

PROVINCE OF THE WESTERN CAPE

**WESTERN CAPE
LIQUOR AMENDMENT BILL**

(As introduced)

(MINISTER OF ECONOMIC OPPORTUNITIES)

[B 3—2015]

PROVINSIE WES-KAAP

**WES-KAAPSE
DRANKWYSIGINGSWETSONTWERP**

(Soos ingedien)

(MINISTER VAN EKONOMIESE GELEENTHEDE)

[W 3—2015]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WOLUNGISO WOTYWALA
WENTSHONA KOLONI**

(Njengoko wazisiwe)

(NGUMPHATHISWA WAMATHUBA EZOQOQOSHO)

[B 3—2015]

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GENERAL EXPLANATORY NOTE:

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

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

AMENDMENT BILL

To amend the Western Cape Liquor Act, 2008, in respect of certain definitions; to make provision for the appointment of not more than three Deputy Presiding Officers to the Liquor Licensing Tribunal; to enable the Presiding Officer of the Liquor Licensing Tribunal to delegate his or her powers and functions; to make provision for the appointment of substitute members of the Liquor Licensing Tribunal; to enable the Presiding Officer of the Liquor Licensing Tribunal to refer certain matters to the Liquor Licensing Tribunal for consideration; to extend the powers of the Liquor Licensing Tribunal; to confer voting rights on co-opted members appointed to certain committees; to extend the functions of the Liquor Licensing Tribunal that may be delegated to a committee; to extend the functions of the Appeal Tribunal; to make different provision regarding the accrual of revenue; to specify a further factor that the Liquor Licensing Tribunal or Presiding Officer may take cognisance of when considering an application for a licence; to further regulate the conditional granting of licences; to do away with special event liquor licences and instead make provision for event liquor licences; to make further provision regarding temporary and event liquor licences; to further regulate the letting of licensed premises; to further regulate the appointment of managers for licensed businesses; to make different provision regarding access by persons under the age of 18 years to restricted areas on licensed premises; to make different provision regarding the trading days and hours of licensed businesses; to do away with the prohibition of unlicensed persons from having more than a specified quantity of liquor in their possession; to further provide for the validity of licences; to make different provision regarding the automatic renewal of licences; to make further provision regarding the transfer of licences; to further regulate the removal of licences; to make further provision regarding appeals and reviews; to amend provisions regarding the functions of certain members of the South African Police Service in terms of the Act; to provide that members of a municipal police service are peace officers for the purposes of the Act, and to extend the powers of peace officers in terms of the Act; to make further provision for the entry, search and investigation of certain premises; to repeal the provision prohibiting the sale, supply or consumption of liquor on an erf upon which the business of a service station selling petrol, diesel or other petroleum products to the public is conducted; to extend the exemptions from the operation of this Act; to clarify the circumstances in which certain evidence constitutes *prima facie* proof in criminal proceedings or hearings of the Liquor Licensing Tribunal; to make further provision regarding offences and penalties; to make provision for the sale by public auction of certain items forfeited to the State; to effect certain textual improvements; and to provide for matters connected therewith.

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

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

1. Section 1 of the Western Cape Liquor Act, 2008 (the principal Act), is amended—
- (a) by the substitution for the definition of “Deputy Presiding Officer” of the following definition: 5
 “**Deputy Presiding Officer**’ means [the] a person appointed as Deputy Presiding Officer of the Liquor Licensing Tribunal in terms of section 16(1)(b);”;
- (b) by the insertion after the definition of “drugs” of the following definitions: 10
 “**event**’ includes an exhibition, sports meeting, performance or function;
 “**event liquor licence**’ means a licence referred to in section 33(2)(a);”;
- (c) by the deletion of the definition of “fortified wine”;
- (d) by the substitution for the definition of “manager” of the following definition: 15
 “**manager**’ means a person whose appointment as manager is approved in terms of section [52(1)] 52;”;
- (e) by the insertion after the definition of “municipality” of the following definition:
 “**municipal police service**’ means a municipal police service established under section 64A of the South African Police Service Act;”;
- (f) by the substitution for the definition of “natural wine” of the following definition:
 “**natural wine**’ means wine of which the alcohol content is at least [6,5%] 4,5% but less than 16,5% [, but excluding fortified wine];”;
- (g) by the substitution for the definition of “peace officer” of the following definition: 25
 “**peace officer**’ means—
 (a) any [police officer and,] member, as defined in section 1 of the South African Police Service Act, of the South African Police Service; 30
 (b) any member of a municipal police service; or
 (c) any person who, 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, except traffic officers;”;
- (h) by the deletion of the definition of “person”;
- (i) by the insertion after the definition of “Provincial Cabinet” of the following definition: 40
 “**Provincial Commissioner**’ means the Provincial Commissioner of the South African Police Service appointed for the Province in terms of the South African Police Service Act;”;
- (j) by the substitution for the definition of “renewal fee” of the following definition:
 “**renewal fee**’ means a fee payable annually or biennially, as the case may be, in respect of a licence, excluding a temporary liquor licence, in order to ensure the continued validity of the licence;”;
- (k) by the deletion of the definition of “special event”;
- (l) by the insertion before the definition of “standing committee” of the following definitions: 50
 “**South African Police Service Act**’ means the South African Police Service Act, 1995 (Act 68 of 1995);
 “**spirit**’ has the same meaning as in the Liquor Products Act, 1989;”;
- (m) by the insertion after the definition of “standing committee” of the following definition: 55
 “**substitute member**’ means a person appointed as a substitute member in terms of section 16(3A);”.

Amendment of section 16 of Act 4 of 2008**2. Section 16 of the principal Act is amended—**

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph: 5
 “(b) **[one member]** not more than three members, with the qualifications stated in paragraph (a) appointed by the Board as Deputy Presiding **[Officer]** Officers;”;
- (b) by the substitution for paragraph (d) of subsection (1) of the following paragraph: 10
 “(d) one member who is a police officer of the rank of **[Superintendent]** Lieutenant Colonel or above, appointed by the Board in consultation with the Provincial Commissioner **[of the South African Police Service]** and the Minister responsible for community safety in the Province; and”;
- (c) by the insertion after subsection (2) of the following subsection: 15
 “(2A)(a) The Presiding Officer may in writing delegate any power or function of the Presiding Officer to a Deputy Presiding Officer to exercise or perform on his or her behalf.
 (b) The provisions of section 10(2), (3) and (6) apply, with the necessary changes, to a delegation in terms of paragraph (a).”; 20
- (d) by the substitution for subsection (3) of the following subsection: 25
 “(3) If the Presiding Officer is not available to perform his or her functions or the office of Presiding Officer is vacant, **[the]** a Deputy Presiding Officer designated by the Chief Executive Officer must, during the unavailability of the Presiding Officer or until a Presiding Officer is appointed, act as Presiding Officer and perform all the functions assigned to the Presiding Officer by this Act.”; and
- (e) by the insertion after subsection (3) of the following subsection: 30
 “(3A)(a) Notwithstanding subsections (1) and (2), the Board may, in consultation with the Minister, at any time appoint not more than four suitable persons as substitute members, to act as members of the Liquor Licensing Tribunal or a committee thereof on the request of the Presiding Officer in the circumstances contemplated in section 21(4) or 24(2A).
 (b) A substitute member holds office for a period, not exceeding two years, as the Board may determine at the time of his or her appointment.”. 35

Amendment of section 17 of Act 4 of 2008, as amended by section 17 of Act 10 of 2010**3. Section 17 of the principal Act is amended—**

- (a) by the substitution for the heading to section 17 of the following heading: 40
 “**Disqualification for appointment as member or substitute member of Liquor Licensing Tribunal**”;
- (b) by the substitution for the words preceding paragraph (a) of the following words: 45
 “The following persons are disqualified from being appointed, continuing or acting as members or substitute members of the Liquor Licensing Tribunal—”; and
- (c) by the substitution for paragraph (f) of the following paragraph: 50
 “(f) anyone who is the family member, partner or business associate of a person with a direct interest in the liquor trade, unless the Board is of the opinion that the interest of the family member, partner or business associate in the liquor trade does not imply that the person is unsuitable to hold office;”.

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

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

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

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

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

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

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

6. Section 20 of the principal Act is amended—

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

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

(b) by the deletion in subsection (1) of the word “or” at the end of paragraph (f);

(c) by the insertion in subsection (1) after paragraph (f) of the following paragraph:

“(fA) any matter remitted to it by the Appeal Tribunal in terms of section 68(5); or”;

(d) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) any other matter referred to it by the Chief Executive Officer or the Presiding Officer, or which it may or must consider in terms of this Act.”;

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

“(2) Except in respect of matters referred to in subsection (1)(a), (b), (c), (f), (fA) 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.”;

(f) by the substitution for paragraph (d) of subsection (3) of the following paragraph:

“(d) subsection (1)(fA) or (g), consider the matter and take such action as it may deem appropriate.”; and

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

“(3A) The Presiding Officer may refer a matter to be considered by the Presiding Officer to the Liquor Licensing Tribunal for consideration if the Presiding Officer thinks that—

(a) the matter involves a dispute of fact;

(b) the matter is complex in nature; or

(c) it is in the public interest to do so.”.

Amendment of section 21 of Act 4 of 2008

7. Section 21 of the principal Act is amended—

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

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

(b) by the addition of the following subsection:

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

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

Substitution of section 22 of Act 4 of 2008

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

“Recusal of member with conflicting interest

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

(a) he or she is a family member, partner or business associate of the applicant for a licence, certification, or any other right or privilege to be granted by the Liquor Licensing Tribunal [or the Presiding Officer, as the case may be];

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

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

(1A) 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 Presiding Officer;

(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 Presiding Officer; or

(c) he or she has any interest which precludes him or her from performing his or her functions as Presiding Officer in a fair, unbiased and proper manner.

(2) If at any stage it appears that a member or substitute member [or the Presiding Officer, as the case may be,] has or may have any interest contemplated in subsection (1) [—(a)] in relation to a matter to be considered by the Liquor Licensing Tribunal, that member or substitute member must without delay [and] fully disclose the nature of his or her interest and leave the meeting or hearing so as to enable the remaining members or substitute members to discuss the matter and determine whether that member or substitute member is precluded from participating in the proceedings at such meeting or hearing by reason of a conflict of interest.[; and]

[(b)](2A) If at any stage it appears that the Presiding Officer has or may have any interest contemplated in subsection (1A) in relation to a matter to be considered by the Presiding Officer, he or she must without delay [and] fully disclose the nature of his or her interest to the Liquor Licensing Tribunal, in which case it must consider the matter.

(3) The disclosure and the decision taken by the remaining members or substitute members of the Liquor Licensing Tribunal, referred to in

subsection [(2)(a)] (2), must be recorded in the minutes of the proceedings in question.

(4) The disclosure referred to in subsection (2A) by the Presiding Officer must be recorded in the minutes of the proceedings of the Liquor Licensing Tribunal.”.

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Amendment of section 24 of Act 4 of 2008

9. Section 24 of the principal Act is amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The Presiding Officer may appoint one or more committees consisting of him or herself or **[the]** a Deputy Presiding Officer and any member or any person co-opted in terms of section 20(5).”;
- (b) by the insertion after subsection (1) of the following subsection:
 “(1A) Notwithstanding subsection (7) and section 20(6), a person co-opted in terms of section 20(5) who is appointed as a member of a committee in terms of subsection (1) has the right to vote at any meeting of the committee when the committee is performing any function of the Liquor Licensing Tribunal contemplated in section 89(7) and that is delegated to the committee in terms of subsection (3)(b).”;
- (c) by the insertion after subsection (2) of the following subsection:
 “(2A)(a) If a member of a committee is absent from a meeting of the committee or unavailable to attend the meeting, the Presiding Officer may request a substitute member to act as a member of the committee in the place of the member who is absent.
 (b) A substitute member who so acts as a member of a committee has the powers and duties of a member of the committee.”;
- (d) by the substitution for subsection (3) of the following subsection:
 “(3) The Liquor Licensing Tribunal may delegate to a committee the functions of the Liquor Licensing Tribunal—
 (a) set out in sections 52, 64, 65, 66 and 71; or
 (b) contemplated in section 89(7).”.

Amendment of section 25 of Act 4 of 2008, as amended by section 21 of Act 10 of 2010

10. Section 25 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister must, for such term as he or she may determine, appoint, on a part-time basis, 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—
 (a) the Liquor Licensing Tribunal;
 (b) the Presiding Officer; or
 (c) a Deputy Presiding Officer performing functions delegated to him or her by the Presiding Officer [in terms of this Act].”.

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

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

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

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

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

“Revenue accruing to Provincial Revenue Fund, Authority or municipalities

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

(2) The following moneys accrue to the Authority—

(a) fines referred to in sections 20(3)(b)(v) and 82(2)(b); 10

(b) [the penalty] penalties referred to in [section] sections 46(6), 48(10), 62(3), 63(4), 64(4), 65(19) and 66(8); and

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

(3) The fees referred to in section 37(4)(a)(i) and (b)(i) accrue to the municipality concerned. 15

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

Amendment of section 33 of Act 4 of 2008, as amended by section 29 of Act 10 of 2010

13. Section 33 of the principal Act is amended by the substitution for paragraph (a) of subsection (2) of the following paragraph: 20

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

Amendment of section 41 of Act 4 of 2008

14. Section 41 of the principal Act is amended— 25

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

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

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph: 30

“(c) subject to section 23(9)[,]—

(i) the proximity of the proposed licensed premises to an undertaking conducting the business of a service station selling petrol, diesel or other petroleum products to the public; and 35

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

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

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15. Section 42 of the principal Act is amended—

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

“(4A) The Liquor Licensing Tribunal may revoke the conditional granting of a licence if it becomes aware of material facts of which it was unaware at the time when the licence was conditionally granted and it is satisfied that, had it been aware of those facts at that time, it would not have conditionally granted the licence.”; and 45

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

“(7) When the Presiding Officer is satisfied that the applicant [complies] has complied with the conditions imposed by the Liquor Licensing Tribunal, the Authority must issue the licence as prescribed, subject to section 46.”. 50

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

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

“Temporary liquor licences and [special] event liquor licences

48. (1) The Presiding Officer may upon application by a licensee 5
[referred to] contemplated in section [33(1)(b) or (d),] 33(1) and upon
the payment of the prescribed fee, grant a temporary liquor licence for
the use by that licensee only.

(1A) An application for a temporary liquor licence must be made [at
least fourteen (14) days prior to the first day of the period referred to
in subsection (2)] within the prescribed period. 10

(2) The Presiding Officer may not grant a temporary liquor licence
under subsection (1) to a particular [person] licensee for a period longer
than fourteen (14) consecutive days and for more than a total of thirty
(30) days per year beginning on 1 January. 15

(3) A temporary liquor licence must be made subject to the [pre-
scribed] conditions referred to in section 49, where applicable, and such
other conditions and restrictions as the Presiding Officer may impose.

(4) The Presiding Officer may upon application by[—

(a) an educational institution, other than a school as defined in 20
section 1 of the South African Schools Act, 1996 (Act 84 of
1996);

(b) a welfare or cultural organisation;

(c) the organiser of an exhibition;

(d) the secretary, manager or chief steward of a bona fide race or 25
sports meeting or similar event; or

(e) the organiser of an artistic performance,]

a person in the prescribed manner and upon the payment of the prescribed
fee, grant [a special] an event liquor licence for the sale of liquor for
consumption on or off, or both on and off, the premises on which liquor is 30
sold at [a special] an event.

(5) An application for [a special] an event liquor licence must be made
[at least fourteen (14) days prior to the date of the special event] within
the prescribed period.

(6) [A special] An event liquor licence may not be granted for a period 35
exceeding the duration of the [special] event concerned.

(7) [A special] An event liquor licence [is] must be made subject to the
conditions referred to in section 49, where applicable, and such other
conditions and restrictions as the [Liquor Licensing Tribunal] Presiding
Officer may impose. 40

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

(9) The Presiding Officer may request any additional information from
an applicant for a temporary or event liquor licence for the purposes of 45
considering the application.

(10) The Presiding Officer may condone the late filing of an application
for a temporary or event liquor licence on good cause shown and on
payment of a penalty of 100% of the prescribed application fee for every
day that the application is submitted late. 50

(11) For the purposes of determining good cause as contemplated in
subsection (10), the Presiding Officer may consider—

(a) whether granting condonation would be in the public interest;

(b) whether granting condonation would be prejudicial to the adminis- 55
trative function of the Authority; and

(c) whether there has been substantial compliance with the Act.

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

- (13) The Presiding Officer may at any time, on good cause shown, by a notice delivered or tendered to the holder of a temporary or event liquor licence—
- (a) declare the licence to be subject to such conditions or restrictions or such further conditions or restrictions set out in the notice as he or she may in his or her discretion impose; 5
 - (b) suspend, revoke or amend any condition or restriction imposed in respect of the licence; or
 - (c) suspend or revoke the licence.
- (14) For the purposes of subsection (13), the Presiding Officer may take cognisance of any of the following— 10
- (a) representations that were made for or against the granting of the temporary or event liquor licence before it was granted and any response to such representations;
 - (b) any report lodged with or by a designated liquor officer, an inspector or a municipal official; 15
 - (c) any complaint lodged with the Presiding Officer regarding the conduct of the licensed business;
 - (d) representations by the licensee concerned or any other person;
 - (e) any other matter referred to the Presiding Officer by the Chief Executive Officer or which the Presiding Officer may or must consider in terms of this Act. 20
- (15) A contravention of or failure to comply with subsection (8) or any condition or restriction contemplated in subsection (3), (7) or (13)(a) is an offence.” 25

Amendment of section 51 of Act 4 of 2008, as amended by section 40 of Act 10 of 2010

17. Section 51 of the principal Act is amended—
- (a) by the substitution for subsection (7) of the following subsection: 30

“(7) A licensee may not let the licence to another person, allow another person to carry on business in terms of the licence or allow another person to use the licensed premises unless the licensee has, upon application, obtained the consent of the Presiding Officer.”;
 - (b) by the substitution for subsection (8) of the following subsection: 35

“(8) The Presiding Officer may not grant an application for letting in the case of a licence which includes the right to micro-manufacture unless he or she is satisfied that the person to whom the licensed premises or part thereof is intended to be let or who is intended to be allowed to use the premises for the purposes of micro-manufacturing— 40

 - (a) is not disqualified from holding a licence in terms of section 35;
 - (b) is of good character; **[or]** and
 - (c) is or will be suitably educated and trained, or will have in his or her employ one or more employees who are or will be suitably educated and trained, to manage the licensed business.”; and
 - (c) by the insertion after subsection (8) of the following subsection: 45

“(8A) The Presiding Officer may not grant an application for letting in the case of a licence other than that contemplated in subsection (8) unless he or she is satisfied that—

 - (a) the application is supported by exceptional circumstances; and
 - (b) the person to whom the licensed premises or part thereof is intended to be let— 50
 - (i) is not disqualified from holding a licence in terms of section 35;
 - (ii) is of good character; and
 - (iii) 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.”. 55

Amendment of section 52 of Act 4 of 2008

18. Section 52 of the principal Act is amended—

- (a) by the insertion after subsection (1) of the following subsection:
 “(1A) The Presiding Officer may, when—
- | | |
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| <p>(a) granting a temporary liquor licence under section 48(1);</p> <p>(b) granting an event liquor licence under section 48(4);</p> <p>(c) acting under section 49(6);</p> <p>(d) acting under section 53(1); or</p> <p>(e) granting a consent in terms of section 65(5),</p> | <p>5</p> <p>10</p> |
|--|--------------------|
- approve the appointment of a natural person nominated by the applicant for the licence, the licensee or proposed licensee, as the case may be, as manager of the licensed business.”;
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) A licensee [**who is not a natural person**] may at any time, and in the prescribed manner, nominate a natural person resident in the Province to be the manager of the licensed business, in which event the Liquor Licensing Tribunal or the Presiding Officer, as the case may be, may approve such person’s appointment as manager.”;
- (c) by the substitution for subsection (4) of the following subsection:
 “(4) The Liquor Licensing Tribunal or the Presiding Officer, as the case may be, may not approve the appointment as manager of a person who is disqualified from holding a liquor licence in terms of section 35 or who is not of good character.”;
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) The Liquor Licensing Tribunal or the Presiding Officer, as the case may be, may direct that the proposed manager undergo such training and education as the Liquor Licensing Tribunal may specify as a precondition of the approval of such appointment.”;
- (e) by the substitution for subsection (8) of the following subsection:
 “(8) The approval of the appointment of a manager in terms of subsection (1), (1A) or (2) remains valid until the appointment of a new manager or the expiry of the period for which the licence or consent was granted, as the case may be.”;
- (f) by the substitution for subsection (9) of the following subsection:
 “(9) If a person[,] whose appointment as a manager has been approved in terms of subsection (1), (1A) or (2)[,] ceases to manage the licensed business or becomes disqualified from doing so, the licensee must, within thirty (30) days from such event, apply in terms of subsection (2) for the approval of the appointment of a manager in his or her place.”;
- (g) by the substitution for subsection (10) of the following subsection:
 “(10) If a licensee fails to comply with subsection (9), [**its**] the licence may be revoked in terms of section 20(3)(b)(ii) or suspended in terms of section 20(3)(b)(iii).”; and
- (h) by the addition of the following subsection:
 “(11) In this section “licensee” includes the holder of an event liquor licence.”.

Amendment of section 56 of Act 4 of 2008

19. Section 56 of the principal Act is amended—

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

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

20. Section 59 of the principal Act is amended—

- (a) by the substitution for subsection (3) of the following subsection: 5
 “(3) If a municipality has not determined the trading days and hours for licensed businesses selling liquor for consumption on or off the licensed premises, the trading days and hours for such a business are those approved at any time by the Liquor Licensing Tribunal or the Presiding Officer, as the case may be, as part of the conditions of the licence concerned.”; 10
- (b) by the substitution for subsection (4) of the following subsection:
 “(4) If a municipality has not determined the trading days and hours for licensed businesses selling liquor for consumption on or off the licensed premises, the Presiding Officer may at any time upon application by the licensee of such a business, by a notice delivered or tendered to the licensee, extend the trading days and hours for that business.”; 15
- (c) by the insertion after subsection (4) of the following subsection:
 “(4A) The trading days and hours for a licensed business may not be approved or extended in terms of subsection (3) or (4) to a time later than 20:00 in respect of a licence for the sale of liquor for consumption off the licensed premises and later than 02:00 the following day in respect of a licence for the sale of liquor for consumption on the licensed premises.”; 20
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) The Presiding Officer must have regard to the criteria referred to in section 34(1)(a) and (e) when considering an application in terms of subsection (4).”; 25
- (e) by the substitution for subsection (6) of the following subsection:
 “(6) The **[Board]** Authority must, within the prescribed period after the granting or **[refusing]** refusal of an application made in terms of subsection (4), notify the applicant of the decision of the **[Liquor Licensing Tribunal]** Presiding Officer.”; 30
- (f) by the substitution for subsection (8) of the following subsection:
 “(8) Subject to section 89(10), a licensee who sells or supplies, or allows the consumption of, liquor on the licensed premises at a time when the sale of liquor is not permitted in terms of subsection (1) **[or]**, (3) **or** (4), is guilty of an offence.”; and 35
- (g) by the addition of the following subsection:
 “(9) Where a licence contemplated in section 89(10) is automatically renewed in terms of section 63, and if the municipality concerned has not determined the trading days and hours for licensed businesses selling liquor for consumption on or off the licensed premises, as the case may be, the trading hours on any day on which the licensee is allowed to sell liquor in terms of the licence concerned are restricted to— 40
 (a) in the case of a licence for the sale of liquor for consumption off the licensed premises, not later than 20:00 on that day; and 45
 (b) in the case of a licence for the sale of liquor for consumption on the licensed premises, not later than 02:00 the following day.”.

Amendment of section 60 of Act 4 of 2008

21. Section 60 of the principal Act is amended— 50

- (a) by the deletion of subsection (3); and
 (b) by the substitution for subsection (4) of the following subsection:
 “(4) A contravention of or failure to comply with subsection (1)[,] **or** (2) **[or (3)]** is an offence.”.

Amendment of section 62 of Act 4 of 2008, as amended by section 44 of Act 10 of 2010

22. Section 62 of the principal Act is amended—

- (a) by the substitution for paragraph (c) of subsection (2) of the following paragraph: 5
 “(c) on the date determined by the Liquor Licensing Tribunal or the Presiding Officer, as the case may be, when [it revokes] the licence is revoked.”;
- (b) by the substitution for paragraph (d) of subsection (2) of the following paragraph: 10
 “(d) where the licence has already acquired validity, on the date on which the Appeal Tribunal or a court sets aside the decision to grant or issue the licence; or”;
- (c) by the substitution for paragraph (b) of subsection (3) of the following paragraph: 15
 “(b) where the licence has lapsed under the circumstances contemplated in subsection (2)(c), the decision by the Liquor Licensing Tribunal or the Presiding Officer to revoke that licence is set aside by the Appeal Tribunal or a court, as the case may be; or”;
- (d) by the substitution for paragraph (c) of subsection (3) of the following paragraph: 20
 “(c) where the licence has lapsed under the circumstances contemplated in subsection (2)(d), the decision by the Appeal Tribunal or the court, as the case may be, to set aside the decision to grant or issue that licence is set aside on appeal or review.”. 25

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

23. The following section is substituted for section 63 of the principal Act:

“Automatic renewal of licences

63. (1) The Authority 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 annual renewal fees should be paid. 30

(2) Upon payment of the prescribed annual renewal fee, the licence is automatically renewed until 31 December of the year in respect of which those fees have been paid. 35

(2A) Notwithstanding subsections (1) and (2), a licensee may in the prescribed manner subscribe to a biennial renewal cycle, in which event the Authority must issue a biennial renewal notice, in the prescribed form, not later than 31 October of the year preceding the first year of the two-year period in respect of which the prescribed biennial renewal fees should be paid. 40

(2B) Upon payment of the prescribed biennial renewal fee, the licence is automatically renewed until 31 December of the second year of the two-year period in respect of which those fees have been paid. 45

(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. 45

(4) A licensee who has failed to pay the prescribed renewal fee on or before the last day in February of the year or the first year of the two-year period, as the case may be, 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 Authority, subject to the payment of the renewal fee plus a penalty of 150%. 50 55

(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 or the first year of the two-year period, as the case may be, 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**] is deemed to have lapsed on 1 January of the year or the first year of the two-year period, as the case may be, in respect of which the prescribed renewal fee should have been paid.” 5

Amendment of section 64 of Act 4 of 2008, as amended by section 46 of Act 10 of 2010 10

24. Section 64 of the principal Act is amended by the substitution for subsection (7) of the following subsection:

“(7) If the Liquor Licensing Tribunal grants an application for the renewal of the licence, the licence is, upon payment of the prescribed renewal fee, deemed to have been renewed in terms of section 63(2) or (2B), as the case may be.” 15

Amendment of section 65 of Act 4 of 2008, as amended by section 49 of Act 10 of 2010

25. Section 65 of the principal Act is amended—

(a) by the substitution for subsection (12) of the following subsection: 20

“(12) The Liquor Licensing Tribunal must, within the prescribed period, either refuse the application, [or] grant it, or conditionally grant it subject to such conditions as the Liquor Licensing Tribunal may determine.”;

(b) by the insertion after subsection (12) of the following subsections: 25

“(12A) The Liquor Licensing Tribunal must, when conditionally granting an application, stipulate a period within which the proposed licensee must comply with the conditions referred to in subsection (12).

(12B) The Liquor Licensing Tribunal may at any time, upon application by the proposed licensee, amend or withdraw the conditions. 30

(12C) The Presiding Officer may at any time, upon application by the proposed licensee, extend the time period stipulated in terms of subsection (12A).”;

(c) by the insertion after subsection (13) of the following subsections: 35

“(13A) If the proposed licensee fails to comply with the conditions imposed by the Liquor Licensing Tribunal within the period referred to in subsection (12A) or the extended period in terms of subsection (12C), the conditional granting of the application lapses and the application for transfer is deemed to have been refused.

(13B) When the Presiding Officer is satisfied that the proposed licensee has complied with the conditions imposed by the Liquor Licensing Tribunal, the Presiding Officer must grant the application for the transfer of the licence.”;

(d) by the substitution for subsection (14) of the following subsection: 45

“(14) The Liquor Licensing Tribunal or the Presiding Officer 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.”;

(e) by the substitution for subsection (15) of the following subsection: 50

“(15) The Authority must notify the proposed licensee, in writing, within the prescribed period after the Liquor Licensing Tribunal or the Presiding Officer, as the case may be, has granted an application for transfer of a licence, [**in writing**] that the application has been granted.”;

(f) by the substitution for subsection (17) of the following subsection: 55

“(17) The Authority must, within the prescribed period after the payment of the prescribed fee referred to in subsection [(4)] (16), [**and subject to sections 42, 43, 44, 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 in terms of section 20(3)(a).”; and

- (g) by the substitution for subsection (21) of the following subsection:

“(21) The Liquor Licensing Tribunal or the Presiding Officer 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 or the Presiding Officer, as the case may be, may **[deem appropriate]** determine.”.

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

26. Section 66 of the principal Act is amended—

- (a) by the deletion of the word “special” wherever it occurs;

- (b) by the substitution for subsection (4) of the following subsection:

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

(a) refuse the application; **[or]**

(b) grant the application; or

(c) conditionally grant the application subject to such conditions as the Liquor Licensing Tribunal may determine.”;

- (c) by the insertion after subsection (4) of the following subsections:

“(4A) The Liquor Licensing Tribunal must, when conditionally granting an application, stipulate a period within which the licensee must comply with the conditions referred to in subsection (4)(c).

(4B) The Liquor Licensing Tribunal may at any time, upon application by the licensee, amend or withdraw the conditions.

(4C) The Presiding Officer may at any time, upon application by the licensee, extend the time period stipulated in terms of subsection (4A).

