kuyo ushishino lotywala olo, kunye nokufumana izimvo zikaceba wewadi wesiza apho izakhiwo zikhoyo. Kukwenziwa namalungiselelo eNkundla yeziBheno yokuba iqwalasele uhlaziyo nezibheno ngokuchasene nezigqibo zeNkundla yokunikwa kwamaphepha-mvume okuthengiswa kotywala. Ukunyanzeliswa nokulawulwa komThetho oyilwayo wokuthengiswa kotywala kuqinisekiswa kukuqhubeka kwenkqubo ekhoyo yamagosa amapolisa onyuliweyo (athiywe okutsha kuMthetho oyilwayo ngokuba ngamagosa amapolisa onyuliweyo omthetho wokuthengiswa kotywala), aqeshwe ngaphakathi kweendidi zeeNkonzo zamaPolisa aseMzantsi Afrika kwiPhondo laseNtshona Koloni, enemisebenzi namandla akwinqanaba eliphezulu. Iindlela zokunyanzelisa eziphuculweyo, amatyala nezohlwayo ziye zaqakwa ukuze kulawulwe ngcono ushishino olunamaphepha-mvume, kuze kupheliswe izenzo ezichasene nalo mThetho oyilwayo.

Lo mThetho oyilwayo ukwanikeza inani elincitshisiweyo loluhlu lwamaphepha-mvume. Eli liquka amaphepha-mvume emveliso encinci kunye nokuthengisela ukusebenzisa phakathi nangaphandle kwezakhiwo apho buthengiswa khona utywala (“iindawo”); ukuthengisela ukusebenzisa kwiindawo zokuthengisela utywala; ukuthengisela ukusebenzisa ngaphandle kweendawo zokuthengisela utywala; kwiimeko ezizodwa, ukuthengisela ukusebenzisa ngaphakathi nangaphandle

kweendawo zokuthengisela utywala, kunye namaphepha-mvume okuthengisa utywala kwiziganeko ezizodwa. Ilungelo lweevenkile ezithengisa ukutya ezinkulu lokuthengisa iwayini yetafile kuphela lisagciniwe. Ulungiselelo lwenziwe lweemeko zamaphepha-mvume asemgangathweni, kwakunye nokunyanzeliswa kweemeko zokuphatha iimfuneko ezithile zecandelo ngalinye elinamaphepha-mvume. Iimfuno eziphambili zokugweba zovavanyo lokuqwalasela izicelo yiBhodi yokuthengiswa kotywala zinikiwe, kwaye ziquka amalungelo osetyenziso lomhlaba njengento yokuqala kunikezo lwamaphepha-mvume.

Iindlela zoqeqesho olugunyazisiweyo lwabathengisi botywala zifuna ukuqinisekisa ukuba benza ngendlela eyiyo. Ulungiselelo lwenziwe lokonyusa ukuqonda koluntu iingozi ezenziwa kukusebenzisa gwenxa utywala, oko kusenziwa ngezaziso ezinyanzelekileyo nemikhankaso yokunika ukuqonda. Lo mThetho oyilwayo ulungiselela ukwenziwa kwengxowa-mali emileyo ukuze kupheliswe iziphumo ezingezizo zentlalo zokusebenzisa gwenxa utywala, kunye nokufundisa abathengisi nabathengi ngotywala.

Iinkqubo zoqeqesho olugunyazisiweyo ziza kuqinisekiswa kunye neGunya leziQinisekiso laseMzantsi Afrika kwakunye negunya elililo lecandelo loqeqesho.

### (iii) Iimeko zemali zalo mThetho oyilwayo

Lo mThetho uyilwayo ulungiselela ukumiswa kwemali yokwenza izicelo, imali yamaphepha-mvume, imali yokuhlaziya iphepha-mvume kunye nezohlwayo ezenziwa nguMphathiswa. Imali esebenzayo yagqibela ukuhlaziywa ngonyaka we-1992. Imali engeniswa yinkqubo yokunika amaphepha-mvume iza kongezeleka kwiNgxowa-mali yeNgeniso yePhondo. Icandelo loluntu elenziwe ngulo mThetho oyilwayo kunye nezakhiwo zalo nemisebenzi yalo liza kuncedwa ngemali ebekelwe bucala yiPalamente yePhondo, kunye nayiphina enye imali eyongezwa kwiBhodi esuka kuyo nayiphina enye intsusa evunywe nguMphathiswa onoxanduva lokwenza oko, emva koqhagamshelwano kunye noMphathiswa onoxanduva lwemali kwiPhondo.

Ingxowa-mali yokuphelisa iziphumo ezingezizo zentlalo zokuthengiswa nokusetyenziswa kotywala ekubhekiselwe kuzo ngasentla, iza kuncedwa ngemali ngokwepesenti (eza kumiswa nguMphathiswa onoxanduva loko eqhagamshelana kunye noMphathiswa onoxanduva lwemali) yemali nganye ehlaziyiweyo ekufuneka ukuba yabelwe kwingxowa-mali.

### (iv) Inkcazelo yegatya ngegatya

#### IZIQULATHO

#### ICANDELO 1

#### UTOLIKO

Igatya 1 Iinkcazelo—Eli gatya linika iinkcazelo zamabinzana namagama aqulethwe kulo mThetho oyilwayo.

