



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

NEDLAC REPORT ON THE NATIONAL LIQUOR AMENDMENT BILL, 2017

1. BACKGROUND

- 1.1 On 10 April 2017, the Department of Trade and Industry (**the dti**) tabled the National Liquor Amendment Bill, 2017 to Nedlac Trade and Industry Chamber Task Team for engagement.
- 1.2 The Department of Trade and Industry published the draft Liquor Bill (Bill) for public comment on 30 September 2016; providing the public with an opportunity to submit written comments. The submission of written comment closed on 15 December 2016 whilst face to face engagement with members of the public within provinces was finalised on 09 December 2016.
- 1.3 Consideration of comment arising from public consultation was finalised in March 2017. The department submitted the final SEIAS report to the Department of Planning, Monitoring and Evaluation (DPME) on 02 June 2017 and received SEIAS sign-off form from DPME to proceed accordingly.
- 1.4 Although the SEIAS presented before the Task Team met the required guidelines of DPME and received the certification, the stakeholders at the NEDLAC Task Team were of the view that the SEIAS did not quantify job losses. While the parties agreed that the SEIAS document would not be replaced, it was agreed that NEDLAC would conduct the research to inform

the deliberations of the NEDLAC constituencies. The research was commissioned by NEDLAC and 1-aside task team for the study was appointed. The 1-aside team drafted and agreed on the terms of reference which included the submission of bids to be finalized by no later than the 11th August by business, that Business will fund the commissioned study and that the appointed service provider be able to conclude the work within the prescribed time frame. Genesis Analytics was appointed on the 31st August 2017 after Business informed the 1-aside team that Genesis analytic will be able to conduct the research study within the time constraint. The Task Team request an extension to finalize the Nedlac process by a month which request was granted on condition that the research should not delay the engagement process including the timeframe to conclude the work of the Task Team. The work of the task team was extended to conclude at the end of September 2017. However, the final research report was not available for the NEDLAC Task Team to consider during their deliberations.

2 PROCESS AT NEDLAC

2.1 A NEDLAC engagement commenced on this version of the Bill as it was in line with the NEDLAC protocol. The Task Team comprised representatives of Organised Labour, Organised Business and Government. A list of task team members is attached as **Annexure 1**.

2.2 The purpose of the task team was as follows:

- 2.2.1 To consider the proposed Amendment Bill tabled by Government, and engage the contents thereof;
- 2.2.2 Undertake a line by line analysis of the Liquor Amendment Bill,2017 with a view to reaching consensus on the provisions thereof;
- 2.2.3 To consider the socio-economic impact study commissioned by the government in relation to the proposed amendment Bill. and
- 2.2.4 Develop a Nedlac Report for submission to all the relevant structures within Nedlac containing maximum areas of agreement, as well as areas

of disagreement, where applicable. In this regard, a matrix is attached as **Annexure 2.**

2.3 The task team met on the following dates:

10 April 2017
09 May 2017
10 July 2017
22 August 2017
12 September 2017
03 October 2017
05 October 2017
14 November 2017

2.4 The following documents were submitted:

Consolidated Matrix reflecting outcomes of discussions	Annexure 1
National Liquor Amendment Bill, 2017	Annexure 2
Socio-Economic Impact Assessment Systems Report (SEIAS) on Liquor Amendment Bill	Annexure 3
Impact of proposed amendment to National Liquor Act, final research report	Annexure 4

2.5 Proposed amendments to the Bill are indicated as follows:

[*text*] = delete _____ = **insert**

3 AREAS OF AGREEMENT

3.1 Clause 2: Amendment of section 9 of Act 59 of 2003

3.1.1 Constituencies agreed to Clause 2 (7) as amended to read: Any person who contravenes the provisions of section 9, commits an offence.

3.1.2 Constituencies agreed to Clause 2 (b) (3) (e) as amended to read: company and delivery vehicles of registrants; or

3.1.3 Constituencies agreed to the phasing period of 15 months.

3.1.4 Constituencies agreed to Clause 2 (3) (f) as amended to read: movies, radio and television airing beyond the time slots, as prescribed by the Minister.