(4D) If the licensee fails to comply with the conditions referred to in subsection (4)(c) within the period referred to in subsection (4A) or the extended period in terms of subsection (4C), the conditional granting of the application lapses and the application for removal is deemed to have been refused.

(4E) When the Presiding Officer is satisfied that the licensee has complied with the conditions referred to in subsection (4)(c), the Presiding Officer must grant the application for the removal of the licence.”;

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

“(5) The Authority must, within the prescribed period after the Liquor Licensing Tribunal or the Presiding Officer 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.”; and

- (e) by the substitution for subsection (13) of the following subsection:

“(13) If an application for the removal of a licence is granted by the Liquor Licensing Tribunal or the Presiding Officer 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 Authority 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.”.

Amendment of section 67 of Act 4 of 2008

27. Section 67 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) A person appointed in terms of subsection **[(1)(b)] (1)** is deemed to be the licensee.”.

Substitution of section 68 of Act 4 of 2008, as amended by section 51 of Act 10 of 2010

28. The following section is substituted for section 68 of the principal Act:

“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)], the Presiding Officer or a Deputy Presiding Officer. 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. 10

(2A) An applicant or interested party who is aggrieved by a decision of the Liquor Licensing Tribunal, the Presiding Officer or a Deputy Presiding Officer may, [apply to] request the Liquor Licensing Tribunal, Presiding Officer or Deputy Presiding Officer as the case may be, to furnish reasons for that decision. 15

(3) An applicant or interested party who is aggrieved by a decision of the Liquor Licensing Tribunal, the Presiding Officer or a Deputy Presiding Officer may, within the prescribed period after receiving reasons for [a] the decision [of the Liquor Licensing Tribunal], lodge with the Liquor Licensing Tribunal a notice of appeal or review as prescribed. 20

[(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.] 25

(5) If the Appeal Tribunal sets aside a decision in terms of subsection (2) it may remit the matter to the Liquor Licensing Tribunal, Presiding Officer or Deputy Presiding Officer, as the case may be, for reconsideration with or without directions. 30

[(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.]

(9)(a) An applicant or interested party who [is aggrieved by the decision of the Liquor Licensing Tribunal] has lodged a notice of appeal or review 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. 35

(b) The Liquor Licensing Tribunal may be represented by the Presiding Officer, a Deputy Presiding Officer, an advocate, an attorney or any other person appearing on its behalf. 40

(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. 45

(11) The Appeal Tribunal must submit a report on its activities during the financial year to the Minister for tabling in the Provincial Parliament within five months after the end of the financial year.”. 50

Amendment of section 69 of Act 4 of 2008, as amended by section 52 of Act 10 of 2010

29. Section 69 of the principal Act is amended by the substitution for subsection (12) of the following subsection: 55

“(12) Proof of non-compliance with a compliance notice, at a meeting of the Liquor Licensing Tribunal, constitutes, in the absence of evidence to the contrary, prima facie proof of the commission of an offence or a

transgression of the licence conditions stipulated in the compliance notice.”.

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

30. Section 73 of the principal Act is amended— 5
- (a) by the substitution for subsection (1) of the following subsection: 10
- “(1) The **[Western Cape]** Provincial Commissioner **[of the South African Police Service]** may, in respect of each police station, designate **[any] one or more** police **[officer of or above the rank of Inspector]** officers to perform the functions of a designated liquor officer in terms of this Act.”;
- (b) by the substitution for subsection (3) of the following subsection: 15
- “(3) The **[Western Cape]** Provincial Commissioner **[of the South African Police Service]** may at any time terminate an appointment made or deemed to have been made in terms of subsection (1).”;
- (c) by the substitution for subsection (5) of the following subsection: 20
- “(5) The Provincial Commissioner must, when designating a liquor officer in terms of subsection (1), and the Authority must, when appointing an inspector in terms of subsection (4), issue a certificate of designation or letter of appointment signed by the Provincial Commissioner or the Chief Executive Officer on behalf of the Authority, as the case may be.”; and
- (d) by the addition of the following subsection: 25
- “(8)(a) The Provincial Commissioner may in writing delegate any power or function of the Provincial Commissioner in terms of this section to any member of the South African Police Service or any other person in the employ of the South African Police Service to exercise or perform on his or her behalf. 30
- (b) Section 15 of the South African Police Service Act applies, with the necessary changes, to a delegation under paragraph (a).”.

Amendment of section 74 of Act 4 of 2008

31. Section 74 of the principal Act is amended—
- (a) by the substitution for the heading to section 74 of the following heading: 35
- “**Powers of designated liquor officers, peace officers and inspectors**”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40
- “Subject to section 75, a designated liquor officer, peace officer or **[an]** inspector may in the performance of his or her functions in terms of this Act—”;
- (c) by the substitution for subparagraph (iii) of paragraph (a) of subsection (1) of the following subparagraph: 45
- “(iii) any premises or vehicle on which he or she on reasonable grounds suspects that liquor is being stored, conveyed or sold contrary to the provisions of this Act.”;
- (d) by the substitution for paragraph (b) of subsection (1) of the following paragraph: 50
- “(b) at any time and place request from any person that he or she forthwith, or upon a date and time stipulated by the designated liquor officer, peace officer or inspector, produce to him or her any licence, record or other document which is or is believed to be in the possession, custody or control of that person or any other person on his or her behalf.”;
- (e) by the substitution for subsection (2) of the following subsection: 55
- “(2) Any person who is in charge of premises contemplated in subsection (1) must render such assistance as the designated liquor officer, peace officer or inspector may reasonably request.”;

- (f) by the substitution for subsection (3) of the following subsection:
 “(3) Any person who is questioned by a designated liquor officer, peace officer or inspector in terms of this Act must first be informed of his or her constitutional rights before any questioning commences and any answer thereafter by that person must be truthful and to the best of his or her ability.”; and 5
- (g) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
 “An answer or explanation given to a designated liquor officer, peace officer or [**an**] inspector may not be used or admitted in criminal proceedings against the person who provides it, except in proceedings against that person on a charge relating to—”. 10

Amendment of section 75 of Act 4 of 2008

32. Section 75 of the principal Act is amended—
- (a) by the substitution for subsection (1) of the following subsection: 15
 “(1) A designated liquor officer, peace officer or [**an**] inspector may exercise a power referred to in section 74 relating to the entry, search or inspection of premises, if authorised by a warrant issued by a magistrate in accordance with subsection (3).”;
- (b) by the deletion of subsection (2); 20
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “A magistrate may issue a warrant to enter, search and inspect any premises referred to in section 74(1)(a), if, on the basis of information provided in writing and under oath or affirmation, the magistrate has reason to believe that—”; 25
- (d) by the substitution for subsection (4) of the following subsection:
 “(4) A designated liquor officer, peace officer or [**an**] inspector may exercise the powers referred to in subsection (1) without a warrant— 30
- (a) with the consent of the owner or the person in control of the premises concerned;
- (b) if there is an outstanding compliance notice issued in terms of section 69, for the purposes of determining whether the notice has been complied with; or
- (c) if the designated liquor officer, peace officer or inspector on reasonable grounds believes that— 35
- (i) a warrant will be issued in terms of subsection (3) if he or she applies for it; and
- (ii) the delay in obtaining the warrant would defeat the objects of the search or inspection.”; 40
- (e) by the insertion after subsection (4) of the following subsection:
 “(4A) A designated liquor officer, peace officer or inspector may exercise the powers referred to in subsection (1) without a warrant only in respect of licensed premises and if the inspection is conducted to check compliance with this Act or with the conditions of a licence.”; 45
- (f) by the substitution for subsection (5) of the following subsection:
 “(5) When entering premises in terms of this section, the designated liquor officer, peace officer or inspector must— 50
- (a) identify himself or herself to the person in charge of the premises;
- (b) exhibit to that person the warrant, if any;
- (c) explain the authority in terms of which the inspection is being conducted; and
- (d) in the case of licensed premises, conduct the inspection with the least possible inconvenience to the licensee or his or her customers and with the least possible disruption of the licensed business.; 55
- (g) by the substitution for subsection (6) of the following subsection:
 “(6) A designated liquor officer, peace officer or inspector must, when seizing anything in terms of this section, issue to the person from whom the article has been seized, a receipt describing the article or articles seized and explaining the reasons for the seizure.”; and 60

- (h) by the substitution for subsection (7) of the following subsection:
“(7) Sections 30 to 34 of the Criminal Procedure Act apply, with the necessary changes, to anything seized in terms of this section.”

Substitution of section 79 of Act 4 of 2008

33. The following section is substituted for section 79 of the principal Act: 5

“Offences regarding designated liquor officers, peace officers and inspectors

79. A person who—

- (a) misrepresents himself or herself as being a designated liquor officer, peace officer or inspector; 10
 (b) hinders a designated liquor officer, peace officer or inspector in the execution of his or her duties in terms of this Act;
 (c) refuses or fails to obey a lawful instruction given by a designated liquor officer, peace officer or inspector;
 (d) when questioned by a designated liquor officer, peace officer or inspector, knowingly gives a false or misleading answer; or 15
 (e) fails to comply with a reasonable request from a designated liquor officer, peace officer or inspector in terms of section 74, is guilty of an offence.”.

Repeal of section 81 of Act 4 of 2008 20

34. Section 81 of the principal Act is repealed.

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

35. Section 84 of the principal Act is amended—

- (a) by the insertion in subsection (1) after paragraph (k) of the following paragraphs: 25

“(kA) an auctioneer acting on behalf of a municipality or the South African Police Service, in the performance of his or her functions;
 (kB) the South African Police Service or relevant municipality, as the case may be, with regard to the sale of liquor forfeited to the State as contemplated in section 87(4);” 30

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

“(d) on behalf of the principal of an educational institution[**, excluding a school as defined in the South African Schools Act, 1996,**] in a restaurant used for the training of persons in catering services on premises occupied, controlled or maintained by the institution concerned, for consumption in that restaurant;” 35

- (c) by the substitution for paragraph (e) of subsection (2) of the following paragraph: 40

“(e) if that person is a *bona fide* collector of wine or spirits and that liquor consists of his or her collection of wine or spirits or any part thereof; or”;

- (d) by the substitution for paragraph (f) of subsection (2) of the following paragraph: 45

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

Substitution of section 85 of Act 4 of 2008

36. The following section is substituted for section 85 of the principal Act:

“Evidence

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 or that he or she holds a valid licence to sell liquor;
- (b) occupied or was in control of premises fitted out in a manner to induce a reasonable conclusion that liquor is for sale there;
- (c) had on his or her premises or under his or her control more liquor than **[the maximum volume referred to in section 60 without the prior consent required by that section]** was reasonably required for himself or herself, his or her family and his or her guests, unless that person is a *bona fide* collector of wine or spirits and that liquor consists of his or her collection of wine or spirits or a part thereof; or
- (d) bought or procured more liquor than **[the maximum volume referred to in section 60 without the prior consent required by that section]** was reasonably required for himself or herself, his or her family and his or her guests, unless that person is a *bona fide* collector of wine or spirits and that liquor consists of his or her collection of wine or spirits or a part thereof, it is, in the absence of evidence to the contrary that raises reasonable doubt, *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, in the absence of evidence to the contrary that raises reasonable doubt, *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;
- (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, in the absence of evidence to the contrary that raises reasonable doubt, *prima facie* proof that all the containers contain liquor;
- (c) there is produced as evidence a document which purports to be a copy of a licence or permit, it is on its mere production, in the absence of evidence to the contrary that raises reasonable doubt, *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;
- (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, in the absence of evidence to the contrary that raises reasonable doubt, *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—
 - (i) his or her valid identity document;
 - (ii) his or her valid driver’s licence; or

(iii) his or her valid passport, such evidence is, in the absence of evidence to the contrary that raises reasonable doubt, *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.”.

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

37. Section 87 of the principal Act is amended—

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

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

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

“(d) section 23(13), 48(15), 56(5), 76(a), 76(d), 77, 78(1), 78(3), 79, 80(1) or 86(2) is liable on conviction to a fine not exceeding R500 000,00 or to imprisonment for a period not exceeding three months or to both such fine and such period of imprisonment.”;

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

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

(d) by the deletion of subsection (3); and

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

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

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

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

Amendment of section 88 of Act 4 of 2008

38. Section 88 of the principal Act is amended—

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

“(bA) the renewal of licences;” and

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

“(d) the [disposal of liquor forfeited to the State in terms of section 87(2)] sale of forfeited liquor by public auction as contemplated in section 87(4); or”.

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

- 39.** The index before section 1 of the principal Act is amended—
- (a) by the substitution for the reference to the heading to section 17 of the following item:
 - “17. Disqualification for appointment as member or substitute member of Liquor Licensing Tribunal”; 5
 - (b) by the substitution for the reference to the heading to section 48 of the following item:
 - “48. Temporary liquor licences and [**special**] event liquor licences”; 10
 - (c) by the substitution for the reference to the heading to section 74 of the following item:
 - “74. Powers of designated liquor officers, peace officers and inspectors”; 10
 - (d) by the substitution for the reference to the heading to section 79 of the following item:
 - “79. Offences regarding designated liquor officers, peace officers and inspectors”; and 15
 - (e) by the deletion of the reference to section 81.

Short title and commencement

- 40.** This Act is called the Western Cape Liquor Amendment Act, 2015, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*. 20

MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE LIQUOR AMENDMENT BILL, 2015

1. BACKGROUND

- 1.1 Since the coming into operation of the Western Cape Liquor Act, 2008 (Act 4 of 2008), and the Western Cape Liquor Amendment Act, 2010 (Act 10 of 2010), a number of practical challenges have been experienced in the implementation of the legislation.
- 1.2 These challenges include:
 - (a) issues of interpretation in respect of sections 59, 81 and 89;
 - (b) the practical challenge of members of the Liquor Licensing Tribunal being unavailable to attend meetings and form a quorum;
 - (c) the limitations on the Presiding Officer and the Liquor Licensing Tribunal to delegate more of their powers to other functionaries; and
 - (d) the limitation that law enforcement officials are not allowed to conduct routine inspections of licensed premises without a warrant.
- 1.3 In the course of effecting amendments to the principal Act in order to address the difficulties as stated above, proposals were received from role-players in liquor regulation in the Province, in particular the South African Police Service and the City of Cape Town.
- 1.4 Pursuant to the receipt of these proposals, provisions to empower peace officers to enforce the principal Act were included in this Bill. In addition, the Bill includes a provision enabling a municipality and the South African Police Service to dispose of seized liquor by public auction should they elect to do so.

2. OBJECTS OF THE BILL

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

3. CONTENTS OF THE BILL

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

- 3.1 **Clause 1** provides new definitions for the terms “Provincial Commissioner”, “municipal police service” and “substitute member”. It amends the definition for “event” and inserts a new definition for “event liquor licence”, in keeping with the amendments made to provisions in the principal Act relating to special event licences. The clause further amends a section reference in the definition for “manager”, amends the definition for “Deputy Presiding Officer” and extends the definition for “peace officer” to include a member of the South African Police Service or a member of a municipal police service. The clause deletes the definition for “a person” and “fortified wine” and inserts a definition for “spirit”. The clause amends the definition for “natural wine”.
- 3.2 **Clause 2** amends section 16 of the principal Act by making provision for the *ad hoc* appointment of substitute members. It also allows for the appointment of up to three Deputy Presiding Officers. It furthermore extends the authority of the Presiding Officer to delegate any of his or her powers or functions.

- 3.3 **Clause 3** amends section 17 of the principal Act and is a consequential amendment to the amendments regarding the appointment of substitute members.
- 3.4 **Clause 4** amends section 18 of the principal Act and aligns the Act with the changes to the names of various ranks presently used in the South African Police Service.
- 3.5 **Clause 5** amends section 19 of the principal Act and is a consequential amendment to the amendments regarding the increase in the number of Deputy Presiding Officers.
- 3.6 **Clause 6** amends section 20 of the principal Act by deleting the obsolete reference to section 65(9). It provides for the Liquor Licensing Tribunal to reconsider a matter that has been remitted by the Appeal Tribunal. The clause establishes the Presiding Officer's authority to refer a matter to the Liquor Licensing Tribunal for consideration.
- 3.7 **Clause 7** amends section 21 of the principal Act by providing that the Presiding Officer may request a substitute member to attend any of the meetings of the Liquor Licensing Tribunal where any other member is unavailable to attend. The aim of this amendment is to prevent the lack of a quorum at meetings of the Liquor Licensing Tribunal due to the unavailability of members.
- 3.8 **Clause 8** substitutes section 22 of the principal Act and is a consequential amendment to the amendment regarding the appointment of substitute members.
- 3.9 **Clause 9** amends section 24 of the principal Act by providing that the Presiding Officer may request a substitute member to attend any of the meetings of a committee of the Liquor Licensing Tribunal if any other member of that committee is unavailable to attend. This clause authorises the Liquor Licensing Tribunal to delegate more of its functions to a committee. The clause confers voting rights on co-opted members who have been appointed to a committee of the Liquor Licensing Tribunal under specific circumstances.
- 3.10 **Clause 10** amends section 25 of the principal Act and is a consequential amendment to the amendment regarding the appeal and review of decisions of the Liquor Licensing Tribunal, Presiding Officer and Deputy Presiding Officers.
- 3.11 **Clause 11** amends section 27 of the principal Act and is a consequential amendment to the amendment regarding the appointment of substitute members.
- 3.12 **Clause 12** substitutes section 30 of the principal Act. While it is a consequential amendment to the extension of the various offences under the principal Act, it also serves to allocate the funds generated by the operation of the Act.
- 3.13 **Clause 13** amends section 33 of the principal Act and is a consequential amendment to the amendments in respect of event liquor licences in clause 16 of the Bill.
- 3.14 **Clause 14** amends section 41 of the principal Act. This amendment extends the factors that the Liquor Licensing Tribunal may take cognisance of when considering an application for a liquor licence.

- 3.15 **Clause 15** amends section 42 of the principal Act to authorise the Liquor Licensing Tribunal to revoke the conditional granting of a licence. It also authorises the Presiding Officer to determine whether the applicant has complied with the conditions set in a conditional licence.
- 3.16 **Clause 16** substitutes section 48 of the principal Act to do away with special event liquor licences, which are substituted by event liquor licences. It further regulates the granting of temporary licences.
- 3.17 **Clause 17** amends section 51 of the principal Act by extending the right to apply for the letting of licensed premises to all licensees. This clause regulates the granting of applications to let licensed premises.
- 3.18 **Clause 18** amends section 52 of the principal Act. It amends the process for the appointment of a manager and allows the Presiding Officer to make appointments under specific circumstances.
- 3.19 **Clause 19** amends section 56 of the principal Act so that persons under the age of 18 years are prohibited from having access to the restricted areas of premises licenced to sell liquor for consumption on the premises.
- 3.20 **Clause 20** amends section 59 of the principal Act. It simplifies and clarifies the provisions regarding trading days and hours in instances where a municipality has not determined the trading days and hours for the sale of liquor for consumption on and off licenced premises.
- 3.21 **Clause 21** amends section 60 of the principal Act by doing away with the prohibition of unlicensed persons' having more than a certain quantity of liquor in their possession.
- 3.22 **Clause 22** amends section 62 of the principal Act by amending the provisions that relate to the validity of a licence because of the amendment to section 68.
- 3.23 **Clause 23** substitutes section 63 by providing a licensee with the option of following a biennial cycle of renewal.
- 3.24 **Clause 24** amends section 64 of the principal Act and is a consequential amendment to the amendment relating to the introduction of a two-year cycle of renewal.
- 3.25 **Clause 25** amends section 65 of the principal Act by authorising the Liquor Licensing Tribunal to conditionally approve an application for the transfer of a licence. This clause regulates the final granting of conditionally approved applications for the transfer of licences.
- 3.26 **Clause 26** amends section 66 of the principal Act and is a consequential amendment to the amendments regarding special event liquor licences. It authorises the Liquor Licensing Tribunal to conditionally approve an application for the removal of a licence and further regulates the final granting of a conditionally approved application for the removal of a licence.
- 3.27 **Clause 27** amends section 67 of the principal Act and is a technical amendment.
- 3.28 **Clause 28** substitutes section 68 of the principal Act. It extends the right of appeal and review to include all decisions of the Liquor Licensing Tribunal, Presiding Officer or Deputy Presiding Officers. This clause extends the power of the Appeal Tribunal to remit a matter before it to the initial decision maker for reconsideration when it sets aside a decision.

- 3.29 **Clause 29** amends section 69 to align it with the amendments to section 85.
- 3.30 **Clause 30** amends section 73 of the principal Act and is a consequential amendment to the alignment of the Act with the naming of ranks of the South African Police Service. It also provides that the Provincial Commissioner may delegate his or her powers and functions in line with the South African Police Service Act, 1995 (Act 68 of 1995).
- 3.31 **Clause 31** amends section 74 of the principal Act. It makes provision for the enforcement of the Act by peace officers.
- 3.32 **Clause 32** amends section 75 of the principal Act and is a consequential amendment to amendments regarding the inclusion of peace officers in the enforcement of the Act. It makes further provision for the search, entry and inspection of licensed premises under specific circumstances without the requirement of a warrant.
- 3.33 **Clause 33** substitutes section 79 of the principal Act and is a consequential amendment to the inclusion of peace officers in the enforcement of the Act.
- 3.34 **Clause 34** repeals section 81 of the principal Act.
- 3.35 **Clause 35** amends section 84 of the principal Act by extending the exemptions provided for in this section to auctioneers acting on behalf of the South African Police Service or a municipality and to the South African Police Service or the relevant municipality selling liquor that has been forfeited to the state. It deletes references to the South African Schools Act, 1996 (Act 84 of 1996), and extends the exceptions of the Act to *bona fide* collectors of wine and spirits.
- 3.36 **Clause 36** substitutes section 85 of the principal Act and is a consequential amendment to the doing away with the prohibition against the possession of more than a certain quantity of liquor by unlicensed persons.
- 3.37 **Clause 37** amends section 87 of the principal Act by extending the offences in terms of the principal Act, making provision for recurring offences and for the sale of seized liquor by public auction.
- 3.38 **Clause 38** amends section 88 of the principal Act and is a consequential amendment to the provisions regarding the sale of seized liquor by public auction.
- 3.39 **Clause 39** amends the index to the principal Act in order to align it with the amendments contained in the Bill.
- 3.40 **Clause 40** provides for the short title of the Act and its commencement.

4. LEGISLATIVE COMPETENCE

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

5. CONSULTATION

Department of the Premier: Legal Services
 City of Cape Town and other municipalities
 Western Cape Liquor Authority
 South African Police Service
 Provincial Treasury
 Industry role-players

6. FINANCIAL IMPLICATIONS

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

7. PERSONNEL IMPLICATIONS

It is envisaged that there will be additional administration in respect of appointed substitute members and deputy presiding officers. The Western Cape Liquor Authority may have to employ and budget for additional personnel.

Dranklisensiëringstribunaal uitmaak, op te klaar; om verder voorsiening te maak betreffende misdrywe en strawwe; om voorsiening te maak vir die verkoop per openbare veiling van sekere items wat aan die Staat verbeur is; om sekere tekstuele verbeteringe aan te bring; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

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

1. Artikel 1 van die Wes-Kaapse Drankwet, 2008 (die Hoofwet), word gewysig— 5
 - (a) deur die omskrywing van “Adjunk-Voorsittende Beampte” deur die volgende omskrywing te vervang:

“**Adjunk-Voorsittende Beampte**’ [die] ’n persoon ingevolge artikel 16(1)(b) as Adjunk-Voorsittende Beampte van die Dranklisensiëringstribunaal aangestel;”;

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 - (b) deur die omskrywing van “bestuurder” deur die volgende omskrywing te vervang:

“**bestuurder**’ ’n persoon wie se aanstelling as bestuurder goedgekeur word ingevolge artikel [52(1)] 52;”;
 - (c) deur die volgende omskrywing na die omskrywing van “drank” in te voeg: 15

“**dranklisensie vir ’n geleentheid**’ ’n lisensie bedoel in artikel 33(2)(a);”;
 - (d) deur die omskrywing van “gefortifiseerde wyn” te skrap;
 - (e) deur die volgende omskrywing voor die omskrywing van “gelisensieerde besigheid” in te voeg: 20

“**geleentheid**’ ook ’n uitstalling, sportbyeenkoms, vertoning of funksie;”;
 - (f) deur die omskrywing van “hernuwingsfooi” deur die volgende omskrywing te vervang:

“**hernuwingsfooi**’ ’n fooi wat jaarliks of tweeejaarliks, na gelang van die geval, betaalbaar is ten opsigte van ’n lisensie, uitgesonderd ’n tydelike dranklisensie, ten einde die voortgesette geldigheid van die lisensie te verseker;”;

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 - (g) deur die volgende omskrywing na die omskrywing van “motorvoertuig” in te voeg: 30

“**munisipale polisie-diens**’ ’n munisipale polisie-diens ingestel kragtens artikel 64A van die Wet op die Suid-Afrikaanse Polisie-diens;”;
 - (i) deur die omskrywing van “natuurlike wyn” deur die volgende omskrywing te vervang:

“**natuurlike wyn**’ wyn waarvan die alkoholinhoud ten minste [6,5%] 35
4,5% maar minder as 16,5% is [, maar sluit gefortifiseerde wyn uit];”;
 - (j) deur die omskrywing van “persoon” te skrap;
 - (k) deur die volgende omskrywing na die omskrywing van “Provinsiale Kabinet” in te voeg:

“**Provinsiale Kommissaris**’ die Provinsiale Kommissaris van die Suid-Afrikaanse Polisie-diens aangestel vir die Provinsie ingevolge die Wet op die Suid-Afrikaanse Polisie-diens;”;

 40
 - (l) deur die omskrywing van “spesiale geleentheid” te skrap;
 - (m) deur die volgende omskrywing voor die omskrywing van “staande komitee” in te voeg: 45

“**spiritus**’ dieselfde as in die Wet op Drankprodukte, 1989;”
 - (n) deur die volgende omskrywing na die omskrywing van “vervaardiger” in te voeg:

“**vervangende lid**’ ’n persoon aangestel as ’n vervangende lid ingevolge artikel 16(3A);”;

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- (o) deur die omskrywing van “vredesbeampte” deur die volgende omskrywing te vervang:
- “**‘vredesbeampte’**—
- (a) enige [**polisiebeampte en,**] lid, soos omskryf in artikel 1 van die Wet op die Suid-Afrikaanse Polisie, van die Suid-Afrikaanse Polisie; 5
- (b) enige lid van ’n munisipale polisie; of
- (c) enige persoon wat, met betrekking tot enige gebied, misdryf, klas van misdrywe of bevoegdheid bedoel in ’n kennisgewing uitgereik kragtens artikel 334(1) van die Strafproseswet, [**enige persoon wat**] ’n vredesbeampte kragtens daardie artikel is, behalwe verkeersbeamptes[.];” en 10
- (p) deur die volgende omskrywing na die omskrywing van “vredesbeampte” in te voeg:
- “**‘Wet op die Suid-Afrikaanse Polisie’** die Wet op die Suid-Afrikaanse Polisie, 1995 (Wet 68 van 1995);” 15

Wysiging van artikel 16 van Wet 4 van 2008

2. Artikel 16 van die Hoofwet word gewysig—

- (a) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
- “(b) [**een lid**] hoogstens drie lede, met die kwalifikasies in paragraaf (a) vermeld, wat deur die Raad as Adjunk-Voorsittende [**Beampte**] Beamptes aangestel word;” 20
- (b) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:
- “(d) een lid wat ’n polisiebeampte met die rang van [**Superintendent**] Luitenant-Kolonel of hoër is, deur die Raad aangestel in oorleg met die Provinsiale Kommissaris [**van die Suid-Afrikaanse Polisie**] en die Minister verantwoordelik vir gemeenskapseveiligheid in die Provinsie; en” 25
- (c) deur die volgende subartikel na subartikel (2) in te voeg:
- “(2A)(a) Die Voorsittende Beampte mag enige bevoegdheid of funksie van die Voorsittende Beampte skriftelik aan ’n Adjunk-Voorsittende Beampte deleger om namens hom of haar uit te oefen of te verrig.
- (b) Die bepalings van artikel 10(2), (3) en (6) is van toepassing, met die nodige veranderinge, op ’n delegering ingevolge paragraaf (a).” 30
- (d) deur subartikel (3) deur die volgende subartikel te vervang:
- “(3) Indien die Voorsittende Beampte nie beskikbaar is om sy of haar funksies te verrig nie of indien die amp van Voorsittende Beampte vakant is, moet [**die**] ’n Adjunk-Voorsittende Beampte aangewys deur die Hoof-Uitvoerende Beampte, terwyl die Voorsittende Beampte nie beskikbaar is nie of totdat ’n Voorsittende Beampte aangestel word, waarnaem as Voorsittende Beampte en al die funksies verrig wat deur hierdie Wet aan die Voorsittende Beampte opgedra word.”; en 40
- (e) deur die volgende subartikel na subartikel (3) in te voeg:
- “(3A)(a) Ondanks subartikels (1) en (2) mag die Raad in oorleg met die Minister te eniger tyd hoogstens vier geskikte persone as vervangende lede aanstel om as lede van die Dranklisensieringstribunaal of ’n komitee daarvan waar te neem op versoek van die Voorsittende Beampte in die omstandighede beoog in artikel 21(4) of 24(2A).
- (b) ’n Vervangende lid beklee die amp vir ’n tydperk van hoogstens twee jaar, wat die Raad tydens sy of haar aanstelling mag bepaal.” 50

Wysiging van artikel 17 van Wet 4 van 2008

3. Artikel 17 van die Hoofwet word gewysig—

- (a) deur die opskrif van artikel 17 deur die volgende opskrif te vervang:
- “**Diskwalifisering vir aanstelling as lid of vervangende lid van Dranklisensieringstribunaal**”; 55

- (b) deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 “Die volgende persone kwalifiseer nie om aangestel te word, voort te gaan of op te tree as lede of vervangende lede van die Dranklisensieringstribunaal nie—”; en 5
- (c) deur paragraaf (f) deur die volgende paragraaf te vervang:
 “(f) iemand wat die familielid, vennoot of besigheidsdeelgenoot van ’n persoon is met ’n regstreekse belang in die drankhandel, tensy die Raad van mening is dat die familielid, vennoot of besigheidsdeelgenoot in die drankhandel nie impliseer dat die persoon ongeskik is om die amp te beklee nie;”. 10

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

4. Artikel 18 van die Hoofwet word gewysig deur subartikel (3) deur die volgende subartikel te vervang: 15
 “(3) Die heraanstelling van ’n lid bedoel in artikel 16(1)(c) [en] of (d) mag slegs geskied na oorleg met onderskeidelik die Minister verantwoordelik vir plaaslike regering in die Provinsie, of die Provinsiale Kommissaris [**van die Suid-Afrikaanse Polisiediens**] en die Minister verantwoordelik vir gemeenskapsveiligheid in die Provinsie.”. 20

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

5. Artikel 19 van die Hoofwet word gewysig deur paragraaf (c) deur die volgende paragraaf te vervang: 25
 “(c) sodanige lid van drie opeenvolgende vergaderings van die Dranklisensieringstribunaal afwesig is sonder die voorafverkreë skriftelike verlof van die Voorsittende Beampte of, waar van toepassing, [die] ’n Adjunk-Voorsittende Beampte;”. 30

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

6. Artikel 20 van die Hoofwet word gewysig—
- (a) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
 “(b) ’n aansoek vir die oordrag van ’n lisensie ingevolge artikel [65(9)] 35
65(1).”;
- (b) deur die woord “of” aan die einde van paragraaf (f) te skrap;
- (c) deur in subartikel (1) die volgende paragraaf na paragraaf (f) in te voeg:
 “(fA) enige aangeleentheid ingevolge artikel 68(5) deur die 40
Appèltribunaal na hom terugverwys; of”;
- (d) deur paragraaf (g) van subartikel (1) deur die volgende paragraaf te vervang: 40
 “(g) enige ander aangeleentheid deur die Hoof-Uitvoerende Beampte of die Voorsittende Beampte na hom verwys of wat die Dranklisensieringstribunaal ingevolge hierdie Wet mag of moet oorweeg.”;
- (e) deur subartikel (2) deur die volgende subartikel te vervang: 45
 “(2) Behalwe ten opsigte van aangeleenthede in subartikel (1)(a), (b), (c), (f), (fA) 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
- (f) deur paragraaf (d) van subartikel (3) deur die volgende paragraaf te vervang:
 “(d) subartikel (1)(fA) of (g), die aangeleentheid oorweeg en die stappe doen wat hy toepaslik ag.”; en

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

“(3A) Die Voorsittende Beampte mag ’n aangeleentheid vir die oorweging van die Voorsittende Beampte vir oorweging na die Dranklisensiëringstribunaal verwys indien die Voorsittende Beampte dink dat—

- (a) die aangeleentheid ’n feitegeskil behels;
- (b) die aangeleentheid ingewikkeld van aard is; of
- (c) dit in die openbare belang is om dit te doen.”.