#### CANDELO 2

#### IBHODI YOLAWULO LOTYWALA ENTSHONA KOLONI

Igatya 2 Ukwenziwa kweBhodi yolawulo lotywala eNtshona Koloni — Eli gatya lilungiselela ukwenziwa kweBhodi yolawulo lotywala yaseNtshona Koloni njengomntu onamagunya

Igatya 3 Ulwakhiwo lweBhodi — Inani lamalungu eBhodi, imisebenzi yekomiti emileyo yeKhabinethi yePhondo kunye noMphathiswa okunyulo lwawo, ukonyulwa kukaSihlalo kunye noSekela-sihlalo kunye, nokuba semthethweni kwamalungu kwanendima yeGosa eliyiNtloko loLawulo njengelungu ngenxa yesikhundla salo, lulungiselelwe kweli gatya.

Igatya 4 Ukulungela ulonyulo njengelungu okanye umqeshwa weBhodi — Eli gatya limisa imfuno ephambili yokugweba yokulungela eyeyona incinane yolononyulo njengelungu okanye umqeshwa weBhodi.

- Igaty 5 Ukwaleta ulonyulo njengelungu okanye umqeshwa weBhodi — Eli gaty limisa umhlaba apho abantu balelwa ukonyulwa, ukuqhubeka okanye ukuba babe ngamalungu okanye abaqeshwa beBhodi.
- Igaty 6 Ixesha lokuba se-ofisini — Ixesha lokuba se-ofisini lamalungu eBhodi yiminyaka emine, nangona kunjalo ilungu linako ukuba liphinde lonyulwe/liqeshwe ekupheleni kwe-ofisi yalo.
- Igaty 7 Ukupheliswa kobulungu beBhodi — Eli gaty limisa izenzeko ezibangela ukuba ubulungu beBhodi bupheliswe.
- Igaty 8 Izithuba zomsebenzi — Limisa ukuba iKhabhinethi yePhondo kufuneka ukuba iqeshe ilungu elitsha leBhodi xa kukho isithuba.
- Igaty 9 Amandla nemisebenzi yeBhodi — Eli gaty linika onke amandla nemisebenzi yeBhodi, kuqokwa namandla okugunyazisa amanye aloo mandla. Amandla eBhodi aquka, phakathi kwezinye izinto, lawo anxulumene nokufumana kunye nokuqhuba umsebenzi wezicelo zamaphepha-mvume, kwakunye nokunikezwa kwamaphepha-mvume emva kokuvunywa kwesicelo yiNkundla yokunikeza amaphepha-mvume otywala, kunye nemisebenzi yolawulo olumanyeneyo enje ngokufumana, ukubamba, ukuqesha, ukuqeshisa kunye nokuhlutha ubumnini bomhlaba, ukuvula nokugcina ii-akhawunti zebhanki; ukuqesha nokugxotha abasebenzi; ukufumana, inkcitho kunye nolawulo olubanzi lwemali; ukungena kwiimvumelwano, kunye nokumisa iimali neentlawulo.
- Igaty 10 Ugunyaziso — Eli gaty ligunyazisa iBhodi ukuba igunyazise nawaphina amandla alo, engaqokwa lawo acaciswe kwisihlomelo-gaty (7), kwiGosa eliyiNtloko loLawulo. Likwalungiselela ukuba iBhodi isenokwenza olo gunyaziso ngokweemeko nezithintelo njengokubona kweBhodi, kwakunye nokuba iGosa eliyiNtloko loLawulo liphinde ligunyazise nawaphina amandla alo okanye imisebenzi eligunyaziswe yona.
- Igaty 11 Ukwamkela abantu njengamalungu — IBhodi inokwamkela abantu abafanelekileyo, abangasayi kuvumeleka ukuba bavote kwiintlanganiso zayo, kwakunye nabamivuzo yabo iza kumiswa yiBhodi.
- Igaty 12 Ukuba yimfihlo — Eli gaty liyalela amalungu nabaqeshwa beBhodi ukuba bangavezi naluphina ulwazi oluye lwafikelela kulwazi lwabo ngenxa yesizathu sokonyulwa okanye sokuqeshwa kwabo yiBhodi, ngaphandle kwakwizenzo ezimiswe kwisihlomelo-gaty kunye negaty 36(2).
- Igaty 13 Iintlanganiso zeBhodi — Eli gaty limisa elona nani lincinci lamaxesha ekufuneka ukuba iBhodi ihlangane ngawo ngonyaka, likwalungiselela ukuba umhlali-ngaphambili abize iintlanganiso ezizodwa, kwanokuba uMphathiswa amise inkqubo yeentlanganiso zeBhodi; likwamisa inani lamalungu ekufuneka abekhona ukuze intlanganiso ibe nokuhlala, kwaye lilawula iinkqubo zokuthatha izigqibo ezintlanganisweni zeBhodi.
- Igaty 14 Imizuzu — Imizuzu kufuneka ukuba irekhodishwe ize igcinwe ezi-ofisini zeBhodi.