3.1.5 Constituencies noted that advertising times would be accommodated in the regulations.

3.1.6 Constituencies agreed to Clause 2 (5) as amended to read: The liquor advertisement and marketing material shall reflect the harmful effects of liquor abuse, as prescribed by the Minister.

3.1.7 Constituencies agreed to Clause 2 (6) as amended to read: The Minister may, after consultation with the Council, relevant government departments and municipalities as the case may be, prescribe more restrictions on the provisions of section 9.

3.2 Clause 3: Amendment of section 10 of Act 59 of 2003

3.2.1 Constituencies agreed to Clause 3 (3) as amended to read: A person must request that a formal form of identification be produced **[take reasonable measures to determine accurately whether or not a person is a minor]** to verify whether the person is under the age of twenty one (21), before selling or supplying liquor or methylated spirits to [that] such person;

3.2.2 Business agreed to this clause saves for the Legal Drinking Age (LDA) of 21.

3.2.3 Constituencies agreed to Clause 3 (4) as amended to read: A **[minor]** person under the age of twenty one (21) must not make a false claim about his or her age in order to induce a person to sell or supply liquor or methylated spirits to him or her;

3.2.3.1 Business stated that consumers also need to understand the nature of the sanction for breaking the law. Under the current definition of a minor, the law treats under 18's as minor's who are usually processed in a juvenile court.

3.2.3.2 Business agreed to this clause saves for the LDA of 21.

3.2.4 Constituencies agreed to Clause 3 (5) as amended to read: A person must not make a false claim about the age of a **[minor]** person under the age of twenty one (21) in order to induce a person to sell or supply liquor or methylated spirits to **[the minor]** such a person;

3.2.4.1 Business stated that Persons over the age of 18 are treated as adults and are prosecuted as such. Consumers who are between 18 and 21 who lie about their age will be prosecuted as adults and we are therefore creating a new category of criminals. Government has always held the view that they seek to regulate the liquor trade and not consumption thereof. This provision will create a new crime, with a new set of criminals.

3.2.4.2 Business agreed to this clause saves for the LDA of 21.

3.2.4.3 Labour proposed: it is illegal to knowingly sell alcohol to a pregnant woman and it is illegal for a woman who knows she is pregnant to purchase alcohol or consume it. Government agreed to the proposal. However, government advised that the provision might be better placed in the norms and standards.

3.2.4.4 Constituencies agreed to retaining section 10(6) of the principal Act.

3.3 **Clause 4: Amendment of section 11 of Act 59 of 2003**

3.3.1 Constituencies agreed to Clause 4 (a) (a) as amended to read: “may apply to the **[Minister]** National Liquor Regulator, in the prescribed manner and form, to be registered as a manufacturer or distributor of liquor, or both; and

3.3.2 Constituencies agreed to Clause 4 (a) (b) as outlined in the Bill.

3.3.3 Constituencies agreed to Clause 4 (a) (c) as amended to read: provide the National Liquor Regulator with all the information relevant to the application.”

3.3.4 Constituencies agreed to Clause 4 (b) (2) (a) (b) (c) (i) (ii) (d) in its entirety.

3.4 **Clause 5: Amendment of section 12 of Act 59 of 2003**

3.4.1 Constituencies agreed to Clause 5 (a) (1) as amended to read: “The **[Minister]** National Liquor Regulator may –

3.4.1.1 Labour raised its concern that the Minister would not have functions and powers. Government would be fragmented.

3.4.1.2 Government clarified that some functions would be moved from the Minister to the Regulator.

3.4.1.3 Business indicated that it agreed with the provision save for the conditions linked to BBBEE.

3.4.2 Constituencies agreed to Clause 5 (b) (2) as amended to read: If an application complies with the provisions of this Act, the **[Minister]** National Liquor Regulator, after considering the application, must either –

3.4.3 Constituencies agreed to Clause 5 (c) (3) as amended to read: If the **[Minister]** National Liquor Regulator refuses an application, the **[Minister]** National Liquor Regulator must give the applicant written reasons for the decision.