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Wysiging van artikel 21 van Wet 4 van 2008

7. Artikel 21 van die Hoofwet word gewysig—

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

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

(b) deur die volgende subartikel by te voeg:

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

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

Vervanging van artikel 22 van Wet 4 van 2008

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

“Onttrekking van lid met botsende belang

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

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(a) hy of sy ’n familielid, vennoot of besigheidsdeelgenoot is van die aansoeker vir ’n lisensie of sertifisering, of enige ander reg of voorreg wat die Dranklisensiëringstribunaal **[of die Voorsittende Beampte, na gelang van die geval,]** staan te verleen;

35

(b) hy of sy of sy of haar familielid, vennoot of besigheidsdeelgenoot ’n direkteur, lid of vennoot is van, of ’n finansiële belang of ander belang het in, die besigheid van die aansoeker vir ’n lisensie, sertifisering of enige ander reg of voorreg wat die Dranklisensiëringstribunaal **[of die Voorsittende Beampte, na gelang van die geval,]** staan te verleen; of

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(c) hy of sy enige belang het wat hom of haar verhinder om sy of haar funksies as lid of vervangende lid van die Dranklisensiëringstribunaal op ’n billike, onbevooroordeelde en behoorlike wyse te verrig.

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(1A) Die Voorsittende Beampte mag nie ’n aangeleentheid oorweeg nie indien, met betrekking tot daardie aangeleentheid—

(a) hy of sy ’n familielid, vennoot of besigheidsdeelgenoot is van die aansoeker vir ’n lisensie, sertifisering of enige ander reg of voorreg wat die Voorsittende Beampte staan te verleen;

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(b) hy of sy of sy of haar familielid, vennoot of besigheidsdeelgenoot ’n direkteur, lid of vennoot is van, of ’n finansiële of ander belang het in, die besigheid van die aansoeker vir ’n lisensie, sertifisering of enige ander reg of voorreg wat die Voorsittende Beampte staan te verleen; of

55

(c) hy of sy enige belang het wat hom of haar verhinder om sy of haar funksies as Voorsittende Beampte op 'n billike, onbevooroordeelde en behoorlike wyse te verrig.

(2) Indien dit in enige stadium blyk dat 'n lid of 'n vervangende lid **[of die Voorsittende Beampte, na gelang van die geval,]** enige belang in subartikel (1) beoog, het of mag hê **[—(a)]** met betrekking tot 'n aangeleentheid wat deur die Dranklisensiëringstribunaal oorweeg moet word, moet daardie lid of vervangende lid die aard van sy of haar belang onverwyld **[en]** volledig openbaar en die vergadering of verhoor verlaat ten einde die oorblywende lede of vervangende lede in staat te stel om die aangeleentheid te bespreek en te bepaal of daardie lid of vervangende lid uitgesluit moet word van deelname aan die verrigtinge op sodanige vergadering of verhoor as gevolg van 'n botsing van belange. **[; en]**

[(b)] (2A) Indien dit in enige stadium blyk dat die Voorsittende Beampte enige belang beoog in subartikel (1A) het of mag hê 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 of vervangende lede van die Dranklisensiëringstribunaal in subartikel **[(2)(a)] (2)** bedoel, moet in die notule van die betrokke verrigtinge aangeteken word.

(4) Die openbaring bedoel in subartikel (2A) deur die Voorsittende Beampte moet in die notule van die verrigtinge van die Dranklisensiëringstribunaal aangeteken word.”

Wysiging van artikel 24 van Wet 4 van 2008

9. Artikel 24 van die Hoofwet word gewysig—

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

“(1) Die Voorsittende Beampte mag een of meer komitees aanstel wat bestaan uit die Voorsittende Beampte self of **[die] 'n** Adjunk-Voorsittende Beampte en enige lid of enige persoon wat ingevolge artikel 20(5) gekoöpteer is.”;

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

“(1A) Ondanks subartikel (7) en artikel 20(6) het 'n persoon gekoöpteer ingevolge artikel 20(5) wat as 'n lid van 'n komitee aangestel is die reg om te stem by enige vergadering van die komitee wanneer die komitee enige funksie van die Dranklisensiëringstribunaal beoog in artikel 89(7) en wat ingevolge subartikel (3)(c) na die komitee gedelegeer word, verrig.”;

(c) deur die volgende subartikel na subartikel (2) in te voeg:

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

(b) 'n Vervangende lid wat aldus as 'n lid van 'n komitee waarneem, het die bevoegdheids en pligte van 'n lid van die komitee.”; en

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

“(3) Die Dranklisensiëringstribunaal mag die funksies van die Dranklisensiëringstribunaal—

(a) wat in artikels 52, 64, 65, 66 en 71 uiteengesit word; of

(b) wat in artikel 89(7) beoog word, aan 'n komitee deleger.”.

Wysiging van artikel 25 van Wet 4 van 2008, soos gewysig by artikel 21 van Wet 10 van 2010

10. Artikel 25 van die Hoofwet word gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Minister moet, vir 'n termyn deur hom of haar bepaal, 'n persoon, op 'n deelydse basis, aanstel met regs kwalifikasies 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—

- (a) die Dranklisensieringstribunaal;
- (b) die Voorsittende Beampte; of
- (c) 'n Adjunk-Voorsittende Beampte wat funksies verrig wat deur die Voorsittende Beampte aan hom of haar gedelegeer is [ingevolge hierdie Wet].”.

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

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

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

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

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

“Inkomste wat aan Provinsiale Inkomstefonds, Owerheid of munisipaliteite toeval

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

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

- (a) boetes bedoel in artikels 20(3)(b)(v) en 82(2)(b);
- (b) die [strafgelde] boetes bedoel in [artikel] artikels 46(6), 48(10), 62(3), 63(4), 64(4), 65(19) en 66(8); [en]
- (c) fooie bedoel in artikels 26(8), 36(1)(e), 38, 46(2), 48(1), 48(4), 53(1), 59(7), 64(1), 65(4), [en 65(9)] 65(16), 66(2) en 66(6).

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

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

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

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

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

Wysiging van artikel 41 van Wet 4 van 2008

14. Artikel 41 van die Hoofwet word gewysig—

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

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

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

“(c) behoudens artikel 23(9)[,]—

- (i) die nabyheid van die voorgestelde gelisensieerde perseel aan 'n onderneming wat die besigheid van 'n diensstasie bedryf wat petrol, diesel of ander petroleumprodukte aan die publiek verkoop; en

- (ii) enige ander aangeleentheid wat na die Dranklisensiërings-tribunaal of Voorsittende Beampte se mening in aanmerking geneem moet word.”.

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

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15. Artikel 42 van die Hoofwet word gewysig—

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

“(4A) Die Dranklisensiëringstribunaal mag die voorwaardelike toestaan van ’n lisensie intrek indien hy bewus word van weselike feite waarvan hy onbewus was toe die lisensie voorwaardelik toegestaan is en hy tevrede is dat, sou hy toe bewus gewees het van daardie feite, hy nie die lisensie voorwaardelik sou goedkeur nie.”; en

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

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

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

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

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“Tydelike dranklisensies en dranklisensies vir [spesiale] geleenthede

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

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(1A) ’n Aansoek vir ’n tydelike [lisensie] dranklisensie moet binne die voorgeskrewe tydperk gedoen word [minstens veertien (14) dae vóór die eerste dag van die tydperk bedoel in subartikel (2)].

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

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(3) ’n Tydelike dranklisensie moet onderworpe gemaak word aan die [voorgeskrewe] voorwaardes bedoel in artikel 49, waar van toepassing, en die ander voorwaardes en beperkings wat die Voorsittende Beampte oplê.

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

(a) ’n opvoedkundige instelling, uitgesonderd ’n skool soos omskryf in artikel 1 van die Suid-Afrikaanse Skolewet, 1996 (Wet 84 van 1996);

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(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

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(e) die organiseerder van ’n kunsuitvoering,] ’n persoon op die voorgeskrewe wyse en teen betaling van die voorgeskrewe fooi ’n dranklisensie vir ’n [spesiale] geleentheid toestaan vir die verkoop van drank vir verbruik op of buite, of beide op en buite, die perseel waarop drank by ’n [spesiale] geleentheid verkoop word.

(5) ’n Aansoek om ’n dranklisensie vir ’n [spesiale] geleentheid moet [minstens veertien (14) dae vóór die datum van die spesiale geleentheid] binne die voorgeskrewe tydperk gedoen word.

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

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(7) ’n Dranklisensie vir ’n [spesiale] geleentheid [is] moet onderworpe gemaak word aan die voorwaardes in artikel 49 bedoel,

waar van toepassing, en die ander voorwaardes en beperkings wat deur die **[Dranklisensiëringstribunaal]** Voorsittende Beampte opgelê word.

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

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

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

(11) Ten einde vas te stel of goeie redes soos beoog in subartikel (10) bestaan, mag die Voorsittende Beampte die volgende oorweeg—

- (a) of kondonering in die openbare belang sal wees;
- (b) of kondonering nadelig sal wees vir die administratiewe funksie van die Owerheid; en
- (c) of daar wesenlik aan die Wet voldoen is.

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

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

- (a) die lisensie onderworpe verklaar aan die voorwaardes of beperkings, of die verdere voorwaardes of beperkings, wat hy of sy na goeddunke mag oplê en wat uiteengesit word in die kennisgewing;
- (b) enige voorwaarde of beperking wat ten opsigte van die lisensie opgelê is, opskort, intrek of wysig; of
- (c) die lisensie opskort of intrek.

(14) Vir die doeleindes van subartikel (13) mag die Voorsittende Beampte kennis neem van enige van die volgende—

- (a) vertoë wat gerig is ten gunste van of teen die toestaan van 'n tydelike dranklisensie of 'n dranklisensie vir 'n geleentheid vóór dit toegestaan is en enige antwoord op sodanige vertoë;
- (b) enige verslag wat by 'n aangewese drankbeampte, 'n inspekteur of 'n munisipale beampte ingedien is;
- (c) enige klagte wat by die Voorsittende Beampte ingedien is betreffende die optrede van die gelisensieerde besigheid;
- (d) vertoë deur die betrokke lisensiehouer of enige ander persoon;
- (e) enige ander aangeleentheid verwys na die Voorsittende Beampte deur die Hoof-Uitvoerende Beampte of wat die Voorsittende Beampte ingevolge hierdie Wet mag of moet oorweeg.

(15) 'n Oortreding van, of 'n versuim om te voldoen aan, subartikel (8) of enige voorwaarde of beperking beoog in subartikel (3), (7) of (13)(a) is 'n misdryf.’’.

Wysiging van artikel 51 van Wet 4 van 2008, soos gewysig by artikel 40 van Wet 10 van 2010

17. Artikel 51 van die Hoofwet word gewysig—

- (a) deur subartikel (7) deur die volgende subartikel te vervang:

“(7) 'n Lisensiehouer mag nie die lisensie aan 'n ander persoon verhuur, toelaat dat 'n ander persoon sake ingevolge die lisensie doen of 'n ander persoon toelaat om die gelisensieerde perseel te gebruik nie tensy die lisensiehouer, by aansoek, die toestemming van die Voorsittende Beampte bekom het.’’;

- (b) deur subartikel (8) deur die volgende subartikel te vervang:
- “(8) Die Voorsittende Beampte mag nie ’n aansoek vir verhuring toestaan in die geval van ’n lisensie wat die reg om te mikrovervaardig insluit 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 of wat toegelaat staan te word om die perseel vir die doeleindes van mikrovervaardiging te gebruik—
- (a) nie ingevolge artikel 35 gediskwalifiseer word om ’n lisensie te hou nie;
- (b) van goeie karakter is; **[of] en**
- (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.”; en
- (c) deur die volgende subartikel na subartikel (8) in te voeg:
- “(8A) Die Voorsittende Beampte mag nie ’n aansoek om verhuring toestaan in die geval van ’n lisensie buiten dié wat in subartikel (8) beoog word nie, tensy hy of sy oortuig is dat—
- (a) die aansoek deur uitsonderlike omstandighede ondersteun word; en
- (b) die persoon aan wie die gelisensieerde perseel of deel daarvan verhuur staan te word—
- (i) nie ingevolge artikel 35 gediskwalifiseer word om ’n dranklisensie te hou nie;
- (ii) van goeie karakter is;
- (iii) 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.”.

Wysiging van artikel 52 van Wet 4 van 2008

18. Artikel 52 van die Hoofwet word gewysig—

- (a) deur die volgende subartikel na subartikel (1) in te voeg:
- “(1A) Die Voorsittende Beampte mag, wanneer hy of sy—
- (a) ’n tydelike dranklisensie kragtens artikel 48(1) toestaan;
- (b) ’n dranklisensie vir ’n geleentheid kragtens artikel 48(4) toestaan;
- (c) kragtens artikel 49(6) optree;
- (d) kragtens artikel 53(1) optree; of
- (e) toestemming ingevolge artikel 65(5) verleen,
- die aanstelling van ’n natuurlike persoon wat benoem word deur die aansoeker vir die lisensie, die lisensiehouer of die voorgestelde lisensiehouer, na gelang van die geval, as bestuurder van die gelisensieerde besigheid goedkeur.”;
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) ’n Lisensiehouer **[wat nie ’n natuurlike persoon is nie,]** mag te eniger tyd en op die voorgeskrewe wyse ’n natuurlike persoon wat in die Provinsie woon, benoem om die bestuurder van die gelisensieerde besigheid te wees, en in so ’n geval mag die Dranklisensieëringstribunaal of die Voorsittende Beampte, na gelang van die geval, daardie persoon se aanstelling as bestuurder goedkeur.”;
- (c) deur subartikel (4) deur die volgende subartikel te vervang:
- “(4) Die Dranklisensieëringstribunaal of die Voorsittende Beampte, na gelang van die geval, mag nie goedkeuring verleen dat ’n persoon wat ingevolge artikel 35 gediskwalifiseer word om ’n dranklisensie te hou of wat nie van goeie karakter is nie, as bestuurder aangestel word nie.”;
- (d) deur subartikel (5) deur die volgende subartikel te vervang:
- “(5) Die Dranklisensieëringstribunaal of die Voorsittende Beampte, na gelang van die geval, mag gelas dat die voorgestelde bestuurder die opleiding en onderrig wat die Dranklisensieëringstribunaal spesifiseer, moet ontvang as ’n voorvereiste vir die goedkeuring van sodanige aanstelling.”;
- (e) deur subartikel (8) deur die volgende subartikel te vervang:
- “(8) Die goedkeuring van die aanstelling van ’n bestuurder ingevolge subartikel (1), (1A) of (2) bly geldig tot die aanstelling van ’n nuwe

- bestuurder of die verstryking van die tydperk waarvoor die lisensie toegestaan of toestemming verleen is, na gelang van die geval.”;
- (f) deur subartikel (9) deur die volgende subartikel te vervang: 5
 “(9) Indien ’n persoon wie se aanstelling as bestuurder ingevolge subartikel (1), (1A) of (2) goedgekeur is, ophou om die gelisensieerde besigheid te bestuur of gediskwalifiseer word om dit te doen, moet die lisensiehouer binne dertig (30) dae vanaf daardie gebeurtenis, ingevolge subartikel (2) aansoek doen vir goedkeuring van die aanstelling van ’n bestuurder in sy of haar plek.”;
- (g) deur subartikel (10) deur die volgende subartikel te vervang: 10
 “(10) Indien ’n lisensiehouer versuim om aan subartikel (9) te voldoen, mag [sy] die lisensie ingevolge artikel 20(3)(b)(ii) ingetrek of ingevolge artikel 20(3)(b)(iii) opgeskort word.”; en
- (h) deur die volgende subartikel by te voeg: 15
 “(11) In hierdie artikel beteken “lisensiehouer” ook die houer van ’n dranklisensie vir ’n geleentheid.”.

Wysiging van artikel 56 van Wet 4 van 2008

19. Artikel 56 van die Hoofwet word gewysig—

- (a) deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang: 20
 “(b) ’n kamer of plek wat die Dranklisensieëringstribunaal of Voorsittende Beampte afgebaken het as ’n gebied waarin persone onder die ouderdom van agtien (18) jaar nie toegelaat word nie; en”;
- (b) deur subartikel (3) deur die volgende subartikel te vervang: 25
 “(3) ’n Persoon onder die ouderdom van agtien (18) jaar mag toegang tot ’n beperkte gebied hê op ’n gelisensieerde perseel waar drank verkoop word vir verbruik buite die gelisensieerde perseel slegs indien vergesel óf deur ’n ouer of voog óf deur ’n volwassene met die toestemming van ’n ouer of voog van daardie persoon.”.

Wysiging van artikel 59 van Wet 4 van 2008, soos gewysig by artikel 43 van Wet 10 van 2010 30

20. Artikel 59 van die Hoofwet word gewysig—

- (a) deur subartikel (3) deur die volgende subartikel te vervang: 35
 “(3) Indien ’n munisipaliteit nie die handelsdae en -ure bepaal het vir gelisensieerde besighede wat drank verkoop vir verbruik op of buite die gelisensieerde perseel nie is die handelsdae en -ure vir so ’n besigheid dié wat te eniger tyd deur die Dranklisensieëringstribunaal of die Voorsittende Beampte, na gelang van die geval, as ’n deel van die voorwaardes van die betrokke lisensie goedgekeur word.”;
- (b) deur subartikel (4) deur die volgende subartikel te vervang: 40
 “(4) Indien ’n munisipaliteit nie die handelsdae en -ure bepaal het vir gelisensieerde besighede wat drank verkoop vir verbruik op of buite die gelisensieerde perseel nie mag die Voorsittende Beampte te eniger tyd by aansoek deur die lisensiehouer van so ’n besigheid, by ’n kennisgewing wat afgelewer of aangebied word aan die lisensiehouer, die handelsdae en -ure vir daardie besigheid verleng.”; 45
- (c) deur die volgende subartikel na subartikel (4) in te voeg: 50
 “(4A) Die handelsdae en -ure vir ’n gelisensieerde besigheid mag nie goedgekeur word of verleng word ingevolge subartikel (3) of (4) na ’n tyd later as 20:00 ten opsigte van ’n lisensie vir die verkoop van drank vir verbruik buite die gelisensieerde perseel en later as 02:00 die volgende dag ten opsigte van ’n lisensie vir die verkoop van drank vir verbruik op die gelisensieerde perseel nie.”;
- (d) deur subartikel (5) deur die volgende subartikel te vervang: 55
 “(5) Die Voorsittende Beampte moet die maatstawwe bedoel in artikel 34(1)(a) en (e) in ag neem by die oorweging van ’n aansoek ingevolge subartikel (4).”;
- (e) deur subartikel (6) deur die volgende subartikel te vervang:

- “(6) Die [Raad] Owerheid moet, binne die voorgeskrewe tydperk ná die toestaan of weiering van ’n aansoek ingevolge subartikel (4) gedoen, die aansoeker in kennis stel van die besluit van die [Dranklisensieringstribunaal] Voorsittende Beampte.”;
- (f) deur subartikel (8) deur die volgende subartikel te vervang: 5
 “(8) Behoudens artikel 89(10), is ’n lisensiehouer wat drank op die gelisensieerde perseel verkoop of verskaf, of die verbruik van drank daarop toelaat, op ’n tyd wanneer die verkoop van drank nie ingevolge subartikel (1) [of], (3) of (4) toegelaat word nie, skuldig aan ’n misdryf.”; en 10
- (g) deur die volgende subartikel by te voeg:
 “(9) Waar ’n lisensie beoog in artikel 89(10) outomaties ingevolge artikel 63 hernu word en indien die betrokke munisipaliteit nie die handelsdae en -ure bepaal het nie vir gelisensieerde besighede wat drank verkoop vir verbruik op of buite die gelisensieerde perseel, na gelang van die geval, is die handelsure op enige dag waarop die lisensiehouer ingevolge die bepaling van die betrokke lisensie gemagtig is om drank te verkoop, beperk tot— 15
- (a) in die geval van ’n lisensie vir die verkoop van drank vir verbruik buite die gelisensieerde perseel, nie later nie as 20:00 op daardie dag; en 20
- (b) in die geval van ’n lisensie vir die verkoop van drank vir verbruik op die gelisensieerde perseel, nie later nie as 02:00 die volgende dag.”. 20

Wysiging van artikel 60 van Wet 4 van 2008

21. Artikel 60 van die Hoofwet word gewysig— 25
- (a) deur subartikel (3) te skrap; en
- (b) deur subartikel (4) deur die volgende subartikel te vervang:
 “(4) ’n Oortreding van, of versuim om te voldoen aan, subartikel (1)[,] of (2) [of (3)] is ’n misdryf.”.

Wysiging van artikel 62 van Wet 4 van 2008, soos gewysig by artikel 44 van Wet 10 van 2010 30

22. Artikel 62 van die Hoofwet word gewysig—
- (a) deur paragraaf (c) van subartikel (2) deur die volgende paragraaf te vervang:
 “(c) op die datum deur die Dranklisensieringstribunaal of die Voorsittende Beampte bepaal wanneer [hy] die lisensie [intrek] ingetrek word.”; 35
- (b) deur paragraaf (d) van subartikel (2) deur die volgende paragraaf te vervang:
 “(d) waar geldigheid reeds aan die lisensie verleen is, op die datum waarop die Appèltribunaal of ’n hof die besluit om die lisensie toe te staan of uit te reik tersyde stel; of”;
- (c) deur paragraaf (b) van subartikel (3) deur die volgende paragraaf te vervang:
 “(b) waar die lisensie verval het in die omstandighede in subartikel (2)(b) beoog, die besluit deur die Dranklisensieringstribunaal of die Voorsittende Beampte om daardie lisensie in te trek, deur die Appèltribunaal of ’n hof, na gelang van die geval, tersyde gestel word; of”;
- (d) deur paragraaf (c) van subartikel (3) deur die volgende paragraaf te vervang:
 “(c) waar die lisensie verval het in die omstandighede in subartikel (2)(d) beoog, die besluit deur die Appèltribunaal of die hof, na gelang van die geval, om die besluit om daardie lisensie toe te staan of uit te reik tersyde te stel op appèl of hersiening tersyde gestel word.”. 50

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

23. Artikel 63 van die Hoofwet word deur die volgende artikel vervang:

“Outomatiese hernuwing van lisensies

63. (1) Die Owerheid 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. 5

(2) By betaling van die voorgeskrewe jaarlikse hernuwingsfooie word die lisensie outomaties hernu tot 31 Desember van die jaar ten opsigte waarvan die hernuwingsfooie betaal is. 10

(2A) Ondanks subartikels (1) en (2) mag ’n lisensiehouer op die voorgeskrewe wyse inteken op ’n tweejaarlikse hernuwingsiklus, in welke geval die Owerheid ’n tweejaarlikse hernuwingskennisgewing moet uitreik, in die voorgeskrewe vorm, nie later nie as 31 Oktober van die jaar wat die eerste jaar van die tweejaartydperk voorafgaan, ten opsigte waarvan die voorgeskrewe tweejaarlikse hernuwingsfooie betaal behoort te word. 15

(2B) By betaling van die voorgeskrewe tweejaarlikse hernuwingsfooie is die lisensie outomaties hernu tot 31 Desember van die tweede jaar van die tweejaartydperk ten opsigte waarvan daardie fooie betaal is. 20

(3) Die lisensiehouer word nie van sy of haar verpligting om die voorgeskrewe hernuwingsfooie betyds te betaal, kwytskeld nie as die kennisgewing nie aan hom of haar gestuur of deur hom of haar ontvang is nie. 25

(4) ’n Lisensiehouer wat versuim om die voorgeskrewe hernuwingsfooie te betaal voor of op die laaste dag van Februarie van die jaar of die eerste jaar van die tweejaartydperk, na gelang van die geval, 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 Owerheid moet bepaal, behoudens die betaling van die hernuwingsfooie plus ’n boete van 150%. 30

(5) Indien die Hoof-Uitvoerende Beampte ingevolge 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 of wat die eerste jaar van die tweejaartydperk voorafgaan, na gelang van die geval. 35

(6) Indien die lisensiehouer versuim om die voorgeskrewe hernuwingsfooie en die boete ingevolge subartikel (4) opgelê te betaal, word die lisensie geag te verval het op 1 Januarie van die jaar of die eerste jaar van die tweejaartydperk, na gelang van die geval, ten opsigte waarvan die voorgeskrewe hernuwingsfooie betaal moes word.”. 40

Wysiging van artikel 64 van Wet 4 van 2008, soos gewysig by artikel 46 van Wet 10 van 2010

24. Artikel 64 van die Hoofwet word gewysig deur subartikel (7) deur die volgende subartikel te vervang: 50

“(7) Indien die Dranklisensieëringstribunaal ’n aansoek vir die hernuwing van die lisensie toestaan, word die lisensie, by betaling van die voorgeskrewe hernuwingsfooie, geag hernu te wees ingevolge artikel 63(2) of (2B), na gelang van die geval.”. 55

Wysiging van artikel 65 van Wet 4 van 2008, soos gewysig by artikel 49 van Wet 10 van 2010