### CANDELO 3

#### INKUNDLA YOKUNIKA AMAPHEPHA-MVUME OKUTHENGISWA KOTYWALA YASENTSHONA KOLONI KUNYE NENKUNDLA YEZIBHENO

- Igaty 15 Ukwakhiwa kweNkundla yokunika amaphepha-mvume okuthengiswa kotywala — Eli gaty liye lenza iNkundla yokunika amaphepha-mvume okuthengiswa kotywala (“iNkundla” kule memorandam ngaphandle kwezihloko); kwaye limisa ukuba iBhodi iza kugcina ubongameli bale nkundla, kodwa akufunekanga ukuba arhoxise okanye atshintshe nasiphina isigqibo seNkundla esithathwe ngokusebenzisa amandla eNkundla ngokwecandelo lomthetho 20.
- Igaty 16 Isiqulatho seNkundla yokunika amaphepha-mvume okuthengiswa kotywala, kunye nokukhethwa nokonyulwa/nokuqashwa kwamalungu ale Nkundla kumiswe kweli gaty. Likwalungiselela ukuba amalungu ale Nkundla kufuneka ukuba aveze ngaphantsi kwesifungo nobungqina ukuba ilungu elo alithintelwanga na ekubeni libe lilungu leBhodi. Ngokuqhagamshelana noMphathiswa nangaliphina ixesha, le Nkundla isenokufuna ubungqina bokuba ilungu lale Nkundla lisafanelekile na.



- Igaty 17 Ukuthintelwa ekuqeshweni/ekonyulweni njengelungu leNkundla yokunika amaphepha-mvume okuthengisa utywala — Eli gaty limisa ukuba ngabaphina abantu abathintelweyo ekubeni bonyulwe/baqeshwe, baqhubeke okanye babe ngamalungu eNkundla yokunika amaphepha-mvume okuthengisa utywala.
- Igaty 18 Ixesha le-ofisi — Amalungu ale Nkundla aqeshelwe/onyulelwe ixesha leminyaka emi-5, kwaye ibhodi kufuneka ukuba ivale nasiphina isithuba somsebenzi esinokubakho.
- Igaty 19 Ukuphela kobulungu beNkundla yokunika amaphepha-mvume okuthengisa utywala — Eli gaty limisa ukubakhona komsebenzi kwiNkundla yokunika amaphepha-mvume okuthengisa utywala: ukuyeka kwelungu; ukuthintelwa kwelungu ukuba liqhubeke okanye ukungabikho kwelungu ezintlanganisweni ezintathu ezilandelelanayo ngaphandle kwemvume yangaphambili yeGosa eLongameleyo, ukuphela kwexesha lomsebenzi lelungu, ukupheliswa kwexesha lelungu yiKhabhinethi yePhondo okanye xa ilungu lingasahlali kwiPhondo.
- Igaty 20 Amandla kunye nemisebenzi yeNkundla yokunika amaphepha-mvume okuthengisa utywala — Eli gaty libonisa imiba enokuqwalaselwa yile Nkundla ezintlanganisweni zayo kunye namanyathelo enokuwathatha malunga nombala lowo eye yawuqwalasela kwezi ntlanganiso. Likwagun-yazisa le Nkundla ukuba yamkele abantu njengamalungu, bantu abo bangasayi kuba nelungelo lokuvota nabaza kuba nemivuzo emiswe yiBhodi.
- Igaty 21 Iintlanganiso kunye nezigqibo zeNkundla yokunika amaphepha-mvume okuthengisa utywala — Eli gaty limisa ukuba iGosa eLongameleyo kufuneka ukuba lixele ixesha nendawo yeentlanganiso zeNkundla yokunika amaphepha-mvume okuthengisa utywala, lize limise nokuba inani lamalungu ekufuneka ekho ukuze intlanganiso ibe nokuhlala malibe sisine, kuqukwa iGosa eLongameleyo, kwanokuba iGosa eLongameleyo kufuneka ukuba lenze ivoti yokwenza isigqibo xa iivoti zilingana.
- Igaty 22 Ukwala kwelungu elinezimvo ezingqubanayo — Imihlaba yokuba ilungu leBhodi kufuneka ukuba lale okanye laliwe liGosa eLongameleyo imiswe kweli gaty.
- Igaty 23 Iinkqubo (proceedings) zeNkundla yokunika amaphepha-mvume okuthengiswa kotywala — Eli gaty lilungiselela iGosa eLongameleyo ukuba limise inkqubo ezintlanganisweni zale Nkundla, lize lazise abantu abanokuchaphazeleka ngokungalunganga kuqwalaselo lwesicelo esiphambi kwalo. Likwaqulathe amalungiselelo anxulumene nokuvelisa ubungqina phambi kwale Nkundla, kunye nokufikeleleka kweenkqubo zale Nkundla kumalungu oluntu, ize inike isohlwayo solwaphulo-mthetho kumntu obengekho kwiinkqubo zale Nkundla ngumntu onyulwe ngokusemthethweni ukuba enze oko.
- Igaty 24 Iikomiti zeNkundla yokunika amaphepha-mvume okuthengiswa kotywala — Ukonyulwa kweekomiti zale Nkundla liGosa eLongameleyo, ubungakanani bazo, iinkqubo kunye nokwazi ukusebenzisa amandla eziwanikiweyo, konke oko kulungiselelwe.
- Igaty 25 INkundla yokuBhena — Kumiswe ukwakiwa kweNkundla yokuBhena kunye neziqinisekiso ezifunekayo zokuqeshwa kwamalungu.

