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Vol. 11

BISHO/  
KING WILLIAM'S TOWN, 4 MARCH 2004

**No. 1128**  
(Extraordinary)

**We all have the power to prevent AIDS**

AIDS  
affects  
us all



A  
new  
struggle

**Prevention is the cure**

**AIDS  
HELPLINE**

**0800 012 322**

DEPARTMENT OF HEALTH



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## PROVINCIAL NOTICES

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### PROVINCE OF THE EASTERN CAPE

**No. 4****4 March 2004**

It is hereby published for general information that the Premier of the Province of the Eastern Cape has assented to the following Act:—

**No. 4 of 2003: Education and Training of Nurses and Midwives Act, 2003 (Eastern Cape).**

### ACT

**To consolidate laws relating to the establishment and control of nursing colleges in the Province; to establish a single nursing college for the Province; to provide for management and control of that college; and to provide for matters incidental thereto.**

*(Text signed by the Premier)*  
*(Assented to on 05-01-2004)*

**BE IT ENACTED** by the Legislature of the Province of the Eastern Cape as follows:—

#### *Definitions*

1. In this Act, unless the context otherwise indicates —

**“College Council”** means the College Council established by section 9;

**“College Principal”** means the College Principal appointed in terms of section 14;

**“Department”** means the Department responsible for nursing education and training;

**“Gazette”** means the Provincial Gazette of the Province;

**“head of department”** means a person who is head of a specialty in a campus;

**“heads of subject”** means the heads of subject referred to in section 18;

**“lecturer”** means a person who teaches, educates and trains learners at the college;

means a campus where coordination of major nursing college take place in the Province;

member of the Executive Council who is in charge responsible for nursing education and training in

means the Nursing Act, 1978 (Act No. 50 of 1978);

means Lilitha Nursing College established by

the Province of the Eastern Cape established by Constitution of the Republic of South Africa, 1996 (1996);

means a campus dependant upon a main campus in an area, offering specified courses;

a person registered as a student at the nursing

means the regulations made hereunder; and

means a university contemplated in section 11(1)(b).

### ***Nursing College***

means a nursing College established by established a nursing College for the Province by established a nursing College, with juristic personality and capable its own name.

means the nursing College main campuses and satellite campuses determined by the MEC by notice in the



### ***Constitution of the College***

3. The College must consist of –

- (a) a principal;
- (b) deputy-principal;
- (c) heads of subject;
- (d) college council;
- (e) college senate;
- (f) students and lecturers, and
- (g) registrar administration and general personnel.

### ***Funding of College***

4. The funds of the College must consist of –

- (a) money appropriated by the Legislature;
- (b) donations and contributions lawfully received from any source;
- (c) interest on investments;
- (d) any monies lawfully derived from any source.

### ***Annual Reports and Financial Statements***

5. (1) The College Council must –

- (a) keep full and proper records of its financial affairs;

- (b) prepare financial statements for each financial year in accordance with generally acceptable accounting practise;
- (c) submit those financial statements within two months after the end of a financial year to the Auditor-General; and
- (d) submit within five months after the end of a financial year to the Provincial Treasury –
  - (i) annual report on the activities of the council during that financial year;
  - (ii) the financial statements for that financial year after the statements have been audited; and
  - (iii) the report of the auditors on those statements.

(2) The annual report and financial statements referred to in subsection (1)(d) must –

- (a) fairly present the state of affairs of the council, its activities, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned; and
- (b) include particulars of –
  - (i) any material losses through criminal conduct and any irregular and fruitless and wasteful expenditure that occurred during the financial year;
  - (ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular or fruitless and or wasteful expenditure;
  - (iii) any losses recovered or written off; and

- (iv) any financial assistance received from the state and commitments made by the state on its behalf.

(3) The College Council must submit the report and statements referred to in subsection (1)(d) to the MEC for tabling in the Legislature.

### ***Expenditure***

6. The expenditure incurred by or on behalf of the College must be defrayed from the funds of the College.

### ***Quarterly Reports***

7. (1) The College Council must submit to the MEC quarterly reports on activities, operations and financial position of the College, and must -

- (a) indicate the amount of money received from the Government and any other source and or any other commitment furnished to the College; and
- (b) contain the detailed personnel establishment and composition of the College.

(2) Notwithstanding the provisions of subsection (1), the MEC may, at any time, request the College Council to submit to him or her, an interim report pertaining to the state of affairs, the activities and the financial position of the College.

### ***Students***

8. (1) (a) The number of students to be admitted to the College in any year must be determined by the MEC on the recommendation of the College Council.

(b) At the instance of the College Senate, the College Council may recommend that the number of students to be registered for any particular course be limited to such extent as may be specified and, if such

limitation is approved by the MEC the persons to be so registered must be selected by the College Senate.

- (c)
    - (i) The minimum qualification for admission to the College for a diploma course is Grade 12 or its equivalent or such other qualifications as determined according to the recognition of prior learning.
    - (ii) The onus of proving the validity, value or status of any qualification is on the applicant;
  - (d) In the selection of candidates for a diploma course at the College regard must be had to the results obtained by an applicant in Grade 12 or equivalent examination: Provided that, irrespective of any such results, the College Council may except in the circumstances contemplated in paragraph (b) at its sole discretion, refuse any application for admission to the College.
- (2) Any person who wishes to train at the College must –
  - (a) not later than the specified date, make application in writing on the appropriate form for admission to the College;
  - (b) if such admission is approved -
    - (i) register with the College when so required;
    - (ii) register with the South African Nursing Council in terms of section 21(1) of the Nursing Act and maintain such registration; and
    - (iii) have proof of professional indemnity; and
  - (c) make payment of all such fees including -



- (i) application;
- (ii) registration; and
- (iii) tuition,

as determined by the College Council.

(3) A student at the College must –

- (a) be under the control and discipline of the Principal of the College;
- (b) comply with the disciplinary and other rules, and with any disciplinary or other code of conduct, made or prescribed by the College Council; and
- (c) unless otherwise authorized by the head of campus reside at such place or residence as specified by the head of campus.

### ***Establishment of College Council and College Senate***

9. There is hereby established a College Council and a College Senate for the nursing college which must be constituted in the manner and exercise the powers and functions hereinafter provided.

### ***Constitution of College Council***

10. (1) Subject to the provisions of this Act, the College Council must consist of –

- (a) a chairperson appointed by the MEC;
- (b) a vice-chairperson in the person of the principal;
- (c) Deputy Principal;



- (d) heads of main campuses;
- (e) four members appointed as representatives by each university to whom the nursing college is affiliated (or their alternates, if any, also so appointed), of whom one shall be the Head of the Department of Nursing Science and other must be the Vice-Rector of the University or, if there is no Vice-Rector or if he or she is absent, such person as the Rector may appoint from amongst the senior academic or administrative staff of the University;
- (f) members who must represent the Department, namely –
  - (i) the head of nursing education *ex officio*;
  - (ii) *ex officio* the Nursing Service Managers of the hospitals at which most of the practical training of the students takes place; and
  - (iii) two other officers or employees in the Department appointed as members by the MEC *ex officio*;
- (g) the Chief Executive Officer or Medical Superintendents of the hospital referred to in paragraph (f)(ii) *ex officio* or his or her alternate delegated thereto by him or her;
- (h) two members (or such members' alternates) appointed by the organized labour;
- (i) two members (or such members' alternates) elected as its representatives by the College Senate;
- (j) one member from each main campus representing the Students Representative Council; and
- (k) one community member appointed by the MEC from the area where each of the main campuses is situated.

(2) Half of the members of the College Council plus one shall constitute a quorum for any meeting of the Council.

(3) The MEC must invite the entities referred to in subsection (1) to submit to him or her the names of the representatives of such entities, and must within a period of one month from the date of such invitation publish the names of members of the College Council in the Gazette.

(4) Members of the College Council, excluding members *ex officio*, must hold office for a period of three years.

### ***Powers and functions of College Council***

11. (1) The College Council –

(a) is responsible for the order and good governance of the College generally, for proper control over its finances, for the promotion and enhancement of its status and prestige and for encouraging dedication and devotion to duty amongst its lecturers, students and administrative and general staff.

(b) must ensure that the college affiliates to one or more universities, and at the instance of or in collaboration with the College Senate, make recommendations to the Department and where appropriate a university concerning –

(i) the educational, administrative and other requirements of the College, and more especially those needed to improve and to maintain, on an ongoing basis, the quality of education and training offered by the College and the proficiency, professionalism and reputation of its students and the efficacy of its administration;

(ii) the fixed establishments generally and in particular the academic posts thereon, whether in relation to

the establishment of new departments, the modification or abolition of existing departments or the creation, adaptation or removal of posts or any other means whereby new subjects may be introduced or existing subjects may be discontinued;

(iii) the appointment of academic staff, in accordance with criteria and procedures recommended, by the College Council; and

(iv) the conditions of service of the academic personnel, including any such conditions relating to discipline or disciplinary procedures or to inefficiency;

(c) must make disciplinary rules, and may prescribe a code of conduct, which is binding on all students of the College, as well as the disciplinary procedures to be followed in the case of breaches of any such rules or of any code of conduct;

(d) must ensure that control is exercised, or itself exercise control, over all organized student activities;

(e) must advise the Department in all matters arising from any misconduct or inefficiency on the part of College staff or in relation to any disciplinary proceedings instituted against any academic personnel;

(f) must, subject to the provisions of this Act –

(i) determine the number of students to be admitted to the College in any year;

(ii) make recommendations regarding the fees to be paid by students; and

- (iii) duly consider at the specified time and make recommendations on the estimates of revenue and expenditure referred to in section 6;
  - (g) may generally consider, and make recommendations to the Department in, any matter affecting the College which in the opinion of the College Council ought to be brought to the attention of the Department: Provided that the College Council must not recommend the establishment of any course, subject or department at the College except after consultation with a university; and
  - (h) must submit an annual report to the MEC of its activities and, whenever so requested by the head of Department, submit to the Department such returns and statistics as the head of Department may specify.
- (2) (a) Subject to the provisions of this Act, a member of the College Council, other than a member *ex officio*, must hold office for a period of three years unless he or she has earlier resigned or otherwise vacated his or her office.
- (b) Any appointed member whose term of office has expired is eligible for reappointment.
- (c) The body or person by whom a member, or any alternate, was appointed may at any time terminate such appointment and make a fresh appointment.
- (3) (a) A member must vacate his or her office if –
- (i) he or she has, without leave, absented himself or herself from three consecutive ordinary meetings of the College Council;
  - (ii) he or she dies or becomes mentally ill or is otherwise incapable of carrying out his or her functions;



- (iii) not being *ex officio*, he or she resigns or his or her appointment is terminated under subsection 2(c);
- (iv) his or her estate is sequestrated; or
- (v) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine.

(4) Any casual vacancy on the College Council must be filled in accordance with section 10(1) and any person filling such a vacancy must hold office for the remainder of the term of his or her predecessor.

(5) Members of the College Council, or members of any committee thereof, who are not in the full-time employment of the State must be reimbursed for actual expenses incurred in respect of traveling and accommodation for attendance at meetings, or when otherwise occupied with the affairs of the College Council.

#### *Meetings of College Council*

12. (1) If neither the Chairperson nor the Vice-Chairperson is present at a meeting of the College Council the members present must, if they constitute a quorum elect one of their number to preside at that meeting.

(2) (a) An ordinary meeting of the College Council must be held at least once every quarter of the year at a time and place fixed by the Principal in the case of the inaugural meeting and thereafter by resolution of the College Council.

(b) A resolution of the majority of the members present at a duly constituted meeting must be adopted as a resolution of the College Council and, in the event of an equality of votes, the member presiding at the meeting must also have a casting vote.

(c) The Chairperson of the College Council may at any time convene a special meeting on not less than 24 hours' notice and must



convene such a meeting on the requisition in writing of not less than one-third of the total number of members of the College Council.

(d) The procedure at any meeting of the College Council shall be as decided by the Council in accordance with the generally accepted procedure at meetings.

(3) The Principal must designate the registrar, or cause secretarial assistance to be provided to the College Council by members of his or her administrative staff and must ensure that copies of the minutes of its meetings are submitted to the Department without delay.

### *Establishment of committees*

13. (1) The College Council may from amongst their number, from time to time, establish such committees as it may deem necessary, and may appoint persons outside the College Council as advisers subject to the approval of the MEC.

(2) The College Council may authorize any such committee to exercise or to perform, generally on or in a particular matter, any power or function of the Council: Provided that any decision of any such committee may be amended or withdrawn by the Council at its first meeting after that decision was made.

(3) Any authorization made by the College Council under subsection (2) may be withdrawn at any time, and no such authorization must prevent the exercise or performance of the relevant power or function by the Council itself.

### *Appointment of College Principal and Deputy College Principal*

14. (1) The College Council must appoint persons determined by it with the concurrence of the MEC, as College Principal and Deputy College Principal.

(2) The person appointed as College Principal and Deputy College Principal –

- (a) must have appropriate qualifications and experience for such appointment; and
- (b) is employed subject to the terms and conditions of employment determined by the College Council with the concurrence of the MEC.

*Responsibilities of College Principal*

15. (1) The College Principal is the head of the administration and academic activities of the College.

(2) As head of administration, the College Principal is responsible for –

- (a) implementing the policies and carrying out the decisions of the College Council;
- (b) the formation and development of an efficient administration and management of academic activities of the College;

- (c) the organisation, control and management of the staff;  
and
- (d) the exercise of any of the powers of the College Council assigned to him or her in terms of this Act.

(3) The College Principal must report to the College Council on the administration as often as the College Council may require.

### ***Acting College Principal***

16. Whenever the College Principal and his or her Deputy are for any reason absent or unable to carry out the functions of office, or whenever there is a vacancy in the office of the College Principal, the College Council may appoint another employee of the College Council as acting College Principal.

### ***Employment of staff***

17. (1) The College Principal –

- (a) within the financial limits set by the College Council, must determine a staff establishment necessary for the functioning of the College; and

(b) may appoint persons in posts on the staff establishment.

(2) (a) A person in the service of another organ of state may be seconded to the College by agreement between the College Principal and such organ of state.

(b) Persons seconded to the College perform their functions under the supervision of the College Principal or his or her Deputy.

(3) A person in the service of the College may, with the consent of that person, be seconded to another organ of state by agreement between the College Principal and such organ of state.

### ***College Senate***

18. (1) The College Senate must consist of –

- (a) A chairperson in the person of the College Principal *ex officio*;
- (b) A deputy-chairperson in the person of a deputy-principal of the College;
- (c) the head or acting head of every department of the College, *ex officio*;
- (d) every head of subject who is not the head of department, *ex officio*;
- (e) five members appointed as its representatives by each of the affiliated universities;



- (f) one student representative from each main campus;
- (g) one member appointed as its representative by the labour organizations;
- (h) one community member;
- (i) two members appointed by the MEC from amongst the persons employed in the nursing services' division of the Department to represent that division;
- (j) one Nursing Service Manager from each main campus
- (k) one member appointed by the MEC for Education to represent his or her department.

(2) Half of the members plus one of the total number of members of the College Senate must constitute a quorum for any meeting of the Senate.

### ***Powers and functions of College Senate***

#### **19.(1) The College Senate –**

- (a) is the highest authority of the College in relation to the control to be exercised over, and the discharge generally of, its academic functions;
- (b) must, subject to the provisions of the Nursing Act and this Act, and in collaboration with the Senate of an affiliated university, exercise control over the curricula, courses, syllabi, instructions, practical classes, examinations, credits for courses passed, promotion to subsequent courses, as well as the requirements generally for qualifying for a diploma of the College.



- (c) must, whether on its own initiative or otherwise, furnish advice to the College Council on the needs or interests of the College staff and in particular as regards academic planning, the creation of academic posts and the development of the College generally;
- (d) must exercise control over any educational or academic publications of the College;
- (e) may promote and encourage any research affecting nursing science or nursing generally;
- (f) must from time to time, and particularly when so requested, submit reports on its activities to the College Council;
- (g) must exercise any other function entrusted to it by this Act; and
- (h) may generally make recommendations to the College Council in any matter falling within the ambit of this section or any other matter which, in the opinion of the College Senate, ought to be considered by the College Council, the Department or the South African Nursing Council.

#### *Application of certain provisions to College Senate*

20. The provisions of sections 12(1), (2), and 13 shall apply to and in respect of the College Senate.

#### *Examinations*

21. (1) Subject to the provisions of this section, a College must cause practical and written examinations to be held in respect of the education and training offered by the College.