25. Artikel 65 van die Hoofwet word gewysig—

- (a) deur subartikel (12) deur die volgende subartikel te vervang: 5
 “(12) Die Dranklisensiëringstribunaal moet die aansoek binne die voorgeskrewe tydperk óf weier óf toestaan **[binne die voorgeskrewe tydperk]** óf voorwaardelik toestaan onderhewig aan die voorwaardes wat die Dranklisensiëringstribunaal mag bepaal.”
- (b) deur die volgende subartikels na subartikel (12) in te voeg: 10
 “(12A) Die Dranklisensiëringstribunaal moet, wanneer hy ’n aansoek voorwaardelik toestaan, ’n tydperk vermeld waarbinne die voorgestelde lisensiehouer aan die voorwaardes bedoel in subartikel (12) moet voldoen.
 (12B) Die Dranklisensiëringstribunaal mag te eniger tyd, by aansoek deur die voorgestelde lisensiehouer, die voorwaardes wysig of intrek. 15
 (12C) Die Voorsittende Beampte mag te eniger tyd, by aansoek deur die voorgestelde lisensiehouer, die tydperk vermeld ingevolge subartikel 12(A) verleng.”;
- (c) deur die volgende subartikels na subartikel (13) in te voeg: 20
 “(13A) Indien die voorgestelde lisensiehouer versuim om binne die tydperk bedoel in subartikel (12A) of die verlengde tydperk ingevolge subartikel (12C) te voldoen aan die voorwaardes wat deur die Dranklisensiëringstribunaal opgelê is, verval die voorwaardelike toestaan van die aansoek en word die aansoek om oordrag geag geweier te wees. 25
 (13B) Wanneer die Voorsittende Beampte oortuig is dat die voorgestelde lisensiehouer voldoen het aan die voorwaardes wat deur die Dranklisensiëringstribunaal opgelê is, moet die Voorsittende Beampte die aansoek om die oordrag van die lisensie toestaan.”;
- (d) deur subartikel (14) deur die volgende subartikel te vervang: 30
 “(14) Die Dranklisensiëringstribunaal of die Voorsittende Beampte mag, by die toestaan van ’n aansoek vir oordrag, gelas dat die voorgestelde lisensiehouer, of een of meer werknemers van daardie persoon, onderrig en opleiding moet ontvang soos deur die Dranklisensiëringstribunaal gelas.”; 35
- (e) deur subartikel (15) deur die volgende subartikel te vervang: 40
 “(15) Die Owerheid moet die voorgestelde lisensiehouer binne die voorgeskrewe tydperk nadat die Dranklisensiëringstribunaal of die Voorsittende Beampte, na gelang van die geval, ’n aansoek vir oordrag van ’n lisensie toegestaan het, skriftelik in kennis stel dat die aansoek toegestaan is.”;
- (f) deur subartikel (17) deur die volgende subartikel te vervang: 45
 “(17) Die Owerheid moet binne die voorgeskrewe tydperk na die betaling van die voorgeskrewe fooi in subartikel [4] (16) bedoel **[en behoudens artikels 42, 43, 44, 45 en 53(1) en (2)]** ’n sertifikaat van oordrag, wat die voorwaardes van die lisensie soos deur die Dranklisensiëringstribunaal ingevolge artikel 20(3)(a) opgelê, uiteensit, in die voorgeskrewe vorm aan die voorgestelde lisensiehouer uitreik.”; en
- (g) deur subartikel (21) deur die volgende subartikel te vervang: 50
 “(21) Die Dranklisensiëringstribunaal of die Voorsittende Beampte mag **[na goeddunke]** ’n aansoek vir oordrag toestaan ten gunste van ’n eksekuteur, trustee, kurator of likwidateur, of aan sodanige ander persoon wat die Dranklisensiëringstribunaal of die Voorsittende Beampte, na gelang van die geval, [geskik ag] mag bepaal.” 55

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

26. Artikel 66 van die Hoofwet word gewysig—

- (a) deur die woord “spesiale”, waar dit ook al voorkom, te skrap; 60
 (b) deur subartikel (4) deur die volgende subartikel te vervang:

- “(4) Die Dranklisensiëringstribunaal moet elke aansoek vir die verwydering van ’n lisensie oorweeg en mag—
- (a) die aansoek weier; **[of]**
 - (b) die aansoek toestaan; **of**
 - (c) die aansoek voorwaardelik toestaan behoudens die voorwaardes wat die Dranklisensiëringstribunaal mag bepaal.”;
- (c) deur na subartikel (4) die volgende subartikels in te voeg:
- “(4A) Die Dranklisensiëringstribunaal moet wanneer hy ’n aansoek voorwaardelik toestaan ’n tydperk vermeld waarbinne die lisensiehouer aan die voorwaardes bedoel in subartikel (4)(c) moet voldoen. 10
- (4B) Die Dranklisensiëringstribunaal mag te eniger tyd, by aansoek deur die lisensiehouer, die voorwaardes wysig of intrek.
- (4C) Die Voorsittende Beampte mag te eniger tyd, by aansoek deur die lisensiehouer, die tydperk vermeld ingevolge subartikel (4A) verleng.
- (4D) Indien die lisensiehouer versuim om binne die tydperk bedoel in subartikel (4A) of die verlengde tydperk ingevolge subartikel (4C) aan die voorwaardes bedoel in subartikel (4)(c) te voldoen, verval die voorwaardelike toestaan van die aansoek en word die aansoek om verwydering geag geweier te wees. 15
- (4E) Wanneer die Voorsittende Beampte oortuig is dat die lisensiehouer aan die voorwaardes bedoel in subartikel (4)(c) voldoen het, moet die Voorsittende Beampte die aansoek om die verwydering van die lisensie toestaan.”;
- (d) deur subartikel (5) deur die volgende subartikel te vervang: 25
- “(5) Die Owerheid moet, binne die voorgeskrewe tydperk nadat die Dranklisensiëringstribunaal of die Voorsittende Beampte ’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.”; en
- (e) deur subartikel 13 deur die volgende subartikel te vervang: 30
- “(13) Indien ’n aansoek vir die verwydering van ’n lisensie deur die Dranklisensiëringstribunaal of die Voorsittende Beampte 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 Owerheid in die kennisgewing beoog in subartikel (5), 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.”. 40

Wysiging van artikel 67 van Wet 4 van 2008

27. Artikel 67 van die Hoofwet word gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) ’n Persoon ingevolge subartikel [(1)(b)] (1) aangestel, word geag die lisensiehouer te wees.”. 45

Vervanging van artikel 68 van Wet 4 van 2008, soos gewysig by artikel 51 van Wet 10 van 2010

28. Artikel 68 van die Hoofwet word deur die volgende artikel vervang:

“Appèlle en hersienings na Appèltribunaal

68. (1) Die Appèltribunaal moet enige appèl teen, of aansoek vir die hersiening van, ’n besluit van die Dranklisensiëringstribunaal **[ingevolge artikel 20(3)]**, die Voorsittende Beampte of ’n Adjunk-Voorsittende Beampte oorweeg. 50

(2) Die Appèltribunaal mag ’n besluit of bevel wat die onderwerp van ’n appèl of hersiening is, bevestig, wysig of tersyde stel en die besluit of bevel vervang, na gelang van die omstandighede. 55

(2A) 'n Aansoeker of belanghebbende wat deur 'n besluit van die Dranklisensiëringstribunaal, die Voorsittende Beampte of 'n Adjunk-Voorsittende Beampte benadeel is, kan [by] die Dranklisensiëringstribunaal, Voorsittende Beampte of Adjunk-Voorsittende Beampte, na gelang van die geval, [aansoek doen] versoek om redes te verstrek vir daardie besluit. 5

(3) 'n Aansoeker of belanghebbende wat benadeel is deur 'n besluit van die Dranklisensiëringstribunaal, die Voorsittende Beampte of 'n Adjunk-Voorsittende Beampte mag binne die voorgeskrewe tydperk na ontvangs van redes vir [’n] die besluit [van die Dranklisensiëringstribunaal,] 'n kennisgewing van appèl of hersiening by die Dranklisensiëringstribunaal indien soos voorgeskryf. 10

[(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.] 15

(5) Indien die Appèltribunaal 'n besluit ingevolge subartikel (2) tersyde stel, mag hy die aangeleentheid terugverwys na die Dranklisensiëringstribunaal, Voorsittende Beampte of Adjunk-Voorsittende Beampte, na gelang van die geval, vir heroorweging met of sonder voorskrifte. 20

[(8) Die Appèltribunaal mag die bevel wat hy in die omstandighede goedgevind, maak aangaande die betaling van die koste van die partye by die verrigtinge of van die Dranklisensiëringstribunaal.] 25

(9)(a) 'n Aansoeker of belanghebbende wat [benadeel is deur die besluit van die Owerheid] 'n kennisgewing van appèl of hersiening ingedien het, mag persoonlik voor die Appèltribunaal verskyn of kan daar verteenwoordig word deur 'n advokaat, prokureur of enige ander persoon wat namens hom of haar verskyn. 30

(b) Die Dranklisensiëringstribunaal mag verteenwoordig word deur die Voorsittende Beampte, 'n Adjunk-Voorsittende Beampte, 'n advokaat, 'n prokureur of enige ander persoon wat namens die Dranklisensiëringstribunaal 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 sodanige 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. 40

(11) Die Appèltribunaal moet, binne vyf maande na die einde van 'n boekjaar, 'n verslag oor sy aktiwiteite gedurende daardie boekjaar aan die Minister voorlê vir tertafellegging in die Provinsiale Parlement.”.

Wysiging van artikel 69 van Wet 4 van 2008, soos gewysig by artikel 52 van 2010

29. Artikel 69 van die Hoofwet word gewysig deur subartikel (12) deur die volgende subartikel te vervang: 45

“(12) Bewys van nievoldoening aan 'n voldoeningskennisgewing, op 'n vergadering van die Dranklisensiëringstribunaal, maak, by gebrek aan bewys in die teendeel, *prima facie*-bewys uit van die pleging van 'n misdryf of 'n oortreding van die lisensievoorwaardes in die voldoeningskennisgewing voorgeskryf.”. 50

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

30. Artikel 73 van die Hoofwet word gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang: 55

“(1) Die [Wes-Kaapse] Provinsiale Kommissaris [van die Suid-Afrikaanse Polisie] mag ten opsigte van elke polisiekantoor [’n] een of meer [polisiebeampte met of bo die rang van Inspekteur] polisiebeamptes aanwys om die funksies van 'n aangewese drankbeampte ingevolge hierdie Wet te verrig.”; 60

- (b) deur subartikel (3) deur die volgende subartikel te vervang:
 “(3) Die **[Wes-Kaapse]** Provinsiale Kommissaris **[van die Suid-Afrikaanse Polisie]** mag ’n aanstelling ingevolge subartikel (1) gemaak of geag gemaak te wees, te eniger tyd beëindig.”;
- (c) deur subartikel (5) deur die volgende subartikel te vervang: 5
 “(5) Die Provinsiale Kommissaris moet by die aanwysing van ’n drankbeampte ingevolge subartikel (1), en die **[Raad] Owerheid** moet by die aanstelling van ’n inspekteur ingevolge subartikel (4), ’n sertifikaat van aanwysing of brief van aanstelling uitreik, onderteken deur die Provinsiale Kommissaris of die Hoof-Uitvoerende Beampte namens die **[Raad] Owerheid**, na gelang van die geval.”; en 10
- (d) deur die volgende subartikel by te voeg:
 “(8)(a) Die Provinsiale Kommissaris mag enige bevoegdheid of funksie van die Provinsiale Kommissaris ingevolge hierdie artikel skriftelik delegeer aan enige lid van die Suid-Afrikaanse Polisie of enige ander persoon in diens van die Suid-Afrikaanse Polisie om namens hom of haar uit te oefen of te verrig. 15
 (b) Artikel 15 van die Wet op die Suid-Afrikaanse Polisie is van toepassing, met die nodige veranderinge, op ’n delegasie kragtens paragraaf (a).”. 20

Wysiging van artikel 74 van Wet 4 van 2008

31. Artikel 74 van die Hoofwet word gewysig—

- (a) deur die opskrif van artikel 74 deur die volgende opskrif te vervang:
“Bevoegdheid van aangewese drankbeamptes, vredesbeamptes en inspekteurs”; 25
- (b) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 “Behoudens artikel 75 mag ’n aangewese drankbeampte, vredesbeampte of [**n**] inspekteur by die verrigting van sy of haar funksies ingevolge hierdie Wet—”; 30
- (c) deur subparagraaf (iii) in paragraaf (a) van subartikel (1) deur die volgende subparagraaf te vervang:
 “(iii) enige perseel of voertuig waarop of waarin hy of sy op redelike gronde vermoed drank geberg, vervoer of verkoop word strydig met die bepalings van hierdie Wet.”; 35
- (d) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
 “(b) op enige tyd en plek enige persoon versoek om onverwyld of op ’n datum en tyd wat deur die aangewese drankbeampte, vredesbeampte of inspekteur bepaal word, enige lisensie, rekord of ander dokument wat in die besit, bewaring of beheer van daardie persoon of enige ander persoon namens hom of haar is of vermoedelik is, aan hom of haar voor te lê.”; 40
- (e) deur subartikel (2) deur die volgende subartikel te vervang:
 “(2) Enige persoon wat in beheer is van ’n perseel in subartikel (1) beoog, moet die bystand verleen wat die aangewese drankbeampte, vredesbeampte of inspekteur redelikerwys versoek.”; 45
- (f) deur subartikel (3) deur die volgende subartikel te vervang:
 “(3) Enige persoon wat deur ’n aangewese drankbeampte, vredesbeampte of inspekteur ondervra word ingevolge hierdie Wet moet eers ingelig word oor sy of haar grondwetlike regte voordat enige ondervraging begin, en enige antwoord daarna deur daardie persoon moet waar wees en na sy of haar beste vermoë wees.”; en 50
- (g) deur die woorde in subartikel (4) wat paragraaf (a) voorafgaan deur die volgende woorde te vervang: 55
 “’n Antwoord of verduideliking wat aan ’n aangewese drankbeampte, vredesbeampte of [**n**] inspekteur gegee word, mag nie gebruik of toegelaat word in strafverrigtinge teen die persoon wat dit verskaf nie, behalwe in verrigtinge teen daardie persoon op ’n klag met betrekking tot—”. 60

Wysiging van artikel 75 van Wet 4 van 2008

32. Artikel 75 van die Hoofwet word gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:
 “(1) ’n Aangewese drankbeampte, vredesbeampte of [**n**] inspekteur mag ’n bevoegdheid in artikel 74 bedoel, uitoefen met betrekking tot die betreding, deursoeking en inspeksie van ’n perseel indien gemagtig deur ’n lasbrief uitgereik deur ’n landdros in ooreenstemming met subartikel (3).”;
- (b) deur subartikel (2) te skrap;
- (c) deur in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 “’n Landdros mag ’n lasbrief uitreik om enige perseel bedoel in artikel 74(1)(a) te betree en te inspekteer indien, op grond van inligting wat skriftelik en onder eed of plegtige verklaring verstrek is, die landdros rede het om te glo dat—”;
- (d) deur subartikel (4) deur die volgende subartikel te vervang:
 “(4) ’n Aangewese drankbeampte, vredesbeampte of [**n**] inspekteur mag die bevoegdhede in subartikel (1) bedoel sonder ’n lasbrief uitoefen—
 (a) met die toestemming van die eenaar of die persoon in beheer van die betrokke perseel;
 (b) indien daar ’n uitstaande voldoeningskennisgewing is wat uitgereik is ingevolge artikel 69, met die doel om vas te stel of daar aan die kennisgewing voldoen is; of
 (c) indien die aangewese drankbeampte, vredesbeampte of inspekteur op redelike gronde glo dat—
 (i) ’n lasbrief ingevolge subartikel (3) uitgereik sal word indien hy of sy daarvoor aansoek doen; en
 (ii) ’n vertraging in die verkryging van ’n lasbrief die oogmerke van die deursoeking of inspeksie sou verydél.”;
- (e) deur die volgende subartikel na subartikel (4) in te voeg:
 “(4A) ’n Aangewese drankbeampte, vredesbeampte of inspekteur mag die bevoegdhede bedoel in subartikel (1) sonder ’n lasbrief uitoefen slegs ten opsigte van ’n gelisensieerde perseel en indien die inspeksie gedoen word om voldoening aan hierdie Wet of aan die lisensievoorwaardes te kontroleer.”;
- (f) deur subartikel (5) deur die volgende subartikel te vervang:
 “(5) By betreding van ’n perseel ingevolge hierdie artikel moet die aangewese drankbeampte, vredesbeampte of inspekteur—
 (a) hom- of haarself identifiseer aan die persoon in beheer van die perseel;
 (b) die lasbrief, as daar een is, aan daardie persoon toon;
 (c) die gesag ingevolge waarvan die inspeksie gedoen word, verklaar; en
 (d) in die geval van ’n gelisensieerde perseel, die inspeksie doen met die mins moontlike ongerief vir die lisensiehouer of sy of haar kliënte en met die mins moontlike ontwrigting van die gelisensieerde besigheid.”;
- (g) deur subartikel (6) deur die volgende subartikel te vervang:
 “(6) ’n Aangewese drankbeampte, vredesbeampte of inspekteur moet by die beslaglegging op enigiets ingevolge hierdie artikel, ’n kwitansie aan die persoon van wie daar op die artikel beslag gelê is, uitreik waarin die artikels waarop beslag gelê is, beskryf word en die redes vir die beslaglegging verduidelik word.”; en
- (h) deur subartikel (7) deur die volgende subartikel te vervang:
 “(7) Artikels 30 tot 34 van die Strafproseswet is van toepassing, met die nodige veranderinge, op enigiets waarop daar ingevolge hierdie artikel beslag gelê is.”.

Vervanging van artikel 79 van Wet 4 van 2008

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

“Misdrywe betreffende aangewese drankbeamptes, vredesbeamptes en inspekteurs

- 79.** ’n Persoon wat— 5
- (a) hom of haar valslik as ’n aangewese drankbeampte, vredesbeampte of inspekteur voordoen;
 - (b) ’n aangewese drankbeampte, vredesbeampte of inspekteur by die uitvoering van sy of haar pligte ingevolge hierdie Wet verhinder;
 - (c) weier of versuim om ’n wettige opdrag van ’n aangewese drankbeampte, vredesbeampte of inspekteur te gehoorsaam; 10
 - (d) wanneer hy of sy deur ’n aangewese [**beampte**] drankbeampte, vredesbeampte of inspekteur ondervra word, wetend ’n vals of misleidende antwoord gee; of
 - (e) versuim om te voldoen aan ’n redelike versoek deur ’n aangewese drankbeampte, vredesbeampte of [**n**] inspekteur ingevolge artikel 74, 15
is skuldig aan ’n misdryf.”.

Herroeping van artikel 81 van Wet 4 van 2008

34. Artikel 81 van die Hoofwet word herroep. 20

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

35. Artikel 84 van die Hoofwet word gewysig—

- (a) deur in subartikel (1) die volgende paragraaf na paragraaf (k) in te voeg: 25
 “(kA) ’n afslaer wat namens ’n munisipaliteit of die Suid-Afrikaanse Polisiediens optree, in die verrigting van sy of haar funksies;
 (kB) die Suid-Afrikaanse Polisiediens of tersaaklike munisipaliteit, na gelang van die geval, ten opsigte van die verkoop van drank wat aan die Staat verbeur word soos beoog in artikel 87(4);”;
- (b) deur paragraaf (d) van subartikel (2) deur die volgende paragraaf te vervang: 30
 “(d) namens die hoof van ’n opvoedkundige instelling[, **uitsluitend ’n skool soos omskryf in die Suid-Afrikaanse Skolewet, 1996,**] in ’n restaurant gebruik vir die opleiding van personeel in spyseniersdienste op persele beset, beheer of onderhou deur die betrokke instelling, vir verbruik in daardie restaurant;”;
- (c) deur paragraaf (e) van subartikel (2) deur die volgende paragraaf te vervang: 35
 “(e) as daardie persoon ’n [**versamelaar**] bona fide-versamelaar is van wyn of spiritus en daardie drank bestaan uit sy of haar versameling wyn of spiritus of enige deel daarvan; of”;
- (d) deur paragraaf (f) van subartikel (2) deur die volgende paragraaf te vervang: 40
 “(f) as daardie persoon ’n [**gelisensieerde**] afslaer is wat optree namens ’n bona fide- kulturele of liefdadigheidsorganisasie, ’n opvoedkundige instelling[, **uitsluitend ’n skool soos omskryf in die Suid-Afrikaanse Skolewet, 1996,**] of ’n versekeraar.”.

Vervanging van artikel 85 van Wet 4 van 2008 45

36. Artikel 85 van die Hoofwet word deur die volgende artikel vervang:

“Bewys

85. (1) Indien daar in enige strafverrigtinge of op ’n vergadering van die Dranklisensieringstribunaal getuienis voorgelê word dat ’n persoon wat nie gelisensieer of toegelaat is om drank ingevolge hierdie Wet of enige ander wet te verkoop nie— 50

- (a) op of naby sy of haar perseel 'n teken of kennisgewing gehad het wat te kenne gee dat drank daar te koop is of dat hy of sy 'n geldige lisensie hou om drank te verkoop;
- (b) 'n perseel beset of onder sy of haar beheer gehad het wat toegerus was op 'n wyse wat tot die redelike afleiding lei dat drank daar te koop was; 5
- (c) meer drank [**as die maksimum volume in artikel 60 bedoel,**] op sy of haar perseel of onder sy of haar beheer gehad het [**sonder die voorafverkreë toestemming wat by daardie artikel vereis word**] as wat redelik nodig was vir hom- of haarself, sy of haar gesin en sy of haar gaste, tensy daardie persoon 'n bona fide-versamelaar van wyn of spiritus is en daardie drank bestaan uit sy of haar versameling wyn of spiritus of 'n deel daarvan; of 10
- (d) meer drank [**as die maksimum volume in artikel 60 bedoel,**] gekoop of verkry het [**sonder die voorafverkreë toestemming wat by daardie artikel vereis word**] as wat redelik nodig was vir hom- of haarself, sy of haar gesin en sy of haar gaste, tensy daardie persoon 'n bona fide-versamelaar van wyn of spiritus is en daardie drank bestaan uit sy of haar versameling wyn of spiritus of 'n deel daarvan. 15 20

is dit, by gebrek aan bewys van die teendeel wat redelike twyfel wek, prima facie-bewys van die verkoop van drank.

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

- (a) 'n verseëelde houer as bewys gelewer word wat 'n vloeistof bevat en op daardie houer daar 'n etiket of ander toestel is wat die alkoholinhoud van die vloeistof aandui, dan is dit, by gebrek aan bewys van die teendeel wat redelike twyfel wek, prima facie-bewys dat die vloeistof die verklaarde alkohol bevat, en indien die verklaarde alkoholinhoud meer as 1% alkohol per volume is, dat die vloeistof drank is; 25 30
- (b) meer as een houer as bewys gelewer word wat elkeen deel uitmaak van 'n voorraad of lot drank wat op dieselfde tyd op dieselfde plek aangetref is en daar bewys word dat een of meer sulke houters drank bevat, dan is dit, by gebrek aan bewys van die teendeel wat redelike twyfel wek, prima facie-bewys dat al die houters drank bevat; 35
- (c) 'n dokument as bewys gelewer word wat voorgee 'n afskrif van 'n lisensie of permit te wees, is dit by die blote voorlegging daarvan, by gebrek aan bewys van die teendeel wat redelike twyfel wek, 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 ingevolge hierdie Wet opgelê is; 40
- (d) 'n verklaring of sertifikaat as bewys gelewer word wat voorgee deur 'n ontleder of chemikus in diens van die Regering van die Republiek of in diens van 'n universiteit of van 'n mediese navorsingsinstituut onderteken te wees, wat 'n ontleding gedoen het van 'n vloeistof of stof wat die onderwerp van die strafverrigtinge of vergadering is, is dié verklaring of sertifikaat, by gebrek aan bewys van die teendeel wat redelike twyfel wek, prima facie-bewys van die inhoud van die verklaring of sertifikaat; of 45 50
- (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 agtien (18) jaar— 55
- (i) sy of haar geldige identiteitsdokument;
 - (ii) sy of haar geldige bestuurslisensie; of
 - (iii) sy of haar geldige paspoort, te verkry,

is sodanige bewys, by gebrek aan bewys van die teendeel wat redelike twyfel wek, prima facie-bewys van die feit dat die lisensiehouer kennis gedra het van die feit dat die persoon onder die ouderdom van agtien (18) jaar was.".

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

37. Artikel 87 van die Hoofwet word gewysig—

- (a) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang: 5
 “(b) artikels 49(7), 50(2), 51(9), 53(4), 58(3), 59(8), 76(e), 76(f)[,] of 76(i) [of 81(4)] is by skuldigbevinding strafbaar met ’n boete van hoogstens R500 000,00 of met gevangenisstraf vir ’n tydperk van hoogstens twee en ’n half jaar, of met sowel sodanige boete en sodanige gevangenisstraf;”;
- (b) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang: 10
 “(d) artikels 23(13), 48(15), 56(5), 76(a), 76(d), 77, 78(1), 78(3), 79, 80(1) of 86(2) is met skuldigbevinding strafbaar met ’n boete van hoogstens R50 000,00 of met gevangenisstraf vir ’n tydperk van hoogstens drie maande, of met sowel sodanige boete en sodanige gevangenisstraf.”; 15
- (d) deur subartikel (2) deur die volgende subartikel te vervang:
 “(2) ’n Persoon wat skuldig bevind word aan ’n misdryf ingevolge hierdie Wet en wat nadat hy of sy van daardie misdryf aangekla is of nadat hy of sy aldus skuldig bevind is, na gelang van die geval, volgehou het of volhou met die handeling of versuim wat die misdryf uitgemaak het, pleeg ’n voortgesette misdryf en is by skuldigbevinding strafbaar met ’n boete van hoogstens R2000,00 of met gevangenisstraf vir ’n tydperk van hoogstens dertig (30) dae, of met sowel sodanige boete en sodanige gevangenisstraf, ten opsigte van elke dag wat daardie persoon volhou met daardie handeling of versuim.”; 20 25
- (e) deur subartikel (3) te skrap; en
- (f) deur subartikel (4) deur die volgende subartikel te vervang:
 “(4)(a) Enige drank wat ingevolge die Strafproseswet aan die Staat verbeur word ten opsigte van ’n misdryf ingevolge hierdie Wet mag, behoudens die bepalings van daardie Wet, oor beskik word deur die verkoop daarvan by ’n openbare veiling deur— 30
 (i) die Suid-Afrikaanse Polisiediens, indien die vervolging van die misdryf deur daardie Diens aan die gang gesit is; of
 (ii) die tersaaklike munisipaliteit, indien die vervolging van die misdryf deur die munisipale polisiediens van daardie munisipaliteit aan die gang gesit is. 35
 (b) Die netto opbrengs van enige verkoop beoog in paragraaf (a) moet in die Nasionale Inkomstefonds of die tersaaklike bankrekening van die munisipaliteit gestort word, na gelang van die geval.”. 40

Wysiging van artikel 88 van Wet 4 van 2008

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38. Artikel 88 van die Hoofwet word gewysig—

- (a) deur in subartikel (1) na paragraaf (b) die volgende paragraaf in te voeg:
 “(bA) die hernuwing van lisensies;”; en
- (b) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang: 45
 “(d) die [beskikking oor drank wat aan die Staat verbeur word ingevolge artikel 87(2)] verkoop van verbeurde drank per openbare veiling soos beoog in artikel 87(4); of”.

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

39. Die indeks voor artikel 1 van die Hoofwet word gewysig—

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- (a) deur die verwysing na die opskrif van artikel 17 deur die volgende item te vervang:
 “17. Diskwalifisering vir aanstelling as lid of vervangende lid van Dranklisensieringstribunaal”; 55
- (b) deur die verwysing na die opskrif van artikel 48 deur die volgende item te vervang:
 “48. Tydelike dranklisensies en dranklisensies vir [spesiale] geleentheid;”;

- (c) deur die verwysing na die opskrif van artikel 74 deur die volgende item te vervang:
“74. Bevoegdhede van aangewese drankbeamptes, vredesbeamptes en inspekteurs”;
- (d) deur die verwysing na die opskrif van artikel 79 deur die volgende item te vervang: 5
“79. Misdrywe betreffende aangewese drankbeamptes, vredesbeamptes en inspekteurs”; en
- (e) deur die verwysing na artikel 81 te skrap.

Kort titel en inwerkingtreding

10

40. Hierdie Wet heet die Wes-Kaapse Drankwysigingswet, 2015, en tree in werking op 'n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

MEMORANDUM OOR DIE OOGMERKE VAN DIE WES-KAAPSE DRANKWYSIGINGSWETSONTWERP, 2015

1. AGTERGROND

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

2. OOGMERKE VAN WETSONTWERP

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

3. INHOUD VAN WETSONTWERP

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

- 3.1 **Klousule 1** bepaal nuwe omskrywings vir die terme “Provinsiale Kommissaris”, “munisipale polisie diens” en “vervangende lid”. Dit wysig die omskrywing vir “geleentheid” en voeg 'n nuwe omskrywing in vir “dranklisensie vir 'n geleentheid”, in ooreenstemming met die wysigings aan bepalings in die Hoofwet in verband met lisensies vir 'n spesiale geleentheid. Die klousule wysig voorts 'n artikelverwysing in die omskrywing vir “bestuurder”, wysig die omskrywing vir “Adjunk-Voorsittende Beampte” en brei die omskrywing vir “vredesbeampte” uit om 'n lid van die Suid-Afrikaanse Polisie diens of 'n lid van 'n munisipale polisie diens in te sluit. Die klousule skrap die omskrywing vir “'n persoon” en “gefortifiseerde wyn” en voeg 'n omskrywing in vir “spiritus”. Die klousule wysig ook die omskrywing vir “natuurlike wyn”.
- 3.2 **Klousule 2** wysig artikel 16 van die Hoofwet deur voorsiening te maak vir die *ad hoc*-aanstelling van vervangende lede. Dit maak ook die aanstelling van tot drie Adjunk- Voorsittende Beamptes moontlik. Dit brei voorts die gesag van

die Voorsittende Beampte uit om enige van sy of haar bevoegdheids- of funksies te deleger.