#### ISAHLUKO 4

##### LAWULO, IMIVUZO KUNYE NOLAWULO LWEMALI

- Igaty 26 Ulawulo lweBhodi, iNkundla yokunika amaphepha-mvume okuthengiswa kotywala kunye neNkundla yeziBheno — Eli gaty limisa ukuba iBhodi kufuneka iqeshe iGosa eliLawulayo eliyiNtloko, unobhala weNkundla yokunika amaphepha-mvume okuthengiswa kotywala kunye nabasebenzi beBhodi. Liyalela iBhodi ukuba imise umgaqo-nkqubo wezibonelelo zoluntu kunye nemivuzo yabasebenzi, kwakunye nemfuno ephambili yokuziphatha esebenza kuwo onke amalungu eBhodi, eNkundla yokunikwa kwamaphepha-mvume okuthengisa utywala kunye naweNkundla yeziBheno. Ikwalungiselela ukugcinwa kwemizuzu yeenkqubo zeNkundla



- kwanokuba iGosa eLongameleyo libonise ukuba inxenyekanye irekhodi epheleleyo yeenkqubo zeNkundla mayingaziswa, ngokwamacandelo omThetho woPhuhliso lokuFikelela kuLwazi, 2000.
- Igaty 27 Umvuzo weGosa elilawulayo eliPhezulu, wamalungu eBhodi, aweNkundla yokunika amaphepha-mvume okuthengiswa kotywala — Umphathiswa eqhagamshelana kunye noMphathiswa onoxanduva lwemali kwiphondo, umisa imivuzo yaba bantu.
- Igaty 28 Uncedo-mali nolawulo lwemali lweBhodi — Eli gaty limisa ukuba yeyiphina imali eza kongezeleka eBhodini, kwaye lilungiselela iinkqubo ezifunekayo zokuqinisekisa ukuzibophelela/uxanduva.
- Igaty 29 Uphicotho-zincwadi neengxelo zonyaka — Eli gaty limisa ukuba uMphicothi-zincwadi Jikelele kufuneka ukuba aphicothe iingxelo zemali zeBhodi, kwanokuba iBhodi kufuneka ukuba ingenise ingxelo yonyaka, ezona ziqulatho zibalwa zibekwe apha.
- Igaty 30 Ingeniso eyongezeleleka kwiNgxowa-mali yeNgeniso yePhondo, iBhodi yoomasipala — Eli gaty limisa ukuba ezinye iimali, izohlwayo kunye nokufunyenwe kwintengiso yezinto ezilahlekelwe ngumntu (*forfeited*) zongezeleleka kwiNgxowa-mali yeNgeniso yePhondo, ze ezinye iimali zongezeleleke kwiBhodi nakumasipala.

#### ISAHLUKO 5

##### UKWENZIWA KWENGXOWA-MALI YEZENTLALO NEMFUNDO

- Igaty 31 Ukwenziwa kwengxowa-mali — Eli gaty liyalela iGosa loLawulo eliPhezulu ukuba lenze ingxowa-mali yokuphelisa iziphumo ezingezizo zentlalo zokusebenzisa gwenxa utywala, kunye nokufundisa amalungu oluntu kunye nabantu abathatha inxaxheba ekuthengiseni nasekuhambiseni utywala kwintengiso, kuhanjiso nasekusebenziseni okukuko kwabo.

#### ISAHLUKO 6

##### UKUNIKA AMAPHEPHA-MVUME

- Igaty 32 Amaphepha-mvume — Eli gaty limisa ukuba akukho bani makavelise kancinci okanye athengise utywala ngaphandle kokuba ugunyazisiwe ukuba enze oko ngokwephepha-mvume elinikezwe ngokweli candelo lomthetho okanye ngokomThetho oyilwayo wokunika amaphepha-mvume okuthengiswa kotywala, 1989.
- Igaty 33 Iindidi zamaphepha-mvume — Eli gaty lilungiselela iindidi ezintlanu zamaphepha-mvume.
- Igaty 34 Iimfuno eziphambili zokugweba zokunika amaphepha-mvume — Eli gaty lilungiselela iimfuno eziphambili zokugweba ekufuneka ziqwalaselwe kuqwalaselo lwamaphepha-mvume.
- Igaty 35 Ukungavunywa kwabaceli — Imihlaba yokungavumeli abaceli amaphepha-mvume inikiwe kweli gaty.
- Igaty 36 Indlela yokwenza isicelo — Eli gaty limisa ukuba izicelo zamaphepha-mvume okuthengisa utywala kufuneka ukuba zifakwe eBhodini, kwanokuba ngawaphina amaxwebhu ekufuneka ukuba angeniswe ukuxhasa izicelo. Likwabopha iBhodi ukuba yazise umenzi-sicelo ngezicelo ezingagqitywanga okanye ezinamadlala, kunye nokugqithisa izicelo ezilungileyo kumasipala ochaphazelekayo.
- Igaty 37 Isaziso sokwenza isicelo — Eli gaty limisa ukuba iBhodi kufuneka ukuba ishicilele isaziso sokwenza isicelo *kwiGazethi yePhondo* nakumaphepha-ndaba oluntu, kunye nokunika isaziso sokwenza isicelo kwigosa lotywala elinikwe elo gunya kunye nomasipala ochaphazelekayo. Likwamisa nokuba ngubanina omakaziswe ngesicelo eso ligosa lotywala elinikwe elo gunya nangumasipala ochaphazelekayo.
- Igaty 38 Izicelo ezilindele ukuhlolwa kwiBhodi — Eli gaty liyalela iBhodi ukuba ivumele ukufikelela kwizicelo, ekubeni kwenziwe intlawulo yemali, ukunika iikopi zesicelo ngexesha elithile emva kokuba sifakwe kwiBhodi.