3.5 Clause 6: Amendment of section 13 of Act 59 of 2003

3.5.1 Constituencies agreed to Clause 6 (a) (1) as amended to read: If the **[Minister] National Liquor Regulator** is required to register an application in terms of section 12, the **[Minister] National Liquor Regulator** must further consider the application, relating to the following criteria:

3.5.1.1 Business clarified that it agreed to the provision subject to Government amending the qualification.

3.5.2 Constituencies agreed to Clause 6 (a) as amended to read: **[(a) commitments made by the applicant in terms of black economic empowerment;] The compliance with the Broad-Based Black Empowerment level as prescribed by the Minister;**

3.5.3 Business agreed provided that the Minister's decision will be guided by the provisions of the BBBEE Act and the parliamentary requirement of consultation. In particular the process outlined by the DTI BBBEE Unit allows for consultations with industry to set a level of BBBEE compliance for the sector that considers the differences across the value chain between, primary producers (farmers), manufacturers and retail. Furthermore the stakeholders took note and agreed to the DTI process that allows for individual companies to table their individual plans to the DTI to motivate for deviations, if required.

3.5.4 Government maintains that it would align with the provisions of the B-BBEE Act as it is an Act of general application.

3.5.5 Constituencies agreed to Clause (b) (1) (B) as amended to read: (A) The Minister shall prescribe the Broad-Based Black Economic Empowerment level of compliance to be met by registrants.

3.5.5 Constituencies agreed to Clause 6 (c) (3) as amended to read: The **[Minister] National Liquor Regulator**, having regard to the objects and purposes of this Act, **[the circumstances of the application, the declared wishes of the applicant in terms of section 11(1)(b) and the criteria set out in subsection (1)]** may-

3.5.6 Constituencies agreed to Clause 6 (d) (4) as amended to read: In addition to the provisions of subsection (3), if an applicant has a director, member, trustees, partner, or member of its board or executive body who falls in the category of persons disqualified in terms of section 11(2), the **[Minister]** National Liquor Regulator must propose a condition designed to prevent that person from exercising any decision-making authority with respect to the proposed registered activities.

3.5.6.1 Business indicated that it agreed to the provision in the bill save for the disqualification of persons under the age of 21. A person under the age of 21 will be restricted as a director of a business from participating in the decision making processes of the business. This provision denies young entrepreneurs the right to economic empowerment in a very important sector of our economy.

3.5.6.2 Business proposes that the age restriction for participation in the industry should remain at 18 years of age. Government agreed.

3.5.6.3 Government clarified that section 11(2) (a) is retained. Therefore, persons above the age of 18 can conduct a business in this industry

3.5.7 Constituencies agreed to Clause 6 (d) (5) as amended to read: If the **[Minister]** National Liquor Regulator proposes conditions on an applicant's registration, the **[Minister]** National Liquor Regulator must inform the applicant of the proposed conditions, and the reasons for them in writing.

3.5.7.1 Business indicated that it agreed with the provision save for the disqualification of persons under the age of 21. Government agreed.

3.5.8 Constituencies agreed to Clause 6 (e) (a) as amended to read: consent to the conditions being imposed, the **[Minister]** National Liquor Regulator must register the applicant, subject only to the conditions as proposed; or”.

3.5.9 Constituencies agreed to Clause 6 (f) as amended to read: “does not respond, or does respond but does not consent, to the proposed conditions, the

[Minister] National Liquor Regulator must consider any response submitted by the applicant and may -;"

3.5.10 Constituencies agreed to Clause 6 (g) (8) (a) (i) (ii) as amended to read: The **[Minister] National Liquor Regulator** must

- (a) provide written reasons for that decision if –
- (i) The **[Minister] National Liquor Regulator** has refused to register the applicant; or
- (ii) the **[Minister] National Liquor Regulator** has amended a previously proposed condition."

3.5.11 Constituencies agreed to Clause 6 (d) (6) (a) (b) as amended to read: An applicant who received a proposal of conditions may respond to the **[Minister] National Liquor Regulator** within -

3.6 Clause 8: Amendment of section 14 of Act 59 of 2003

3.6.1 Constituencies agreed to Clause 8 (a) (1) as amended to read: Upon registering an applicant, the **[Minister] National Liquor Regulator** must - ;"

3.6.2 Constituencies agreed to Clause 8 (b) (e) as amended to read: file any prescribed reports with the **[Minister] National Liquor Regulator** in the prescribed manner and form."