- 3.3 **Klousule 3** wysig artikel 17 van die Hoofwet en is 'n gevolglike wysiging van die wysigings rakende die aanstelling van vervangende lede.
- 3.4 **Klousule 4** wysig artikel 18 van die Hoofwet en bring die Wet in ooreenstemming met die veranderinge in verskeie rangbenamings wat tans in die Suid-Afrikaanse Polisiediens gebruik word.
- 3.5 **Klousule 5** wysig artikel 19 van die Hoofwet en is 'n gevolglike wysiging van die wysigings rakende die toename in die getal Adjunk- Voorsittende Beamptes.
- 3.6 **Klousule 6** wysig artikel 20 van die Hoofwet deur die uitgediende verwysing na artikel 65(9) te skrap. Dit maak voorsiening vir die Dranklisensieringstribunaal om 'n aangeleentheid te heroorweeg wat deur die Appèltribunaal terugverwys is. Die klousule skep ook die bevoegdheid van die Voorsittende Beampte om 'n aangeleentheid vir oorweging na die Dranklisensieringstribunaal te verwys.
- 3.7 **Klousule 7** wysig artikel 21 van die Hoofwet deur te bepaal dat die Voorsittende Beampte 'n vervangende lid kan versoek om enige van die vergaderings van die Dranklisensieringstribunaal by te woon waar enige ander lid onbeskikbaar is om dit by te woon. Die doel van hierdie wysiging is om die gebrek aan 'n kworum weens die onbeskikbaarheid van lede te voorkom by vergaderings van die Dranklisensieringstribunaal.
- 3.8 **Klousule 8** vervang artikel 22 van die Hoofwet en is 'n gevolglike wysiging van die wysiging rakende die aanstelling van vervangende lede.
- 3.9 **Klousule 9** wysig artikel 24 van die Hoofwet deur te bepaal dat die Voorsittende Beampte 'n vervangende lid kan versoek om enige van die vergaderings van 'n komitee van die Dranklisensieringstribunaal by te woon indien enige ander lid van daardie komitee onbeskikbaar is om dit by te woon. Die klousule stel die Dranklisensieringstribunaal in staat om meer van sy funksies aan 'n komitee te deleger. Die klousule verleen in bepaalde omstandighede stemreg aan gekoöpteerde lede wat in 'n komitee van die Dranklisensieringstribunaal aangestel is.
- 3.10 **Klousule 10** wysig artikel 25 van die Hoofwet en is 'n gevolglike wysiging van die wysiging rakende die appèl en hersiening van besluite van die Dranklisensieringstribunaal, Voorsittende Beampte en Adjunk- Voorsittende Beamptes.
- 3.11 **Klousule 11** wysig artikel 27 van die Hoofwet en is 'n gevolglike wysiging van die wysiging rakende die aanstelling van vervangende lede.
- 3.12 **Klousule 12** vervang artikel 30 van die Hoofwet. Terwyl dit 'n gevolglike wysiging van die uitbreiding van die verskeie misdrywe kragtens die Hoofwet is, ken dit ook fondse toe wat deur die werking van die Wet gegeneer word.
- 3.13 **Klousule 13** wysig artikel 33 van die Hoofwet en is 'n gevolglike wysiging van die wysigings ten opsigte van dranklisensies vir geleenthede in klousule 16 van die Wetsontwerp.
- 3.14 **Klousule 14** wysig artikel 41 van die Hoofwet. Hierdie wysiging brei die faktore uit waarvan die Dranklisensieringstribunaal kennis kan neem by die oorweging van 'n aansoek om 'n dranklisensie.
- 3.15 **Klousule 15** wysig artikel 42 van die Hoofwet ten einde die Dranklisensieringstribunaal in staat te stel om die voorwaardelike toestaan van 'n lisensie in te trek. Dit stel ook die Voorsittende Beampte in staat om te

bepaal of die aansoeker aan die voorwaardes voldoen wat in 'n voorwaardelike lisensie gestel is.

- 3.16 **Klousule 16** vervang artikel 48 van die Hoofwet om weg te doen met dranklisensies vir spesiale geleenthede, wat met dranklisensies vir 'n geleentheid vervang word. Voorts reguleer dit die toestaan van tydelike lisensies.
- 3.17 **Klousule 17** wysig artikel 51 van die Hoofwet deur die reg om aansoek te doen om die verhuring van 'n gelisensieerde perseel na alle lisensiehouers uit te brei. Hierdie klousule reguleer die toestaan van aansoeke om gelisensieerde persele te verhuur.
- 3.18 **Klousule 18** wysig artikel 52 van die Hoofwet. Dit wysig die proses vir die aanstelling van 'n bestuurder en stel die Voorsittende Beampte in staat om in bepaalde omstandighede aanstellings te maak.
- 3.19 **Klousule 19** wysig artikel 56 van die Hoofwet sodat persone onder die ouderdom van 18 jaar verbied word om toegang te hê tot die beperkte gebied van 'n perseel wat gelisensieer is vir die verkoop van drank vir verbruik op die perseel.
- 3.20 **Klousule 20** wysig artikel 59 van die Hoofwet. Dit vereenvoudig en stel die bepalings duideliker rakende handelsdae en -ure in gevalle waar 'n munisipaliteit nie die handelsdae en -ure vir die verkoop van drank vir verbruik op en buite die perseel bepaal het nie.
- 3.21 **Klousule 21** wysig artikel 60 van die Hoofwet deur weg te doen met die bepaling wat ongelisensieerde persone verbied om meer as 'n sekere hoeveelheid drank in hul besit te hê.
- 3.22 **Klousule 22** wysig artikel 62 van die Hoofwet deur die bepalings te wysig wat met die geldigheid van 'n lisensie verband hou as gevolg van die wysiging van artikel 68.
- 3.23 **Klousule 23** vervang artikel 63 deur 'n lisensiehouer die opsie te gee om 'n tweejarige hernuwingsiklus te volg.
- 3.24 **Klousule 24** wysig artikel 64 van die Hoofwet en is 'n gevolglike wysiging van die wysiging rakende die ingebruikneming van die tweejaarlikse hernuwingsiklus.
- 3.25 **Klousule 25** wysig artikel 65 van die Hoofwet deur die Dranklisensieringstribunaal in staat te stel om 'n aansoek om die oordrag van 'n lisensie voorwaardelik goed te keur. Hierdie klousule reguleer die uiteindelijke toestaan van voorwaardelik goedgekeurde aansoeke om die oordrag van lisensies.
- 3.26 **Klousule 26** wysig artikel 66 van die Hoofwet en is 'n gevolglike wysiging van die wysigings rakende dranklisensies vir spesiale geleenthede. Dit stel die Dranklisensieringstribunaal in staat om 'n aansoek om die verwydering van 'n lisensie voorwaardelik goed te keur en reguleer voorts die uiteindelijke toestaan van 'n voorwaardelik goedgekeurde aansoek om die verwydering van 'n lisensie.
- 3.27 **Klousule 27** wysig artikel 67 van die Hoofwet en is 'n tegniese wysiging.
- 3.28 **Klousule 28** vervang artikel 68 van die Hoofwet. Dit brei die reg op appèl en hersiening uit om alle besluite van die Dranklisensieringstribunaal, Voorsittende Beampte of Adjunk- Voorsittende Beamptes in te sluit. Hierdie klousule brei die bevoegdheid van die Appèltribunaal uit om 'n aangeleentheid wat voor hom dien, terug te verwys vir heroerwering na die aanvanklike besluitnemer wanneer hy 'n besluit ter syde stel.

- 3.29 **Klousule 29** wysig artikel 69 om dit in ooreenstemming te bring met die wysigings van artikel 85.
- 3.30 **Klousule 30** wysig artikel 73 van die Hoofwet en is 'n gevolglike wysiging van die ooreenstemming van die Wet met die rangbenamings van die Suid-Afrikaanse Polisie diens. Dit bepaal ook dat die Provinsiale Kommissaris sy of haar bevoegdheede en funksies in ooreenstemming met die Wet op die Suid-Afrikaanse Polisie diens, 1995 (Wet 68 van 1995), kan delegeer.
- 3.31 **Klousule 31** wysig artikel 74 van die Hoofwet. Dit maak voorsiening vir die afdwinging van die Hoofwet deur vredesbeamptes.
- 3.32 **Klousule 32** wysig artikel 75 van die Hoofwet en is 'n gevolglike wysiging van die wysigings rakende die insluiting van vredesbeamptes by die afdwinging van die Wet. Dit maak verder voorsiening vir die deursoeking, betreding en inspeksie van 'n gelisensieerde perseel sonder die vereiste van 'n lasbrief in bepaalde omstandighede.
- 3.33 **Klousule 33** vervang artikel 79 van die Hoofwet en is 'n gevolglike wysiging van die wysigings rakende die insluiting van vredesbeamptes by die afdwinging van die Hoofwet.
- 3.34 **Klousule 34** herroep artikel 81 van die Hoofwet.
- 3.35 **Klousule 35** wysig artikel 84 van die Hoofwet deur die vrystellings uit te brei waarvoor daar in hierdie artikel voorsiening gemaak word, na afslaaers wat namens die Suid-Afrikaanse Polisie diens of 'n munisipaliteit optree en na die Suid-Afrikaanse Polisie diens of die tersaaklike munisipaliteit wat drank verkoop wat aan die Staat verbeur is. Dit skrap verwysings na die Suid-Afrikaanse Skolewet, 1996 (Wet 84 van 1996), en brei die uitsonderings van die Wet uit na *bona fide*-versamelaars van wyn en spiritus.
- 3.36 **Klousule 36** vervang artikel 85 van die Hoofwet en is 'n gevolglike wysiging van die wegdoening van die verbod teen die besit deur ongelisensieerde persone van meer as 'n sekere hoeveelheid drank.
- 3.37 **Klousule 37** wysig artikel 87 van die Hoofwet deur die misdrywe ingevolge die Hoofwet uit te brei, deur voorsiening te maak vir voortgesette misdrywe en vir die verkoop per openbare veiling van drank waarop beslag gelê is.
- 3.38 **Klousule 38** wysig artikel 88 van die Hoofwet en is 'n gevolglike wysiging van die bepaling rakende die verkoop per openbare veiling van drank waarop beslag gelê is.
- 3.39 **Klousule 39** wysig die inhoudsopgawe van die Hoofwet om dit in ooreenstemming te bring met die wysigings van die Wetsontwerp.
- 3.40 **Klousule 40** maak voorsiening vir die kort titel van die Wet en die inwerkingtreding daarvan.

4. WETGEWENDE BEVOEGDHEID

Die Provinsiale Minister verantwoordelik vir ekonomiese geleenthede is oortuig dat die bepaling van die Wetsontwerp binne die wetgewende bevoegdheid van die Provinsie ressorteer.

5. OORLEGPLEGING

Departement van die Premier: Regsdienste
Stad Kaapstad en ander munisipaliteite
Wes-Kaapse Drankowerheid
Suid-Afrikaanse Polisie
Provinsiale Tesourie
Rolspelers in die bedryf

6. FINANSIËLE IMPLIKASIES

Die Drankowerheid kan vervangende lede en Adjunk- Voorsittende Beamptes aanstel. Daar sal vir die koste van hul vergoeding begroot moet word.

7. PERSONEELIMPLIKASIES

Dit word verwag dat daar bykomende administrasie ten opsigte van aangestelde vervangende lede en Adjunk- Voorsittende Beamptes sal wees. Die Wes-Kaapse Drankowerheid sal moontlik bykomende personeel moet aanstel en voor begroot.

AMAGQABANTSHINTSHI ACACISAYO:

- [] Amagama abhalwe ngqindilili akwizibiyeli ezisikweri abonisa okukhutshiweyo kwimithetho ekhoyo.
-
- Amagama akrwelwe umgca ngaphantsi abonisa okuye kongezwa kwimithetho ekhoyo.
-
-

ULUNGISO LOMTHETHO OSAYILWAYO

Owenza izilungiso kuMthetho woTywala weNtshona Koloni, ka-2008, malunga neenkcazelo ezithile; ukulungiselela ukumiselwa kwaMasekela-Gosa oNgameleyo angekho ngaphezulu kwesithathu ukuze abe yinxalenye yeSigqeba seeLayisenisi zoTywala; ukulungiselela ukuba iGosa eLongameleyo leSigqeba seeLayisenisi zoTywala lidlulisele amagunya nemisebenzi yalo; ukulungiselela ukuba kukwazeka ukutyumba amagosa endaweni yalawo akhoyo okanye ebekhona kwiSigqeba seeLayisenisi zoTywala; ukulungiselela ukuba iGosa eLongameleyo leSigqeba seeLayisenisi zoTywala lidlulisele imicimbi ethile yeeLayisenisi zoTywala ukuba iphononongwe; ukongeza amagunya eSigqeba seeLayisenisi zoTywala; ukunikeza amalungelo okuvota kumalungu afakelelweyo atyunjwe kwiikomiti ezithile; ukongeza imisebenzi yeSigqeba seeLayisenisi zoTywala enokudluliselwa kwikomiti; ukubeka umqathango owahlukileyo malunga nokukhula kwengeniso kumaziko athile; ukuchaza ngomnye umba owongezelelekileyo iSigqeba seeLayisenisi zoTywala okanye iGosa eLongameleyo elisenokuwuthathela ingqalelo xa lijonga isicelo selayisenisi yotywala; ukulawula ngakumbi ukunikezwa kweelayisenisi phantsi kwemiqathango ethile; ukuyekisa iilayisenisi zotywala zeziganeko ezithile ze endaweni yoko kwenziwe imiqathango yeelayisenisi zotywala zeziganeko; ukwenza eminye imiqathango yokurentisa ngezakhiwo ezinelayisenisi; ukwenza eminye imiqathango yokuqeshwa kweemanejala zamashishini anelayisenisi; ukwenza imiqathango eyahlukileyo malunga nokungena kwabantu abaneminyaka engaphantsi kweli-18 kwiindawo zokusela utywala ukuze kubekho imigaqo yothintelo kwimimandla eneelayisenisi; ukwenza imiqathango eyahlukileyo malunga neentsuku kunye neeyure zokuthengisa utywala kumashishini anelayisenisi; ukubhangisa imiqathango enqanda ukuba abantu abangenalayisenisi bangabi notywala obungaphezulu koko bafanele ukuba babe nabo; ukwenza eminye imiqathango emalunga nokuphelelwa kweelayisenisi; ukwenza umqathango owahlukileyo malunga nohlaziyo oluzenzekelayo lweelayisenisi; ukwenza eminye imiqathango emalunga nokudluliselwa kweelayisenisi; ukwenza eminye imiqathango malunga nokuthathwa kweelayisenisi; ukwenza eminye imiqathango malunga nokuvalwa kwezakhiwo ezinelayisenisi; ukwenza izilungiso kwimiqathango emalunga neminye imisebenzi yamalungu aMapolisa oMzantsi Afrika ephuma kulo Mthetho; ukwenza imiqathango ethi amapolisa kamasipala angamagosa ocwangco ngokwalo Mthetho; kunye nokongeza amagunya amagosa ocwangco ngokwalo Mthetho; ukwenza eminye imiqathango yokungena; ukusethwa nokuphandwa kwezakhiwo ezithile; ukubhangisa imiqathango enqanda ukuthengisa, ukubonelela okanye ukusela utywala kwisiza esineshishini elisisitishi sepetroli,

idizili okanye ezinye iimveliso zamafutha ezithuthi; ukongeza abo baphulelwayo ukuba bangawuthobeli lo Mthetho; ukucacisa iimeko apho ubungqina buthathwa *njengoko bunjalo* de buphikiswe kwiinkqubo zeenkundla okanye kwiinkqubo zokumamela zeSigqeba seeLayisenisi zoTywala; ukwenza eminye imiqathango malunga namatyala nezohlwayo; ukwenza imiqathango yokuthengisa efandesini izinto ezithile ezithinjwe nguRhulumente; ukufakelela ezinye izinto zokuphucula uxwebhu; kunye nokulungiselela imiba enxulumene noku.

MAWUPHUNYEZWE yiPalamente yePhondo leNtshona Koloni ngolu hlobo lulandelayo:—

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

- 1.** Icandelo 1 loMthetho woTywala weNtshona Koloni, ka-2008 (uMthetho-
ngqangi), lenziwa izilungiso— 5
- (a) ngokufakelwa kwale nkcazo-gama ilandelayo emva kwenkcazo yegama elithi
“ISekela-Gosa eLongameleyo”:
“**Isekela-Gosa eLongameleyo**’ lithetha umntu onyulwe njengeSekela-
gosa eLongameleyo leSigqeba seeLayisenisi zoTywala ngokwecandelo 10
16(1)(b);
- (b) ngokufakelwa kwale nkcazo-gama ilandelayo emva kwenkcazo
ethi “iziyobisi”:
“**isiganeko**’ sibandakanya umboniso, intlanganiso yezemidlalo,
ukwenza okuthile eqongeni, okanye umsebenzi; 15
ilayisenisi yotywala yesiganeko’ ithetha ilayisenisi ekubhekiswe kuyo
kwicandelo 33(2)(a);”;
- (c) ngokucinywa kwenkcazelo yegama elithi “isipirithi”;
- (d) ngokufakelwa kwale nkcazo-gama ilandelayo endaweni yenkcazo yegama
elithi “umphathi”:
“**umphathi**’ uthetha umntu okunyulwa kwakhe njengomphathi
kuvunye ngokwemigaqo yecandelo [52(1)] 52;”;
- (e) ngokufakelwa kwale nkcazo-gama ilandelayo emva kwenkcazelo yegama
elithi “umasipala”:
“**iinkonzo zamapolisa kamasipala**’ zithetha iinkonzo zamapolisa 25
kamasipala ezimiselwe phantsi kwecandelo 64A leSouth African Police
Service Act, 1995 (UMthetho 68 ka-1995);”;
- (f) ngokufakelwa kwale nkcazo-gama ilandelayo endaweni yenkcazo yamagama
athi “iwayini”:
“**iwayini yendalo**’ ithetha yiwayini enotywala [obuyi-6,5%] 4,5% 30
ubuncinane kodwa bube ngaphantsi kwe-16,5%, [yaye
ayiyibandakanyi iwayini enesipirithi];”;
- (g) ngokufakelwa kwale nkcazo-gama ilandelayo endaweni yenkcazo yamagama
elithi “igosa elingumgcini-cwangco”:
“**igosa elingumgcini-cwangco**’ lithetha— 35
(a) Naliphi [igosa lasebupoliseni] ilungu (njengoko lichaziwe
kwicandelo 1 leSouth African Police Service Act, 1995) leNkonzo
yaMapolisa yaseMzantsi Afrika;
(b) naliphi ilungu lenkonzo yesipolisa kamasipala; [yaye] okanye
(c) nawuphi na umntu, ojongene naluphi na uhlobo lolwaphulomthetho 40
okanye igunya ekuthethwe ngalo kwisaziso esikhutshwe phantsi
kwecandelo 334(1) loMthetho weNkqubo yolwaphulo-mthetho,
[nawuphi na umntu] umntu oligosa elingumgcini-cwangco
ngaphantsi kwelo candelo, ngaphandle kwamagosa endlela;”;
- (h) ngokucinywa kwenkcazo-gama yegama elithi “umntu”; 45
- (i) ngokufakelwa kwale nkcazo-magama ilandelayo emva kwenkcazo
yamagama athi “IKhabhinethi yePhondo”:
“**UMkhomishinala wePhondo**’ uthetha uMkhomishinala wePhondo
waMapolisa oMzantsi Afrika otyunjelwe iPhondo ngokwemiqathango
yoMthetho iSouth African Police Service Act;”;

- (j) ngokufaka endaweni yenkcazelo yebinzana “intlawulo yokuhlaziya” kwale nkcazelo ilandelayo:
 “**‘intlawulo yokuhlaziya’** ithetha intlawulo ehlawulelwa iphephamvume unyaka nonyaka okanye emva kweminyaka emibini, kuxhomekeka kwimeko leyo, oku kungaquki iphephamvume lethutyana, ukwenzela ukuqinisekisa ukuba semthethweni kwephephamvume;”;
- (k) ngokucinywa kwenkcazo-gama yamagama athi “iziganeko ezizodwa”;
- (l) ngokufakelwa kwale nkcazo-gama ilandelayo phambi kwenkcazelo yamagama athi “ikomiti esisigxina” kwezi nkcazelo zilandelayo:
 “**‘South African Police Service Act’** ithetha iSouth African Police Service Act, 1995 (UMthetho 68 ka-1995);
 “**‘isipirithi’** sithetha isipirithi njengoko sichaziwe kwicandelo leLiquor Products Act, 1989 (UMthetho 60 ka-1989);”; kananjalo
- (m) nangokufakelwa kwale nkcazo-gama ilandelayo emva kwenkcazo yamagama athi “ikomiti esisigxina”:
 “**‘ilungu elingena endaweni yelinye’** lithetha umntu otyunjwe njengelungu elingena endaweni yelinye kulandelwa imiqathango yecandelo 16(3A);”.

Ukwenziwa kwezilungiso kwicandelo 16 loMthetho 4 ka-2008 20

2. Icandelo 16 loMthetho-ngqangi lenziwa izilungiso—

- (a) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (b) weli candelwana (1):
 “(b) **[nelungu elinye]** namalungu angekho ngaphezulu kwesithathu aneziqinisekiso ezixelwe kumhlathi (a) anyulwa yiBhodi njengaMaSekela [leGosa] eGosa eLongameleyo;”;
- (b) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (d) wecandelwana (1):
 “(d) nelungu elinye elilipolisa elikwisikhundla **[sobuPhathi]** seLuthenanti Kolonali okanye nangaphezulu, linyulwa yiBhodi yokubonisana nomKomishinala **[weeNkonzo zamaPolisa aseMzantsi Afrika]** noMphathiswa ojongene nokhuseleko loluntu kwiPhondo; kunye”;
- (c) nangokufakelwa kweli candelwana lilandelayo emva kwecandelwana (2):
 “(2A)(a) IGosa eLongameleyo linganikeza ngamagunya okanye umsebenzi walo kwiSekela-Gosa eLongameleyo ukuba lenze umsebenzi egameni lalo ngokuthi oko likubhale phantsi.
 (b) Imiqathango yecandelo 10(2), (3) no-(6) iyasebenza, ikhatshwa lolo tshintsho ludingekayo kudluliselo-magunya ngokomhlathi (a) iyasebenza kule meko.”;
- (d) ngokufakelwa kweli candelwana lilandelayo: endaweni yecandelwana (3)
 “(3) Ukuba ngaba iGosa eLongameleyo alikwazi ukwenza imisebenzi yalo okanye ukuba ngaba isikhundla seGosa eLongameleyo asinamntu, kufuneka iSekela leGosa eLongameleyo ngokugunyaziswa yiNgqonyela ngethuba lingekho iGosa eLongameleyo okanye de kufikelele kwixesha apho iGosa eLongameleyo linyulwa khona, lenze umsebenzi weGosa eLongameleyo kwaye liwenze njengoko usitsho lo Mthetho.”; kunye
- (e) nangokufakelwa kweli candelwana lilandelayo emva kwecandelwana (3):
 “(3A)(a) Noxa kukho amacandelwana (1) no-(2), iBhodi, inokuthi emva kokuba ithethene noMphathiswa, nangaliphi na ixesha, ityumbe abantu abafanelekileyo abangekho ngaphezu kwesine njengamalungu angena endaweni yamanye ukuba abe ngaMalungu eSigqeba seLayisenisi yezoTywala okanye amalungu ekomiti yaso xa icelwe liGosa eLongameleyo ngenxa yeemeko ezichazwe kwicandelo 21(4) okanye 24(2A).
 (b) Ilungu elingene endaweni yelinye liba lilungu isithuba esingekho ngaphezulu kweminyaka emibini, ngokokubona kweBhodi ngelo xesha lokutyunjwa kwakhe.”.

Ukulungiswa kwecandelo 17 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 17 loMthetho 10 ka-2010

3. Eli candelo lilandelayo lingena endaweni yecandelo 17 loMthetho-ngqangi—
 (a) ngokufakelwa isihloko kwicandelo 17 lesi sihloko silandelayo:

“Ukuthintelwa ukunyulwa njengelungu okanye ilungu elingene endaweni yelinye leSigqeba seLayisenisi yezoTywala”; 5

- (b) ngokufakelwa kwamagama phambi komhlathi (a) kula magama alandelayo:
 “Aba bantu balandelayo bayathintelwa ukuba banganyulwa, bangaqhubeka okanye bangasebenza njengamalungu okanye lawo angene endaweni yamanye amalungu eSigqeba seLayisenisi yezoTywala—”; kananjalo 10

- (c) ngokufakelwa komhlathi (f) endaweni yalo mhlathi ulandelayo:
 “(f) nabani na, olilungu losapho, umlingane okanye iqabane kwezoshishino lomntu onenzuzo ngqo kurhwebo lotywala, ngaphandle kokuba iBhodi ibona ukuba inzuzo yelungu losapho, iqabane okanye ihlakani kwezoshishino kurhwebo lotywala ayitsho ukuba akanakulunga ukuba angabamba isikhundla;”. 15

Ukwenziwa kwezilungiso kwicandelo 18 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 18 loMthetho 10 ka-2010 20

4. Icandelo 18 loMthetho-ngqangi lenziwa izilungiso ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (3):

“(3) Ukunyulwa kwakhona kwelungu okuxelwe kwicandelo 16(1)(c) [kunye] okanye (d) kungenziwa emva kokubonisana noMphathiswa ojongene noburhulumente basekhaya kwiPhondo, okanye umKomishinala wePhondo [waMapolisa oMzantsi Afrika] kwakunye noMphathiswa ojongene nokhuseleko loluntu kwiPhondo ngokulandelelanayo.”. 25

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

5. Icandelo 19 loMthetho-ngqangi lenziwa izilungiso ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (c): 30

“(c) elo lungu liye alabikho kwiintlanganiso zade zantathu zilandelelana zeSigqeba seLayisenisi yezoTywala ngaphandle kwemvume ebhaliweyo yeGosa eLongameleyo, okanye iSekela leGosa eLongameleyo xa kuyimfuneko;”. 35

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

6. Icandelo 20 loMthetho-ngqangi lenziwa izilungiso—

- (a) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (b) wecandelwana (1): 40

“(b) nasiphi na isicelo sokudluliselwa kwephepa-mvume ngokwemigaqo yecandelo [65(9)] 65(1);”. 40

- (b) ngokucima kwicandelwana (1) igama elithi “okanye” ekupheleni komhlathi (f);
 (c) ngokufakela kwicandelwana (1) emva komhlathi (f) kwalo mhlathi ulandelayo: 45

“(fA) nawuphi na umba odluliselwe kuyo yiNkundla yeZibheno ngokwemiqathango yecandelo 68(5); okanye”; 45

- (d) ngokufakela endaweni yomhlathi (g) kwecandelwana (1) lalo mhlathi ulandelayo: 50

“(g) nawuphi na omnye umba oxelwe liGosa eliLawulayo eliyiNtloko okanye iGosa eLongameleyo, okanye onokuthi uqwalaselwe ngokwakulo Mthetho.”; 50

- (e) ngokufakela endaweni yecandelwana(2) leli candelwana lilandelayo:

“(2) Ngaphandle kwemiba exelwe kwicandelwana (1) (a), (b), (c), (f), (fA) no (g), iGosa eLongameleyo linokwala ukubiza intlanganiso 55

yeSigqeba seLayisenisi yezoTywala xa libona kufanelekile ukuba ngaba ekuboneni kwalo lo ntlanganiso ayiyo mfuneko ngokolwazi oluthiwe thaca phambi kwalo.”;

- (f) ngokufakela endaweni yomhlathi (d) kwecandelwana (3) lalo mhlathi ulandelayo: 5
 “(d) icandelwana (1)(fA) okanye (g), liqwalasela umbu ze lithathe inyathelo elilibona lifanelekile.”; kananjalo
- (g) ngokufakela emva kwecandelwan (3) kweli candelwana lilandelayo: 10
 “(3A) IGosa eLongameleyo lingawudlulisela umbu ofanele ukuqwalaselwa liGosa eLongameleyo kwiSigqeba seZibheno kwiiLayisenisi zoTywala ukuze uqwalaselwe ukuba iGosa eLongameleyo licinga ukuba—
 (a) umbu lowo ubandakanya impikiswano ngemiba;
 (b) umbu lowo uxhakaxhaka; okanye
 (c) uluntu lufuna ukuba igosa elo lenze njalo.”. 15

Ukwenziwa kwezilungiso kwicandelo 21 loMthetho 4 ka-2008

7. Icandelo 21 loMthetho-ngqangi lenziwa izilungiso—

- (a) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (2):
 “(2) Inani elisemthethweni lokubamba intlanganiso yeSigqeba seLayisenisi yezoTywala sisine samalungu kuquka neGosa eLongameleyo okanye iSekela leGosa eLongameleyo [okanye bobabini].”; kananjalo 20
- (b) ngokongezwa kweli candelwana lilandelayo:
 “(4)(a) Ukuba ilungu leSigqeba seLayisenisi yezoTywala, ngaphandle kweGosa eLongameleyo alikho kwintlanganiso yeSigqeba seLayisenisi yezoTywala okanye alikwazi kuzimasa intlanganiso, IGosa eLongameleyo lingacela elinye ilungu ukuba lingene endaweni yelo longu lingekhoyo. 25
 (b) Ilungu elimele elinye elisebenza njengelungu linamagunya nemisebenzi yelungu.”. 30

Ukutshintshwa kwecandelo 22 loMthetho 4 ka-2008

8. Eli candelo lilandelayo lingena endaweni yecandelo 22 loMthetho-ngqangi:

“Ukuzikhwebula kwelungu elinomdla onembambano

- 22.** (1) Ilungu okanye ilungu elimele lona leSigqeba seLayisenisi yezoTywala alinako [ukuvota,] ukuthatha inxaxheba kunye, nokuvota okanye kwiinkqubo zazo naziphi na iintlanganiso okanye amatyala kananjalo [iGosa eLongameleyo alinako ukuqwalasela] nawo nawuphi na umbu ukuba, lo mba— 35
- (a) ngowelungu losapho, iqabane okanye umlingane kwezorhwebo womenzi wesicelo-mvume, ukuqinisekiswa, okanye nalo naliphi na ilungelo elinokunikwa siSigqeba seLayisenisi yezoTywala [okanye iGosa eLongameleyo, nanjengoko imeko inokutsho]; 40
- (b) ngowelungu okanye ilungu losapho, iqabane okanye umlingane kwezorhwebo ungumlawuli, ilungu okanye iqabane linomdla wezimali okanye ongomnye kwishishini lomenzi wesicelo sephepha-mvume, ukuqinisekiswa, okanye nalo naliphi na ilungelo elinikwe siSigqeba seLayisenisi yezoTywala [okanye iGosa eLongameleyo, nanjengoko imeko inokutsho]; okanye 45
- (c) ilungu linomdla onokuthi ube nomthelela ekwenzeni kwalo imisebenzi njengelungu okanye ilungu elimele elinye leSigqeba seLayisenisi yezoTywala, kumba ongenzeleliyo nokwathe ngqo. 50
 (1A) IGosa eLongameleyo alinakuthatha inxaxheba ukuba ngaba kulo mba—
- (a) ulilungu losapho, iqabane okanye ihlakani lezoshishino lomfakisicelo ofake isicelo selayisenisi, isiqinisekiso okanye naliphi na ilungelo okanye kukho ilungelo afuna ukulinikwa liGosa eLongameleyo; 55