- Igaty 39 Ukumelwa — Kwenziwe amalungiselelo okufakwa kwabameli malunga namaphepha-mvume ngabantu abanomdla, kunye nendlela efunekayo enxulumene noko.
- Igaty 40 Ukugqithiswa kwamaxwebhu — Ukugqithiswa kwezicelo zamaphepha-mvume kunye namaxwebhu ahambelana noko ngumasipala kwiBhodi kulungiselelwe.
- Igaty 41 Ukuqwalaselwa kwezicelo — Eli gaty 41 lilungiselela ukuqwalaselwa kwezicelo yiNkundla yokunika amaphepha-mvume otywala kunye nenkqubo enxulumene noko.
- Igaty 42 Ukunikwa ngokwemiqathango — Eli gaty 42 lilungiselela iNkundla ukuba inike iphepha-mvume ngokwemiqathango, ngokuthobela iimeko ezithile ezingaphakathi kwexesha elinyanzeliswa ngelo xesha lokunika iphepha-mvume ngokwemiqathango. Likwalungiselela ukwandiswa kwexesha elikhankanywe ngaphambili ngexesha lokwenza isicelo kwiGosa eLongameleyo.
- Igaty 43 Ilungelo lokusebenzisa iindawo — Eli gaty 43 lenza ukuba iNkundla ibonise ukuba iphepha-mvume elinikezwe ngokwemiqathango lisenokunokunganikezwa ade umenzi-sicelo abe nelungelo lokusebenzisa iindawo ezifanelwe yile njongo ukuze oko kugunyaziswe kwiphepha-mvume.
- Igaty 44 Iindawo ezingagqitywanga — Eli gaty 44 lenza ukuba iNkundla inike iphepha-mvume ngokwemiqathango ngenxa yeendawo ezingekamiswa, okanye iindawo ezifuna ulungiso lwesakhiwo, ulongezo okanye ukwakhiwa kwakhona ukuzenza ukuba zifanele injongo eziza kusetyenziselwa yona ngaphantsi kwephepha-mvume.
- Igaty 45 Imfundo noqeqesho — INkundla isenokunikeza iphepha-mvume ngokomqathango, ize iyalele ukuba inokunganikezwa ade umenzi-sicelo aye kuqeqesho njengoko kufunwa yiNkundla.
- Igaty 46 Ukunikezwa kwephepha-mvume — Eli gaty 46 liyalela iBhodi ukuba yazise abenzi-zicelo ukuba izicelo zabo ziye zavunyelwa, ibazise ukuba bahlawule imali eyiyo yephepha-mvume ngaphakathi kweentsuku ezingama- 60, kunye nokubonisa ixesha elongezelelweyo lokuhlawula le mali, leentsuku ezingamashumi amathandathu, apho banokwenza isicelo sokuba baxolelwe ngokungahlawuli imali yephepha-mvume, ze xa benikezwa isicelo sokugqibela, bavunyelwa ukuba bahlawule le mali ineso hlwayo se-100%.
- Igaty 47 Ukubhubha okanye ukungabi nako komenzi-sicelo— Eli gaty 47 lilungiselela ukuqhubeka kwesicelo xa kubhujiwe, ukuthimba, ukungabi nako komenzi-sicelo, okanye apho umenzi-sicelo eyikhampani, iqumrhu, itrasti okanye umanyano lwamashishini, ehlawula amatyala, phambi koqwalaselo lokugqibela lwesicelo.
- Igaty 48 Amaphepha-mvume otywala exeshana naweziganeko ezizodwa — Eli gaty 48 ligunyazisa iGosa eLongameleyo, ukuba xa kwenziwe isicelo ngumntu onephepha-mvume, linikeze iphepha-mvume lexeshana lokuba lisetyenziswe nguloo mntu unephepha-mvume kuphela, kwakunye ngokwamaphepha-mvume okuthengisa nokusebenzisa utywala kwiindawo ezinamaphepha-mvume kuphela. Likwagunyazisa iGosa eLongameleyo, ukuba xa ilungu elikuluhlu olucacisiweyo lwabenzi-zicelo lenze isicelo, ukuba linikeze iphepha-mvume lotywala leziganeko ezizodwa kangangexesha elingagqithiyo kubude besiganeko eso sisodwa.