(2) The evaluation of the clinical skills of candidates, must be undertaken at a time and in a manner determined by the College Senate and

be conducted by appropriate members of the College staff or other clinical staff and be moderated by appropriate staff nominated by the university concerned.

(3) College Senate must exercise control over the written examination procedures and must ensure the proper marking of answer books and moderation of examination papers by duly appointed internal or external examiners and by moderators nominated by the university.

(4) If a candidate is successful in an examination for which a diploma is to be awarded, such diploma must be endorsed substantially to the effect that the holder has met all the requirements for the diploma as laid down by the College and a university: Provided that, *in lieu* of such an endorsement, the university may itself endorse thereon that the requisite training therefore took place in association with the university.

### ***Inspection of the College***

**22.(1)** The Head of the Department may cause an inspection of the College to be made at any time in respect of any matter concerning –

- (a) the administration of the College generally or its finances or accounting methods;
- (b) the registration of, or any other aspect affecting, students including their education and training;
- (c) the control exercised over stores and equipment on charge to the College; or
- (d) any other relevant matter.

**22 (2)** For the purposes of subsection 1 the Head of Department means the administrative head of the Department responsible for nursing education and training in the Province referred to under the definition of MEC in section 1.

***Repeal of laws***

**23.** (1) The following laws are hereby repealed:

- (a) Training of Nurses and Midwives Ordinance, 1984 (Ordinance No. 4 of 1984);
- (b) Regulations for establishment of a Nursing College made in Government Notice No. 17 of 22 January 1990, in terms of the Health Act, 1985 (Act No. 28 of 1985) (Transkei); and
- (c) Regulations for a College of Nursing made in Government Notice No. 50 of 1991, in terms of Health Act, 1986 (Act No. 24 of 1986) (Ciskei).

***Transitional Provisions***

**24.** (1) Any nursing college established under a law repealed by this Act, must continue to exist until it is disestablished by the MEC by notice in the *Gazette*.

(2) Persons or staff who on the date of commencement of this Act are performing responsibilities or functions provided for in this Act must subject to the provisions of this Act be deemed to have been appointed in terms of this Act.

***Short title***

**25.** This Act is called the Education and Training of Nurses and Midwives Act, 2003 (Eastern Cape).

## PROVINCE OF THE EASTERN CAPE

No. 5

4 March 2004

It is hereby published for general information that the Premier of the Province of the Eastern Cape has assented to the following Act:—

**No. 9 of 2003: Eastern Cape Heritage Resources Act, 2003 (Eastern Cape).**

## ACT

**To provide for the establishment of a statutory body to identify, manage, conserve and promote heritage resources in the Province; and to provide for matters incidental to thereto.**

*(Text signed by the Premier)  
(Assented to on 05-01-2004)*

**BE IT ENACTED** by the Legislature of the Province of the Eastern Cape as follows: -

## CHAPTER 1

## DEFINITIONS

## Definitions

1. In this Act, unless the context indicates otherwise -

**“alter”** means any action affecting the structure, appearance or physical properties of a place or object whether by way of structural or other works, by painting, plastering or other decoration or by any other means;

**“Amafa Ethu”** means the heritage conservation agency established as a statutory body by section 2 of this Act;

**“archaeological”** means -

- (a) material remains resulting from human activity which are in a state of disuse and are in or on land and are older than 100 years, including artifacts, human and hominid remains and artificial features and structures;
- (b) rock art, being any form of painting, engraving or other graphic representation on a fixed rock surface or loose rock or stone, which was executed by human agency and is older than 100 years, including any area within 10 meters of such representation;
- (c) wrecks, being any vessel or aircraft, or any part thereof, which was wrecked in South Africa, whether on land, in the internal waters, the territorial waters or in the maritime cultural zone referred to in section 6 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), and any cargo, debris or artifacts found or associated with these,



which are older than 60 years or which in terms of national legislation are considered to be worthy of conservation; and

- (d) features, structures and artifacts associated with military history which are older than 75 years and the sites on which they are found;

**“Council”** means the Council of trustees of Amafa Ethu established by section 2;

**“classified post”** means a post on the establishment structure of the Department determined in terms of section 16(1);

**“conservation”**, in relation to heritage resources, includes protection, maintenance, preservation and sustainable use of places or objects so as to safeguard their cultural significance;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**“cultural significance”** means of aesthetic, architectural, historical, scientific, social, spiritual, linguistic or technological value or significance;

**“Department”** means the department responsible for heritage matters in the Province;

**“development”** means any physical intervention, excavation or action, other than those caused by natural forces, which may, in any way, result in a change in the nature, appearance or physical appearance of a place or influence its stability and future well-being, including –

- (a) construction, alteration, demolition, removal or change of use of a place or a structure on the place;
- (b) carrying out any works on or over or under the place;
- (c) subdivision or consolidation of land comprising a place, including the structures or airspace;
- (d) construction or putting up for display signs or hoarding;



- (e) any change to the natural or existing condition or topography of land;
- (f) any removal or destruction of trees or removal of vegetation or topsoil;

**“Director”** means the Director of museums and heritage resources of the Department;

**“export”** means “export” as defined in the Import and Export Control Act, 1963 (Act No. 45 of 1963);

**“expropriate”** means the process as determined by the terms of and according to procedures prescribed in the Expropriation Act, 1975 (Act No. 63 of 1975);

**“Gazette”** means the Provincial Gazette of the Province;

**“grave”** means a place of interment and includes the contents, headstone or other marker of and any other structures on or associated with such place;

**“graves of cultural significance”** means graves protected in terms of section 29;

**“head”** means the head and accounting officer of Amafa Ethu on the staff establishment thereof;

**“head of Department”** means the administrative head of the Department as set out in Column 2 of Schedule 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**“heritage conservancy”** means a declared area of land surrounding a heritage resource or heritage resources to reasonably ensure the protection or reasonable enjoyment of the resource, or the protection of the view of or from the resource;

**“heritage landmark”** means the heritage landmark designated as such in terms of section 22(c);

**“heritage object”** means an object contemplated in section 23;

**“heritage resource”** means any place or object of cultural significance including –

- (a) places, buildings, structures and equipment;
- (b) places to which oral traditions are attached or which are associated with living heritage;
- (c) historical settlements and townscapes;
- (d) landscapes and natural features;
- (e) geological sites of scientific or cultural importance;
- (f) archaeological and palaeontological sites;
- (g) graves and burial grounds, including –
  - (i) ancestral graves;
  - (ii) royal graves;
  - (iii) graves of important individuals;
  - (iv) other human remains not covered by the Human Tissues Act, 1983 (Act No. 65 of 1983);
- (h) movable objects, including –
  - (i) objects recovered from the soil or waters of South Africa including archaeological and palaeontological objects and material, meteorites and rare geological specimens;
  - (ii) ethnographic art and objects;
  - (iii) military objects;
  - (iv) objects of decorative art;
  - (v) objects of fine art;
  - (vi) objects of scientific or technological interest;

- (vii) books, records, archives, documents, photographic positives and negatives, graphic material, film or video material or sound recordings; and
- (viii) any other prescribed categories, but excluding any object made by a living person;
- (i) battlefields;
- (j) traditional building techniques;

**“heritage site”** means any place protected under section 22 of this Act;

**“improvement”** in relation to heritage resources, includes the repair, restoration and rehabilitation of places protected under this Act;

**“land”** includes land covered by water and the airspace above land;

**“Legislature”** means the Legislature of the Province;

**“living heritage”** means the intangible aspects of inherited culture, and may include-

- (a) cultural tradition;
- (b) oral history;
- (c) performance;
- (d) ritual;
- (e) popular memory;
- (f) skills and techniques;
- (g) indigenous knowledge systems; and
- (h) the holistic approach to nature, society and social relationships;

**“local authority”** means –

- (a) a district council as defined in section 1 of the Local Government: Municipal Structures Act, 1998(Act No. 117 of 1998); and
- (b) a municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998(Act No. 117 of 1998);

**“management”** in relation to heritage resources, includes the conservation, presentation and improvement of places protected under this Act;

**“MEC”** means the Member of the Executive Council responsible for heritage resources in the Province;

**“meteorite”** means any naturally occurring object of extraterrestrial origin;

**“non-classified post”** means a post, other than a classified post, in Amafa Ethu to which the Council may appoint a person in terms of section 17 (c);

**“object”** means any movable property of cultural significance which may be protected in terms of any provisions of this Act, including –

- (a) any archaeological artifact;
- (b) palaeontological and rare geological specimens;
- (c) meteorites; and
- (d) other objects referred to in paragraph (h) of the definition **“heritage resources”**;

**“owner”** includes a registered title holder to a property or his or her authorized agent and any person with a real interest in the property and –

- (a) in the case of a place owned by the state or a supported body, the relevant executing authority or any other person or body of persons responsible for the care, management and control of that place; and
- (b) in the case of tribal land, the recognized traditional authority;

**“palaeontological”** means any fossilized remains or fossil trace of animals or plants which lived in the geological past, other than fossil fuels or fossiliferous



rock intended for industrial use, and any site which contains such fossilized remains or trace;

**“place”** includes –

- (a) a site, area or region;
- (b) a building or other structure, which may include equipment, furniture, fittings and articles associated with or connected with such building or other structures;
- (c) a group of buildings or other structures, which may include equipment, furniture, fittings and articles associated with or connected with such a group of buildings or other structures; and
- (d) an open space, including a public square, street or park, and in relation to the management of a place, includes the immediate surroundings of a place;

**“plan”** means any plan envisaged by the Physical Planning Act, 1991 (Act No. 125 of 1991), or any other town and land use planning legislation applicable in the Province;

**“planning”** means urban and regional planning as covered by the Development Facilitation Act, 1995 (Act No. 67 of 1995), or any other town and land use planning legislation applicable in the Province;

**“planning authority”** means an office of the state, at provincial or local government level, which is legally vested with a physical planning capacity;

**“prescribe”** means prescribe by regulation under this Act;

**“presentation”** includes –

- (a) the exhibition or display of;
- (b) the provision of access and guidance to; and
- (c) the provision, publication or display of information in relation to, heritage resources protected under this Act;

**“Province”** means the Province of the Eastern Cape established by section 103 of the Constitution;

**“provisional protection”** means provisional protection referred to in section 26;

**“public monuments and memorials”** means all monuments and memorials –

- (a) erected on land belonging to any branch of central, provincial or local government, or on land belonging to any organization funded by or established in terms of legislation of such a branch of government;
- (b) which were paid for by public subscription, government funds, or a public-spirited or military organization and are on land belonging to any private individual;

**“regulations”**, unless otherwise stated, means the regulations made hereunder;

**“site”** means any area of land, including that covered by water, and including any structures or objects thereon;

**“small-scale agriculture”** means any farming activity undertaken by a single farmer and his family working without labour employed from outside and on a total area of land not exceeding ten hectares;

**“structures”** means any human-made building, works, device, or any other facility older than 60 years, and which is fixed to land and any fixtures, fittings and equipment associated with these;

**“supported body”** means a body funded by or established in terms of legislation of any branch of government, and includes state-owned enterprises;

**“this Act”** includes the regulations;

**“victims of conflict”** means –

- (a) certain persons who died in the area now included in the Province as a direct result of any war or conflict, excluding the periods covered by the Commonwealth War Graves Act, 1992 (Act No. 8 of 1992);

- (b) members of the forces of Great Britain and the former British Empire who died on active service prior to 14 August 1914 in any area now included in the Province;
- (c) persons who, during the Anglo-Boer War (1899-1902) were removed as prisoners of war from any place now included in the Republic to any place outside South Africa and who died there; and
- (d) certain categories of persons who died in the "Liberation Struggle" as defined in regulations, in areas included in the Republic as well as outside the Republic;

"wreck" has the meaning given under the definition of "archaeology";

## CHAPTER 2

### ESTABLISHMENT OF HERITAGE RESOURCES AGENCY

#### Establishment of Amafa Ethu

2. (1) There is hereby established an agency, to be known as Amafa Ethu.

(2) Amafa Ethu must be a body corporate, administered by a Council of trustees, capable of suing and being sued in its own name and of performing, subject to the provisions of this Act, all such actions necessary for, or incidental to, the exercise of such powers.

#### Objects of Amafa Ethu and jurisdiction

3. (1) The objects of Amafa Ethu must be the identification, management, conservation and promotion of heritage resources of the Province within the terms of this Act and to generally foster heritage conservation and management for the benefit of present and future generations.

(2) Heritage resources within the Province must, subject to the provisions of this Act, fall under the control of Amafa Ethu.

### **Composition of the Council**

4. (1) Subject to the succeeding provisions of this section, the Council must consist of a minimum of seven and a maximum of nine members, appointed by the MEC from public nominations in the prescribed manner.

(2) The members of the Council contemplated in subsection (1) must be appointed in accordance with the principles of transparency and representativity, and their appointment must take into account the desirability that the members -

- (a) have qualifications or special experience or interest in fields relevant to heritage resources, and the financial knowledge needed for the efficient functioning of Amafa Ethu; and
- (b) be representative of the relevant sectoral interests, cultural and demographic characteristics of the population of the Province.

### **Designation of chairperson**

5. (1) The MEC must designate one member of the board to serve as chairperson of the board.

(2) The Council must appoint any other member thereof as vice-chairperson, who must act as chairperson if the chairperson contemplated in subsection (1) is unable to serve in that capacity or if the office becomes vacant.

### **Tenure of office of Council members**

6. (1) The terms of office of members of the Council must be four years.

(2) A member must vacate office if he or she -

- (a) resigns in writing;
- (b) has been absent without leave of the Council for three consecutive meetings;
- (c) is convicted of an offence and sentenced to imprisonment without the option of a fine;



(d) is an unrehabilitated insolvent; or

(e) is found to be of unsound mind by a competent court.

(3) The MEC may, after consultation with the Council, remove a member if in the opinion of the MEC there are sound reasons for doing so.

(4) Any Council member whose period of office has been terminated, for reasons other than those set out in subsections (2) and (3), is eligible to serve for one further term of office.

### **Vacancies on the Council and filling thereof**

7. (1) A vacancy on the Council must be filled by the appointment of a successor by the MEC.

(2) Any member of the Council who has been appointed in terms of subsection (1) must hold office for the unexpired period of office of his or her predecessor.

### **Disqualification for membership of the Council**

8. No person must be eligible for appointment to the Council if –

(a) he or she is not a South African citizen unless the MEC has specifically authorized such appointment; or

(b) within the preceding five years he or she has been convicted of an offence and sentenced to imprisonment without the option of a fine.

### **Quorum and meetings of Council**

9. (1) The quorum of a meeting of the Council shall be half the number of Council members plus one.

(2) The Council may meet as often as necessary, but at least twice a year.

(3) Any decision of the Council must be taken by resolution of the majority of the members present at any meeting of the Council, and, in the event of equality of votes on any matter, the person presiding at the meeting in

question must have a casting vote in addition to his or her deliberative vote as a member of the Council.

### **Powers, duties and functions of the Council**

10. (1) Generally, the powers, duties and functions of the Council are to manage the policy and finances of Amafa Ethu in concert with the chief executive officer, and to recommend appropriate heritage conservation actions.