- (b) yena okanye ilungu losapho, iqabane okanye ihlakani lezoshishino ngumlawuli okanye liqabane okanye unento achaphazeleka kuyo edibene nezimali kwishishini lomfaki-sicelo ocela ilayisenisi isiqinisekiso okanye naliphi na ilungelo okanye kukho ilungelo afuna ukulinikwa liGosa eLongameleyo; okanye 5
- (c) kukho into abandakanyeka kuyo ebangela ukuba abe akanakukwazi ukwenza umsebenzi wakhe njengeLungu eLongameleyo ngenndlela engenzeleliyo nengenamkhethe.
- (2) Ukuba nangaliphi na ixesha kufumaniseka ukuba ilungu okanye ilungu elimele lona [okanye IGosa eLongameleyo, nanjengoko imeko inokutsho,] linto elichaphazeleka kuyo njengoko kuchaziwe kwicandelwana (1) [-(a)] ngokubhekiselele kumba onokuqwalaselwa siSigqeba seLayisenisi yezoTywala, lichaze ngokuzelelo ubume bomdla walo kwaye liyishiye intlanganiso okanye ityala ukuvumela amalungu aseleyo ukuba axoxe ngomba kwaye agqibe ukuba ilungu okanye ilungu elimele lona liyathintelwa ekuthatheni inxaxheba kwiinkqubo zalo ntlanganiso okanye ityala ngenxa yesizathu sokuba nomdla onembambano. [kanye no-(b)]
- [(b)](2A) Ukuba nangaliphi na ixesha kufumaniseka ukuba iGosa eLongameleyo linto elichaphazeleka kuyo kwezo zichazwe kwicandelwana (1A) malunga nombala oza kuqwalaselwa liGosa eLongameleyo, kufuneka [yaye] ngaphandle kokulibazisa achaze ngokuzelelo umdla wakhe kwiSigqeba seLayisenisi yezoTywala, apho kufuneka siqwalasele umbala. 20
- (3) Ukuxela kwanesigqibo esithathwe ngamalungu okanye amalungu amele amanye eSigqeba seLayisenisi yezoTywala, okuxelwe kwicandelwana [(2)(a)] (2), kufuneka kubhalwe kwimizuzu yenkqubo ekuthethwa ngayo. 25
- (4) Ukuxela kweLungu eLongameleyo ekuxelwe kwicandelwana (2A) kufuneka kubhalwe kwimizuzu yenkqubo yeSigqeba seLayisenisi yezoTywala.”. 30

Ukwenziwa kwezilungiso kwicandelo 24 loMthetho 4 ka-2008

9. Icandelo 24 loMthetho-ngqangi lenziwa izilungiso—

- (a) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (1):
“(1) IGosa eLongameleyo linganyula ikomiti enye nangaphezulu ezenziwe lilo okanye iSekela leGosa eLongameleyo kunye nalo naliphi na ilungu okanye umntu onyulwe ukuba abe lilungu ngokwecandelo 20 (5).”;
- (b) ngokufakelwa kweli candelwana lilandelayo emva kwecandelwana (1):
“(1A) Noxa kukho icandelwana (7) necandelo 20(6), umntu olilungu elifakelweyo ngokwemiqathango yecandelo 20(5) othe watyunjwa ukuba abe lilungu lekomiti ngokwecandelwana (1) unelungelo lokuvota kuyo nayiphi na intlanganiso yekomiti xa ikomiti isenza nawuphi na umsebenzi weSigqeba seLayisenisi zoTywala kwimisebenzi echazwe kwicandelo 89(7) edluliselwe kwikomiti ngokwemiqathango yecandelwana(3)(b).”;
- (c) ngokufakelwa kweli candelwana lilandelayo emva kwecandelwana (2):
“(2A)(a) Ukuba ilungu leSigqeba seLayisenisi yezoTywala alikho kwintlanganiso yeSigqeba seLayisenisi yezoTywala okanye alikwazi kuzimasa intlanganiso, iGosa eLongameleyo lingacela elinye ilungu ukuba lingene endaweni yelo lungu lingekhoyo.
(b) Ilungu elimele elinye elisebenza njengelungu lekomiti linamagunya nemisebenzi yelungu.”; kanaanjalo
- (d) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (3):
“(3) ISigqeba seLayisenisi yezoTywala singanikezela kwikomiti imisebenzi yaso—
(a) njengoko kutshiwo kumacandelo 52, 64, 65, 66 no-71; okanye
(b) kuchaziwe kwicandelo 89(7).”.

Ukwenziwa kwezilungiso kwicandelo 25 of Act 4 of 2008, loMthetho 4 ka-2008, njengoko lilungisiwe endaweni yalo kungene icandelo 21 loMthetho 10 ka-2010

10. Icandelo 25 loMthetho-ngqangi lenziwa izilungiso ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (1):

- “(1) UMphathiswa ngexesha anganako ukunyula umntu oneziqinisekiso zomthetho ezilingana nezo zifuneka ekubeni ubani abe uyamkelwa njengegqwetha leNkundla ePhakamileyo yaseMzantsi Afrika, nonamava kulawulo lezobulungisa ukuba abe yiNkundla yamatyala eziBheno eza kuchophela izibheno okanye izicelo zokuqwalaselwa kwezigqibo,—
- (a) zeSigqeba seLayisenisi yezoTywala;
- (b) zeGosa eLongameleyo; okanye
- (c) zeSekela-Gosa eLongameleyo elenza imisebenzi eliyinikwe liGosa eLongameleyo [ngokwalo Mthetho].”.

Ukwenziwa kwezilungiso kwicandelo 27 loMthetho 4 ka-2008, njengoko lilungisiwe endaweni yalo kungene icandelo 23 loMthetho 10 ka-2010

11. Icandelo 27 loMthetho-ngqangi lenziwa izilungiso ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (1):

- “(1) IGosa elilawulayo eliyiNtloko, amalungu eBhodi, naweSigqeba seLayisenisi yezoTywala, umntu onyulwe njengeNkundla yamatyala yeziBheno kunye namalungu amele amanye banelungelo lokufumana intlawulo efanelekileyo njengoko kuqingqwe nguMphathiswa, ebonisene noMphathiswa ojongene nezimali kwiPhondo.”.

Ukutshintshwa kwecandelo 30 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 26 loMthetho 10 ka-2010

12. Eli candelo lilandelayo lingena endaweni yecandelo 30 loMthetho-ngqangi:

“INgeniso eyongezelekileyo kwiNgxowa-mali yeNgeniso kwiPhondo, kwiBhodi okanye koomasipala

30. (1) Intlawulo ezixelwe [kumacandelo] icandelo [46(2), 48(1) no-(4),] 63(2) [no-(2B) [65(16)]] kufuneka zihlawulwe kwiNgxowa-mali yeNgeniso yePhondo.
- (2) Ezi mali zilandelayo ziimali ezongezelekileyo kwiBhodi—
- (a) izohlwayo ezixelwe kumacandelo 20(3)(b)(v) kunye 82(2)(b);
- (b) [isohlwayo] izohlwayo ezixelwe [kwicandelo] amacandelo 46(6), 48(10), 62(3), 63(4), 64(4), 65(19) no-66(8); kananjalo
- (c) iintlawulo ezixelwe kumacandelo 26(8), 36(1)(e), 38, 46(2), 48(1), 48(4), 53(1), 59(7), 64(1), 65(4), [no-65(9)] 65(16), 66(2) no-66(6).
- (3) Intlawulo ezixelwe kwicandelo 37(4)(a)(i) no(b)(i) ezongezelekileyo kulo masipala.
- (4) Akukho mali ixeliweyo apha kweli candelo ebuyiswayo.”.

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

13. Icandelo 33 loMthetho-ngqangi lenziwa izilungiso ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (a) wecandelwana (2):

- “(a) iphepha-mvume lokuvelisa nokuthengisa utywala obuza kuselelwa ngaphakathi nangaphandle, okanye zombini ngaphakathi nangaphandle, kwezakhiwo apho buthengiswa khona kwiziganeko [ezizodwa]; kunye”.

Ukwenziwa kwezilungiso kwicandelo 41 loMthetho 4 ka-2010

- 14.** Icandelo 41 loMthetho-ngqangi lenziwa izilungiso—
- (a) ngokutshintshwa kwamagama alandelayo kotshintsho kwicandelwana (1) kumagama aphambi komhlathi (a):
- “ISigqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo singathi xa siqwalasela isicelo sithathele oku kulandelayo ingqalelo—”;
- and
- (b) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (c) wecandelwana (1):
- “(c) kuxhomekeke kwicandelo 23(9)[,]—
- (i) umgama wesakhiwo esiza kunikwa ilayisenisi eneshishini eliyigaraji ethengisa ipetroli, idizili okanye ezinye iimveliso zamafutha emoto iwathengisela uluntu; kunye
- (ii) nawo nawuphi na umba ekuboneni kweSigqeba seLayisenisi yeZotywala okanye iGosa eLongameleyo, kufuneka uqwalaselwe.”.

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

- 15.** Icandelo 42 loMthetho-ngqangi lenziwa izilungiso—
- (a) ngokufakelwa kweli candelwana lilandelayo emva kwecandelwana (4):
- “(4A) ISigqeba seLayisenisi yeZotywala singatshintsha unikezelo lwelayisenuisi yotywala olunemiqathango ukuba ngaba siye yafumanisa izinto ebesingazazi ngexesha ebesinikeza ilayisenisi enemiqathango, yaye sanelisekile ukuba, ukuba besizazi ezo zinto ngesingayikhuphanga loo layisenisi inemiqathango.”;
- (b) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (7):
- “(7) Xa iGosa eLongameleyo lanelisekile ukuba umceli [wabe uyayiphumeza] uyithobele imibandela ebekwe siSigqeba seLayisenisi yezoTywala, iBhodi kufuneka ilikhuphe iphepha-mvume njengoko kumiselwe ngokwecandelo 46.”.

Ukutshintshwa kwecandelo 48 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 38 loMthetho 10 ka-2010

- 16.** Eli candelo lilandelayo lingena endaweni yecandelo 48 loMthetho-ngqangi:
- “Amaphepha-mvume otywala ethutyana kunye namaphepha-mvume otywala [amatheko awodwa]**
- 48.** (1) iGosa eLongameleyo lingathi kwakuba kwenziwe isicelo ngumnini wephepha-mvume [esixelwe] ekubhekiswe kuso kwicandelo [33(1)(b) okanye (d)], 33(1) naxa kuhlawulwe inflawulo emiselweyo, linike iphepha-mvume lotywala lethutyana ukuba lisetyenziswe ngumnini wephepha-mvume kuphela.
- (1A) Isicelo selayisenisi yotywala yethutyana kufuneka senziwe [ubuncinane kwiintsuku ezilishumi elinesine (14)] phambi kosuku lokuqala ekubhekiswe kulo kwicandelwana (2) ngexesha elibekiweyo.
- (2) iGosa eLongameleyo alinako ukunika [umntu] umnini-layisenisi iphepha-mvume lotywala lethutyana phantsi kwecandelwana (1) ixesha elibude bungaphezulu kweentsuku ezilishumi elinesine (14) ezilandelelanayo kunye ngaphezulu kweentsuku ezingamashumi amathathu (30) ngonyaka ukuqala ngeyo-1 kweyoMqungu.
- (3) Iphepha-mvume lotywala lethutyana kufuneka lenziwe ngokwemimiselo [emiselweyo] ekubhekiswe kuzo kwicandelo 49, apho kuyimfuneko, kunye neminye imimiselo nezithintelo ezinokubekwa liGosa eLongameleyo.

- (4) IGosa eLongameleyo lingathi kwakwenziwa isicelo[—
- (a) **liziko lemfundo, ngaphandle kwesikolo esichazwe kwicandelwana 1 leSouth African Schools Act, 1996 (UMthetho 84 ka-1996);**
- (b) **liziko lezentlalontle okanye lezenkcubeko;** 5
- (c) **ngumququzeleli womboniso;**
- (d) **ngunobhala, umphathi okanye umququzeleli oyintloko wogqatso olusemthethweni okanye intlanganiso yezemidlalo okanye isiganeko esifanayo; okanye**
- (e) **umququzeleli womdlalo wobugcisa,]** 10
- linike iphepha-mvume [**elilodwa**] lotywala letheke elo ukuba utywala buthengiselwe ukuselwa ngaphakathi okanye ngaphandle kwezakhiwo apho buthengiswa khona kwisiganeko [**esisodwa**].
- (5) Isicelo sephepha-mvume lotywala lesiganeko [**esisodwa**] kufuneka senziwe [**iintsuku ezilishumi elinesine (14) phambi komhla wokuqala**] wesiganeko [**esisodwa**] kwixesha elimisiweyo. 15
- (6) Iphepha-mvume lotywala lesiganeko [**esisodwa**] alinako ukunikwa ixesha eledlula elo lesiganeko esisodwa.
- (7) Iphepha-mvume lotywala lesiganeko [**esisodwa**] [**lingaphantsi malenziwe phantsi**] kwemibandela eqononondisiweyo exelwe 20 kwicandelo 49, xa kunokwenzeka, neminye imibandela kunye nezithintelo ezinokubekwa [**siSigqeba seLayisenisi yezoTywala**] liGosa eLongameleyo.
- (8) Utywala bungathengiswa kusetyenziswa ilayisenisi yotywala yesiganeko kuphela kwisiganeko esikhutshelwe loo layisenisi kanaanalo kuphela kwisakhiwo ekwamkelwe ukuba loo layisenisi isebenze kuso. 25
- (9) IGosa eLongameleyo lingacela iinkcukacha ezongezelekileyo kumfaki-sicelo selayisenisi yethutyana okanye ilayisenisi yotywala yesiganeko ukulungiselela uqwalaselo lwesicelo esifakiweyo.
- (10) IGosa eLongameleyo lingakwamkela ukufakwa emva kwexesha 30 kwesicelo selayisenisi yethutyana okanye ilayisenisi yotywala yesiganeko xa kunikwe isizathu esivakalayo naxa kuhlawulwe isohlwayo esiyi-100% semali yesicelo ebekiweyo ngosuku ngalunye isicelo esingene emva kwexesha.
- (11) Ngenjongo yokugqiba ngesizathu esivakalayo ekubhekiswe kuso kwicandelwana (10), iGosa eLongameleyo lingathathela ingqalelo into yokuba— 35
- (a) ingaba ukuvumela ulwamkelo lwesicelo yinto efunwa luluntu na;
- (b) ingaba ukuvumela ulwamkelo lwesicelo akusayi kucalula imisebenzi yolawulo yoGunyaziwe na; yaye 40
- (c) ingaba uMthetho uthotyelwe ngokwaneleyo na.
- (12) IGosa eLongameleyo alinakunikeza ilayisenisi yethutyana okanye eyesiganeko ngaphandle kokuba sele kuqeshwe umanejala weloo shishini yaye loo ngqesho yesele yamkelwe ngokwemiqathango yecandelo 52. 45
- (13) IGosa eLongameleyo lingathi nanini, xa kunikwe isizathu esivakalayo, lisebenzisa isaziso esihanjiswayo okanye esinikwe umnini-layisenisi yethutyana okanye yesiganeko—
- (a) libhengeze ilayisenisi njengekhutshwe phantsi kwemiqathango okanye izithintelo okanye eminye imiqathango okanye izithintelo ezichazwe kwisaziso ezibekwe lilo ngokokubona kwalo; 50
- (b) lingamisa, lirhoxise okanye litshintshe nawuphi umqathango okanye isithintelo esibekwe kwilayisenisi; okanye
- (c) singayekisa okanye sirhoxise ilayisenisi.
- (14) Ngeenjongo zeli candelwana (13), iGosa eLongameleyo lingathathela ingqalelo yayo nayiphi na kwezi zilandelayo: 55
- (a) izinto ebezingeniwe ezixhasa okanye ezichasa ukunikezwa ilayisenisi yethutyana okanye eyesiganeko phambi kokuba inikezwe kunye naziphi izimvo ngezo nkxaso okanye izichaso;
- (b) nayiphi na ingxelo engeniswe ligosa lotywala, umhloli okanye igosa likamasipala; 60
- (c) nasiphi na isikhalazo esingeniswe kwiGosa eLongameleyo malunga nokuziphatha kweshishini elinelayisenisi;

- (d) into ebhaliweyo engeniswe ngumnini-layisenisi ochaphazelekayo okanye nawuphi na umntu;
- (e) nawuphi na umba othunyelwe kwiGosa eLongameleyo liGosa eliyiNgqonyela okanye umba ekufuneka uqwalaselwe liGosa eLongameleyo ngokwalo Mthetho. 5
- (15) Ulwaphulo-mgaqo okanye ukungathobeli icandelwana (8) okanye nawuphi na umqathango okanye isithintelo esixelwe kwicandelwana (3), (7) okanye (13)(a) kulityala.”.

Ukwenziwa kwezilungiso kwicandelo 51 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 40 loMthetho 10 ka-2010 10

17. Icandelo 51 loMthetho-ngqangi lenziwa izilungiso—

- (a) ngokufakelwa kweli candelwana lilandelayo endaweni yeli likwicandelwana (7):
 “(7) Umnini-layisenisi akanakurentisa ngelayisenisi yakhe komnye umntu, avumele omnye umntu ukuba ashishine ngemiqathango yelayisenisi yakhe okanye avumele omnye umntu ukuba asebenzise isakhiwo sakhe esinelayisenisi ngaphandle kokuba umnini-layisenisi wenze isicelo soko waze wafumana imvume kwiGosa eLongameleyo.”; 15
- (b) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (8):
 “(8) IGosa eloNgameleyo alinakunika imvume yesicelo sokuqeshisa indawo leyo ilayisenisiweyo okanye inxalenye yayo kwimeko apho ilayisenisi ibandakanya ilungelo lokwenza imveliso encinci ngaphandle kokuba lanelisekile ukuba umntu lowo uza kuqeshiselwa indawo leyo okanye lowo uza kuvunyelwa ukuba asebenzise eso sakhiwo ukuze enze imveliso encinci— 20
- (a) asingomntu ungavumelekanga ukuba nelayisenisi ngokwecandelo 35; 25
- (b) unesimilo esincomekayo; [okanye] kananjalo
- (c) ufundile kananjalo uqeqeshwe ngokufanelekileyo okanye uya kufunda kananjalo aqeqeshwe ngokufanelekileyo okanye uya kuba nomsebenzi omnye okanye ngaphezulu abafunde ngokufanelekileyo kananjalo beqeqeshwe ngokufanelekileyo ngenjongo yokulawula ishishini elo.”; kananjalo 30
- (c) ngokufakelwa kweli candelwana lilandelayo emva kwecandelwana (8):
 “(8A) IGosa eLongameleyo alinakusivuma isicelo sokurentisa ilayisenisi ngaphandle kweso sixelwe kwicandelwana (8) ngaphandle kokuba lanelisekile ukuba— 35
- (a) isicelo eso sixhaswa ziimeko ezizodwa; yaye
- (b) umntu lowo uza kuvunyelwa ukuba asebenzise eso sakhiwo okanye inxalenye yaso— 40
- (i) asingomntu ungavumelekanga ukuba nelayisenisi ngokwecandelo 35;
- (ii) unesimilo esincomekayo; kananjalo
- (iii) ufundile kananjalo uqeqeshwe ngokufanelekileyo okanye uya kufunda kananjalo aqeqeshwe ngokufanelekileyo okanye uya kuba nomsebenzi omnye okanye ngaphezulu abafunde ngokufanelekileyo kananjalo beqeqeshwe ngokufanelekileyo ngenjongo yokulawula ishishini elo.”. 45

Ukwenziwa kwezilungiso kwicandelo 52 loMthetho 4 ka-2008

18. Icandelo 52 loMthetho-ngqangi lenziwa izilungiso—

- (a) ngokufakelwa kweli candelwana lilandelayo emva kwecandelwana (1): 50
 “(1A) IGosa eLongameleyo lingathi, xa—
- (a) linikezela ilayisenisi yotywala yethutyana phantsi kwecandelo 48(1);
- (b) linikezela ilayisenisi yotywala yesiganeko phantsi kwecandelo 48(4); 55
- (c) lisenza umsebenzi phantsi kwecandelo 49(6);
- (d) lisenza umsebenzi phantsi kwecandelo 53(1); okanye
- (e) linikezela imvume ngokwemiqathango yecandelo 65(5),

- lamkele ukuqeshwa komntu otyunjwe ngumfaki-sicelo, umnini-
layisenisi okanye lowo ekuphakanyiswe ukuba abe ngumnini-layisenisi,
ngokwaloo meko, ukuba abe yimanejala yeshishini elinelayisenisi.”;
- (b) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (2): 5
“(2) Umnini-layisenisi [**ongenguye umntu wendalo**] unako nanini
na, ngendlela emiselweyo ukutyumba umntu wendalo ohlala kwiPhondo
ukuba abe ngumphathi weshishini elilayisenisiweyo, apho iSigqeba
seLayisenisi yeZotywala okanye iGosa eLongameleyo, ngokwaloo
meko, sinakho ukuvuma ukutyunjwa kwaloo mntu njengomphathi.”;
- (c) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (4): 10
“(4) ISigqeba seLayisenisi yeZotywala okanye iGosa eLongameleyo,
ngokwaloo meko, alinakwamkela ukuqeshwa komntu ongavumelekanga
ukuba abe nelayisenisi yotywala ukuba abe yimanejala ngokwemi-
qathango yecandelo 35 okanye onesimilo esingancomekiyo.”;
- (d) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (5): 15
“(5) ISigqeba seLayisenisi yeZotywala okanye iGosa eLongameleyo,
ngokwaloo meko, lingayalela ukuba umphathi ocetywayo
makayokuqeqeshwa kananjalo ayokufundiswa njengoko kuchazwe
yiNkundla yemiCimbi yoTywala njengomqathango wokuqala phambi
kokuvunywa kolo tyumbo.”; 20
- (e) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (8):
“(8) Ukuvunywa kokutyunjwa komphathi ngokwemiqathango
yecandelwana (1), (1A) okanye (2) kuya kuhlala kusebenza kude
kutyunjwe umphathi omtsha okanye de kuphele isithuba sokusebenza
kwelayisenisi okanye imvume, ngokwaloo meko.”; 25
- (f) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (9):
“(9) Ukuba umntu[,] okutyunjwa kwakhe njengomphathi
kuvunyiweyo ngokwecandelwana (1), (1A) okanye (2)[,] uyayeka
ukuphatha ishishini elilayisenisiweyo okanye uba kwimo
yokungavumeleki ukuba enze njalo, umnini-layisenisi kufuneka, 30
kwiintsuku ezingamashumi amathathu (30) ukususela kumhla
wokwenzeka koku, acele ngokwecandelwana (1) okanye (2) ukuba
kuvunywe ukutyunjwa komphathi endaweni yakhe.”;
- (g) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (10): 35
“(10) Ukuba umnini-layisenisi uyasilela ekuthobeleni icandelwana
(9), ilayisenisi [**yakhe**] ingarhoxiswa ngokwemiqathango
yecandelo 20(3)(b)(ii) okanye inqunyanyiswe ngokwemiqathango
yecandelo 20(3)(b)(iii).”; kananjalo
- (h) ngokongezwa eli candelwana lilandelayo: 40
“(11) Kweli candelo “umnini-layisenisi” ubandakanya lowo
unelayisenisi yotywala yeziganeko.”.

Ukwenziwa kwezilungiso kwicandelo 56 loMthetho 4 ka-2008

19. Icandelo 56 loMthetho-ngqangi lenziwa izilungiso—

- (a) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (b) weli
candelwana (2): 45
“(b) igumbi okanye indawo iSigqeba seLayisenisi yeZotywala okanye
iGosa eLongameleyo eyichonge njengendawo apho abantu
abaminyaka ingaphantsi kweshumi elinesibhozo (18)
bengavumelekanga khona; kunye “; kananjalo
- (b) ngokuthi endaweni yecandelwana (3) kufakwe eli candelwana lilandelayo: 50
“(3) Umntu ominyaka ingaphantsi kwelishumi elinesibhozo (18)
angangena kwindawo ekungangenwayo kuyo kumaziko anelayisenisi
apho kuthengiswa utywala obungazi kuselelwa kweso sakhiwo xa
ephelekwa ngumzali okanye ngumgadi wakhe okanye ngumntu
omkhulu ngemvume yomzali okanye yomgadi wakhe waloo mntu.”. 55

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

20. Icandelo 59 loMthetho-ngqangi lenziwa izilungiso—

- (a) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (3): 5
 “(3) Ukuba umasipala akazibekanga iintsuku neeyure zokuthengisa utywala zamashishini anelayisenisi athengisa utywala obuselwa ngaphakathi kwamasango eso sakhiwo okanye ngaphandle kwaso, iintsuku neeyure zokuthengisa utywala zelo shishini zezo zamkelwe nangasiphi na isithuba siSigqeba seLayisenisi yeZotywala okanye liGosa eLongameleyo, ngokwaloo meko, njengenxalenye yemiqathango yaloo layisenisi.”;
- (b) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (4): 15
 “(4) Ukuba umasipala akazibekanga iintsuku neeyure zokuthengisa utywala zamashishini anelayisenisi athengisa utywala obuselwa ngaphakathi kwamasango esakhiwo okanye ngaphandle kwaso, iGosa eLongameleyo, nangaliphi na ixesha umnini-layisenisi welo shishini efake isicelo, angazongeza iintsuku neeyure zokuthengisa utywala zelo shishini ngesaziso esisisiwe kuloo mnini-layisenisi lowo.”;
- (c) ngokufakelwa kweli candelwana lilandelayo emva kwecandelwana (4): 20
 “(4A) Iintsuku neeyure zokuthengisa utywala zeshishini elinelayisenisi azinakwamkelwa okanye zongezwe ngokwemiqathango yecandelwana (3) okanye (4) kwixesha elingaphaya kweye-20:00 kwilayisenisi yotywala obuthengiselwa ukuba buselelwe ngaphandle kwamasango esakhiwo obuthengiswa kuso ze ibe lixesha elingaphaya kweye-02:00 ngosuku olulandelayo kwilayisenisi yotywala obuselelwa ngaphakathi kweso sakhiwo sinelayisenisi.”;
- (d) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (5): 30
 “(5) iGosa eLongameleyo kufuneka lithathele ingqalelo inkqubo ekubhekiswe kuyo kwicandelo 34(1)(a) no-(e) xa liqwalasela isicelo ngokwemiqathango yecandelwana (4).”;
- (e) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (6): 35
 “(6) Lowo unamagunya kufuneka, ngexesha elimiselweyo emva kokuvunywa okanye kokwaliwa kwesicelo esenziweyo ngokwecandelwana (4), yazise umfaki-sicelo ngesigqibo [seSigqeba seLayisenisi yeZotywala] iGosa eLongameleyo.”; kananjalo
- (f) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (8): 40
 “(8) Ngokuxhomekeke kwicandelo 89(10), umnini-layisenisi othengisa okanye obonelela ngotywala okanye ovumela ukuselwa kotywala kwindawo elayisenisiweyo ngexesha ukuthengiswa kotywala kungavunyelwanga yilayisenisi ngokwemiqathango yecandelwana (1) [okanye], (3) okanye (4), uyakuba netyala lokwaphula umthetho.”; kunye
- (g) ngokongezwa kweli candelwana lilandelayo: 45
 “(9) Apho ilayisenisi echazwe kwicandelo 89(10) ihlaziywa ngokuzenzekelayo ngokwecandelo 63, yaye ukuba umasipala akazibekanga iintsuku neeyure zokuthengisa zamashishini anelayisenisi athengisa utywala obuselelwa ngaphakathi okanye ngaphandle kwamasango amashishini anelayisenisi, kuxhomekeka kwimeko leyo, iiyure zokuthengisa nangaluphi na usuku ngeentsuku umnini-layisenisi avumeleke ukuba athengise ngokwelayisenisi yakhe zinale miqathango ilandelayo—
- (a) kwimeko yelayisenisi yotywala obuza kuselelwa ngaphandle kwamasango eshishini elinelayisenisi, akudlulwa ngaphaya ko-20:00 wolo suku; yaye
- (b) kwimeko yelayisenisi yokuthengiswa kotywala obuza kuselelwa ngaphakathi kwamasango eshishini elinelayisenisi, akudlulwa ngaphaya 02:00 wosuku olulandelayo. 55

Ukwenziwa kwezilungiso kwicandelo 60 loMthetho 4 ka-2008

21. Icandelo 60 loMthetho-ngqangi lenziwa izilungiso—
- (a) ngokucinywa kwecandelwana (3); kanaanjalo
- (b) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (4):
- “(4) Nakuphi na ukwaphula okanye ukusilela ukuthobela icandelwana (1)[,] okanye (2) [**okanye** (3)] kukwaphula umthetho.”. 5

Ukwenziwa kwezilungiso kwicandelo 62 loMthetho 4 ka-2008, lenziwe izilungiso licandelo 44 loMthetho 10 ka-2010

22. Icandelo 62 loMthetho-Ngqangi lenziwa izilungiso—
- (a) ngokufakela endaweni yomhlathi (c) wecandelwana (2) kwalo mhlathi 10 ulandelayo:
- “(c) ngomhla omiselwe siSigqeba sokuNikezwa kwamaPhepha-mvume oTywala okanye iGosa eLongameleyo, kuxhomekeke kwimeko leyo, xa [ilirhoxisa] iphepha-mvume lirhoxiswa;”;
- (b) ngokufakela endaweni yomhlathi (d) wecandelwana (2) kwalo mhlathi 15 ulandelayo:
- “(d) apho iphepha-mvume sele lisemthethweni, ngalo mhla iNkundla yeZibheni okanye inkundla isimisayo isigqibo sokukhupha okanye ukunikezela iphepha-mvume; okanye;”;
- (c) ngokufakela endaweni yomhlathi (b) wecandelwana (3) kwalo mhlathi 20 ulandelayo:
- “(b) xa iphepha-mvume liphelelwe ngenxa yeemeko ekubhekiselwa kuzo kwicandelwana (2)(c), isigqibo seSigqeba sokuNikezwa kwamaPhepha-mvume oTywala okanye iGosa eLongameleyo sokurhoxisa elo Phepha-mvume siyamiswa yiNkundla yeZibheni okanye yinkundla, kuxhomekeke kwimeko leyo; okanye;” kunye 25
- (d) nangokufakela endaweni yomhlathi (c) wecandelwana (3) kwalo mhlathi ulandelayo:
- “(c) xa iphepha-mvume liphelelwe ngenxa yeemeko ekubhekiselwa kuzo kwicandelwana (2)(d), isigqibo seSigqeba sokuNikezwa kwamaPhepha-mvume okanye senkundla, kuxhomekeke kwimeko leyo, sokumisa isigqibo sokunikezela okanye ukukhupha iphepha-mvume siyamiswa kulindwe isibheni okanye uphononongo.” 30

Ukwenziwa kwezilungiso kwicandelo 63 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 45 loMthetho 10 ka-2010 35

23. Eli candelo lilandelayo lingena endaweni yecandelo 63 loMthetho-ngqangi:

“Ukuhlaziywa kwamaphepha-mvume okuzenzekelayo

63. (1) IBhodi ingakhupha isaziso sokuhlaziya sonyaka, ngendlela emiselweyo, ungekadluli umhla wama-31 Okthobha wonyaka ophambi kwalo imirhumo yonyaka yokuhlaziya iza kuhlawulelwa wona. 40

(2) Yakuba ihlawulwe imirhumo yonyaka emiselweyo, iphepha-mvume lihlaziyekile ke ngoko lisemthethweni kude kube ngama-31 Disemba walo nyaka imirhumo ihlawulelwa wona.