## ISAHLUKO 7

### IIMFUNeko ZAMAPHEPHA-MVUME

- Igaty 49 Iimfuneko zephepha-mvume elisemgangathweni — Eli gaty 49 lifuna ukuba utywala bube nokuthengiselwa kuphela ukusetyenziswa kwiindawo okanye ngaphandle kweendawo ezinemvume ngokodidi olusebenzayo lwemvume leyo, lize lilungiselele ilungelo leevenkile ezinkulu ezithengisa ukutya ukuba zithengise utywala betafile eza kusetyenziswa ngaphandle kweendawo ezinemvume. Likwamisa ukuba kwiiivenkile ezinkulu

ezithengisa ukutya, iwayini inokuthengiswa kuphela kwiindawo ezitshixekayo ngamaxesha apho utywala bungenakuthengiswa ngawo. Le mfuneko ikwasebenza nakwiindawo ezithengisa utywala ezinemvume yokwenza oko.

- Igatya 50 Ukuhanjiswa — Imfuneko zokuhanjiswa kotywala zibekwe kweli gatya.
- Igatya 51 Imidla yemali nokuqeshisa ngeendawo ezinamaphepha-mvume — Eli gatya limisa ukuba umntu onephepha-mvume akanako, ngaphandle kwemvume yangaphambili yeGosa eLongameleyo, ukutshintshela umdla wemali ongaphezu kwe-5% kushishino olunephepha-mvume. Umntu onephepha-mvume kwakhona akanako ukuqeshisa ngephepha-mvume komnye umntu, ngaphandle kwephepha-mvume eliquka ilungelo kushishino oluncinci.
- Igatya 52 Ulawulo — Eli gatya limisa indlela neemfuneko zokuqinisekisa ulawulo oloneliso lweendawo ezinamaphepha-mvume ngabantu abafezekisa iimfuno eziphambili zokugweba ezimisiweyo.
- Igatya 53 Ukulungiswa kweendawo ezinamaphepha-mvume okanye uhlobo loshishino — Ulungiso kwiindawo ezinamaphepha-mvume okanye uhlobo loshishino lufuna imvume liGosa eLongameleyo.
- Igatya 54 Abantwana — Eli gatya libonisa ukuba utywala akufunekanga ukuba buthengiselwe umntwana (umntu ongaphantsi kweminyaka eli-18 leminyaka), kwanokuba bunikwe umntwana, ngaphandle kwakwimithamo engenamsebenzi ngaphantsi kweemeko ezicacisiweyo, kwanokuba umntwana avunyelwe kwicandelo elinyiniweyo leendawo ezinamaphepha-mvume okanye akhokelele ngokungalinganga nawuphina umntu kwiminyaka yakhe ukuze afumane utywala okanye afumane ukungena kumacandelo anyiniweyo eendawo ezinamaphepha-mvume.
- Igatya 55 Abaqeshi nabaqeshwa — Ubudlelwane phakathi komqeshi nomqeshwa malunga nokunikezwa kotywala kumqeshwa buyalawulwa kweli gatya.
- Igatya 56 Ukufikelela kwiindawo ezinamaphepha-mvume — Eli gatya lilawula ufikelelo lwabantu abangaphantsi kweminyaka elishumi elinesibhozo kwiindawo ezinamaphepha-mvume.
- Igatya 57 Ukugcinwa kotywala — Eli gatya lilawula ukugcinwa kotywala ngabantu abanamaphepha-mvume.
- Clause 58 Indawo yokuthengisa — Eli gatya lilawula indawo yokuthengisa yabantu abanamaphepha-mvume.
- Igatya 59 Amaxesha oshishino — Eli gatya limisa ukuba utywala kufuneka buthengiswe kuphela ngezoo ntsuku nangezoo yure zoshishino njengoko zimiswe yiNkundla yamaphepha-mvume otywala, kwaye imisa ubuninzi beeyure zoshishino.
- Igatya 60 Ubuninzi botywala nokugcina iirekhodi — Eli gatya limisa iirekhodi zokuthengisa utywala ukuba zigcinwe ngumntu onephepha-mvume, livumela ukubonisa obona buninzi buphezulu botywala ekufuneka ukuba buthengiswe kumntu omnye ngumntu onephepha-mvume ngosuku olunye, kwaye lithintela ukuba notywala obungaphezulu kobuninzi obumisiweyo kumntu ongenaphepha-mvume.
- Igatya 61 Izinto ezingavunyelwayo — Eli gatya libonisa ukuba umntu akufunekanga ukuba enze imveliso encinci, athengise okanye ahambise nayiphina into njengotywala ukuba loo nto ayibotywala njengoko kucacisiwe kumThetho oyilwayo, okanye *i-impotable*, okanye apho into *e-impotable* iye yongezwa.

## CANDELO 8

### UKUSEBENZA NOKUHLAZIYA AMAPHEPHA-MVUME

- Igatya 62 Ukusebenza kwamaphepha-mvume neemvume — Ixesha lokusebenza kwamaphepha-mvume linikiwe kweli gatya. Likwanika nokusebenza kwamaphepha-mvume aphelelweyo ngokuba kwenziwe intlawulo yezohlwayo ezibonisiweyo, kunye nokurhoxiswa kwamaphepha-mvume anxulumene neendawo ezishiyiweyo.
- Igatya 63 Uhlaziyo oluzenzekelayo lwamaphepha-mvume — Eli gatya lilungiselela uhlaziyo oluzenzekelayo lwamaphepha-mvume kunye nenkqubo enxulumene noko.