(2) The Council must enjoy the following powers, duties and functions -

- (a) to make such recommendations in order to enable the MEC to exercise his or her powers under this Act;
- (b) to advise the MEC regarding –
  - (i) the withdrawal of heritage landmark, Provincial landmark and heritage object status;
  - (i) the withdrawal of other notices published in the *Provincial Gazette* in terms of the provisions of sections 20, 23(1), 25 (4), 27; and
  - (iii) regulations to be made by him or her in terms of this Act;
- (c) by notice in the *Provincial Gazette* to –
  - (i) designate any heritage resource as protected in terms of the provisions of section 22; and
  - (ii) where it has such powers, withdraw notices in the *Provincial Gazette*;
- (d) in terms of sections 53 and 55 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to submit to the MEC a draft budget, and to present to him or her an audited report on the use of funds during the previous year;
- (e) to investigate and report on any matter pertaining to heritage resources at the request of the MEC;

- (f) to perform such functions relating to the conservation of any artifact or heritage site as the MEC may from time to time determine;
- (g) to collaborate with and enter into agreements with other branches of government and other organizations with a view to fulfilling its obligations in terms of this Act;
- (h) to cause to have drawn up, approve and establish policy and standards in terms of which the Amafa Ethu and other relevant bodies and authorities will function with respect to heritage in the Province, as prescribed by regulations;
- (i) to issue or cause to be issued permits and notices as required in terms of this Act and set conditions in such permits concerning, amongst other things, the deposition of recovered materials in storage facilities of the Amafa Ethu or other appropriate institution and the erection of plaques recognizing the importance of a heritage resource;
- (j) to establish projects and research programmes aimed at documenting the heritage resources of the Eastern cape with a view to facilitating their conservation and increasing knowledge and understanding of these;
- (k) to submit annually to the Department a report on the activities and concerns of Amafa Ethu, together with recommendations and suggestions for legislative amendment and enactment, if any;
- (l) to purchase or otherwise acquire, hold, let, hire, receive in trust, make over to any person to hold in trust, or sell, exchange or otherwise alienate, or hypothecate, burden with servitude or otherwise confer any real right in any property movable or immovable, subject to the consent of the MEC in the case of fixed property or the Department in the case of movable property;
- (m) to lend any heritage objects and material in its custody to a museum or public institution, subject to the proviso that

such objects and materials are managed in accordance with the accepted standards for museum conservation;

- (n) by agreement with the owner of any land, to acquire or construct and maintain an access road over such land to any heritage site, or to construct upon such land fences, walls or gates upon, across or next to such road;
- (o) to preserve, repair, restore or provide security for any immovable or movable property owned or otherwise controlled by Amafa Ethu;
- (p) to make recommendations to the MEC regarding the expropriation of property in terms of section 37;
- (q) to raise funds and gain independent income for use in performing the functions of Amafa Ethu by way of inter alia the following methods:
  - (i) charging for services and other functions rendered in terms of this Act;
  - (ii) use of commercial opportunities associated with the field of operations of Amafa Ethu; and
  - (iii) receipt of donations of property, materials or money;
- (r) to establish and administer trust funds for use in performing the functions of Amafa Ethu;
- (s) to invest, lend or borrow money;
- (t) to spend the proceeds of fund-raising, investments, trust funds and other independent income on any activity covered by this Act and within the limitations prescribed by a donor or the terms of reference of a trust fund;
- (u) to assess applications for, and, where resources permit, grant
  - (i) subsidies; and



- (ii) subject to adequate security, low-interest, or interest-free loans,

in respect of the purchase, restoration or maintenance of any site or artifact protected in terms of sections 22 to 28 and to, wherever appropriate, institute a covenant in terms of section 36 as a condition of such a subsidy or loan;

- (v) to create and where necessary register with the relevant authorities a logo, or logos, for Amafa Ethu, its projects and other areas of responsibility and categories of protection provided for in the Act;

- (w) where possible and appropriate, to affix to any site protected in terms of this Act a badge, or otherwise mark an area, indicating its status of protection in terms of this Act;

- (x) to publish or by other means make available or distribute, or cause to be published and distributed, any knowledge and information associated with heritage resources of the Province, subject to withholding information in instances where it considers that revelation may impact negatively on the economic interests of owners or potential investors, or on the future conservation of a heritage resource;

- (y) to encourage and promote heritage conservation through the medium of the media, educational programmes and involvement with other conservation bodies, tourism initiatives and other similar activities;

- (z) to wherever appropriate interpret the heritage resources of the Province via –

- (i) erection of explanatory plaques;

- (ii) mounting of exhibitions;

- (iii) creation of interpretive centres;

- (iv) erection of public memorials; or

- (v) creation of other tourist facilities necessary for effective interpretation of the heritage resources of the Province;
- (aa) to wherever interpretation of the heritage takes place on sites owned by the Province, or other provincially supported bodies, be the provincial authority responsible for such activity and the provision of necessary facilities;
- (ab) to approve the deposit in an appropriate province-aided museum in the Eastern Cape such archaeological material as may be recovered in terms of permits issued under this Act;
- (ac) to maintain a store of historic building and other relevant materials for use in the conservation of structures protected in terms of this Act, such facility to be known as the 'Amafa Ethu Conservation Materials Bank';
- (ad) where it is not the responsibility of another authority, to repair, restore, maintain and generally care for burial grounds and graves referred to in section 29 (2), (3) and (4); and
- (ae) where such sites are threatened by what it considers to be unavoidable or necessary development, and subject to the provisions of any other law and at cost to the developer, to exhume and re-inter graves of victims of conflict.

### **Inspection and documentation**

11. The Council must cause the staff of Amafa Ethu –

- (a) on a regular basis, to inspect those heritage resources protected in terms of sections 22 to 27, and maintain a register of such inspections; and
- (b) to inspect or document any aspect of the heritage of the Province which-
  - (i) has the potential to become protected by the Act for which the possible need for protection is being investigated;

- (ii) is, or which it has reason to believe may be protected by the Act;
- (iii) it wishes to document for research purposes or for purposes of building up a public record of heritage resources; or
- (iv) is part of an investigation into a suspected offence in terms of the Act.

### **Admission of guilt**

12. The Council may delegate to the staff of Amafa Ethu and other responsible bodies powers to levy admission of guilt fines for contraventions of the provisions of this Act as prescribed.

### **Maintenance of registers**

13. The Council must maintain registers of –

- (a) all heritage conservation bodies operating in the Province;
- (b) all sites and objects protected by this Act;
- (c) all known royal graves, graves of victims of conflict, public memorials; and battlefields, as prescribed.

### **Identification and documentation of heritage resources**

14. The Council must cause to be identified and documented the heritage resources of the Province through procedures as prescribed.

### **Assistance to individuals and communities**

15. The Council must endeavor to assist communities and individuals to conserve their heritage through procedures as prescribed.

**Staff establishment, salaries and allowances**

16. (1) The Department must determine the staff establishment of Amafa Ethu and the grading of classified posts on such establishment in terms of prevailing public service norms and standards and must make provision on such establishment for the post of a head for Amafa Ethu.

(2) The salaries, wages and allowances of all employees in classified posts must be fixed by the Department in terms of the Public Service Act, 1994 (Proclamation No.103 Of 1994), and Public Service Regulations, 1999, and the Council must pay a person in a classified post a salary, wage or allowance in excess of the salary, wage or allowance fixed by the Department in respect of that post.

(3) The salaries and allowances of staff appointed in terms of subsections (1) and (2) by the Department must be remunerated from monies appropriated by the Legislature for this purpose.

(4) Subject to the provisions of section 17 (c), the Council must not appoint or engage any staff in excess of the staff establishment determined for Amafa Ethu.

**Appointment and termination of services of staff**

17. The Council may, subject to the provisions of this Act -

- (a) recommend candidates to the Department for appointment to the vacancies on the staff establishment;
- (b) recommend to the Department the termination of services of an officer on the staff establishment;
- (c) employ any person in a non-classified post at its own cost, with the approval of the Department, additional to the staff establishment of Amafa Ethu in a temporary capacity if such employment is necessary –
  - (i) due to illness or absence of the incumbent of the post;
  - (ii) to provide for the performance of work for which staff is not ordinarily maintained on a permanent basis; or



- (iii) when vacant classified posts cannot readily be filled by the Department.

### **Conditions of employment**

18. The conditions of employment of staff in classified posts in Amafa Ethu must be determined by the Public Service Act, 1994 (Proclamation No.103 Of 1994), and Public Service Regulations, 1999, and the Council must not alter such conditions.

### **Finances**

19. (1) The funds of Amafa Ethu consist of -

- (a) moneys appropriated by the Legislature to enable it to perform its functions and exercise its powers;
- (b) fees and fines received under the regulations;
- (c) fees received in payment of services;
- (d) funds raised by and donations and contributions to it;
- (e) trust funds vested in it;
- (f) interest derived from investments; and
- (g) funds derived from any other source.

(2) The Council must use its funds to defray expenditure incurred in connection with the performance of its functions.

(3) The Council may invest any money not required for immediate use or as a reasonable operating balance in accordance with the directions determined by the MEC in consultation with the MEC responsible for finance.

(4) The Council may establish and operate a reserve fund and may deposit therein such amounts as become available from time to time.

(5) Amafa Ethu with the approval of the Council -

- (a) may not lend or borrow any money without the consent of the MEC given with the concurrence of the MEC responsible for finance;
- (b) may purchase or otherwise acquire, hold, let, hire or receive in trust any real right in any immovable or movable property; and
- (c) may not make over to any person to hold in trust or sell, exchange or otherwise alienate, hypothecate, burden with servitude or otherwise confer any real right in a movable property, without the approval of the MEC given with the concurrence of the MEC responsible for finance.

(6) Once during every financial year, at a time determined by the MEC, Amafa Ethu must submit a statement of its estimated income and expenditure for the following financial year to the MEC for approval, granted with concurrence of the MEC responsible for finance.

(7) Amafa Ethu may during the course of a financial year submit supplementary estimates of its expenditure for that financial year to the MEC for approval, granted with the concurrence of the MEC responsible for finance.

(8) Amafa Ethu must not incur any expenditure except in accordance with an estimate of expenditure approved under subsections (6) and (7).

(9) Amafa Ethu must –

- (a) keep full and correct accounts and records of all its financial transactions and affairs, including all its transactions in its capacity as a trustee of any trust fund, and all properties under its control and must ensure that all payments out of its funds are correctly made and properly authorized and that adequate control is maintained over its assets, or those in its custody, and the incurring of liabilities, and
- (b) as soon as possible after the end of the financial year, draw up annual financial statements which must show money received and expenditure incurred and its assets and liabilities at the end of the financial year concerned.

(10) The financial year of Amafa Ethu ends on 31 March each year.

(11) The accounts and financial statements referred to in subsection (9)(b) must be audited by the Auditor-General.

(12) The accounts and annual financial statements referred to in subsection (9)(b) must be available for public inspection.

### CHAPTER 3

#### HERITAGE RESOURCES CONSERVATION MEASURES

##### **Rights and duties of other authorities and individuals**

20. (1) In order to facilitate liaison between Provincial departments regarding heritage-conservation matters and to facilitate the duties of Provincial departments, the MEC may establish a Provincial heritage liaison committee which must meet at least once per year and must consist of –

- (a) a senior official designated by the head of Department in the Department;
- (b) the head of Amafa Ethu, who must chair the meeting, and relevant senior staff of Amafa Ethu;
- (c) senior officials of all provincial departments and provincially supported bodies which have some or other duty concerning or impacting upon heritage matters, whose attendance must be determined by regulations;
- (d) other government-sponsored institutions with similar duties which it is felt may on a voluntary basis wish to contribute to interdepartmental liaison;
- (e) a nominated member of the House of Traditional Leaders;

- (f) a secretary provided by Amafa Ethu; and
- (g) such other person, member or representative of a community as the MEC may determine, after consultation with the community concerned.

(2) All departments of the Provincial Administration and provincially supported bodies must, free from charge, make available to Amafa Ethu for its use and incorporation into its databases any information which they have on record or collect pertaining to the heritage of the Province.

(3) A competent local authority must be obliged to –

- (a) ascertain that the terms of this Act, where applicable, have been complied with, prior to it granting authority in accordance with its jurisdictional powers to any development which will impact upon a site;
- (b) inform Amafa Ethu of any change in the planning status and zoning determination of any site protected in terms of sections 22 to 29;
- (c) subject to minimum standards set in terms of regulations, maintain the graves of victims of conflict which fall within its area of jurisdiction if it is a local authority responsible for an urban area;
- (d) at the time of the revision of any plan, or on any other suitable occasion, and in consultation with and to the satisfaction of Amafa Ethu, make provision for the identification and protection of the heritage resources of the area under its jurisdiction through use of the appropriate provisions of the Act;
- (e) implement the minimum incentives for conservation, as determined in this Act;
- (f) administer heritage resources in accordance with what Amafa Ethu regards as its level of competence and according to powers delegated in terms of provisions of this Act; and



- (g) inform Amafa Ethu of its intention to dispose of any architectural or technical drawings in any manner other than to a provincial archive and shall, free of charge, make them available to Amafa Ethu should it wish to add them to its collections.

(4) Where any site protected in terms of this Act is to be interpreted, the person wishing to undertake such interpretation must, at least sixty days prior to the institution of interpretive measures or manufacture of associated material, consult with Amafa Ethu regarding the contents of interpretive material or programmes and must obtain a permit from Amafa Ethu for the erection, in the vicinity of the site, of any plaque or other structure associated with such interpretation.

#### **Applicability of national legislation and relations with other heritage bodies**

21. (1) Amafa Ethu may enter into agreements with national heritage bodies regarding the performance of functions in terms of national legislation on behalf of such a national body.

(2) Amafa Ethu may assist and cooperate with other heritage bodies, both within and outside of South Africa, provided that this does not involve the transfer of funds to such a body and with due regard to the impact this will have upon its own resources or effectiveness and the financial and public relations benefits to be derived from such an arrangement.

#### **Formal protections**

22. The Council must, wherever it deems it necessary, and subject to the provisions of this section, introduce the following protections by way of publication in the *Gazette*:

- (a) Heritage landmark status must be conferred upon sites which constitute, in the opinion of the Council, important elements of the heritage of the Province;
- (b) no person must damage, alter, redecorate, remove from its original position, subdivide or amend any plan thereof except under the authority of a permit issued by Amafa Ethu;

- (a) Amafa Etho must designate a site as a Heritage Landmark subject to -
  - (i) the owner being given 90 days from the date of the Council's decision in which to object, or suggest reasonable conditions under which Heritage Landmark status is acceptable; and
  - (ii) where an objection is not received or conditions are not considered reasonable, the site must automatically be included in the Heritage List;

(b) Any heritage landmark must automatically enjoy any incentives afforded sites on the heritage list;

(c) Subject to any successful objection in terms of section 23(3), sites which the Council has resolved to protect as heritage landmarks must be deemed to be protected as such for six months from the date of serving of notice of the Council's intention on the owner;

(d) Amafa Etho must inform the local authority within whose area of authority a heritage Landmark falls within two months of the designation thereof;

(e) Wherever the Council considers it inappropriate, all heritage landmarks must be marked with a badge indicating their status;

(f) Where they exist, the title deeds and survey diagrams of all heritage landmarks must be endorsed concerning their status;

(g) Heritage landmarks may be demolished until such time as the status has been withdrawn by the MEC; and

(h) Regulations must make provision for a process of consultation and arbitration between Amafa Etho, relevant local authority, appropriate community structures and the owner of a heritage landmark.

### Heritage object status

23. (1) Heritage object status must be applicable to artifacts, or collections thereof, which are of substantial aesthetic, historic, scientific, or technological importance, or which have a significant connection to a site protected under this Act, and which must be the subject of regulations.

(2) No person must destroy, damage, alter, restore, or remove such an object from its place of storage except under the authority of a permit issued by Amafa Ethu.

(3) Any designation of an object as a heritage object must, other than in instances where it is the property of the Province, a provincially supported body, or a local authority or body supported by a local authority, be subject to the owner being given 90 days in which to object or to suggest reasonable conditions under which heritage object status is acceptable.

(4) Subject to any successful objection in terms of subsection (3), artifacts which the Council has resolved to protect as heritage objects must be deemed to be protected as such for six months from the date of serving of notice of the Council's intention of the owner.

(5) All heritage objects must be marked physically in accordance with recognized curatorial norms, or by way of the display of appropriate marking in their vicinity.

(6) No heritage objects may be destroyed or permanently removed from the Province until such time as its status has been withdrawn by the MEC.

(7) Regulations must make provision for a process of consultation between Amafa Ethu, a relevant local authority, appropriate community structures or any person in the declaration of heritage objects.

### Heritage register

24. (1) Amafa Ethu must, by notice in the *Gazette*, compile a heritage register of listed sites which it considers to be worthy of conservation and whose listing must be the subject of regulations.

(2) Regulations must make provision for a process of consultation between Amafa Ethu, a relevant local authority, appropriate community structures or any person wishing to list or remove sites on or from the heritage register.

(3) Listed sites must be protected in the following manner:

- (a) except in cases where the Council considers it inappropriate, all listed sites must be marked with a badge indicating their status;
- (b) where they exist, the title deeds and survey diagrams of all listed sites must be endorsed concerning their status;
- (c) regulations jointly published by the MEC and the MEC responsible for local government may provide for minimum incentives to be made available by local authorities for the proper treatment of sensitive sites;
- (d) where a local authority so wishes it may in any relevant plan, or by other additional means, provide incentives which to those provided for in terms of subsection (3)(c).