(2A) Noxa kukho amacandelwana (1) no-(2), umnini-layisenisi angathi esebenzisa indlela ebekiweyo alandele inkqubo yokurhuma emva kweminyaka emibini apho uGunyaziwe eya kuthi akhuphe isaziso sohlaziyo seminyaka emibini esebenzisa ifomu esemthethweni, ingadlulanga i-31 Oktobha yonyaka ophambi konyaka wokuqala wesithuba seminyaka emibini ekufuneka loo ntlawulo yeminyaka emibini ihlawulelwe yona. 45 50

(2B) Emva kokuhlulwa umrhumo wohlaziyo weminyaka emibini, ilayisenisi iye ihlaziyelwe iminyaka emibini de ibe yi-31 Disemba yonyaka wesibini wesithuba seminyaka emibini esihlawulelwe loo ntlawulo.

(3) Umnikazi phepha-mvume akanakungayihlawuli imirhumo emiselweyo ngexesha ukuba isaziso asithunyelwanga okanye akasifumananga.

(4) Umnikazi phepha-mvume ongakwazanga ukuhlawula umrhumo wokuhlaziya omiselweyo phambi okanye ngomhla wokugqibela kaFebruwari walo nyaka imirhumo yokuhlaziya ebekufanele ukuba ihlawulwe ngayo, okanye unyaka wokuqala wesithuba seminyaka emibini, kuxhomekeke kwimeko leyo, unako, phambi okanye ngama-31 Matshi aloo nyaka, ukufaka isicelo esibhaliweyo kwiGosa eliPhezulu leSigqeba sokucela uxolo ngokungakwazi ukuhlawula, iGosa eliPhezulu leSigqeba lingakuxolela oku liyamkele intlawulo emiselweyo efike emva kwexesha ngomhla oza kugqitywa yiBhodi, oku kuhamba nokuhlulwa komrhumo wokuhlaziya kunye nesohlwayo esiyi-150%.

(5) Ukuba iGosa eliPhezulu leSigqeba limxolele ngokwemigaqo yecandelo (4) kwaye nomrhumo wokuhlaziya nesohlwayo zihlawulwe, iphepha-mvume lithathwa ngokuba lihlaziyiwe kowa-31 Disemba onyaka ophambi kwalo imirhumo yokuhlaziyiwa ihlawulelwa wona okanye unyaka wokuqala wesithuba seminyaka emibini, kuxhomekeke kwimeko leyo.

(6) Ukuba umnikazi phepha-mvume akakwazi ukuhlawula imirhumo yokuhlaziya emiselweyo kunye nesohlwayo asifumene ngokwemigaqo yecandelwana (4), iphepha-mvume liza kuthathwa ngokuba liphelelwe ngomhla woku-1 Januwari walo nyaka imirhumo yokuhlaziya ibifanele ukuba ingawo okanye unyaka wokuqala wesithuba seminyaka emibini, kuxhomekeke kwimeko leyo.”.

Ukwenziwa kwezilungiso kwicandelo 64 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 46 loMthetho 10 ka-2010

24. Icandelo 64 loMthetho-ngqangi lenziwa izilungiso ngokufakela endaweni yecandelwana (7) kweli candelwana lilandelayo:

“(7) Ukuba iSigqeba sokuNikezelwa kwamaPhepha-mvume oTywala siyasamkela isicelo sokuhlaziyiwa kwephepha-mvume, iphepha-mvume, liya kuthi emva kokuhlulwa kwemirhumo ebekiweyo, lithathwe ngokuba lihlaziyiwe ngokwemigaqo yecandelo 63(2) okanye (2B), kuxhomekeke kuloo meko.”.

Ukwenziwa kwezilungiso kwicandelo 65 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 49 loMthetho 10 ka-2010

25. Icandelo 65 loMthetho-ngqangi lenziwa izilungiso—

(a) ngokufakela eli candelwana lilandelayo endaweni yecandelwana (12):

“(12) ISigqeba sokuNikezelwa kwamaPhepha-mvume oTywala kufuneka, lingaphelanga ixesha elimiselweyo, sisikhabe, **[okanye]** sisamkele isicelo, okanye sisamkele phantsi kwemiqathango ethile ebekwe siSigqeba seLayisenisi yeZotywala.”;

(b) ngokufakela emva kwecandelwana (12) kwala macandelwana alandelayo:

“(12A) ISigqeba seLayisenisi yeZotywala kufuneka xa sinikezela imvume enemiqathango, sichaze isithuba apho lowo ekuphakanyiswe ukuba abe ngumnini-layiseni ekufuneka ethobele ngaso loo miqathango echazwe kwicandelwana (12).

(12B) ISigqeba seLayisenisi yeZotywala singathi nanini emva kokufakwa kwesicelo ngulowo ekuphakanyiswe ukuba abe ngumnini-layisenisi, sitshintshe okanye sirhoxise imiqathango.

(12C) IGosa eLongameleyo lingathi nanini emva kokufakwa kwesicelo ngulowo ekuphakanyiswe ukuba abe ngumnini-layisenisi, longeze isithuba esibekiweyo ngokwemiqathango yecandelwana (12A).”;

(c) ngokufakela emva kwecandelwana (13) kwala macandelwana alandelayo:

“(13A) Ukuba lowo ekuphakanyiswe ukuba abe ngumnini-layisenisi uyasilela ukuthobela imiqathango ebekwe siSigqeba seLayisenisi yeZotywala kwisithuba esixelwe kwicandelwana (12A) okanye isithuba esongeziweyo ngokwemiqathango yecandelwana (12C), imiqathango

yokunikezwa iyaphelelwa yaye isicelo sokunikezwa kwelayisenisi sithathwa njengesikhatyiweyo.

(13B) Xa iGosa eLongameleyo lanelisekile ukuba lowo ekuphakanyiswe ukuba abe ngumnini-layisenisi uyithobele imiqathango ebekwe siSigqeba seLayisenisi yeZotywala, iGosa eLongameleyo kufuneka linike umfaki-sicelo ilayisenisi.”;

(d) ngokuthi endaweni yecandelwana (14) kufakwe eli candelwana lilandelayo:

“(14) ISigqeba seLayisenisi yeZotywala okanye iGosa eLongameleyo lingathi, xa linikezela isicelo sokunikezwa kwelayisenisi liyalele lowo ekuphakanyiswe ukuba abe ngumnini-layisenisi, okanye umsebenzi omnye okanye ngaphezulu wakhe, ukuba afunde aqeqeshwe ngendlela iSigqeba sokuNikezelwa kwamaPhepha-mvume oTywala esifuna ngayo.”;

(e) ngokuthi endaweni yecandelwana (15) kufakwe eli candelwana lilandelayo:

“(15) IBhodi mayazise lowo ekuphakanyiswe ukuba abe ngumnini-layisenisi, ngokumbhalela, lingaphelanga ixesha elimisiweyo emva kokuba iSigqeba seLayisenisi yeZotywala okanye iGosa eLongameleyo, ngokwaloo meko, sisivumile isicelo sokutshintshwa kwephepha-mvume, [ngokubhalwe phantsi] ukuba isicelo sivunyiwe.”;

(f) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (17):

“(17) IBhodi kufuneka, lingaphelanga ixesha elimiselweyo emva kokuba imali emiselweyo ekubhekiswa kuyo kwicandelwana [(4)] 16, [kuxhomekeke kumacandelo 42, 43, 44, 45 no-53(1) no-(2),] ikhuphe iphepha-siqinisekiso sokutshintshwa kwephepha-mvume ekuthethwa ngalo, esicacisa imiqathango, iphephamvume elisebenza ngayo, enyanzeliswa siSigqeba seLayisenisi yeZotywala ngokwemiqathango yecandelo 20(3)(a).”;

(g) ngokufakelwa kweli candelwana lilandelayo: endaweni yecandelwana (21)

“(21) ISigqeba seLayisenisi yeZotywala okanye iGosa eLongameleyo linakho, [ngokokubona kwalo,] ukusivuma isicelo sokutshintsha sinike umabi-mafa, umgcini-mafa, umphathi-mafa okanye lowo uphethe umcimbi wokubhangisa okanye omnye umntu, ngokokugqiba kweSigqeba seLayisenisi yeZotywala okanye iGosa eLongameleyo, ngokwaloo meko, [elimbona efanelekile].”.

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

26. Icandelo 66 loMthetho-ngqangi lenziwa izilungiso—

(a) ngokucinywa kwegama elithi “akhethekileyo” naphina apho livela khona;

(b) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (4):

“(4) ISigqeba sokuNikezelwa kwamaPhepha-mvume oTywala kufuneka siqwalasele isicelo ngasinye sokususwa kwephepha-mvume kwaye sinakho—

(a) ukusikhaba isicelo; [okanye]

(b) sisivume isicelo; okanye

(c) sisamkele isicelo phantsi kwemiqathango ethile eya kuthi ibekwe siSigqeba seLayisenisi yeZotywala.”;

(c) ngokufakelwa kwla macandelwana alandelayo emva kwecandelwana (4):

“(4A) ISigqeba seLayisenisi yeZotywala kufuneka xa sinikezela imvume enemiqathango, sichaze isithuba apho umnikazi phepha-mvume ekufuneka ethobele ngayo loo miqathango echazwe kwicandelwana (4)(c).

(4B) ISigqeba seLayisenisi yeZotywalasingayitshintsha okanye siyirhoxise nanini na imiqathango emva kokufakwa kwesicelo ngumnikazi phepha-mvume.

(4C) iGosa eLongameleyo, nanini na emva kokufakwa kwesicelo ngumnikazi phepha-mvume, lingalandisa ixesha elibekwe ngokwemiqathango yecandelwana (4A).

(4D) Ukuba umnikazi phepha-mvume akayithobeli imiqathango ekuthethwe ngayo kwicandelwana (4)(c) kwisithuba esixelwe kwicandelwana (4A) okanye isithuba esongeziweyo ngokwemiqathango yecandelwana (4C), ukuphelelwa kwexesha lokunikezwa

kwemiqathango yezicelo noshenxiswa kwesicelo okubonwa ngathi kuye kwakhatywa.

(4E) Xa iGosa eLongameleyo lanelisekile ukuba umnini-layisenisi uyithobele imiqathango exelwe kwicandelwana (4)(c), iGosa eLongameleyo kufuneka linike imvume yokunikezwa kwelayisenisi.”;

(d) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (5):

“(5) IBhodi kufuneka, lingagqithanga ixesha elimiselweyo emva kokuba iSigqeba seLayisenisi yezoTywala okanye iGosa eLongameleyo lisivumile isicelo sokususwa kwephepha-mvume, kodwa oku kuxhomekeke kwicandelwana (10), lazise umfaki-sicelo ngokubhaliweyo ngokuba isicelo sakhe sivunyiwe.”; kananjalo

(e) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (13):

“(13) Ukuba isicelo sokususwa kwephepha-mvume sivunyiwe siSigqeba sokuNikezelwa kwamaPhepha-mvume okanye iGosa eLongameleyo sivunyelwa izakhiwo ezingekakhiwa, okanye izakhiwo ezisafuna ukuqhaqhwa zilungiswe, ukufakelwa okanye ukudilizwa zakhiwe ngokutsha ukuze zikulungele eziza kusetyenziselwa kona ngokwephephamvume, iBhodi kufuneka, kwisaziso ekubhekiswa kuso kwicandelwana (5), iyalele umnikazi phepha-mvume ukuba azithobele ezo meko okanye iimfuneko, ekubhekiswa kuzo kwisaziso, ngokuphathelelene nezo zakhiwo ziza kukhonjwa liGosa eloNgameleyo, lingaphelanga elo xesha ligqitywe liGosa eloNgameleyo.”.

Ukwenziwa kwezilungiso kwicandelo 67 loMthetho 4 ka-2008

27. Icandelo 67 loMthetho-ngqangi lenziwa izilungiso ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (2):

“(2) Umntu owonyulwe ngokwemigaqo yecandelo [(1)(b)] (1) uthathwa ngokuba ngumnikazi phepha-mvume.”.

Ukutshintshwa kwecandelo 68 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 51 loMthetho 10 ka-2010

28. Eli candelo lilandelayo lingena endaweni yecandelo 68 loMthetho-ngqangi:

“Izibheno nezicelo zovandlakanyo eziya kwiSigqeba seZibheno

68. (1) ISigqeba seZibheno kufuneka siqwalasele nasiphi na isibheno okanye isicelo sovandlakanyo ngaso nasiphi na isigqibo seSigqeba seeLayisenisi zoTywala [ngokwemigaqo yecandelo 20(3)] seGosa eLongameleyo okanye seSekela-Gosa eLongameleyo.

(2) ISigqeba seZibheno sisenokusiqinisekisa isigqibo eso okanye umyalelo lowo sisukela kuwo isibheno eso okanye isicelo sovandlakanyo eso, ngokwemeko.

(2A) Umfaki-sicelo okanye lowo uchaphazelekayo ongaxolanga sisigqibo seSigqeba seeLayisenisi zoTywala, okanye seGosa eLongameleyo okanye seSekela-Gosa eLongameleyo usenokuthi, lingaphelanga elo xesha libekiweyo, [angenise] isaziso afake isicelo kwiSigqeba seeLayisenisi zoTywala kwiGosa eLongameleyo okanye kwiSekela-Gosa eLongameleyo kuxhomekeke kulowo uchophele loo mcimbi sokuba anikwe izizathu zeso sigqibo,

(3) Umfaki-sicelo okanye lowo uchaphazelekayo ongaxolanga sisigqibo seSigqeba seeLayisenisi zoTywala, okanye seGosa eLongameleyo okanye seSekela-Gosa eLongameleyo usenokuthi, lingaphelanga elo xesha libekiweyo emva kokuba efumene izizathu zesigqibo [seSigqeba seeLayisenisi zoTywala] angenise isaziso kwiSigqeba seeLayisenisi zoTywala sokuba uyabhena okanye ucela uvandlakanyo, ngokwendlela ebekiweyo yokwenza oko.

[(4) Isibheno okanye uvandlakanyo kufuneka luchotshelwe ngokungathi sisibheno esingeniswe kwiNkundla ePhakamileyo kubhenwa ngesigwebo senkundla kamantyi kwityala lembambano kwaye nawo nawuphi na umthetho osebenza kwisibheno

sembambano esilolo hlobo, uya kuthi usebenze, kwenziwe ke ezo nguqu zithe zaba yimfuneko.]

(5) Ukuba iNkundla yeZibheno ibekele bucala isigqibo ngokwecandelwana C (2), isenokudlulisela loo mba kwiSigqiba seeLayisenisi zoTywala, kwiGosa eLongameleyo okanye kwiSekela-Gosa eLongameleyo, kuxhomekeke kwimeko leyo, ukuze uqwalaselwe, yaye isenokunika okanye inganiki mkhombandlela. 5

[(8) ISigqeba seZibheno sisenokuwukhupha loo myalelo ngokwentlawulo yeendleko zamaqela la achaphazeleka kule nkqubo okanye ezeSigqeba seeLayisenisi zoTywala, ngokokubona kwaso kwiimeko ezo.] 10

(9)(a) Umfaki-sicelo okanye lowo uchaphazelekayo [ungaxoliswayo sisigqibo seSigqeba seeLayisenisi zoTywala] ofake isaziso sesibheno okanye sovandlakanyo usenokuya kuvela ngokwakhe phambi kweSigqeba seZibheno okanye usenokuya kumelwa apho ligqwetha lejaji okanye nguye nawuphi na omnye umntu oye kuvela egameni lakhe. 15

(b) ISigqeba seeLayisenisi zoTywala singamelwa liGosa eLongameleyo okanye liSekela-Gosa eLongameleyo, igqwetha okanye nabani osimeleyo. 20

(10) Ukuba ngaba umntu, asakuba enikiwe isaziso ngokufanelekileyo sokuba abekhona kwindibano yeSigqeba seZibheno, uyasilela ukuya kuloo ndibano okanye uyahlala angezi engakhange afumane mvume kwiSigqeba seZibheno, indibano leyo isenokuqhutywa ngaphandle kwakhe okanye iSigqeba seZibheno sisenokuthi sithathe nawaphi na amanye amanyathelo esiwabona efanelekile kunjalo nje enobulali kuloo meko. 25

(11) Inkundla yeZibheno kufuneka ingenise ingxelo ngemisebenzi yayo ngexesha lonyakamali kuMphathiswa ukuze yandlalwe kwiPalamente yePhondo zingaphelanga iinyanga ezintlanu emva kokuphela konyaka-mali.”. 30

Ukwenziwa kwezilungiso kwicandelo 69 loMthetho 4 ka-2008, njengoko lenziwe izilungiso licandelo 52 loMthetho 10 ka-2010

29. Icandelo 69 loMthetho-ngqangi owenziwa izilungiso lenziwa izilungiso ngokufakela eli candelwana lilandelayo endaweni yecandelwana (12): 35

“(12) Ubungqina bokungasithobeli isaziso sothotyelo kwindibano yeSigqeba seeLayisenisi zoTywala, ngaphandle kobungqina obuphikisayo obenza ukuba kubekho amathandabuzo, bubungqina bokuba sikhona isigqitho esenziweyo okanye ukutyeshelwa komqathango welayisenisi ocaciswe kwisaziso sothotyelo.”. 40

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

30. Icandelo 73 loMthetho-ngqangi lenziwa izilungiso—

(a) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (1): 45

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

(b) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (3): 50

“(3) UMkhomishinala waMapolisa wePhondo [leNtshona Koloni] angathi nanini atshitshise ingqesho eyenziwe kulandelwa imiqathango yecandelwana (1).”;

(c) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (5): 55

“(5) UMkhomishinala wePhondo kufuneka ukuba xa emisela igosa lotywala elimiselweyo ngokwecandelwana (1), kunye neBhodi kufuneka ukuba xa ibeka umhloli ngokwecandelwana (4), ikhuphe isiqinisekiso okanye ileta esayiniweyo yokubekwa okanye yokumiselwa isayinwe

nguMkhomishinala wePhondo okanye liGosa eliLawulayo eliyiNtloko egameni leBhodi, ngokwaloo mntu uphethe lo mcimbi.”; kananjalo

(d) ngokongezwa kweli candelwana lilandelayo:

“(8)(a) UMkhomishinala wePhondo angathi adlulisele nawaphi amagunya akhe okanye umsebenzi wakhe ngeleta ebhaliweyo ngokwemiqathango yeli candelo kulo naliphi iLungu laMapolisa oMzantsi Afrika okanye nawuphi na umntu oqeshwe ngaMapolisa oMzantsi Afrika ukuba enze loo msebenzi egameni lakhe.

(b) Icandelo 15 leSouth African Police Service Act nezilungiso zayo, lilo elisebenzayo xa kuthe kwadluliselwa amagunya achazwe kumhlathi (a).”

Ukutshintshwa kwecandelo 74 loMthetho 4 ka-2008

31. Eli candelo lilandelayo lingena endaweni yecandelo 74 loMthetho-ngqangi:

(a) ngokufakelwa isihloko kwicandelo 74 lesihloko silandelayo:

“Amagunya amagosa otywala amiselweyo, amagosa ocwangco nabahloli”;

(b) ngokufakelwa kwecandelwana (1) kumagama aphambi komhlathi (a) kula magama alandelayo:

“Ngokuthathela ingqalelo icandelo 75, igosa lotywala elimiselweyo, igosa locwangco okanye umhloli usenokuthi xa esenza umsebenzi wakhe ngokwalo Mthetho—”;

(c) ngokufakelwa umhlathana (iii) womhlathi (a) wecandelwana (1) lalo mhlathana ulandelayo:

“(iii) nakuwo nawaphi na amasango okanye kuso nasiphi na isithuthi xa enesizathu esimkrokrisa ukuba kungenzeka ukuba kuthi kanti kugcinwa okanye kuthengiswa okanye kuhanjiswa utywala kuwo okanye kuyo ngendlela ehamba nxamnye nemigaqo yalo Mthetho, aze ke enze naluphi na uphando, abuze nayiphi na imibuzo okanye enze naluphi na uhlobo, ngokokubona kwakhe kufanelekile;”;

(d) ngokufakelwa umhlathi (b) wecandelwana (1) lalo mhlathi ulandelayo:

“(b) nanini na, naphi na acele nawuphi na umntu ukuba ambonise ilayisenisi yakhe kwangoko okanye ngaloo mhla lithe igosa lotywala, igosa locwangco okanye umhloli wawubeka, okanye amarekhodi okanye ezinye iimpepha nje anazo okanye ekukholelwa ukuba ziselugcinweni lwakhe okanye eziphantsi kolawulo lwakhe umntu lowo okanye ke omnye umntu osebenza egameni laloo mntu;”;

(e) ngokufakelwa icandelwana (2) endaweni yeli candelwana lilandelayo:

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

(f) ngokufakelwa icandelwana (3) endaweni yeli candelwana lilandelayo:

“(3) Nawuphi na umntu obuzwa imibuzo ligosa lotywala elimiselweyo, igosa locwangco okanye umhloli ngokwemigaqo yalo Mthetho kufuneka ukuba aqale axelwe ngamalungelo akhe awanikwa ngumgaqo-siseko phambi kokuba kuqaliswe ngemibuzo, kwaye nayiphi na impendulo enikwa nguloo mntu kufuneka ibe yinyani, ayinike kangangoko ekwazi.”; kananjalo

(g) ngokufakelwa kwecandelwana (4) kumagama aphambi komhlathi (a) kula magama alandelayo:

“Impendulo okanye inkcazo enikwa igosa lotywala elimiselweyo, igosa locwangco okanye umhloli isenokungasetyenziswa okanye isenokungamkelwa xa kuxoxwa ityala lalowo ubeyinikile, ngaphandle kokuba kuxoxwa ityala lomntu eliphathelele kwisityholo esimalunga—”.

Ukwenziwa kwezilungiso kwicandelo 75 loMthetho 4 ka-2008

- 32. Icandelo 75 loMthetho-ngqangi owenziwa izilungiso lenziwa izilungiso—**
- (a) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (1):
 “(1) Igosa lotywala elimiselweyo, igosa locwangco okanye umhloli usenokuthi asebenzise ilungelo elikhankanywe kwicandelo 74 malunga nokungena nokusetsha okanye nokuhlola amasango, ukuba ngaba ugunyaziswa liphepha lesigunyazo elikhutshwe ngumantyi ngokwecandelwana (3).”;
- (b) ngokucima icandelwana (2);
- (c) ngokutshintshwa kwala magama alandelayo kwicandelwana (3) kumagama aphambi komhlathi (a):
 “Umantyi usenokuthi akhuphe iphepha logunyaziso lokungena, ukusetsha nokuhlola nawaphi na amasango ekubhekiswe kuwo kwicandelo 74(1)(a), ukuba ngaba ngokwengcaciso ebhaliweyo nefungelweyo okanye eyenzelwe uqinisekiso, unaso isizathu sokukholelwa ukuba—”;
- (d) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (4):
 “(4) Igosa lotywala elimiselweyo, igosa locwangco okanye umhloli usenokuwasebenzisa la magunya akhankanywa kwicandelwana (1) nangaphandle kwephepha logunyaziso—
- (a) ngemvume yomntu okanye yomntu olawula loo masango;
- (b) ukuba kukho isaziso sothotyelo esingekafezekiswa nesasikhutshwe ngokwemigaqo yecandelo 69, ngeenjongo zokuqinisekisa ukuba ngaba isaziso eso sithotyelwe na; okanye
- (c) ukuba ngaba igosa lotywala elimiselweyo, igosa locwangco okanye umhloli unezizathu ezibonakalayo zokukholelwa ukuba—
- (i) iphepha logunyaziso liya kukhutshwa ngokwemiqathango yecandelwana (3) ukuba unokuthi enze isicelo salo; nokuba
- (ii) ulibaziseko ekufumaneni iphepha logunyaziso lungazidobalalisa iinjongo zoko kusetsha okanye zoko kuhlola.”;
- (e) ngokufakelwa kweli candelwana lilandelayo kwecandelwana (4):
 “(4A) Igosa lotywala elimiselweyo, igosa logcino-cwangco okanye umhloli usenokuwasebenzisa amagunya akhankanywe kwicandelwana (1) ngaphandle kwephepha logunyaziso kumasango anelayisenisi kuphela, kwanokuba uhlolo lwenzelwa ukujonga uthotyelo lwalo Mthetho nemiqathango yelayisenisi.”;
- (f) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (5):
 “(5) Xa lingena kumasango ngokweli candelo, igosa lotywala elimiselweyo, igosa locwangco okanye umhloli kufuneka—
- (a) azazise kulo mntu uphethe la masango;
- (b) ambonise loo mntu iphepha logunyaziso, ukuba likhona;
- (c) acacise igunya eluqhutywa phantsi kwalo uhlolo olo; kwaye
- (d) kwimeko yamasango anelayisenisi, aluqhube uhlolo olo ngendlela eya kuthi ingabi naluphazamiso lungako kumnini welayisenisi nakubathengi/nakubaxhasi bakhe nakwishishini eli linelayisenisi.”;
- (g) ngokuthi endaweni yecandelwana (6) kufakwe eli candelwana lilandelayo:
 “(6) Igosa lotywala elimiselweyo, igosa locwangco okanye umhloli xa ethatha nantoni ngokwemigaqo yeli candelo, kufuneka ukuba amnike irisithi loo mntu amthathela into okanye izinto ezichazwa kuyo izinto ezo zithathiweyo, amcacisele nesizathu sokuzithatha izinto ezo.”; kunye
- (h) nokuthi endaweni yecandelwana (7) kufakwe eli candelwana lilandelayo:
 “(7) Amacandelo 30 ukuya ku-34 oMthetho iCriminal Procedure Act, nezilungiso zawo, ngawo asebenzayo, kuyo nantoni na ethe yathathwa kulandelwa eli candelo.”.

Ukutshintshwa kwecandelo 79 loMthetho 4 ka-2008

33. Eli candelo lilandelayo lingena endaweni yecandelo 79 loMthetho-ngqangi:

“Amatyala amalunga namagosa otywala amiselweyo, amagosa ocwangco nabahloli

- 79.** Umntu othi— 5
- (a) aphosise ngokuthi uligosa elimiselweyo lotywala, igosa locwangco okanye umhloli;
- (b) ophazamisana negosa lotywala, igosa locwangco okanye umhloli ekwenzeni umsebenzi wakhe ngokwalo Mthetho;
- (c) owalayo okanye angakwazi ukuthobela umyalelo osemthethweni onikwe ligosa elimiselweyo lotywala, igosa locwangco okanye umhloli; 10
- (d) xa ebuzwa ligosa elimiselweyo lotywala, igosa locwangco okanye umhloli, anike impendulo engeyiyo esazi ukuba uyaphosisa; okanye 15
- (e) angakwazi ukuthobela isicelo esinokuthobeleka esisuka kwigosa elimiselweyo lotywala, igosa locwangco okanye umhloli ngokwemiqathango yecandelo 74, unetyala.”.