3.7 Clause 9: Amendment of section 15 of Act 59 of 2003

3.7.1 Constituencies agreed to clause 9 (3) as amended to read: If a registered person acquires control over another registered person that holds a different category of registration, the registered persons must notify the **[Minister] National Liquor Regulator** in the prescribed manner and form.

3.8 Clause 10: Amendment of section 16 of the Act 59 of 2003

3.8.1 Constituencies agreed to Clause 10 (a) (1) as amended to read: The **[Minister] National Liquor Regulator** may reconsider, and vary the conditions of registration of any registrant, in any of the following circumstances.

- 3.8.2 Constituencies agreed to Clause 10 (b) as amended to read: If the registrant has notified the **[Minister]** National Liquor Regulator of a material alteration contemplated in subsection (3).
- 3.8.3 Constituencies agreed to Clause 10 (c) as amended to read: Upon request by the registrants submitted to the **[Minister]** National Liquor Regulator in the prescribed manner and form.
- 3.8.4 Constituencies agreed to Clause 10 (d) as amended to read: If at least five (5) years have passed since the **[Minister]** National Liquor Regulator last reviewed or varied the conditions of registration in terms of this section.
- 3.8.5 Constituencies agreed to Clause 10 (e) as amended to read: Where the National Liquor Regulator deems it necessary to do so.”
- 3.8.6 Constituencies agreed to Clause 10 (b) (2) as amended to read: A registrant who applies for registration or licensing as a micro-manufacturer or retail seller in terms of applicable provincial legislation must notify the **[Minister]** National Liquor Regulator in the prescribed manner and form.
- 3.8.7 Constituencies agreed to Clause 10 (c) (3) as amended to read: A registrant must notify the **[Minister]** National Liquor Regulator in the prescribed manner and form if it proposes to -
- 3.8.8 Constituencies agreed to Clause 10 (d) (4) (a) as amended to read: the **[Minister]** National Liquor Regulator will review the conditions of registration in light of proposed changes; or
- 3.8.9 Constituencies agreed to Clause 10 (d) (4) (b) as amended to read: the **[Minister]** the National Liquor Regulator accepts the proposed changes.
- 3.8.10 Constituencies agreed to Clause 10 (e) (5) as amended to read: If the **[Minister]** National Liquor Regulator reviews conditions or registration in terms of this section –
- 3.8.11 Constituencies agreed to Clause 10 (f) (b) as amended to read: the **[Minister]** National Liquor Regulator may propose new or alternative conditions -.”

3.9 **Clause 11: Amendment of section 17 of Act 23 of 2003**

3.9.1 Constituencies agreed with Clause 11 (a) (3) as amended to read: Any person may apply in the prescribed manner and form to the **[Minister]** National Liquor Regulator for the appointment of a person to conduct the registered activities of a registrant, pending the appointment of an administrator contemplated in subsection (2).”

3.9.2 Constituencies agreed to Clause 11 (b) (4) as amended to read: Before granting an application made in terms of subsection (3), the **[Minister]** National Liquor Regulator must be satisfied that -

3.10 **Clause 12: Amendment of section 18 of Act 59 of 2003**

3.10.1 Constituencies agreed to Clause 12 (1) (a) as outlined in the Bill

3.10.2 Constituencies agreed to Clause 12 (1) (b) as amended to read: an initial registration fee for each premises to be paid upon registration; **[and]**

3.10.3 Constituencies agreed to Clause 12 (1) (c) as amended to read: an application fee for each premise;

3.10.4 Constituencies agreed to Clause 12 (1) (e) as amended to read: an annual renewal fee to be paid by the registrant for each registered premises.

3.11 **Clause 13: Amendment of section 19 of Act 59 of 2003**

3.11.1 Constituencies agreed to Clause 13 (a) (1) as amended to read: In addition to the authority set out in section 17, the **[Minister]** National Liquor Regulator may review, and propose new conditions on, a registrant –

3.11.2 Constituencies agreed to Clause 13 (b) (2) as amended to read: Before imposing a condition in terms of subsection (1)(b) or (c), the **[Minister]** National Liquor Regulator must provide the registrant with a reasonable opportunity to remedy the shortcoming in its conduct.