(4) Inclusion of a site in the heritage register must not exempt persons from complying with those terms of this Act which apply to the destruction, excavation, alteration, or other disturbance of archaeological and palaeontological sites and artifacts, or meteorites.

(5) Regulations must make provision for a process of consultation and arbitration between Amafa Ethu, the relevant local authority, appropriate community structures and any person wishing to damage, alter, redecorate, demolish, remove from its original position, subdivide or amend any plan relating to a listed site.

(6) Regulations must establish guidelines for the circumstances under which work on a listed building may be prevented by means of the provisional protection afforded in terms of section 26.

### **Heritage conservancies**

25. (1) Heritage conservancies must be protected in terms of relevant plans or where there are no such plans, regulations made by the MEC.

(2) This section is subject to the following:

- (a) a local authority must, when amending any relevant plan, or at the instance of Amafa Ethu, investigate the establishment



of heritage conservancies and consult with Amafa Ethu in this regard;

- (b) regulations must provide for a process of consultation with property owners and the communities affected by the provisions governing a heritage conservancy prior to the introduction of such measures;
- (c) each conservancy must be suitably signposted;
- (d) where they exist, the title deeds and survey diagrams of all properties within a heritage conservancy shall be endorsed concerning their status;
- (e) particular sites within a heritage conservancy may, in addition to the general provisions governing the conservancy, be afforded further protection in accordance with the other provisions of this section, or section 28;
- (f) the provisions of any plans or regulations governing a heritage conservancy must specifically state which general protections in terms of section 28 and aspects of protection in terms of this section will be excluded from application.

### **Provisional Protection**

26. (1) Provisional protection must be applicable to any important heritage resource which is not protected as a heritage landmark or heritage object which the Council considers to be or is potentially under a threat with respect to its future conservation and which threat it believes may be alleviated through the provision of a period for reconsideration and negotiation.

(2) No person may damage, alter, redecorate, remove from its original position, restore, subdivide or amend any plan relating to a provisionally protected heritage resource except under the authority of a permit issued by Amafa Ethu.

(3) At the discretion of the Council, Provisional Protection may apply for a period up to a maximum of two years, which period is to be stated in the notice instituting such protection.

(4) Heritage resources which the Council has resolved to provisionally protect must be deemed to be protected as such from the time of the serving of a notice to this effect on the owner or his agent and provided that a notice is published in the *Gazette* within 30 days of serving such notice.

(5) Where they exist, the title deeds and survey diagrams of all sites which have provisional protection for a period of more than six months must be endorsed concerning their status and the date of expiry thereof.

(6) Amafa Ethu must inform the local authority within whose area of authority a provisionally protected site falls within two months of service of notice on the owner thereof.

(7) The Council may at its own discretion, or must following a successful appeal against its decisions withdraw provisional protection via notice in the *Gazette* and the serving of such notice on the owner.

#### **Sensitive site**

27. (1) The Council may protect the immediate environs of heritage landmarks and Provincial landmarks by designating a suitable buffer area as a sensitive site.

(2) Such buffers must be protected in that -

- (a) no person must damage, alter, subdivide or in any other way develop such a site without consulting Amafa Ethu, such process of consultation being provided for in regulations to be jointly published by the MEC and the MEC responsible for Local Government, and which must provide for consultation to commence at least 60 days prior to the initiation of such changes to such sites;
- (b) where they exist, the title deeds and survey diagrams of all sensitive sites shall be endorsed concerning their status;
- (c) regulations jointly published by the Member of the Executive Council, the Member of the Executive Council of Local Government and the Member of the Executive Council of Traditional Affairs shall provide for minimum incentives to be made available by local authorities for the proper treatment of sensitive sites;

- (d) where a local authority so wishes, it may in any relevant plan, or by other means, provide incentives which are additional to those provided for in paragraph (c).

## CHAPTER 4

### General protections

#### Structures

28. Any proposed demolition, addition or alteration of structures or parts thereof which are older than 60 years must be subject to the following:

- (a) at least thirty days prior to the commencement of such a proposed demolition a permit shall be applied for from Amafa Ethu;
- (b) the Council may at its own discretion and through publication of a notice in the *Gazette* lift this provision within a defined geographical area, or for certain defined categories of sites within a defined geographical area, when it is satisfied that heritage resources falling into the defined geographical area or category have been identified and are adequately provided for in terms of sections 22 to 27;
- (c) should the Council believe it to be necessary it may, following a three-month notice period which will be published in the *Gazette*, withdraw or amend a notice which has previously lifted this provision;
- (d) conditions stipulated in terms of permits issued under this provision shall be of such a nature so as to facilitate the recycling of historical building materials and the revision of design proposals;
- (e) where a permit is refused, the Council shall within a three-month period give consideration to the protection of the site

in terms of one of the formal classification provided for in sections 20 to 25.

### **Graves of cultural significance**

29. Graves of cultural significance must -

- (a) without the need for publication of a notice in the *Gazette*, enjoy protection equivalent to that of Heritage Landmark or Provincial Landmark provided for in terms of section 22;
- (b) be subject to the proviso that no permit shall be issued by Amafa Ethu without prior knowledge of the relevant monarch and his advisors, and in terms of regulations prescribed in this Act.

### **Graves of victims of conflict**

30. No person must damage, alter, exhume, or remove from its original position the grave of a victim of conflict, cemetery made up of such graves, or that part of a cemetery which contains such graves except after consultation with Amafa Ethu, and in terms of regulations prescribed in this Act.

### **Traditional burial places**

31. (1) All other graves not otherwise protected by this Act and not located in formal cemeteries administered by local authorities, must not be damaged, altered, exhumed, removed from their original positions, or otherwise disturbed except under the authority of permit issued after consultation with Amafa Ethu, and in terms of regulations prescribed in this Act.

(2) The Council must only recommend that such a permit be issued once it has been satisfied that the applicant has made a concerted effort to contact and consult communities and individuals who by tradition have an interest in the graves and have reached agreements regarding the future thereof.

(3) Regulations must provide a time period and minimum requirements for such consultation.



**Battlefields, public monuments and memorials**

32. Battlefields, public monuments and memorials must without the need to publish a government notice to this effect, be protected in the same manner as sites which are on the heritage register as established in section 24.

**Archaeology, rock art, paleontology, battlefields and meteorite sites**

33. (1) No person may destroy, damage, excavate, alter, write or draw upon, or otherwise disturb any archaeological, rock art, palaeontological, battlefield or meteorite site except under the authority of a permit issued by Amafa Ethu, provided that Amafa Ethu may, regarding archaeological sites, take account of existing small-scale agricultural activities.

(2) Upon discovery of archaeological or palaeontological material or a meteorite, a person engaged in small-scale agriculture shall immediately cease operations in the vicinity of such material and report their presence to Amafa Ethu.

(3) After consultation with the owner, the Council may, by way of serving of a notice too that effect on an owner or other controlling authority, prevent what it considers to be inappropriate activities within 50 meters of sites which obtain rock art.

(4) No person may exhume, remove from its original position, otherwise disturb, damage, destroy, own or collect any archaeological or palaeontological object or material, or objects which the Council deems to be associated with a battlefield, or meteorite, except under the authority of a permit issued at Amafa Ethu.

(5) No person may bring any equipment which assists in the detection of metals and archaeological and palaeontological objects and material, or excavation equipment onto an archaeological or palaeontological site or a battlefield, or use similar detection or excavation equipment for the recovery of meteorites, except under the authority of a permit issued by Amafa Ethu.

**Objects**

34. (1) All archaeological objects and palaeontological material, objects on battlefields, and meteorites must at all time of discovery become the property of the Province as represented by Amafa Ethu.

(2) Amafa Ethu may at its own discretion dispose of such objects and material to relevant and responsible institutions subject to it complying with the

standards and procedures of disposal as prescribed by the provincial authority responsible for museums.

(3) No person may trade in, export or attempt to export from the Province any category of archaeological object or palaeontological material, or objects which the Council deems to have been recovered from a battlefield, or meteorite, other than those categories of objects or material which may by regulations be excluded from such provisions.

(4) Regulations must prescribe how persons or institutions in possession of archaeological objects and palaeontological materials, or objects which could reasonably be expected to have been recovered from battlefields, must lodge lists of such objects and material, and other required information, for auditing with Amafa Ethu.

(5) Subject to regulations, objects and materials listed in section 29(7) must remain in the ownership of the person lodging the list.

(6) Regulations must provide a system whereby Amafa Ethu regularly monitors such objects and materials.

(7) All other such objects and materials not listed within the prescribed period must be deemed to have been recovered after the date on which this Act came into effect.

(8) Regulations may prescribe the manner in which a moratorium may be instituted on the declaration and possession of such material and objects.

(9) Regulations may prescribe the manner in which objects of any form, material, or manufacture which have, in the opinion of Amafa Ethu been in the Province for longer than 60 years, be protected in that they may be to be removed from the Province or alienated or disposed of except under the authority of a permit issued by Amafa Ethu.

### **Standards and conditions**

35. The setting of standards and conditions regarding curation and excavation of material covered in this section and the conditions pertaining to their temporary or otherwise export, the lodging of a financial deposit which will be held in trust to establish bona fides before a permit is issued, conditions of forfeiture of deposit, the submission of reports on research, must be the subject of regulations promulgated by the MEC.

### **Covenants**

36. Amafa Ethu must, where it is in the interests of the conservation of heritage resources and by mutual agreement, enter into a covenant with a local authority, community, person or persons regarding any arrangement whereby a certain clearly defined heritage resource, or a resource which it has facilitated regardless of, and in addition to, any other provisions provided for in this Act, for any aspect of the conservation of that resource such a covenant may incorporate in its terms a provision for financial, or other assistance from Amafa Ethu and must be in the form of a binding contract.

### **Expropriation**

37. The MEC may expropriate property protected in terms of sections 22 to 27 under the following circumstances, in accordance with the provisions of the Expropriation Act, 1975(Act No. 63 of 1975), on the recommendation of the Council, when -

- (a) in her or his opinion a site or artifact is neglected to the extent that it will lose its potential for conservation; and
- (b) following negotiation with and thereafter the serving of a notice of intention to expropriate on the owner;
- (c) if within at least sixty days from the date of serving such notice the MEC the opinion that no satisfactory steps have been taken to rectify the conservation problems; and
- (d) a site that is registered in terms of section 24 is threatened with demolition or alterations, or other actions, which will in her or his opinion severely compromise its value as a heritage resource and if the period of negotiations provided for has not resolved the matter to the satisfaction of the MEC.

### **Heritage resources management**

38. (1) Any person wishing to undertake a project described in terms of the following categories:

- (a) construction of a road, wall, power line, pipeline, canal or other similar form of linear development or barrier exceeding 300 meters in length;
- (b) construction of a bridge or similar structure exceeding 50 meters in length; and
- (c) any development, or other activity which will change the character of an area of land or water -
  - (i) exceeding 10 000 square meters in extent;
  - (ii) involving three or more existing erven or subdivisions thereof; or
  - (iii) involving three or more erven, or subdivisions thereof, which have been consolidated within the past five years; or
  - (iv) the costs of which will exceed a sum set in terms of regulations; or
  - (v) any other category of development provided for in regulations,

must at her or his own initiative and at the very earliest stages of initiating such a development, notify the Council and furnish it with details regarding the location, nature and extent of the proposed development.

(2) Within 14 days of the receipt of a notification under section 29(1) the Council must -

- (a) if there is reason to believe that a heritage resource or resources will be affected by such development, notify the person who intends to undertake the development that it requires the submission to it of an impact assessment report, compiled at the cost of the person proposing the development, by a person or persons approved by the Council with relevant qualifications and experience in heritage resource management; or



- (b) notify the person concerned that the provisions of this section must not apply.
- (3) Regulations must specify the information to be provided in a report required under section 29(2)(a) provided that the following must be included:
- (a) The identification and mapping of all heritage resources in the area affected;
  - (b) An assessment of the significance of such resources in terms of the heritage assessment criteria set out in regulations;
  - (c) An assessment of the impact development on such heritage resources;
  - (e) If heritage resources will be adversely affected by the proposed development, the consideration of alternatives; and
  - (f) Plans for mitigation of any adverse effects during and after completion of the proposed development.
- (4) The report must be considered timeously by the Council which must, after consultation with the person proposing the development, decide-
- (a) whether or not the development may proceed;
  - (b) whether any limitations or conditions are to be applied to the development;
  - (c) what general protections in terms of this Act apply, and what formal protections may be applied to such heritage resources;
  - (d) whether compensatory action must be required in respect of any heritage resources damaged or destroyed as a result of the development; and
  - (e) whether the appointment of specialists is required as a condition of approval of the proposal.
- (5) The Council must make any decision under section 29(4) above with respect to any development which impacts on a heritage resource protected at national level unless it has first consulted the national heritage conservation agency.

(6) The applicant may appeal against the decision of the Council to the MEC, who-

- (a) must consider the views of both parties; and
- (b) may at her or his discretion –
  - (i) appoint a committee to undertake an independent review of the impact assessment report and the decision of the provincial heritage authority;
  - (ii) consult the South African Heritage Resources Agency; or
  - (iii) consult the provincial Executive Council regarding the appeal; and
- (c) must uphold, amend or overturn such decision.

(7) The provision of this section must not apply to a development described in section 29(1) affecting any heritage resource formally protected by this Act or national heritage legislation unless the relevant authority concerned decides otherwise.

(8) The provisions of this section must not apply to a development as described in section 29(1) if any evaluation of the impact of such development on heritage resources is required in terms of national legislation, *inter alia* the integrated environmental management (IEM) guidelines issued by the Department of Environmental Affairs and Tourism, the Environment Conservation Act, 1989 (Act No. 73 of 1989), the Minerals Act, 1991 (Act No. 50 of 1991) or other planning and development legislation applicable in the Province, provided that the Council must ensure that the evaluation fulfils the requirements of the Act in terms of section 30(3) and any comments and recommendations of the Council with regard to such development have been taken into account prior to the granting of any consent.

(9) The MEC may, on the recommendation of the Council, and by notice in the *Gazette*, exempt from the requirements of this section, any place specified in the notice.

(10) Any person who has complied with the decision of the Council in section 29(4) or of the MEC in section 29(6) or other requirements referred to in section 29(8) must be exempt from compliance with all other protections in terms of this section, but any existing heritage covenants made in terms of section 28(9) must continue to apply.

### Permits

39. (1) Regulations must prescribe the manner in which an application must be made to the Council for any permit under this Act and other requirements for permit applications, including –

- (a) any particulars or information to be furnished in the application and any documents, drawings, plans, photographs and fees which should accompany the application;
- (b) minimum qualifications and standards of practice required of persons making application for a permit to perform specified actions in relation to particular categories of protected heritage resources;
- (c) standard and conditions for the excavation and curation of archaeological and palaeontological objects and material and meteorites recovered under authority of a permit;
- (d) the conditions under which, before a permit is issued, a financial deposit must be lodged and held in trust for the duration of the permit or such period as the regulation may specify, and conditions of forfeiture of such deposit;
- (e) conditions for the temporary export and return of objects protected under section 23 or 28(7);
- (f) the submission of reports on work done under authority of a permit; and
- (g) the responsibilities of the Council regarding monitoring of work done under authority of a permit.

(2) On application by any person in the manner prescribed under section 30(1), the Council may in its discretion issue to such person a permit to

perform such actions at such time and subject to such terms, conditions and restrictions or directions as may be specified in the permit, including a condition

- (a) that the applicant give security in such form and such amount determined by the Council, having regard to the nature and extent of the work referred to in the permit to ensure the satisfactory completion of such work, or the curation of objects and material recovered during the course of the work; or
- (b) providing for the recycling or deposit in the Amafa Ethu Conservation Materials Bank referred to in section 10(2)(ac); or
- (c) stipulating that design proposals be revised; or
- (d) regarding the qualifications and expertise required to perform the actions for which the permit is issued.

(3) Notwithstanding (1) and (2) above no person must, by obtaining any permit, permission or authority under this Act, be absolved from the duty to comply with the provisions of any other law.

### Exemptions

40. The MEC may, on the recommendation of the Council, at his discretion, in respect of any heritage resource protected under this Act by notice in the *Gazette*, grant an exemption from the requirement to obtain a permit from it for such activities or class of activities by such persons or class of persons in such circumstances as are specified in the notice.

### Appeals

41. (1) Regulations must provide for a system of appeal to the Council against the decision of a committee or other delegated representative of the Council and to the MEC against the decision of the Council.