- Igaty 64 Ukwenziwa kwezicelo zokuhlaziywa kwamaphepha-mvume — Eli gaty lilungiselela amaxesha apho ukuhlaziywa okuzenzekelayo kwamaphepha-mvume kungenzekiyo, lize lilungiselele indlela yokwenza isicelo sokuhlaziya amaphepha-mvume anjalo.

#### ICANDELO 9

#### UKUPHELISWA KOSHISHINO, UKUTSHINTSHELA KUNYE NOKUSUSWA KWAMAPHEPHA-MVUME

- Igaty 65 Ukupheliswa koshishino kunye nokutshintshelwa kwamaphepha-mvume — Eli gaty lifuna ukuba umntu onephepha-mvume oye waphelisa ushishino lwakhe olunamaphepha-mvume azise iBhodi ngaphakathi kweentsuku ezingama-30, kwaye umthengi woshishino olunamaphepha-mvume kufuneka enze isicelo kwiGosa eLongameleyo sokuba asebenzise ushishino ngexesha leenyanga ezi-6, ezisenokwandiswa, ngexesha lokutshintshelwa kwephepha-mvume kuloo mthengi. Likwaqhubeka nokumisa inkqubo yokwenza isicelo nokuphatha izicelo zotshintshelo.
- Igaty 66 Ukususwa kwamaphepha-mvume — Eli gaty limisa inkqubo yokwenza isicelo nokuphatha izicelo zokuba kususwe amaphepha-mvume kwiindawo ezinamaphepha-mvume ukuya nakweziphina iindawo ezikwi-Phondo.
- Igaty 67 Ukushiya iindawo kunye nokubhubha nokungakwazi ukwenza komntu onamaphepha-mvume — Eli gaty linika iindlela zokuqinisekisa ulawulo kwiindawo ezinamaphepha-mvume xa ezoo ndawo ziye zashiywa ngumntu onamaphepha-mvume, okanye xa ebhubhile okanye engakwazi ukushishina okanye xa umntu lowo unamaphepha-mvume etshonile.

#### ICANDELO

#### IZIBHENO NOHLAZIYO

- Igaty 68 Izibheno nohlaziyo eziya kwiNkundla yeziBheno — Inkqubo yezibheno nohlaziyo eziya kwiNkundla yeziBheno inikiwe.

#### ICANDELO 11

#### UKUTHOBELA

- Igaty 69 Izaziso zokuthobela — Eli gaty libonisa umba wokuthotyelwa kwezaziso kumntu onamaphepha-mvume ngumhloli wamaphepha-mvume otywala okanye, xa umhloli wamaphepha-mvume otywala engekho okanye xa engafumaneki, igosa lotywala elonyuliweyo kufuneka nalo lilandele le nkqubo.
- Igaty 70 Ukuvalwa kweendawo ezinamaphepha-mvume — Eli gaty linika igunya umhloli, igosa lotywala elonyuliweyo okanye naliphina igosa lenkozo yobupolisa elingentla kodidi lobuhloli ukuba lizivale iindawo ezinamaphepha-mvume kwezinye iimeko, ixesha elingalidanga kuneeyure eziseleyo zokushishina zaloo mini, kwaye likwanika inkqubo enxulumene nokuvala okunjalo kunye nokurhoxiswa kwayo.
- Igaty 71 Imiyalelo yexeshana — Eli gaty linika inkqubo yeNkundla yamaphepha-mvume otywala ukuba inikeze imiyalelo yexeshana ukuqinisekisa ukuthotyelwa kolawulo ngabantu abanamaphepha-mvume, apho kuye kwafunyanwa izikhalazo ezinezizathu ngexesha loqwalaselo lweendlela zokugqibela olwenziwa yiNkundla yamaphepha-mvume otywala.
- Igaty 72 Amaphepha-mvume arhoxisiweyo, atshitshisiweyo nalahlekelwe ngamalungelo — Eli gaty liphatha imicimbi yamaphepha-mvume arhoxisiweyo, atshitshisiweyo nalahlekelwe ngamalungelo, lize livumele umntu onamaphepha-mvume ukuba athengise ngentengiso yasesidlangaleni nabuphina utywala obukwiindawo zotywala ngomhla wokurhoxiswa, wokutshitshiswa okanye wokulahlekelwa ngamalungelo kwamaphepha-mvume.