Ukubhangiswa kwecandelo 81 loMthetho 4 ka-2008 20

34. Icandelo 81 loMthetho-ngqangi liyabhangiswa.

Ukwenziwa kwezilungiso kwicandelo 84 loMthetho 4 ka-2008, njengoko endaweni yalo kungene icandelo 57 loMthetho 10 ka-2010

35. Icandelo 84 loMthetho-ngqangi owenziwa izilungiso lenziwa izilungiso—
- (a) ngokufakelwa kwale mhlathi ilandelayo kwicandelwana (1) emva komhlathi (k): 25
- “(kA) unothimba owenza umsebenzi egameni likamasipala okanye egameni laMapolisa oMzantsi Afrika, xa esenza umsebenzi wakhe;
- (kB) aMapolisa oMzantsi Afrika okanye umasipala ochaphazelekayo, ngokwaloo meko, malunga nokuthengiswa kotywala obuthinjwe nguRhulumente njengoko kuchazwe kwicandelo 87(4);”; 30
- (b) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (d) wecandelwana (2):
- “(d) egameni lenqununu yeziko lezemfundo [ngaphandle kwesikolo esichazwe kwiSouth African Schools Act, 1996 ,] kwiiresty esetyenziselwa abantu abaqeqeshelwa ukupheka kweso sakhawo sinabantu, silawulwayo okanye esimenteyinwa liziko elo, ukuze kutyelwe kulo restyu;”; 35
- (c) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (e) weli candelwana (2):
- “(e) ukuba loo mntu ngumqokeleli weewayini okanye igrangqa yaye obo tywala bunengqokelela yakhe yeewayini okanye yeeग्रangqa okanye inxalenye yazo; okanye”; kananjalo 40
- (d) ngokufakelwa kwalo mhlathi ulandelayo: endaweni yomhlathi (f) weli candelwana (2): 45
- “(f) ukuba loo mntu ngunothimba [onelayisenisi] osebenzela umbutho wenkcubeko okanye wentlalontle, iziko lezemfundo, [ngaphandle kwesikolo esichazwe kwiSouth African Schools Act, 1996,] okanye iziko leinshorensi.”. 50

Ukutshintshwa kwecandelo 85 loMthetho 4 ka-2008

36. Eli candelo lilandelayo lingena endaweni yecandelo 85 loMthetho-ngqangi:

“Ubungqina

- 85.** (1) Ukuba kwathi ekuxoxweni kwetyala okanye kwintlanganiso yeSigqeba seeLayisenisi zoTywala kwafunyaniswa kukho ubungqina bokuba umntu ongenayo ilayisenisi okanye ongavunyelwanga ukuba athengise utywala ngokwemigaqo yalo Mthetho okanye yawo nawuphi na omnye uMthetho—
- (a) unomqondiso okanye isaziso anaso kumasango akhe okanye kufutshane nawo esixela ukuba kukho utywala obuthengiswayo kuwo okanye unelayisenisi esasebenzayo yokuthengisa utywala;
- (b) kumasango amiswe okanye alawulwa ngendlela ebonisa ngaphandle kwamathandabuzo ukuba kuthengiswa utywala kuwo;
- (c) apha kumasango akhe okanye aphantsi kolawulo lwakhe unotywala **[obungaphaya komthamo ekungenakudlulwa kuwo ngokwemigaqo yecandelo 60 engakhange ayifumane imvume efunwa leli candelo]** abebufunela yena okanye amalungu osapho lwakhe okanye iindwendwe zakhe, ngaphandle kokuba loo mntu ngumqokeleli weewayini okanye iigrangqa yaye obo tywala buqulethe ingqokelela yakhe yeewayini okanye yeegrangqa okanye okanye inxalenye yazo; okanye
- (d) uthenge okanye ufumene utywala obungaphaya kwalo mthamo **[kungenakudlulwa kuwo ngokwemigaqo yecandelo 60 engakhange ayifumane imvume efunwa leli candelo]** ubebufunela yena okanye amalungu osapho lwakhe okanye iindwendwe zakhe, ngaphandle kokuba loo mntu ngumqokeleli weewayini okanye iigrangqa yaye obo tywala buqulethe ingqokelela yakhe yeewayini okanye yeegrangqa okanye okanye inxalenye yazo,
- kukungabikho kobungqina obuphikisa ubungqina obususa amathandabuzo okuba uthengisa utywala ngokwenene.
- (2) Ukuba ekuxoxweni kwetyala okanye kwintlanganiso yeSigqeba seeLayisenisi zoTywala—
- (a) kuye kwavela ubungqina obusisikhongozelo esingekavulwa esiphethe into elulwelo ekukho kuso neleyibhile okanye into exela umthamo wegrangqa kolo lwelo, kube kungekho bungqina obuphikisa ubungqina obudala amathandabuzo, obo bubungqina obucacileyo bokuba ulwelo olo lunalo eli grangqa lixeliweyo, kwaye ke ukuba ngaba elo grangqa lingaphaya kwe-1% ngokomthamo, olo lwelo lubutywala;
- (b) kuthe kwangeniswa ubungqina bezikhongozelo ezingaphaya kwesinye, iseso siyinxenye yesitokhwe okanye yengqokelela yezikhongozelo eziphethwe utywala nezifunyenwe kwindawo enye ngexesha elinye, kwaye kwabonakaliswa izikhongozelo ezo zingaphezulu kwesinye ziphethwe utywala, kube kungekho bungqina obuphikisa ubungqina obudala amathandabuzo, obo bubungqina obucacileyo ukuba zonke ezo zikhongozelo ziphethwe utywala;
- (c) kuthe kwangeniswa ubungqina obuliphepha ekuthiwa liyikopi yelayisenisi, ngokuveliswa nje kwalo, kube kungekho bungqina obuphikisa ubungqina obudala amathandabuzo, obo bubungqina belayisenisi okanye bemvume, kwaye nawuphi na umqathango okanye uqinisekiso oluhamba nelo phepha luthathwa ngokuba ngumqathango okanye luqinisekiso olubekwe ngokwemiqathango yalo Mthetho;
- (d) kuthe kwangeniswa njengobungqina inkcazo okanye isiqinisekiso ekuthiwa sisayinwe ngumhlalutyi okanye ngunokhemesti oqeshwe nguRhulumente weRiphabliki yoMzantsi Afrika, okanye oqeshwe yiyunivesiti okanye liziko lophando ngamayeza, elithe lenza uhlautyo lolwelo okanye lwesabstenisi ebandakanyeka ekuxoxweni kwetyala okanye kwintlanganiso, loo nkcazo okanye eso satifikethi

- kube kungekho bungqina obuphikisa ubungqina obudala amathandabuzo, obo bubungqina obaneleyo boko kuqulathwe yinkcazo leyo okanye sisiqinisekiso eso; okanye
- (e) kungeniswe ubungqina bokuba umnini welayisenisi otyholwa ngokutyeshela icandelo 54 uye wasilela ukufuna kumntu ongaphantsi kweminyaka yobudala elishumi elinesibhozo (18) nokuba—
- (i) liphepha lakhe elisisazisi esisemthethweni;
 - (ii) ilayisenisi yokuqhuba yakhe esemthethweni; okanye
 - (iii) ipasipoti yakhe esemthethweni,
- kube kungekho bungqina buphikisa ubungqina obudala amathandabuzo, obo bubungqina obucacileyo bokuba umnini welayisenisi wayesazi ukuba loo mntu ungaphantsi kweminyaka yobudala elishumi elinesibhozo (18).”

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

- 37. Icandelo 87 loMthetho-ngqangi owenziwa izilungiso lenziwa izilungiso—**
- (a) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (b) weli candelwana (1) :
- “(b) icandelo 49(7), 50(2), 51(9), 53(4), 58(3), 59(8), 76(e), 76(f)[,] okanye 76(i) **[okanye 81(4)]** xa efunyenwe enetyala uya kuhalwuliswa imali engekho ngaphezu kwama-R500 000,00 okanye avalelwe entolongweni isithuba esingadlulanga kwiminyaka emibini enesiqingatha okanye azinikwe zozibini ezi zigwebo.”;
- (b) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (d) wecandelwana(1) :
- “(d) icandelo 23(13), 48(15), 56(5), 76(a), 76(d), 77, 78(1), 78(3), 79, 80(1) okanye 86(2) usenokugwetywa ifayini engadlulanga kuma-R50 000,00 okanye avalelwe entolongweni isithuba esingadlulanga kwiminyaka emibini enesiqingatha okanye azinikwe zozibini ezi zigwebo.”;
- (c) ngokufakelwa kweli candelwana lilandelayo emva kwecandelwana (1):
- “(2) Umntu ogwetyelwe ityala ngokwalo Mthetho nothe emva kokuba etyatyekwe elo tyala okanye emva kokuba egwetyiwe, kuxhomekeke kuloo meko, uyaqhubeka nomkhwa ebewenza okanye unento angayenziyo emenze ukuba abe netyala, uyaqhubeka ukwenza ityala, uya kuthi agwetyelwe isohlwayo esingekho ngaphezu kweR2000,00 okanye avalelwe entolongweni isithuba esingekho ngaphezu kweentsuku ezingama-30, okanye azifumane zombini ezi zigwebo, esentlawulo nesokubanjwa ngosuku ngalunye athe waqhubeka esenza okanye engenzi loo nto imbangela ukuba abe unetyala.”;
- (d) ngokucinywa kweli candelwana (3); kananjalo
- (e) ngokufakelwa kweli candelwana lilandelayo endaweni yecandelwana (4):
- “(4)(a) nabuphi na utywala obuthinjwe nguRhulumente ngokomthetho iCriminal Procedure Act obulityala ngokwalo Mthetho, bungathi ngokwemiqathango yalo Mthetho, buthengiswe kwifandesi kawonkewonke—
- (i) ngaMapolisa oMzantsi Afrika, ukuba isimangalo selo tyala sasiqalwe ngawo; okanye
 - (ii) ngumasipala ochaphazelakayo, ukuba isimangalo selo tyala sasiqalwe ngamapolisa alo masipala.
- (b) Imali efunyenwe kuloo ntengiso echazwe kumhlathi (a) kufuneka ihlawulwe kwiNgxowamali yeNgeniso yeSizwe (National Revenue Fund) okanye kwibhanki yaloo masipala uchaphazelekayo, kuloo meko.”.

Ukwenziwa kwezilungiso kwicandelo 88 loMthetho 4 ka-2008

- 38.** Icandelo 88 loMthetho-ngqangi lenziwa izilungiso—
- (a) ngokufakelwa kwalo mhlathi ulandelayo endaweni yomhlathi (d) wecandelwana (1):
 “(bA) ukuhlaziywa kweelayisenisi;”; kunye 5
- (b) nangokufakelwa endaweni yomhlathi (d) wecandelwana (1) kwalo mhlathi ulandelayo:
 “(d) [nokwenziwayo ngotywala obuthe banikezelwa okanye bathathwa nguRhulumente ngokwemigaqo yecandelo 87(2)] ukuthengiswa kotywala obuthinjiweyo kwifandesi kawonkewonke njengoko kuchaziwe kwicandelo 87(4); okanye”. 10

Ukwenziwa kwezilungiso kwisalathiso soMthetho 4 ka-2008, njengoko senziwe izilungiso licandelo 1 loMthetho 10 ka-2010

- 39.** Isalathiso esiphambi kwecandelo 1 loMthetho-ngqangi senziwa izilungiso—
- (a) ngokutshintshwa koko kubhekisa kwisihloko secandelo 17 salo mba ulandelayo:
 “17. Ukuthintelwa ukunyulwa njengelungu okanye ilungu elimele elinye leSigqeba seLayisenisi yezoTywala”; 15
- (b) ngokutshintshwa koko kubhekisa kwisihloko secandelo 48 esithi:
 “48. Amaphepha-mvume otywala ethutyana kunye namaphepha- 20
 mvume otywala [amatheko awodwa]”;
- (c) ngokutshintshwa koko kubhekisa kwisihloko secandelo 74 esithi:
 “74. Amagunya amagosa otywala amiselweyo, amagosa ocwangco nabahloli”;
- (d) ngokutshintshwa koko kubhekisa kwisihloko secandelo 79 esithi: 25
 “79. Amatyala amalunga namagosa otywala amiselweyo, amagosa ocwangco nabahloli”; kananjalo
- (e) nangokucinywa koko kubhekisa kwicandelo 81.

Isihlokwana esifutshane nokuqalisa kwawo

- 40.** Lo Mthetho waziwa ngokuba nguMthetho weZilungiso kuMthetho woTywala weNtshona Koloni, ka-2015, kwaye uqalisa ukusebenza ngaloo mhla uya kuthi ubekwe yiNkulumbuso yePhondo ngompoposho okwiGazethi yePhondo. 30

IMEMORANDAM YEENJONGO ZOMTHETHO OSAYILWAYO WEZILUNGISO WOTYWALA WENTSHONA KOLONI, 2015

1. IMVELAPHI

- 1.1 Oko kwaqala ukusebenza uMthetho woTywala weNtshona Koloni, ka-2008 (UMthetho 4 ka-2008), noMthetho weZilungiso kuMthetho woTywala weNtshona Koloni, ka-2010 (uMthetho 10 ka-2010), kuye kwakho imingeni emininzi ekusebenziseni lo mthetho.
- 1.2 Le mingeni ibandakanya:
 - (a) imiba yokutolika intsingiselo yamacandelo 59, 81 no-89;
 - (b) umngeni wamalungu eSigqeba seLayisenisi yeZotywala apho amalungu aye angafumaneki ukuba azimase iintlanganiso ze ngenxa yoko kungabikho khoram;
 - (c) izithintelo kwiGosa eLongameleyo neSigqeba seeLayisenisi zoTywala ukuba badlulise amanye amagunya abo kwabanye abasebenzi; kunye
 - (d) nezithintelo zokuba amagosa onyanzeliso-mthetho angavumeleki ukuba enze uhlobo lwesiqhelo kumaziko anelayisenisi engaphethanga myalelo wenkundla.
- 1.3 Xa bekusenziwa izilungiso kuMthetho-ngqangi ukuze kujongwane nobunzima obukhankanywe ngentla, kuye kwafunyanwa iziphakamiso kumaziko achaphazelekayo kulawulo lotywala kwiPhondo, ingakumbi kuMapolisa oMzantsi Afrika nakwiSixeko saseKapa.
- 1.4 Kulandelwa ezi ziphakamiso, imiqathango yokuxhobisa amagosa ocwangco ukuba anyanzelise uMthetho-ngqangi bezibandakanyiwe kuMthetho oSayilwayo. Ngaphezu koku, uMthetho oSayilwayo ubandakanya imiqathango enceda umasipala naMapolisa oMzantsi Afrika ukuba alahle utywala obuthinjiweyo ngokuthi abuthengise kwifandesi kawonkewonke ukuba akhetha ukwenza oko.

2. IINJONGO ZALO MTHETHO USAYILWAYO

- 2.1 UMthetho usaYilwayo unceda ekujonganeni neqela lemingeni ekhoyo ngoku abajongene nayo abachaphazelekayo kunyanzeliso lokuthotyelwa koMthetho-ngqangi.
- 2.2 Injongo yezi zilungiso kukuxhobisa uGunyaziwe woTywala weNtshona Koloni ukuba enze umsebenzi wakhe ongundoqo engakhange wadibana neengxaki eziba yimiqobo. Oku kuza kwenza ukuba inkqubo yokunikezwa kweelayisenisi kwiPhondo ihambe lula.

3. IZIQULATHO ZALO MTHETHO USAYILWAYO

Iinjongo zamasoloty ahlukileyo zichazwe apha ngezantsi.

- 3.1 **Isoloty 1** lineenkcazelo ezintsha “zoMkomishinala wePhondo”, “iinkonzo zamapolisa zikamasipala” kunye “nelungu elingene endaweni yelinye”. Lenza izilungiso kwinkcazelo “yesiganeko” yaye likwafakela nenkcazelo entsha “yelayisenisi yotywala yesiganeko”, kulandelwa izilungiso ezenziwe kwimiqathango yoMthetho-ngqangi emalunga “neelayisenisi zeziganeko ezizodwa”. Eli soloty likwenza izilungiso kwicandelo elinika inkcazelo “yomphathi”, lenza izilungiso kwinkcazelo “yeSekela-gosa eLongameleyo” likongeza nenkcazelo “yegosa locwangco” ukuze ibandakanye iLungu laMapolisa oMzantsi Afrika okanye ilungu lamapolisa kamasipala. Eli soloty licima inkcazelo “yomntu” kunye “newayini enesipirithi” nokufakela inkcazelo “yesipirithi”. Eli soloty lenza izilungiso kwinkcazelo “yewayini”.
- 3.2 **Isoloty 2** lenza izilungiso kwicandelo 16 loMthetho-ngqangi ngokwenza imiqathango yokutyunjwa kwamalungu angena endaweni yamanye

amalungu. Likwawumela ukuba kutyunjwe aMasekela aMagosa oNgameleyo ukuya kuma kwisithathu. Likwanika iGosa eLongameleyo ukuba lidlulisele amagunya okanye imisebenzi yalo komnye umntu.

- 3.6 **Isoloty 3** lenza izilungiso kwicandelo 17 loMthetho-ngqangi yaye lisisiphumo sokwenziwa kwezilungiso ezimalunga nokutyunjwa kwamalungu angena endaweni yamanye.
- 3.4 **Isoloty 4** lenza izilungiso kwicandelo 18 loMthetho-ngqangi yaye lilungelelanisa uMthetho kunye notshintsho kumagama amanqanaba ahlukileyo kwiNkonzo yaMapolisa oMzantsi Afrika.
- 3.5 **Isoloty 5** lenza izilungiso kwicandelo 19 loMthetho-ngqangi yaye lisisiphumo sokwenziwa kwezilungiso ezimalunga nokunyusa inani laMasekela aMagosa oNgameleyo.
- 3.6 **Isoloty 6** lenza izilungiso kwicandelo 20 loMthetho-ngqangi ngokususa isalathiso esidala esibhekisa kwicandelo 65(9). Libonelela ngomhlaba wokuba iSigqeba soNikezo-zilayisenisi zoTywala sikwazi ukuphinda siqwalasele umcimbi odluliselwe kuyo yiNkundla yeZibheni. Eli soloty limisela igunya leGosa eLongameleyo lokuba lidlulisele umcimbi kwiSigqeba soNikezo-zilayisenisi zoTywala ukuba uqwalaselwe.
- 3.7 **Isoloty 7** lenza izilungiso kwicandelo 21 loMthetho-ngqangi ngomqathango othi iGosa eLongameleyo lingacela ilungu elimele elinye ukuba lizimase nayiphi na intlanganiso yeSigqeba seeLayisenisi zoTywala xa elinye ilungu lingazi kukwazi ukuza entlanganisweni. Injongo yesi silungiso kukunqanda ukungabikho kwekhoram ezintlanganisweni zeSigqeba seLayisenisi yeZotywala ngenxa yokungafumaneki kwamalungu.
- 3.8 **Isoloty 8** lingena endaweni yecandelo 22 loMthetho-ngqangi yaye lisisiphumo sokwenziwa kwesilungiso esimalunga nokutyunjwa kwamalunga angena endaweni yamanye.
- 3.9 **Isoloty 9** lenza izilungiso kwicandelo 24 loMthetho-ngqangi ngomqathango othi iGosa eLongameleyo lingacela ilungu elimele elinye ukuba lizimase nayiphi na intlanganiso yeSigqeba seeLayisenisi zoTywala xa elinye ilungu lingazukwazi ukuza entlanganisweni. Eli soloty likwanceda iSigqeba seeLayisenisi zoTywala ukuba sidlulisele imisebenzi yaso kwikomiti. Isoloty linikeza amalungelo okuvota kumalungu arhwetyeshiweyo athe anyulelwa kwikomiti yeSigqeba seeLayisenisi zoTywala phantsi kwemiqathango ethile.
- 3.10 **Isoloty 10** lenza izilungiso kwicandelo 25 loMthetho-ngqangi yaye lisisiphumo sokwenziwa kwesilungiso esimalunga nesibheni kunye nophonongo lwezigqibo zeSigqeba seeLayisenisi zoTywala, eseGosa eLongameleyo iSigqeba kunye naMasekela-gosa oNgameleyo.
- 3.11 **Isoloty 11** lenza izilungiso kwicandelo 27 loMthetho-ngqangi yaye lisisiphumo sokwenziwa kwesilungiso esimalunga nokutyunjwa kwamalunga angena endaweni yamanye.
- 3.12 **Isoloty 12** lingena endaweni yecandelo 30 loMthetho-ngqangi. Noxa isisilungiso esenzeke ngenxa yemeko yokongezeka kwamatyala ohlukileyo phantsi kwalo Mthetho, likwanceda ekubeni kwabiwe iimali ezenzeke ngenxa yokusebenza kwalo Mthetho.
- 3.13 **Isoloty 13** lenza izilungiso kwicandelo 33 loMthetho-ngqangi yaye lisisiphumo sokwenziwa kwezilungiso ezimalunga neelayisenisi zotywala zamatheko akwiSoloty 16 loMthetho osaYilwayo.

- 3.14 **Isolotya 14** lenza izilungiso kwicandelo 41 loMthetho-ngqangi. Esi silungiso songeza izinto ekufuneka zithethelwe ingqalelo xa iSigqeba seeLayisenisi zoTywala siqwalasela isicelo selayisenisi yotywala.
- 3.15 **Isolotya 15** lenza izilungiso kwicandelo 42 loMthetho-ngqangi ukuze uGunyaziwe woTywala akwazi ukurhoxisa unikezo lweyilayisenisi ekhatshwa yimiqathango. Likwagunyazisa iGosa eLongameleyo ukuba likwazi ukuthatha isigqibo sokuba ingaba umfaki-sicelo uyithobela na imiqathango ekwelayisenisi ekhutshwe nemiqathango.
- 3.16 **Isolotya 16** lingena endaweni yecandelo 48 loMthetho-ngqangi ukuze kususwe iilayisenisi zotywala zamatheko awodwa, ze kungene endaweni yazo iilayisenisi zotywala zamatheko. Likwabonelela ngemiqathango yeelayisenisi zethutyana.
- 3.17 **Isolotya 17** lenza izilungiso kwicandelo 51 loMthetho-ngqangi ngokongeza ilungelo lokufaka isicelo sokurentisa ngesakhiwo esinelayisenisi kubo bonke abanini-layisenisi. Likwabonelela ngemiqathango yezicelo zokurentisa ngezakhiwo ezineelayisenisi.
- 3.18 **Isolotya 18** lenza izilungiso kwicandelo 52 loMthetho-ngqangi. Lenza izilungiso kwinkqubo yokutyunjwa kwemanejala yaye livumela iGosa eLongameleyo kunye neekomiti ezimiselwe ngokwemiqathango yecandelo 24 ukuba zityumbe abantu kwiimeko ezithile.
- 3.19 **Isolotya 19** lenza izilungiso kwicandelo 56 loMthetho-ngqangi ukwenzela ukuba abantu abangaphantsi kweminyaka eli-18 bangavunyelwa kwimimandla enezithintelo ekwizakhiwo ezinelayisenisi yokuthengisa utywala obuza kuselelwa kweso sakhiwo.
- 3.20 **Isolotya 20** lenza izilungiso kwicandelo 59 loMthetho-ngqangi. Lenza lula ze licacise imiqathango emalunga neentsuku zokuthengisa utywala apho umasipala engazibekanga iintsuku neeyure zokuthengisa utywala obuza kuselelwa ngaphakathi nangaphandle kwesakhiwo esinelayisenisi.
- 3.21 **Isolotya 21** lenza izilungiso kwicandelo 60 loMthetho-ngqangi ngokuyekisa ukuthintelwa kweelayisenisi zabantu abanotywala abungaphezulu komyinge othile.
- 3.22 **Isolotya 22** lenza izilungiso kwicandelo 62 loMthetho-ngqangi ngokwenza izilungiso kwimiqathango emalunga nokusebenza kwelayisenisi ngenxa yezilungiso ezikwicandelo 68.
- 3.23 **Isolotya 23** lingena endaweni yecandelo 63 ngokubonelela umnini-layisenisi ngokuba akhethe ukulandela umjikelelo weminyaka emibini wohlaziyo.
- 3.24 **Isolotya 24** lenza izilungiso kwicandelo 64 loMthetho-ngqangi yaye lisisiphumo sokwenziwa kwesilungiso esimalunga nokwaziswa komjikelelo ongunyaka-mbini wohlaziyo.
- 3.25 **Isolotya 25** lenza izilungiso kwicandelo 65 loMthetho-ngqangi ngokuvumela iSigqeba seeLayisenisi zoTywala ukuba sikwazi ukwamkela izicelo zokunikezwa kweelayisenisi phantsi kwemiqathango ethile. Likwabeka imiqathango yonikezo lokugqibela lweelayisenisi.
- 3.26 **Isolotya 26** lenza izilungiso kwicandelo 66 loMthetho-ngqangi yaye lisisiphumo sokwenziwa kwezilungiso ezimalunga neelayisenisi zamatheko awodwa. Likwavumela iSigqeba seeLayisenisi zoTywala ukuba sikwazi ukwamkela izicelo zokususwa kweelayisenisi phantsi kwemiqathango ethile yaye likwabeka imiqathango yokunikezelwa kwezicelo ezinemiqathango zokususwa kwelayisenisi.

- 3.27 **Isolotya 27** lenza izilungiso kwicandelo 67 loMthetho-ngqangi yaye sisilungiso sokulungisa into enobuzaza.
- 3.28 **Isolotya 28** lingena endaweni yecandelo 68 loMthetho-ngqangi. Longeza ilungelo lokubhena nophononongo ukuze kubandakanywe zonke izigqibo zeSigqeba seeLayisenisi zoTywala, zeGosa eLoNgameleyo okanye zeSekelagosa eLongameleyo. Eli solotya linikeza igunya kwiNkundla yeZibheno ukuba idlulisele umcimbi ophambi kwayo kumthathi-sigqibo wokuqala ukuba aphinde asiqwalasele xa ethatha isigqibo.
- 3.29 **Isolotya 29** lenza izilungiso kwicandelo 69 ukuze lihambelane nezilungiso zecandelo 85.
- 3.30 **Isolotya 30** lenza izilungiso kwicandelo 73 loMthetho-ngqangi yaye lisisiphumo sokulungelelaniswa koMthetho kunye nokuchazwa kwamaganaba aMapolisa oMzantsi Afrika. Likwatsho ukuba uMkomishinala wePhondo angadlulisela amagunya akhe nemisebenzi yakhe ngokuhambelana nomthetho iSouth African Police Service Act, 1995 (uMthetho 68 ka-1995).
- 3.31 **Isolotya 31** lenza izilungiso kwicandelo 74 loMthetho-ngqangi. Libeka imiqathango yokunyanzeliswa koMthetho ngamagosa ocwangco.
- 3.32 **Isolotya 32** lenza izilungiso kwicandelo 75 loMthetho-ngqangi yaye sisilungiso esenziwe ngenxa yezilungiso ezimalunga nokubandakanywa kwamagosa ocwangco ekunyanzelisweni koMthetho. Sikwabeka nemiqathango yokusetsha, ukungena nokuhlola amaziko anelayisenisi phantsi kweemeko ezithile kungafunyanwanga myalelo wenkundla.
- 3.33 **Isolotya 33** lingena endaweni yecandelo 79 loMthetho-ngqangi yaye sisilungiso esenziwe ngenxa yezilungiso ezimalunga nokubandakanywa kwamagosa ocwangco ekunyanzelisweni koMthetho.
- 3.34 **Isolotya 34** libhangisa icandelo 81 loMthetho-ngqangi.
- 3.35 **Isolotya 35** lenza izilungiso kwicandelo 84 loMthetho-ngqangi kwaye kwangaxeshanye lenza isilungiso ngokongeza abo bavunyelwe ukuba bangayithobeli le miqathango ngokubandakanya oonothimba abathunywe ngaMapolisa oMzantsi Afrika okanye umasipala naMapolisa oMzantsi Afrika okanye loo masipala uchaphazelekayo othengisa utywala obuthinjwe ngurhulumente. Lisuse konke okubhekisa kwiSouth African School's Act, 1996 (uMthetho 84 ka-1996), yaye longeza izaphulelo kuMthetho kwabo bangabaqokeleli beewayini ngrangqa.
- 3.36 **Isolotya 36** lingena endaweni yecandelo 85 loMthetho-ngqangi njengesilungiso esenziwe ekuyekisweni kwesithintelo sokuba notywala obungaphezu kobo abantu abangenalayisenisi yotywala abafanele ukuba nabo
- 3.37 **Isolotya 37** lenza izilungiso kwicandelo 87 loMthetho-ngqangi ngokongeza amatyala ngokwalo Mthetho-ngqangi, nokwenza imiqathango yokujongana namatyala aphindwayo kunye nokuthengiswa kotywala obuthinjiweyo kwifandesi kawonkewonke.
- 3.38 **Isolotya 38** lenza izilungiso kwicandelo 88 loMthetho-ngqangi njengesilungiso esidalwe yimiqathango emalunga nokuthengiswa kotywala obuthinjiweyo kwifandesi kawonkewonke.
- 3.39 **Isolotya 39** lenza izilungiso kwisalathiso esisekugqibeleni kuMthetho-ngqangi ukuze silungelelane nezilungiso ezikulo Mthetho usaYilwayo.
- 3.40 **Isolotya 40** libonelela ngesihloko esifutshane soMthetho nokuqala ukusebenza kwawo.

4. UTHOTYELO LWEMITHETHO

UMphathiswa wePhondo ojongene nophuhliso loqoqosho nokhenketho uzanelisile ukuba imiqathango yalo Mthetho usaYilwayo iyahambelana nemithetho yePhondo.

5. AMAZIKO EKUBONISWENE NAWO

ISEbe leNkulumbuso: iiNkonzo zoMthetho
ISixeko saseKapa nabanye oomasipala
UGunyaziwe woTywala weNtshona Koloni
INkonzo yaMapolisa oMzantsi Afrika
ISEbe likaNondyebo wePhondo
Abachaphazeleka kushishino lotywala

6. IZIPHUMO NGOKWASEZIMALINI

UGunyaziwe woTywala angatyumba amalungu okungena endaweni yamanye amalungu kunye namasekela amagosa ongameleyo. Iindleko zokuhlawulwa kwawo kuya kufuneka zabelwe imali.

7. IFUTHE KUBASEBENZI

Kucingelwa ukuba kuza kubakho umsebenzi owongezelekileyo wolawulo ngenxa yamalungu angene endaweni yamanye namasekela amagosa ongameleyo. UGunyaziwe wezoTywala weNtshona Koloni kusenokufuneka aqeshe kwaye enze ulwabiwo-mali lwabasebenzi abongezelekileyo.