(2) In considering an appeal referred to in section 32(1) the MEC must have due regard to –



- (a) the advice of at least two independent assessors appointed by the MEC to assist in the matter by virtue of their expertise with regard to the matter;
- (b) the cultural significance of the heritage resources in question;
- (c) heritage conservation principles; and
- (d) any other relevant factors which are brought to her or his attention by the appellant or the heritage authority.

(3) Should the MEC find in favour of the appellant, he or she may require that appropriate compensation for the loss of heritage resources be made to the Council or other appropriate body for use in ensuring the continued conservation of other heritage resources.

(4) An appeal against the decision of a local authority regarding an application for special consent for a listing or removal of sites from the heritage register and matters connected therewith and protection of heritage conservancies and matters connected therewith must, subject to the protective provisions referred to in sections 24 and 25 respectively, be made to the applicable planning appeal body in accordance with the planning appeal procedures applicable in the Province: Provided that –

- (a) the local authority must inform the Council on the institution of an appeal; and
- (b) in considering such appeal the planning appeal body must have due regard to the cultural significance of the place in question, heritage conservation principles and any other relevant factors which are brought to its attention by the appellant, the local authority or the Council.

## Regulations

42. The MEC may make regulations in terms of which the Council may –

- (a) levy admission of guilt fines up to an amount determined by such regulations, for infringement of the terms of this Act;

- (b) serve a notice upon a person who is contravening a specified provision of the Act or has not complied with the terms of a permit issued by the Council, imposing a daily penalty for the duration of the contravention, subject to a maximum period of 365 days; and
- (c) confiscate any vehicle, craft, equipment or other contraption utilised by any person who contravenes a specified provision of the Act.

### Offences

43. Any person who –

- (a) whether or not on the request of the Council, fails to provide any information that is required to be given under this Act or the regulations;
- (b) for the purpose of obtaining, whether for herself or himself or for any other person, any permit, consent or authority under this Act, makes any statement or representation knowing it to be false or not knowing or believing it to be true;
- (c) fails to comply with or performs any act contrary to the terms, conditions, restrictions or directions subject to which any permit, consent or authority has been issued to her or him under this Act;
- (d) obstructs the holder of a permit under this Act in exercising a right granted to her or him by means of such permit;
- (e) damages takes or removes, or causes to be damaged, taken or removed from a place protected in terms of the provisions of this Act by badge or sign or any interpretive display or any other property or object erected by the national heritage agency, the Council, or a competent local authority;
- (f) received any badge or any other property or object unlawfully taken or removed from a place protected in terms of the provisions of this Act;
- (g) within the terms of this Act commits or attempts to commit any other unlawful act, violates any prohibition or fails to perform any

obligation imposed upon her or him by its terms, or who counsels, procures, solicits or employs any other person to do so shall be guilty of an offence.

### **Laying of charges**

44. Any person who believes that there has been an infringement of any provision of this Act may lay a charge with the South African Police Services or any other competent authority.

### **Jurisdiction of the magistrate's court**

45. A magistrate court must, notwithstanding the provisions of any law, be competent to impose any penalty under this Act.

### **Orders to make good**

46. Whenever any person has been convicted of any contravention of this Act, which has resulted in damage to or alteration of a protected heritage resource the court must –

- (a) order such person to put right the result of the action of which he or she was found guilty, in the manner so specified and within such period as may be so specified, and upon failure of such person to comply with the terms of such order, order such person to pay to the Council a sum equivalent to the cost of making good; or
- (b) when it is of the opinion that such person is not in a position to make good damage done to a heritage resource by virtue of the offender not being the owner or occupier of a heritage resource or for any other reason, or when it is advised by the Council that it is unrealistic or undesirable to require that the results of the action be made good, order such person to pay to the Council a sum equivalent to the cost of making good.

### **No-development orders**

47. (1) In addition to other penalties, if the owner of a place has been convicted of an offence against this Act involving the destruction of, or damage to, the place, the MEC on the advice of the Council, may serve on the owner an

**Repeal of laws**

56. The Historical Monuments Act, 1989 (Act No. 10 of 1989) (Ciskei), is hereby repealed, and anything done in terms of that law is deemed to have been done in terms of this Act.

**Short title and commencement**

57. This Act is called the Eastern Cape Heritage Resources Act, 2003.



## PROVINCE OF THE EASTERN CAPE

No. 6

4 March 2004

It is hereby published for general information that the Premier of the Province of the Eastern Cape has assented to the following Act:—

No. 10 of 2003: Eastern Cape Liquor Act, 2003 (Eastern Cape).

# ACT

To provide for the registration of the retail sale of liquor in the Province of the Eastern Cape; and for matters connected therewith.

*(Text signed by the Premier)*  
*(Assented to on 11-12-2003)*

## ARRANGEMENT OF SECTIONS

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**BE IT ENACTED** by the Legislature of the Province of the Eastern Cape; as follows:-

### Definitions

1. (1) In this Act, unless the context indicates otherwise-

"any other law" includes the common law;

"beer" means -

- (a) a drink manufactured by the fermentation of a mash of malt, with or without cereals and flavored with hops;
- (b) ale or stout; or
- (c) any substance or other fermented drink;
- (d) manufactured as or sold under the name of beer, ale or stout; or
- (e) declared to be beer under subsection (2)(a),

if it contains more than one per cent by volume of alcohol, but does not include sorghum beer;

"board" means a body established by section 4 of this Act;

"chairperson" means the relevant chairperson appointed in terms of section 12;

"Companies Act, 1973" means the Companies Act, 1973 (Act No. 61 of 1973);

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);

"controlling interest" means a controlling interest as defined in section 1 of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979);

"court" means a competent court that has jurisdiction;

"Department " means the department responsible for liquor matters in the Province;

"financial year" means-

- (a) the period from the date on which this Act takes effect to the last day of March in the following year; and
- (b) each period of 12 months thereafter ending on the last day of March;

"Gazette" means the *Provincial Gazette* of the Province;

"inspector" means an inspector appointed or designated in terms of section 46(1);

"judicial officer" means a judge or a magistrate;

"Legislature" means the Legislature of the Province of the Eastern Cape;

"liquor" means-

- (a) any liquor product as defined in section 1 of the Liquor Products Act, 1989;
- (b) any beer or sorghum beer; and
- (c) any other substance or drink declared to be liquor under subsection (2)(b);

"Liquor Act, 1989" means the Liquor Act, 1989 (Act No. 27 of 1989);

"Liquor Products Act, 1989" means the Liquor Products Act, 1989 (Act No. 60 of 1989);

"methylated spirit" means-

- (a) spirit denatured in accordance with any law on the denaturation or methylation of spirit;
- (b) any other denatured, medicated, perfumed or otherwise treated spirit declared to be methylated spirit under subsection (2)(d);

"MEC" means the member of the Executive Council of the Province, to whom the Premier has assigned the responsibility for liquor matters;

"municipality" means a municipality in terms of section 8, 9 or 10 of the Municipal Structures Act, 1998 (Act No. 117 of 1998);

"micro-manufacturer" means a person registered as such in terms of this Act to manufacture liquor at or below the prescribed threshold volume, and includes micro-manufacturing of African traditional beer and methylated spirits;

"Minister" means the member responsible for liquor matters in the National Cabinet;

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"panel of appeal" means a body established by section 10(1), and "panel" has a corresponding meaning;

"person" includes a trust, and any other entity mentioned in the definition of "person" as defined in section 1 of the Interpretation Act, 1957 (Act No. 33 of 1957);

"Premier" means the Premier of the Province;

"premises" includes any place, land, building or conveyance, or any part thereof;

"prescribe" means prescribe by regulation;

"Province" means the Province of the Eastern Cape established by section 103 of the Constitution;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No 1 of 1999);

"register" means the relevant register referred to in section 35(1)(a);

"registered person" means a person to whom a certificate of registration has been issued or who is deemed to be registered in terms of this Act;

"registered premises" means premises in respect of which a certificate of registration has been issued;

"regulation" means a regulation made under this Act;

"retailer" means any person registered for a category of registration contemplated in section 20(a), (b), (c), (d) or (e);

"sell" includes exchange or keep, offer, display, deliver, supply or dispose of for sale, or authorise, direct or allow a sale;



"South African citizen" means a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 80 of 1995);

"sorghum beer" means-

- (a) the drink generally known as sorghum beer and commonly manufactured from grain sorghum, millet or other grain;
- (b) any other drink manufactured or sold under the name of sorghum beer; or
- (c) any other substance or fermented drink declared to be sorghum beer under subsection (2)(c);

"this Act" includes any regulation or notice made or issued under this Act.

(2) The Premier may, by notice in the *Gazette*-

- (a) declare any substance or fermented drink other than the drinks contemplated in paragraphs (a), (b) and (c) of the definition of "beer" in subsection (1), to be beer for the purposes of this Act;
- (b) declare any substance or drink other than the liquor contemplated in paragraphs (a) and (b) of the definition of "liquor" in subsection (1), to be liquor for the purposes of this Act;
- (c) declare any substance or fermented drink other than the drink contemplated in paragraphs (a) and (b) of the definition of "sorghum beer" in subsection (1), to be sorghum beer for the purposes of this Act; and
- (d) declare any denatured, medicated, perfumed or otherwise treated spirit other than the spirit contemplated in paragraph (a) of the definition of "methylated spirit" in subsection (1), to be methylated spirit for the purposes of this Act.

## CHAPTER 1

### OBJECTS AND APPLICATION OF ACT

#### Objects of Act

2. The objects of this Act are to make provision for the registration of retail sales and micro-manufacturing of liquor in the Province, to encourage and support the

liquor industry and to manage and reduce the socio-economic and other costs of excessive alcohol consumption by creating an environment in which-

- (a) the entry of new participants into the liquor industry is facilitated;
- (b) appropriate steps are taken against those selling liquor outside the administrative and regulatory framework established in terms of this Act;
- (c) those involved in the liquor industry may attain and maintain adequate standards of service delivery;
- (d) community considerations on the registration of retail premises are taken into account; and
- (e) the particular realities confronting the liquor industry in the Province can be addressed.

#### **Application of Act and conflict with other laws**

3. (1) This Act must not apply to-

- (a) an officer as defined in section 1(1) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), in the performance of his or her functions as such;
- (b) an administrator of a deceased or insolvent estate, in the administration of that estate;
- (c) sheriff or any other officer acting in terms of an order of a court, judge or magistrate, in the performance of his or her functions as such;
- (d) the master of a ship or the commander of an aircraft of an air service licensed in terms of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), to provide a scheduled air transport service, with regard to the sale of liquor to a passenger on board that ship while in a harbour in, or in the territorial waters of, the Republic during a voyage of not less than 100 kilometres, or to a passenger on board that aircraft while on a flight of not less than 100 kilometres from one airport in the Republic to another;
- (e) a person referred to in a notice under section 10 of the Liquor Products Act, 1989, with regard to the sale of any sacramental beverage under such a notice;

(f) a person, with regard to the sale of any spiritous or distilled perfumery or medicated spirit, which perfumery or spirit is not methylated spirit; and

(g) the manufacturer of sweets containing more than two per cent by mass of alcohol and manufactured in the Republic, with regard to the sale of those sweets to a registered person.

(2) Subject to sections 23(a), 32(1) and (2), 47(1), 48(2), 50(2)(a) and 51, if any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, save the Constitution or any Act amending this Act, the provisions of this Act must prevail.

## CHAPTER 2

### PROVINCIAL STRUCTURES AND FUNCTIONS

#### Part 1

#### Eastern Cape Liquor Board

##### Establishment of the Eastern Cape Liquor Board

4. There is hereby established the Eastern Cape Liquor Board which is a juristic person.

##### Composition of the Eastern Cape Liquor Board

5. (1) Subject to subsection (2), the board must consist of no more than five members appointed by the MEC.

(2) At least one, but not more than two members of the board must be officers in the Provincial public service.

(3) Whenever the MEC is required to appoint any person to the board that is not a person contemplated in subsection (2), he or she must-

(a) publish an invitation in at least two newspapers with wide circulation in the Province, a notice calling for nomination or application and stating the criteria for nomination; and

(b) consider all nominations and applications submitted in response to the notice and appoint a fit and proper person.

(4) (a) A member of the board must hold office for the period determined by the MEC at the time of the member's appointment, but not exceeding three years at a time.

(b) A member must be eligible for reappointment at the end of his or her first term of office.

(c) The MEC may appoint any member of the Board other than a member contemplated in subsection 5(2) on a full-time contractual basis for a period not exceeding such member's term of office on such terms and conditions as determined by the MEC in consultation with the MEC responsible for finance in the Province.

#### **Allowances of members**

6. A member of the board other than a member contemplated in section 5 (2) and (4)(c) must be paid such allowances in connection with the affairs of the board as determined by the MEC in consultation with the MEC responsible for finance.

#### **Personnel and administration of the board**

7. (1) The Board must, in consultation with the MEC, establish a staff structure for the Board.

(2) The Board must appoint staff in terms of the structure contemplated in subsection (1).

(3) The staff contemplated in subsection (2) must be remunerated by the Board on such terms and conditions determined by the Board in consultation with the MEC.

#### **Funds of the board**

8. The funds of the board must consist of-

(a) money appropriated by the Legislature; and

(b) any money which may accrue to the board from any other source.



**Powers and functions of the board****9. The board-**

- (a) must consider and approve or refuse applications for the categories of registration contemplated in section 20(a), (b), (c); (d) or (e);
- (b) may cancel, suspend or vary any registration approved by it in the manner contemplated in this Act;
- (c) may determine conditions applicable to the categories of registration contemplated in section 20(a), (b), (c); (d) or (e); and
- (d) must publish in the Provincial Gazette applications received for registration, transfer or removal as prescribed.
- (e) may exercise any other power and must perform any other duty conferred or imposed on it in terms of this Act.

**Part 2****Panel of appeal****Establishment of panel of appeal**

- 10. (1) A panel of appeal for the Province is hereby established.
- (2) The panel of appeal must consist of at least three, but not more than five, fit and proper persons appointed by the MEC;
- (3) At least one member of the panel must have a suitable degree of skill and experience in the administration of civil and criminal law matters.
- (4) Whenever the MEC is required to appoint any member contemplated in subsection (2), he or she must-
  - (a) publish in at least two newspapers with wide circulation in the Province an invitation calling for nomination or application; and
  - (b) consider all nominations and applications submitted in response to the invitation and appoint members to the board.
- (5) A member contemplated in subsection (2) must hold office for the period determined by the MEC at the time of the member's appointment, but not

exceeding three years at a time, and a member is eligible for reappointment at the end of his or her first term of office.

(6) Section 8 must apply with regard to the funds of the panel of appeal.

(7) Section 7 must apply with regard to the officers and the administrative and other resources and services required to enable the panel of appeal to perform its functions.

(8) The panel of appeal must consider appeals against decisions made by the board.

(9) The decision of the panel of appeal is final.

### Part 3

#### General provisions applicable to provincial structures

##### Disqualification for and vacating of office

11. (1) No person may be appointed to the board or the panel of appeal if he or she -

- (a) is not a South African citizen;
- (b) is of unsound mind;
- (c) has at any time been convicted and sentenced to imprisonment without the option of a fine;
- (d) is an unrehabilitated insolvent; or
- (e) is a member of Parliament, the Legislature, a provincial legislature, a Municipal Council, the National Cabinet or the Executive Council of the Province.

(2) A member of a body referred to in subsection (1) must vacate his or her office if he or she-

- (a) becomes subject to a disqualification contemplated in subsection (1);
- (b) ceases to hold a qualification, office or interest by virtue of which that member was appointed;

- (c) has been absent without permission of the relevant chairperson for more than two consecutive ordinary meetings of the board or the panel of appeal;
- (d) resigns by one month's written notice to the MEC; or
- (e) is removed from office by the MEC, if he or she is of the opinion that it is in the public interest to remove a member.

(3) Without prejudice to the generality of subsection (2)(e), the MEC may at any time remove from office any member of a body referred to in subsection (1), for reasons of -

- (a) incompetence;
- (b) nepotism;
- (c) dishonesty;
- (d) conflict of interest;
- (e) failure to act in the interests of the board or panel;
- (f) failure to attend to the matters of the board or panel; and
- (g) the member bringing the board or panel into disrepute.

(4) All vacancies in the bodies referred to in subsection (1) must be filled in accordance with the procedure contemplated in section 5(3) or 10(4), as the case may be.

### **Designation of chairpersons**

12. (1) The MEC must designate one member of the board to serve as chairperson of the board.