## ICANDELO 12

## UKUNYANZELISWA KOMTHETHO

- Igaty 73 Ukonyulwa nemisebenzi yegosa lotywala elonyuliweyo nabahloli bamaphepha-mvume otywala — Eli gaty libonisa ukuqeshwa kwamagosa otywala onyuliweyo kwiiNkonzo zamaPolisa aseMzantsi Afrika nguMkhomishinari wamaPolisa ePhondo kunye nawabahloli bamaphepha-mvume otywala yiBhodi. Likwafuna ukuba banike ubungqina bokuqeshwa kwabo xa besenza umsebenzi wabo, baze babonise imisebenzi yabo ngaphantsi komthetho.
- Igaty 74 Amandla amagosa otywala onyuliweyo nawabahloli bamaphepha-mvume otywala — Eli gaty libonisa amandla amagosa otywala onyuliweyo nawabahloli bamaphepha-mvume otywala mayela nokunyanzelisa imithetho esemthethweni esebenza kubantu abanamaphepha-mvume.
- Igaty 75 Ukusetyenziswa kwamandla okungena nokusetsha okanye okuhlola iindawo zotywala — Eli gaty lilawula amandla amagosa otywala onyuliweyo nawabahloli bamaphepha-mvume otywala okungena nokusetsha, okuhlola nawokuthimba kwiindawo zotywala, ngokobunjani bemeko.
- Igaty 76 Ubugwenxa ngokubanzi — Eli gaty libonisa ubugwenxa ngokubanzi obumalunga nokuthengisa, ukuhambisa nokusebenzisa utywala obungaqulethwanga kwamanye amacandelo omThetho oyilwayo.
- Igaty 77 Izenzo zobugwenxa ezimalunga nolwazi—Izenzo zobugwenxa eziboniswa leli gaty ziphatelelene nokunikezwa kolwazi ngexesha lokwenza izicelo ngokomThetho oyilwayo, nakwii-arhente zokunyanzelisa umthetho ngabantu abanamaphepha-mvume kunye/okanye abaqeshi babo.
- Igaty 78 Izenzo zobugwenxa ezimayela neentlanganiso zeNkundla yokunika amaphepha-mvume otywala kunye neNkundla yeziBheno — Izenzo zobugwenxa eziboniswa leli gaty zinxulumene nokuphathwa ngocwangco kweenkqubo zeNkundla yokunika amaphepha-mvume otywala neNkundla yeziBheno.
- Clause 79 Izenzo zobugwenxa ezimayela namagosa onyuliweyo otywala nabahloli bamaphepha-mvume otywala — Izenzo zobugwenxa eziboniswa leli gaty zinxulumene nezithintelo, nophazamiso ekwenziweni kwemisebenzi zezi arhente zokunyanzelisa umthetho.
- Igaty 80 Izenzo zobugwenxa ezimalunga neemoto — Eli gaty libonisa izenzo zobugwenxa ezimalunga nokusetyenziswa okanye nokuba notywala ezimotweni eqhutywayo okanye ezipakwe endleleni.
- Igaty 81 Izenzo zobugwenxa ezimayela neegaraji — Eli gaty lilawula ukuthengiswa, ukuhanjiswa okanye ukusetyenziswa kotywala kwiziza ekukho kuzo iigaraji.
- Igaty 82 Ukusilela ukuthobela umyalelo weNkundla yokunika amaphepha-mvume otywala — Eli gaty liqinisekisa ukuthotyelwa kwemiyalelo yeNkundla yokunika amaphepha-mvume otywala.
- Igaty 83 Uxanduva lokwenzelelela — Eli gaty liqinisekisa ukuba abantu abanamaphepha-mvume bahlala benoxanduva lokuziphatha okungekho mthethweni koomanejala, ii-arhente okanye abaqeshwa babo.
- Igaty 84 Ukukhululwa — Eli gaty linika uludwe lwabantu abakhululweyo kulo mThetho, lize livumele iNkundla yokunikeza amaphepha-mvume otywala ukuba iveze abaqokeleli botywala kunye nabavelisi nabathengisi bezipirithi okanye iziqholo ezihluzwe ngokubiliswa.
- Igaty 85 Ubungqina — Eli gaty libonisa iindlela zokwenza lula ukungeniswa kobungqina ngaphambi kweNkundla yokunikeza amaphepha-mvume otywala nangexesha leenkqubo zenkundla.
- Igaty 86 Izaziso — Eli gaty limisa ukuboniswa okugunyazisiweyo kolwazi olwamkelweyo olumalunga nemiba yezempilo kwiindawo ezithengisa nezihambisa utywala.
- Igaty 87 Izohlwayo — Eli gaty libonisa izohlwayo ezifanelekileyo zezenzo ezigwenxa ezibonise ngulo mThetho.

## ICANDELO 13

IMIMISELO, IMITHETHO ETSHINTSHAYO, UKURHOXISWA KWEMITHETHO  
KUNYE NELUNGELO ELIFUTSHANE

- Igaty 88 Imimiselo — Eli gaty libonisa umphathiswa onguye onamandla okuni-keza imimiselo emayela nalo mThetho uyilwayo.
- Igaty 89 Imithetho etshintshayo — Eli gaty liqinisekisa ukuqhubeka kushishino lotywala ukusukela kumacandelo omThetho woTywala, 1989 (UmThetho 27 wonyaka we-1989), uze ulungiselele ukukhululwa ekwenzeni lo mThetho kwabantu neendawo ebe zichatshazelwe okanye ebe zonakaliswe ngumthetho wexesha localucalulo.
- Igaty 90 Amacandelo omthetho orhoxiso — Eli candelo lirhoxisa umThetho woTywala, 1989, (UmThetho onguNombolo 27 wonyaka we-1989).
- Igaty 91 Ilungelo elifutshane — Eli gaty libonisa ilungelo elifutshane lomThetho oyilwayo.