(2) The MEC must designate one member of the panel of appeal to serve as chairperson.

(3) The MEC may appoint any other member of the board or panel of appeal as vice-chairperson, who must act as chairperson if the chairperson contemplated in subsection (1) or (2) is unable to serve in that capacity or if the office becomes vacant.

place set out in the notice and may appoint an advocate or attorney to assist him or her.

(3) The chairperson of a body referred to in subsection (1) may cause any person to be summonsed in the prescribed manner to be present at any meeting to-

- (a) give evidence; or
- (b) produce any document or any other thing which is in his or her possession or custody or under his or her control and which, in the opinion of the chairperson, relates or may relate to a matter to be considered thereat,

with notice to that person of the date, time and place of the meeting at which his or her presence is required.

### **Accessibility of meetings**

18. (1) Subject to subsections (2) and (3), any meeting of the board or the panel of appeal must be accessible to the public.

(2) The chairperson of the relevant meeting may direct that any person whose presence is in his or her opinion not desirable at the relevant meeting, may not attend the meeting or must leave the meeting.

(3) The deliberations and voting on any matter at a meeting must take place behind closed doors.

## **CHAPTER 3**

### **REGISTRATION**

#### **Compulsory registration**

19. No person shall sell liquor unless that person is registered or is deemed to be registered in terms of this Act to sell that liquor.

#### **Categories of registration**

20. An application for registration in terms of this Act may be made in respect of the following categories:



- (a) the retail sale of liquor for consumption off the premises where the liquor is being sold;
- (b) the retail sale of liquor for consumption on the premises where the liquor is being sold;
- (c) the retail sale and consumption of liquor on and off the premises on which the liquor is being sold;
- (d) the retail sale and consumption of liquor at a special event; or
- (e) micro-manufacturing.

### **Disqualification and other incompetency**

21. No person may apply to be registered in terms of this Act, if that person-

- (a) is a minor on the date of submitting the application for registration;
- (b) is an unrehabilitated insolvent;
- (c) is of unsound mind;
- (d) is a company or a close corporation that is not registered in terms of the provisions of the Companies Act, 1973, or the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be;
- (e) is a trust in which-
  - (i) the majority of trustees having the controlling power at any given time are not South African citizens; and
  - (ii) the majority of the beneficial interests are held by the persons referred to in subparagraph (i);
- (f) is a partner, co-director, co-trustee or co-beneficiary of any person who, in terms of this Act, is disqualified or incompetent to register.

### **Application procedure for registration, transfer or removal**

22. (1) An application for a category of registration contemplated in section 20(a), (b), (c), (d) or (e) must -

- (a) be made to the board;

- (b) subject to subsection (13) and section 71(2), be made in terms of this section.

(2) An application for registration contemplated in subsection (1) must be made by submitting to the board-

- (a) the prescribed form properly completed and specifying-

- (i) the particulars of the applicant which, in the case of-

- (aa) a natural person, must include his or her full name, identity number and residential address and a statement that he or she is not disqualified for registration in terms of section 21;
    - (bb) a company or close corporation must include its full name, registration number and the address of its registered office;
    - (cc) a company, except for a company which is listed on the Johannesburg Stock Exchange, must include the names, identity numbers and residential addresses of all shareholders and a statement that none of them is disqualified from registration in terms of section 21;
    - (dd) a close corporation, the names, identity numbers and residential addresses of all its members and a statement that none of them is disqualified from registration in terms of section 21;
    - (ee) a trust, must include the names, identity numbers and residential addresses of all its trustees and known beneficiaries, and a statement that none of them is disqualified from registration in terms of section 21; or
    - (ff) an association or partnership, must include the names, identity numbers and residential addresses of all its members or partners, and a statement that none of them is disqualified from registration in terms of section 21;

- (ii) the physical address and the erf, street or farm number and a description of the premises from which the applicant intends to sell liquor, including a plan of the premises;

- (iii) the category in respect of which registration is being sought;
- (iv) in respect of the premises from which the applicant intends to sell liquor, whether the premises concerned are-
  - (aa) in existence, or
  - (bb) the premises concerned are not yet in existence, in which case the applicant must furnish details of the steps to be taken in the event of the application for registration being approved to construct the premises.;
- (b) other information that may be required by the board to enable the board to determine whether or not the applicant meets the requirements of registration;
- (c) the prescribed fee which must be paid in the prescribed manner;
- (d) proof of service of the notice contemplated in the prescribed manner on the -
  - (i) ward committee which must on receipt of the notice consult the community of the area where the premises are situated and simultaneously submit a report to the board and the relevant municipal council; and
  - (ii) governing body of every education institution or place of worship within a radius prescribed by the MEC from the premises in respect of which the application is made.

(3) Upon receipt of the application contemplated in subsection (2), the board must in the prescribed manner enable the public to-

- (a) have access to, inspect or obtain a copy of the application; and
- (b) lodge representations or objections to any application.

(4) Within 60 days after receiving an application which complies fully with subsection (3), the board must consider the application, the report from the ward

committee and any further information provided by the applicant and register the applicant by entering the applicant's name in the register if it is satisfied that-

- (a) the applicant complies with the requirements for registration contemplated in subsection (3); and
- (b) no objections have been received by the board.

(5) If, after considering an application for registration contemplated in subsection (1), the board is of the opinion that the application does not comply with the requirements for registration referred to in subsections (2) and (3); or if an objection to the application has been received, the board must notify the applicant in writing of the reasons for its decision or must provide the applicant with a copy of any objection received, and inform the applicant that he, she or it has 30 days from the date of service of the notice to comply with the requirements and respond to any objection.

(6) The period contemplated in subsection (5) may be extended by the board on good cause shown by the applicant.

(7) If an applicant who has been served a notice contemplated in subsection (5) complies with the requirements as set out in that notice or responds to any objection timeously and adequately, the board must register the applicant by entering the applicant's name in the register.

(8) If an applicant who has been served a notice contemplated in subsection (5) has not complied with the requirements as set out in that notice timeously and adequately or has failed to respond to any objection, the board must refuse to register the applicant and notify the applicant in writing of the refusal and the reasons therefor.

(9) The board must within 30 days of its final decision on the registration of an applicant, serve on all objectors to that application a notice in writing of its decision and the reasons therefor.

(10) The provisions of subsection (2)(d) shall not be applicable in respect of an application for registration in terms of section 20(d).

(11) The holder of a registration certificate may at any time make application to the board for the transfer thereof to another person.

(12) The holder of a registration certificate may at any time make application for the removal of the registration certificate from the registered premises concerned to other premises situated in the same district municipal area as the registered premises.



(14) (a) The procedure and consultation process provided for in this section is applicable to an application for a transfer or removal.

(b) The provisions of section 21 are applicable in respect of an application for removal.

### **Death or incapability of applicant**

23. If a person who has made an application for a registration, excluding the category of registration contemplated in section 20(d), dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs on or before the date on which the application is considered:

- (a) the relevant administrator of the deceased or insolvent estate, judicial manager or curator or, if such an administrator, manager or curator has not yet been appointed or the holder of that office is unable or unwilling to act, a person who is duly authorised thereto by the board considering the application, must, subject to the law regarding deceased estates, insolvency, judicial management or mental health, have all the rights that the applicant would have had if he or she had not died, become insolvent, been placed under judicial management or been declared so incapable; and
- (b) the board may, subject to this Act and the said law, in its discretion approve the registration in favour of such an administrator, manager, curator or person.

### **Appeals against refusals and conditions**

24. (1) An applicant may, within 30 days after being served a notice of a decision of the board not to approve an application for registration, transfer or removal or of a determination of terms and conditions, appeal against the decision or determination by submitting to the panel of appeal-

- (a) the application to register;
- (b) the notice sent to the applicant by the board in terms of section 22(7) or (10);
- (c) details of the applicant's response to the board's notice; and
- (d) the board's final notice and reasons for the decision which is the subject of the appeal.

(2) An objector to an application may, within 30 days after being served the notice contemplated in section 22(12), appeal against the relevant decision by submitting to the panel of appeal-

- (a) a copy of the objection;
- (b) a copy of the notice contemplated in section 22(12); and
- (c) the grounds of appeal.

(3) Within 90 days after receipt of the relevant documents, the panel of appeal must consider the appeal in the prescribed manner, including providing the appellant, the board and any other interested party with the opportunity to make oral representations, and must send notices in writing of its decision to the appellant, the board and other parties involved, stating the reasons for the decision.

(4) If the panel of appeal upholds an appeal-

(a) contemplated in subsection (1), the board must register the person; or

(b) contemplated in subsection (2), the board must consider afresh the registration in respect of which the appeal was made.

#### **Certificate of registration, transfer or removal**

25. (1) Upon grant of registration, transfer or removal, the board must-

- (a) register the applicant from the date on which the applicant's name was entered in the register;
- (b) issue a certificate of registration in the applicant's name on the prescribed form, which must include-
  - (i) a registration number;
  - (ii) the premises in respect of which registration has been granted;
  - (iii) the conditions upon which registration was granted;
  - (iv) the category of registration; and
  - (v) the period for which registration is granted;

(c) send the certificate to the applicant; and

(d) advise the applicant of the date on which the applicant's name was entered in the register.

(2) The registration and registration certificate of any registered person must be valid until-

(a) the period of registration determined by the board has elapsed;

(b) the registration is cancelled in terms of this Act;

(c) the registered person has voluntarily de-registered; or

(d) in the case of a body corporate, it is wound-up or dissolved.

(3) A registration is subject to the payment of the prescribed annual fee before the prescribed date.

(4) In the case of approval by the board of an application for transfer, the board must issue a certificate of transfer in a prescribed form in the name of the transferee

(5) In the case of approval by the board for a removal, the board must issue a removal certificate in a prescribed form

### **Commencement of registrations**

26. (1) Subject to subsection (2), a registration certificate which has been issued must be valid-

(a) if no fees have been prescribed in respect of the issue thereof, as from the date of such issue;

(b) if any fees have prescribed, as from the date on which such fees are paid.

(2) If any fees prescribed under subsection (1) are not paid in respect of an applicable registration before the expiry of the period so prescribed, that registration must not acquire validity and the application for the registration must be deemed not to have been approved.

### **Effects of registration**

27. (1) The certificate of registration of a person or a duly certified copy of the certificate, must be sufficient proof that the person-

(a) has met all the requirements of registration; and

(b) has been registered in terms of this Act.

(2) A registered person must reflect its registered status and registration number on all of that person's trading documents.

### **Non-compliance with obligations**

28. (1) The board must-

(a) serve a compliance notice in the prescribed form on a registered person if the board has reason to believe that the person has not complied with-

(i) a material provision of the terms and conditions of that person's registration;

(ii) that person's obligations in terms of this Act; and

(b) refer the person, to the South African Police Service for criminal investigation if it is satisfied that any non-compliance contemplated in paragraph (a) may constitute an offence.

(2) A compliance notice contemplated in sub-section (1), must-

(a) be in writing;

(b) notify the person of the alleged non-compliance and the steps the person is required to take in order to comply; and

(c) inform the person, that he, she or it has 30 days from the date of the notice to comply with the requirements.

(3) The period contemplated in subsection (2)(c) may be extended by the board on good cause shown by the registered person.

### **Variation, suspension or cancellation of registration**

29. (1) If a registered person who has been served a notice in terms of section 28 does not comply with the requirements stated in the notice or becomes disqualified or otherwise incompetent in terms of this Act, the board must -



- (a) vary or suspend the registration on such terms and conditions as the board may determine; or
- (b) cancel the registration certificate; and
- (c) notify the person in writing of-
  - (i) the variation or suspension or cancellation and state the reasons therefor;
  - (ii) the date on which the registration was varied or suspended or cancelled; and
- (d) amend the register accordingly.

(2) When a person's registration has been cancelled, all the rights, benefits and allowances accruing therefrom must lapse immediately.

(3) For the purposes of this Act, variation, suspension or cancellation of registration takes effect on the date on which the registration certificate is varied, suspended or cancelled by the board.

### **Appeals against variation, suspension or cancellation of registration**

30. (1) A registered person may refer the decision of the board to vary, suspend or cancel that person's registration for appeal to the panel of appeal, and the procedure established by section 24(1), must apply, with the necessary changes, to the noting of that appeal.

(2) Within 90 days after receipt of the relevant documents, the panel of appeal must consider the appeal in the prescribed manner and must send notices in writing of its decision to the appellant and the board, stating the reasons for the decision.

(3) If the panel of appeal upholds an appeal-

- (a) the board must re-instate the registration of the relevant person, by-
  - (i) re-issuing the certificate of registration; and
  - (ii) amending the register accordingly;
- (b) the person must be deemed not to have had that person's registration cancelled.

**Voluntary deregistration and winding-up or dissolution**

31. (1) A registered person may deregister voluntarily by sending the board a notice in writing-

- (a) stating the person's intention and reasons to deregister voluntarily; and
- (b) specifying a date, at least 60 days after the date of the notice, on which the deregistration is to take effect.

(2) If a registered person resolves to be sequestrated, wound-up or dissolved, that person must within 30 days of the completion of the sequestration, winding-up or the dissolution process or an order of court, send to the board a written notice-

- (a) stating that fact; and
- (b) containing certified copies of all relevant documents confirming the winding-up or dissolution.

(3) Upon receiving a notice contemplated in subsection (2), the board must on the date specified in the notice-

- (a) cancel the certificate of registration of the person and deregister it by amending the register; and
- (b) notify the person in writing of the date on which the deregistration was effected in the register.

**Death or incapability of certain registered persons**

32. (1) If a registered person, excluding a registered person in respect of a category of registration contemplated in section 20(d), dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs-

- (a) the relevant administrator of the deceased or insolvent estate, judicial manager or curator must, subject to the law regarding deceased estates, insolvency, judicial management or mental health, as from the date of his or her appointment as such, for all purposes become the registered person;
- (b) the relevant administrator of the deceased or insolvent estate, judicial manager or curator may, for the purposes of the administration or management of the estate concerned, conduct the business to which the registration relates.

(2) The chairperson of the board may, on application by any person and if satisfied that every person who has a financial interest in the business contemplated in subsection (1) has been given reasonable notice of the application, appoint any person who is not disqualified or otherwise incompetent in terms of this Act to hold the relevant registration, to conduct that business until the appointment of the administrator, manager or curator so contemplated, and a person so appointed must, subject to the law regarding deceased estates, insolvency, judicial management or mental health, for the period of his or her appointment for all purposes be deemed to be the registered person.

(3) If the only member of a company or close corporation which is a registered person dies, becomes insolvent, is placed under judicial management or is declared incapable of handling his or her own affairs, subsections (1) and (2) must apply, with the necessary changes, despite any other law, to that company or corporation.

### **Replacement of registration certificate**

33. (1) The chairperson of the board may at any time after the issue of a registration certificate and with the concurrence of the registered person, replace that certificate by the issue of another certificate of the same kind in respect of the relevant premises to the registered person against payment of the prescribed fee.

(2) A registration certificate issued under subsection (1) must be subject to the conditions set out in that certificate that the chairperson may in his or her discretion impose.

### **Controlling interest**

34. (1) A registered person must not permit any other person to procure a controlling interest in the business to which the registration relates, unless the chairperson of the board has, on application by the registered person, granted consent that the other person may procure that interest in that business.

(2) The chairperson must not grant consent under subsection (1) where the person who is the subject of the application, is disqualified or incompetent in terms of this Act to be registered.

### **Register of registered persons**

35. (1) The board must-

- (a) in respect of the decisions of that board keep a register in the prescribed form of all persons-

- (i) that have been registered;
  - (ii) whose registrations have been cancelled or varied; and
  - (iii) that have voluntarily deregistered or have been wound-up or dissolved; and
  - (iv) applied for registration to sell or micro-manufacture liquor; and
  - (v) terms and conditions of registration or variation.
- (b) submit the information referred to in paragraph (a) on a monthly basis to the responsible department.

(2) Within 60 days after the end of each financial year, the board must publish in the Gazette and at least one other widely circulated means of communication the provincial record of registrations, setting out the names of all persons-

- (a) who are registered on the last day of the relevant financial year;
- (b) whose registrations were cancelled during the relevant financial year; and
- (c) who deregistered voluntarily or have been wound-up or dissolved during the relevant financial year.

(4) Subsection (3) does not preclude the board from publishing the names of the persons contemplated in that subsection in any widely circulated means of communication as and when deemed fit.

### **Payments into revenue funds**

36. All prescribed fees received in terms of this Act by the board, must be paid into the Provincial Revenue Fund.



- (i) that have been registered;
  - (ii) whose registrations have been cancelled or varied; and
  - (iii) that have voluntarily deregistered or have been wound-up or dissolved; and
  - (iv) applied for registration to sell or micro-manufacture liquor; and
  - (v) terms and conditions of registration or variation.
- (b) submit the information referred to in paragraph (a) on a monthly basis to the responsible department.

(2) Within 60 days after the end of each financial year, the board must publish in the Gazette and at least one other widely circulated means of communication the provincial record of registrations, setting out the names of all persons-

- (a) who are registered on the last day of the relevant financial year;
- (b) whose registrations were cancelled during the relevant financial year; and
- (c) who deregistered voluntarily or have been wound-up or dissolved during the relevant financial year.

(4) Subsection (3) does not preclude the board from publishing the names of the persons contemplated in that subsection in any widely circulated means of communication as and when deemed fit.

#### **Payments into revenue funds**

36. All prescribed fees received in terms of this Act by the board, must be paid into the Provincial Revenue Fund.

## CHAPTER 4

### TERMS AND CONDITIONS APPLICABLE TO SALE OF LIQUOR

#### Persons to whom liquor may be sold

37. A retailer, registered for a category of registration contemplated in section 20(a), (b), (c) (d) or (e) may not sell liquor to a manufacturer or a wholesaler.

#### Prohibition on sale of liquor to certain persons

38. No registered person may sell liquor to -

- (a) any person who is under the age of 18 years; or
- (b) an intoxicated person.

#### Conditions applicable to storing and display of liquor

39. A registered person selling liquor must, in the case of a retailer, display liquor for the purpose of sale only in that portion of the premises designated for that purpose on the plan accompanying the application for registration.

#### Management of business

40. (1) A person other than a natural person must not conduct any business under a registration unless a natural person who permanently resides in the Republic and who is not disqualified or incompetent in terms of this Act to be a registered person, is appointed by him or her in the prescribed manner to manage and be responsible for its business.

(2) A natural person who is a registered person may in the prescribed manner appoint another natural person who permanently resides in the Republic and who is not disqualified or incompetent in terms of this Act to be a registered person, to manage and be responsible for the business to which the said registration relates.

(3) If a registered person or the only member of a company or close corporation which is a registered person-

- (a) has, in the opinion of the chairperson of the board, left the relevant registered premises without making provision for the conduct thereon of the business to which the registration relates; or

## CHAPTER 4

### TERMS AND CONDITIONS APPLICABLE TO SALE OF LIQUOR

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#### Conditions applicable to storing and display of liquor

39. A registered person selling liquor must, in the case of a retailer, display liquor for the purpose of sale only in that portion of the premises designated for that purpose on the plan accompanying the application for registration.

#### Management of business

40. (1) A person other than a natural person must not conduct any business under a registration unless a natural person who permanently resides in the Republic and who is not disqualified or incompetent in terms of this Act to be a registered person, is appointed by him or her in the prescribed manner to manage and be responsible for its business.

(2) A natural person who is a registered person may in the prescribed manner appoint another natural person who permanently resides in the Republic and who is not disqualified or incompetent in terms of this Act to be a registered person, to manage and be responsible for the business to which the said registration relates.

(3) If a registered person or the only member of a company or close corporation which is a registered person-

- (a) has, in the opinion of the chairperson of the board, left the relevant registered premises without making provision for the conduct thereon of the business to which the registration relates; or

- (b) becomes a person who is disqualified or otherwise incompetent in terms of this Act to be a registered person,

or if the registered person which is a partnership, is dissolved, the chairperson of the board may, on application by a person who has an interest in the relevant business, appoint any person who is in the opinion of the chairperson, fit to manage and be responsible for that business for a period of not more than 12 months, and a person so appointed must, subject to subsection (4)(b), for the period of his or her appointment for all purposes be deemed to be the registered person.

(4) An appointment under subsection (3)-

(a) must be subject to the conditions set out in the appointment that the chairperson may in his or her discretion impose;

(b) must not affect any right of a person who has an interest in the business concerned; and

(c) may at any time be withdrawn by the chairperson.

(5) A person managing and responsible for a business to which a registration relates, must be subject to the same obligations and liabilities as the relevant registered person.

(6) Subsection (5) must not be interpreted to release the registered person from any obligation or liability to which he or she is subject in law.

### **Sale of liquor at special events**

41. A person who is registered to sell liquor at a special event may-

- (a) sell liquor only at that event; and
- (b) sell liquor only at the place where and during the times when that event is held as set out in the application for registration.

### **Trading hours**

42. A person registered to sell liquor may-

- (a) despite any other law, sell liquor on any day of the week; and
- (b) sell liquor only during the hours determined by the municipality in whose area of jurisdiction the premises are situated.



- (b) becomes a person who is disqualified or otherwise incompetent in terms of this Act to be a registered person,

or if the registered person which is a partnership, is dissolved, the chairperson of the board may, on application by a person who has an interest in the relevant business, appoint any person who is in the opinion of the chairperson, fit to manage and be responsible for that business for a period of not more than 12 months, and a person so appointed must, subject to subsection (4)(b), for the period of his or her appointment for all purposes be deemed to be the registered person.

(4) An appointment under subsection (3)-

(a) must be subject to the conditions set out in the appointment that the chairperson may in his or her discretion impose;

(b) must not affect any right of a person who has an interest in the business concerned; and

(c) may at any time be withdrawn by the chairperson.

(5) A person managing and responsible for a business to which a registration relates, must be subject to the same obligations and liabilities as the relevant registered person.

(6) Subsection (5) must not be interpreted to release the registered person from any obligation or liability to which he or she is subject in law.

### **Sale of liquor at special events**

41. A person who is registered to sell liquor at a special event may-

- (a) sell liquor only at that event; and
- (b) sell liquor only at the place where and during the times when that event is held as set out in the application for registration.

### **Trading hours**

42. A person registered to sell liquor may-

- (a) despite any other law, sell liquor on any day of the week; and
- (b) sell liquor only during the hours determined by the municipality in whose area of jurisdiction the premises are situated.

**Other business on registered premises**

43. (1) Despite any other law, a registered person may also sell such goods on the registered premises or conduct the business thereon, that the Premier may prescribe.

(2) Subject to subsection (3), the primary business of a registered premises must be the sale of liquor.

(3) Subsection (2) does not apply to-

- (a) a general dealer dealing in groceries and foodstuffs;
- (b) a bona fide theatre at which dramatic performances, concerts or films are regularly presented or shown to the public; and
- (c) registered premises where bona fide meals and sleeping accommodation are regularly supplied to guests.

**Limitations on employers**

44. (1) No registered person may employ any person in or in connection with the sale of liquor who is under the age of 18 years.

(2) Subsection (1) does not apply to any person of or above the age of 16 years who is undergoing or has undergone training in catering services, and who is employed on the premises of the registered person to whom he or she is duly apprenticed in any capacity.

**Public health notices**

45. The MEC may, in consultation with the MEC responsible for health in the Province, determine the content and the manner in which public health notices relating to the sale and consumption of liquor must be displayed by a person selling liquor.

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## CHAPTER 5

### LAW ENFORCEMENT AND JUDICIAL PROCEEDINGS

#### Part 1

#### Inspections

##### Appointment or designation of inspectors

46. (1) The Board may appoint any person, or designate any officer of the Board, as an inspector.

(2) A designation in terms of subsection (1) may be general or specific.

(3) An inspector must, in the exercise of his or her powers in terms of this Act, be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(4) A certificate of designation in the prescribed form issued by the board certifying that a person has been designated as an inspector must be *prima facie* proof of the designation.

##### Powers and duties of inspectors

47. (1) An inspector may conduct an inspection and monitor and enforce compliance with this Act and any other law which authorises him or her to conduct an inspection or monitor and enforce compliance on any liquor related matter.

(2) Subject to sections 49 and 50 and any other law, an inspector who conducts an inspection may-

- (a) question any person present on any land or premises in respect of any matter which may be relevant to the inspection;
- (b) question any person whom the inspector believes may have information relevant to the inspection;
- (c) inspect any document that a person is required to maintain in terms of this Act or any other law or that may be relevant to any liquor related inspection;



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- (a) question any person present on any land or premises in respect of any matter which may be relevant to the inspection;
- (b) question any person whom the inspector believes may have information relevant to the inspection;
- (c) inspect any document that a person is required to maintain in terms of this Act or any other law or that may be relevant to any liquor related inspection;

- (d) copy the document referred to in paragraph (c), or if necessary, remove the document in order to copy it;
- (e) take samples of any substance that is relevant to the work or inspection;
- (f) take photographs or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises; and
- (g) do all things necessary for conducting the inspection.

(3) An inspector who removes anything other than a substance contemplated in subsection (2)(e) from land or premises being inspected, must-

- (a) issue a receipt for it to the owner of or person in control of the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

### **Entry with warrant**

48. (1) An inspector may enter any land or premises if a magistrate has issued a warrant in accordance with subsection (2) to enter or inspect the land or premises, and the warrant is still valid.

(2) A magistrate may issue a warrant to enter and inspect any land or premises, if, from information in writing on oath, the magistrate has reason to believe that-

- (a) it is necessary to obtain information, in the interest of the public, that cannot be obtained without entering the land or those premises; or
- (b) there is non-compliance with this Act.

(3) A warrant in terms of subsection (2) may be issued at any time and must specifically-

- (a) identify the land or premises that may be entered and inspected; and
- (b) authorise the inspector to enter and inspect the land or premises and to do anything contemplated in section 48(2).

- (d) copy the document referred to in paragraph (c), or if necessary, remove the document in order to copy it;
- (e) take samples of any substance that is relevant to the work or inspection;
- (f) take photographs or make audio-visual recordings of anything or any person, process, action or condition on or regarding any land or premises; and
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- (b) there is non-compliance with this Act.

(3) A warrant in terms of subsection (2) may be issued at any time and must specifically-

- (a) identify the land or premises that may be entered and inspected; and
- (b) authorise the inspector to enter and inspect the land or premises and to do anything contemplated in section 48(2).

- (4) A warrant in terms of subsection (2) is valid until-
- (a) it is executed;
  - (b) it is cancelled by the magistrate who issued it or, in the magistrate's absence, by any other judicial officer;
  - (c) the purpose for which it was issued has lapsed; or
  - (d) 90 days have passed since the date it was issued.
- (5) Before commencing any inspection, an inspector who carries out a warrant must-
- (a) if the owner of or a person apparently in control of the land or premises is present-
    - (i) identify himself or herself and explain his or her authority to that person or furnish proof of his or her designation; and
    - (ii) hand a copy of the warrant to that person or a person named in it; or
  - (b) if the owner or person apparently in control of the land or premises is absent or refuses to accept a copy, attach a copy of the warrant to the land or premises in a prominent and visible place.

#### **Entry without warrant**

49. (1) An inspector who does not have a warrant in his or her possession may enter and inspect-

- (a) any land or premises with the consent of the owner or person apparently in control of the land or those premises; or
- (b) any land or premises in respect of which a certificate of registration has not been issued.

(2) In addition to the entry permitted in terms of subsection (1), an inspector may enter any land or premises without a warrant-

- (a) if authorised to do so by any other law; or



- (b) in respect of which there is an outstanding compliance notice issued in terms of section 54, for the purpose of determining whether that notice has been complied with; or
- (c) there are reasonable grounds to believe that a warrant would be issued in terms of section 48 and the delay in obtaining such warrant would defeat the object of the warrant.

(3) Before commencing an inspection on any land or premises in terms of this section, an inspector must identify himself or herself and explain his or her authority or furnish proof of his or her designation to the person apparently in control of the land or premises or the person who gave permission to enter.

### **Use of force**

50. (1) An inspector carrying out a warrant in terms of section 48 may overcome any resistance to entry or inspection by using the force that is reasonably required, including breaking a lock, door or window of the land or premises to be entered.

(2) Before using force, the person carrying out the warrant must audibly demand admission and must announce his or her purpose, unless he or she reasonably believes that doing so may induce someone to destroy, dispose of, or tamper with, any object or document that is the object of the inspection.

(3) Subject to any other law, or except in the case of an emergency force may not be used to effect an entry or conduct an inspection.

### **Inspector may be accompanied**

51. An inspector may be accompanied during an inspection by a member of the South African Police Service, or any other person reasonably required to assist in conducting the inspection.

### **Duty to produce documents**

52. Any person who is in possession of any document relevant to an inspection, must produce it at the request of the inspector.

### **Duty to answer questions and assist inspector**

53. (1) Any person who is questioned by an inspector in terms of this Chapter must first be informed of his or her constitutional rights before any questioning commences and any voluntary answer thereafter by that person must be truthful and to the best of his or her ability.

(2) An answer or explanation given to an inspector may not be used or admitted in criminal proceedings against the person who provides it, except in proceedings against that person on a charge relating to-

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

(3) An owner or occupier of any land or premises must provide any facility and assistance that is reasonably required by an inspector to perform his or her functions effectively.

### Compliance notices

54. (1) An inspector who is of the opinion that any provision of this Act has not been complied with, may, subject to subsection (2), issue a compliance notice in the prescribed form to the owner or person apparently in control of the relevant land or premises.

(2) A compliance notice contemplated in subsection (1) must set out-

- (a) the provision that has allegedly not been complied with;
- (b) details of the nature and extent of the alleged non-compliance;
- (c) any steps that are required to be taken and the period within which those steps must be taken; and
- (d) any penalty that may be imposed in terms of section 61 in the event of non-compliance with those steps.

(3) A compliance notice must remain in force until an inspector issues a prescribed compliance certificate in respect of that notice.

(4) An inspector who is satisfied that the owner or person apparently in control of any land or premises has satisfied the terms of a compliance notice may issue a prescribed compliance certificate to indicate that compliance.

**Closing of registered and other premises**

55. (1) An inspector or the chairperson of the board may, if he or she is of the opinion that a public disturbance, disorder, riot or public violence is occurring or threatening at or near any registered premises or any premises on or place in which liquor may be sold without a registration, in such manner as may appear to him or her in the circumstances of the case to be the most effective, order the registered person or the person concerned, as the case may be, or the manager or agent of the person, to close the premises or place concerned during the times or for the periods that the inspector or member may deem fit.

(2) A registered person or the person concerned, or his or her manager or agent, must, on receipt of an order given under subsection (1), forthwith comply therewith, and, if he or she fails to do so, the person who has given the order may take the steps and use or cause to be used the force that he or she may deem necessary to close the premises or place concerned.

(3) Any order given under subsection (1), may at any time be withdrawn-

- (a) by the person who gave such an order; or
- (b) by the chairperson of the board.

**Part 2****Prohibited and controlled liquids****Prohibited concoctions and drinks**

56. (1) No person may have in his or her possession or custody or under his or her control, consume or sell, supply or give to any person-

- (a) any concoction manufactured by the fermentation of treacle, sugar or other substances and known as isishimiyana, hopana, qediviki, skokiaan, uhali or Barberton, but excluding indigenous qhilika;
- (b) any concoction which, though called by another name is similar or substantially similar to any of the concoctions referred to in paragraph (a);
- (c) any concoction manufactured by the fermentation of any substance the consumption of which would, in the opinion of the MEC in consultation with the Minister responsible for

health, be prejudicial to the health and well-being of the population of the Republic, and specified by him or her by a notice in the Gazette; or

- (d) any drink manufactured by the distillation of any concoction referred to in paragraph (a), (b) or (c).

(2) The MEC may, in consultation with the Minister responsible for health, at any time by a like notice withdraw or amend any notice issued under subsection (1)(c).

### Part 3

## Offences and penalties

### Offences regarding inspections

57. (1) No person shall-

- (a) refuse to grant an inspector access to premises to which the inspector is duly authorised to have access;
- (b) obstruct, interfere or hinder an inspector who is exercising a power or performing a duty in terms of this Act;
- (c) refuse to provide an inspector with a document or information that the person is lawfully required to provide in terms of this Act;
- (d) furnish false or misleading information to an inspector;
- (e) unlawfully prevent the owner of any land or premises, or a person working for that owner, from entering the land or premises in order to comply with a requirement of this Act;
- (f) pretend to be an inspector;
- (g) falsify an authorisation or a warrant, compliance notice or compliance certificate contemplated in this Chapter;
- (h) fail to comply with a compliance notice issued in terms of this Chapter;



- (i) enter any land or premises without a warrant in circumstances requiring a warrant;
- (j) act contrary to a warrant issued in terms of this Chapter;
- (k) without authority enter or inspect land or premises;
- (l) disclose any information relating to the financial or business affairs of any person which was acquired in the exercise of any power or performance of any duty in terms of this Act, except-
  - (i) to a person who requires that information in order to exercise a power or perform a duty in terms of this Act;
  - (ii) if the disclosure is ordered by a competent court; or
  - (iii) if the disclosure is in compliance with the provisions of any law.

#### **Offences regarding trading in liquor**

58. (1) No registered person may enter into or be a party to any agreement, understanding or condition whereby any registered person is directly or indirectly bound at any time-

- (a) to take delivery of liquor, whether together with any other article or not, from or through any registered person whether to the exclusion wholly or partly of any other registered person or not;
- (b) to take delivery of, distribute or keep in stock liquor of a particular registered manufacturer;
- (c) not to take delivery of liquor from or through a particular registered person; or
- (d) not to take delivery of, distribute or keep in stock liquor of a particular registered manufacturer.

(2) No registered retailer may accept delivery of any liquor which has not been ordered by such retailer.

(3) No registered person may fix, maintain or establish the price at which another registered person must sell any liquor.

(4) No registered manufacturer, officer or director of any registered manufacturer shall be the owner, proprietor or lessor of any premises covered directly or indirectly by any wholesaler's registration.

(5) No registered manufacturer or wholesaler may, either directly or indirectly, give or lend any money or make any donation in cash or in kind to any retailer for the purposes of equipping, fitting out or maintaining and conducting, either in whole or in part, or the establishment of a business operated under a liquor retail registration, except the usual and customary credit for returning packages or containers in which liquor was packed for the market by the manufacturer.

### General offences

59. (1) No person may-

- (a) sell liquor otherwise than in terms of a registration;
- (b) be violent or drunk and disorderly on premises in respect of which a certificate of registration has been issued;
- (c) if he, she or it is the owner or occupier of registered premises, allow violent or drunk and disorderly behaviour on that premises;
- (d) be drunk and disorderly in or on-
  - (i) any road, street, lane, thoroughfare, square, park or market;
  - (ii) any shop, warehouse or public parking garage;
  - (iii) any form of public transport; or
  - (iv) any place of entertainment, cafe, eating-house or racecourse or any other premises or place to which the public has or is granted access, irrespective of whether access is granted against payment or is restricted to any category of persons or not;
- (e) consume any liquor in any road, street, lane or thoroughfare, or on vacant land adjacent thereto, in

an urban area or other area subdivided into erven or plots with streets bounded by such erven or plots;

- (f) introduce, possess or consume any liquor on a sports ground that is not a registered premises, to which the public has or is granted access, irrespective of whether access is granted against payment or is restricted to any category of persons or not, except on any registered premises situated on the sports ground concerned;
- (g) falsely represents himself or herself or any other person to be over the age of 18 years in order to persuade a registered person, or his or her agent or employee, to sell or supply liquor to him or her or to that other person;
- (h) supply liquor to a person in his, her or its employment as wages or remuneration or as a supplement therefore; or
- (i) allow prostitution and drug-trafficking on registered premises.

### **Responsibility of registered persons for other persons**

60. When the manager of the business to which a registration relates, the agent or employee of the registered person or a member of the family of such a person or manager does or omits to do any act which would be an offence in terms of this Act for the relevant registered person to do or omit to do, that registered person must, in the absence of evidence to the contrary, be deemed himself or herself to have done or omitted to do the act, unless the court is satisfied that-

- (a) the registered person neither connived at nor permitted the act or omission by the manager, agent, employee or member concerned;
- (b) the registered person took all reasonable steps to prevent the act or omission; and
- (c) an act or omission, whether lawful or unlawful, of the nature charged on no condition or under no circumstance fell within the scope of the authority or employment of the manager, agent, employee or member concerned,

and the fact that the registered person issued instructions whereby an act or omission of that nature is prohibited must not in itself be sufficient proof that he or she took all reasonable steps to prevent the act or omission.

### **Penalties**

61. (1) Any person who contravenes or fails to comply with a provision of-

- (a) section 17, 59 or 59(1)(b) or (c) must be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both such fine and imprisonment;
- (b) section 19, 37, 38, 40, 41(a), 42, 45, 57 or 59(1)(a) must be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years or to both such fine and imprisonment; or
- (c) section 59(1)(h) or 60 must be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years or to both such fine and imprisonment.

(2) Any person who is found to be continuously contravening or failing to comply with a provision of this Act, must in respect of each day on which that person contravenes or fails to comply with that provision, be guilty of an offence, including the day of any conviction for an offence in terms of this subsection or any subsequent day, and liable on conviction to a fine or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

(3) Any person who is convicted of an offence in terms of this Act within a period of five years after he or she was convicted of any offence in any law governing the sale of liquor, must be liable to double the fine or imprisonment which may be imposed for that offence or to both that fine and that offence.

(4) Despite any other law, a magistrate's court must have jurisdiction to impose any penalty prescribed by this Act.

## **Part 4**

### **Judicial proceedings against or by the board**

#### **Service of notices and documents**

62. Any notice or document required to be served in terms of this Act, may be served by hand or sent by telefacsimile or registered letter addressed to the



person to whom a notice or a document is to be served at the physical address, postal address or telefacsimile number, as the case may be, most recently provided by that person to the board or the person who wish to serve such document or notice, and knowledge of the contents must be deemed to exist-

- (a) when the notice or document was hand delivered, when it was delivered;
- (b) where the notice or document was sent by telefacsimile, upon recordal thereof by the sending station; and
- (c) where the notice or document was posted by registered mail, fourteen days after it was sent,

in the absence of evidence of the contrary that the person on whom it was served, acting in good faith, through absence, accident, illness or other cause beyond that person's control did not receive the notice, or did not receive the notice until a later date.

### **Service of process**

63. In any judicial proceedings instituted against the board, the service on the chairperson and at the office of the State Attorney if it is, or the branch of that office that is, situated in the area of jurisdiction of the court, of any process or any document whereby the proceedings are instituted, must be sufficient service on the board.

### **Notices of intention to defend**

64. The time to be allowed for the delivery of a notice of intention to defend in any judicial proceedings contemplated in section 62 must, despite any other law, be not less than one month after service of the document whereby the proceedings are instituted, unless the court concerned has in a particular case authorised a shorter period.

### **Costs**

65. The costs incurred by the board in connection with any judicial proceedings contemplated in section 66 must, unless the court orders the costs to be borne by the opposite party or by the board.

### **Appeals to High Court**

66. (1) A person who has made any application, objection or representations in terms of this Act and who feels aggrieved by a decision on a question of law made by the panel of appeal in connection with the application, objection or representations, may appeal to a division of the High Court against the decision.

(2) An appeal contemplated in subsection (1) must be noted and prosecuted as if it were an appeal against a judgment in a magistrate's court in civil proceedings.

(3) If the court, after considering the appeal, is satisfied that the panel of appeal has misdirected itself in the making of the decision concerned, the court may set aside that decision, and must in setting aside the decision, unless in its opinion exceptional circumstances warrant another order, issue an order that the board consider afresh the matter in respect of which the decision was made.

## **Part 5**

### **Evidential matters**

#### **Proof of certain facts by affidavit**

67. (1) If the question arises in any civil proceedings whether a particular act, transaction or occurrence did or did not take place in a particular department of the State or an organ of state or in a branch or office of such a department or organ, or the question arises in such proceedings whether a particular functionary in such a department, organ, branch or office did or did not perform a particular act or did or did not take part in a particular transaction, a document purporting to be an affidavit by a person who in that affidavit alleges-

- (a) that he or she is the employ of the State or organ of state in the department, branch or office concerned;
- (b) that-
  - (i) if the act, transaction or occurrence concerned took place in that department, branch or office; or
  - (ii) if the functionary concerned performed such an act or took part in such a transaction, it would in the ordinary course of events have come to the deponent's knowledge and a record thereof which is available to him or her would have been kept; and

- (c) that it has not come to his or her knowledge-
  - (i) that such an act, transaction or occurrence took place; or
  - (ii) that that functionary performed such an act or took part in such a transaction, and that there is no record thereof, must on mere production be admissible as proof in those proceedings that the act, transaction or occurrence concerned did not take place or that the functionary concerned did not perform the act concerned or did not take part in the transaction concerned.

(2) If the question arises in any civil proceedings whether a person with a particular name did or did not furnish a particular officer with particular information or a particular document, a document purporting to be an affidavit by a person who in that affidavit alleges that he or she is that officer and that no person with such a name furnished him or her with such information or document, must on mere production be admissible as proof in those proceedings that the person did not furnish that officer with such information or document.

(3) If the question arises in any civil proceedings whether a fact or information has been recorded under this Act or whether a document is kept or retained thereunder, a document purporting to be an affidavit by a person who in that affidavit alleges that he or she is the person on whom this Act confers the power or imposes the duty to record that fact or information or to keep or retain that document and that he or she has recorded the fact or information concerned or keeps or retains the document concerned or that he or she has satisfied himself or herself that the fact or information concerned has been recorded or that the document concerned is kept or retained, must on mere production be admissible as proof in those proceedings that that fact or information has been so recorded or that that document is so kept or retained.

#### **Procedural requirements for proof by affidavit**

68. (1) An affidavit contemplated in section 67 must not be admissible as proof in terms of the applicable subsection unless a copy thereof has been served by the party intending to make use thereof on every other party to the proceedings concerned at least seven days before the date of the production thereof.

(2) The court to which an affidavit referred to in subsection (1) is produced may on application by any party to the proceedings concerned order that the person who made the affidavit concerned be called upon to give

evidence in those proceedings or that written interrogatories be submitted to him or her for reply, and such interrogatories and any reply thereto purporting to be a reply by that person must likewise be admissible as proof in those proceedings.

## CHAPTER 6

### REGULATIONS

#### Regulations

69. (1) The MEC may make regulations regarding-

- (a) the empowerment of new entrants into the industry in respect of retail trade;
- (b) the payment of fees in respect of-
  - (i) any application made in terms of this Act;
  - (ii) registrations; and
  - (iii) annual registration fees;
- (c) the duties of officers by virtue of this Act;
- (d) the form of certificates of registration, notices, summonses, appointments and designations, determinations, applications, objections and other documents in terms of this Act;
- (e) notices of information with regard to the abuse of liquor or any other related matter deemed by him or her to be in the public interest;
- (f) within the framework of section 22, the application procedure for the category of registration contemplated in section 20(d);
- (g) the manner in which a general dealer which is a registered person must demarcate areas and keep, display and sell liquor and control access thereto;
- (h) any matter required or permitted to be prescribed in terms of this Act;
- (i) the volume of liquor which a micro-manufacturer must not exceed; and



- (j) generally all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) A regulation made under this Act may provide that a person who contravenes or fails to comply with a provision thereof, must be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) A regulation regarding any fees must be made in consultation with the MEC responsible for provincial expenditure.

## CHAPTER 7

### GENERAL PROVISIONS

#### Limitation of liability

70. The State, an organ of state, a member of the board, and the panel of appeal, or any person in their service or acting on their authority, or any person appointed to exercise any power or to perform any duty in terms of this Act, is not liable in respect of any loss or damage resulting from anything done or not done in good faith in terms of this Act.

#### Transitional arrangements

71. (1) Any application made by virtue of a law repealed by the Liquor Act, 1989 before the date of commencement of the repeal and not disposed of on that date, must be continued and disposed of as if the law were not so repealed.

(2) Every exemption, licence or approval referred to in the first column of the Schedule hereto and in force immediately before the date of commencement of this Act, must be deemed from that date to be a registration in the category referred to in the second column of that Schedule.

(3) A notice issued under section 33 of the Liquor Act, 1989, in respect of an application for a licence referred to in the first column of the Schedule hereto and in force immediately before the date of commencement of this Act, must be deemed from that date to be a registration referred to in the second column of that Schedule.

(4) Subject to subsection (2), any application or matter received by a local authority in terms of the Liquor Act, 1989, before the commencement of this Act and not disposed of prior to such commencement, must be disposed of by that local authority in terms of that Act.

(5) The holder of a grocer's wine licence in terms of the Liquor Act, 1989, who is deemed to be registered to sell wine by virtue of the conversion contemplated in subsection (2), must be entitled to sell wine as defined in section 1 of the Liquor Products Act, 1989, for a period of ten years after the commencement of this Act: Provided that the holder of such registration may, at any stage after expiry of a period of five years from the date of commencement of this Act, apply for registration to sell all kinds of liquor in separate premises as prescribed.

(6) Any person who within six months from the date of commencement of this Act was operating an illegal shebeen may make application in a prescribed manner to the board to be issued with a temporary registration certificate which must be valid for a period of twelve months from such date of issue, on such conditions as prescribed.

(7) The person contemplated in subsection (6) must within a period of twelve months make application to the board for registration in terms of section 22.

(8) The temporary registration certificate issued in terms of subsection (6) must lapse at the expiry of a period of twelve months unless the holder lodges an application for registration in terms of section 22.

(9) The temporary registration certificate issued to a holder in terms of subsection (6), who has lodged an application in terms of section 22 within twelve months as contemplated in subsection (7), must remain valid until the board has considered the application.

(10) The rights, duties and obligations that flow from a temporary registration certificate are the same as those of registration in terms of this Act.

### **Short title and commencement**

72. This Act is called the Eastern Cape Liquor Act, 2003, and comes into operation on a date fixed by the Premier by proclamation in the *Gazette*.

**SCHEDULE****Conversion of exemptions, licences and approvals**

<b>Kind of exemption, licence or approval in force immediately before the date of commencement of this Act</b>	<b>Category of registration deemed to be in force from the date of commencement of this Act</b>
An exemption in terms of section 3(1)(e), (f), (g), (h), (j), or (k) or (2) of the Liquor Act, 1989, or any other law.	A registration for the retail sale of liquor referred to in section 20(a), (b), (c), (d) or (e) of this Act, as the case may be, for a period of 5 years, whereafter such registration must lapse.
An exemption referred to in section 4(1) of the Liquor Act, 1989.	A registration for the retail sale of liquor referred to in section 20(a), (b), (c), (d) or (e) of this Act, as the case may be, for a period of 5 years, whereafter such registration must lapse.
A hotel liquor licence referred to in section 20(a)(i) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 20(b) of this Act.
A restaurant liquor licence referred to in section 20(a)(ii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 20(b) of this Act.
A wine-house licence referred to in section 20(a)(iii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 20(b) of this Act.
A theatre liquor licence referred to in section 20(a)(iv) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 20(b) of this Act.
A club liquor licence referred to in section 20(a)(v) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor



	is being sold, referred to in section 20(b) of this Act.
A sorghum beer licence referred to in section 20(a)(vi) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 20(b) of this Act.
A special liquor licence referred to in section 20(a)(vii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 20(b) of this Act.
An occasional licence referred to in section 20(a)(ix) of the Liquor Act, 1989.	A registration for the retail sale of liquor at a special event referred to in section 20(d) of this Act, and must lapse at the closure of the occasion for which it was granted.
A liquor store licence referred to in section 20(b)(iii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, referred to in section 20(a) of this Act.
A grocer's wine licence referred to in section 20(b)(iv) of the Liquor Act, 1989.	A registration for the retail sale of wine for consumption off the premises on which wine is being sold, referred to in section 20(a) of this Act, for a period of ten years after which such registration must lapse, provided that the holder of such a registration may at any stage after expiry of a period of five years after the date of commencement of this Act, apply for registration to sell all kinds of liquor on separate premises as prescribed.
A sorghum beer licence referred to in section 20(b)(vii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, referred to in section 20(a) of this Act.
A special licence referred to in section 20(b)(viii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption off the premises on which liquor



	is being sold, referred to in section 20(a) of this Act.
An approval granted in terms of section 60 of the Liquor Act, 1989 to the holder of the wine-house licence.	A registration for the retail sale of liquor for consumption off the premises on which liquor is being sold, referred to in section 20(a) of this Act.
A sports ground liquor licence referred to in section 189 of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on the premises on which liquor is being sold, referred to in section 20(b) of this Act.
A special licence (Tavern) referred to in section 20(a)(vii) of the Liquor Act, 1989.	A registration for the retail sale of liquor for consumption on and off the premises on which the liquor is being sold, referred to in section 20(c) of this Act.