3.11.3 Constituencies agreed to Clause 13 (3) as amended to read: Section 13, read with the changes required by the context, applies to a proposal by the **[Minister]** National Liquor Regulator to impose conditions under this section.

3.11.4 Constituencies agreed to Clause 13 (4) as amended to read: The **[Minister]** National Liquor Regulator may propose new or alternative conditions under this section only to the extent that is reasonable and justifiable in the circumstances that gave rise to the review.

3.12 **Clause 14: Amendment of section 20 of Act 59 of 2003**

3.12.1 Constituencies agreed to Clause 14 (a) (a) as amended to read: by the **[Minister]** National Liquor Regulator, in terms of subsection (2) or (3);

3.12.2 Constituencies agreed to Clause 14 (a) (b) as amended to read: The **[Minister]** National Liquor Regulator may cancel a registration if the registrant –

3.12.3 Constituencies agreed to Clause 14 (a) (d) as amended to read: fails to pay the annual registration renewal fee;

3.12.4 Constituencies agreed to Clause 14 (a) (e) as amended to read: fails to pay an annual renewal fee for the registered premises; or

3.12.5 Constituencies agreed to Clause 14 (d) (3) as amended to read: In addition to the authority set out in subsection (2), the **[Minister]** National Liquor Regulator may cancel the registration of a registrant if the registrant –

3.12.6 Constituencies agreed to Clause 14 (e) (i) as amended to read: failed to comply with the order of the **[Minister]** National Liquor Regulator given in terms of section 32(2);

3.12.7 Constituencies agreed to Clause 14 (f)(4) as amended to read: If the **[Minister]** National Liquor Regulator had cancelled a registration, the

[Minister] National Liquor Regulator must notify the former registrant in writing of-

3.12.8 Constituencies agreed to Clause 14 (f)(5) as amended to read: If a registration is cancelled in terms of this section, section 21 or section 22, the **[Minister] National Liquor Regulator** must –

3.12.9 Constituencies agreed to Clause 14 (h)(6) as amended to read: A registration is cancelled as of the date on which the **[Minister] National Liquor Regulator** notifies the former registrants of the cancellation, which, in the case of a cancellation in terms of section 21, must be on the date specified by the registrant in the notice of voluntary cancellation.

3.13 Clause 15: Amendment of section 21 of Act 59 of 2003

3.13.1 Constituencies agreed to clause 15 (a) as amended to read: A registrant may cancel the registration by giving the **[Minister] the National Liquor Regulator** written notice in the prescribed manner and form -

3.14 Clause 16: Amendment of section 22 of Act 59 of 2003

3.14.1 Constituencies agreed to Clause 16 (1) as amended to read: If a registrant's estate is wound up or sequestered without having transferred the registration in terms of section 15, the liquidator or trustee of that estate must notify the **[Minister] National Liquor Regulator** in the prescribed manner and form within six months after the sequestration or winding-up, or such longer time as the **[Minister] National Liquor Regulator**, on request, may allow.

3.14.2 Constituencies agreed to Clause 16 (2) as amended to read: Upon receiving a notice in terms of subsection (1), the **[Minister] National Liquor Regulator** must cancel the registration concerned.

3.15 Clause 17: Amendment of section 23 of Act 59 of 2003

3.15.1 Constituencies agreed to Clause 17 (a) (1) as amended to read: The **[Minister]** National Liquor Regulator must establish and maintain and publish a register in the prescribed form of all persons who have been registered under this Act or applicable provincial legislation, including those whose registration has been transferred, altered or cancelled.

3.15.1.1 Labour proposed that the list should be published quarterly on the Liquor Regulators website.

3.15.2 Constituencies agreed to Clause 17 (b) as amended to read: The **[Minister]** National Liquor Regulator must -

3.16 Clause 18: Amendment of section 24 of Act 59 of 2003

3.16.1 Constituencies agreed to the deletion of Clause 18 (a): **Review [or appeal of Minister's] of National Liquor Regulator's decisions.**

3.16.2 Constituencies agreed to Clause 18 (b) (1) as amended to read: A decision of the **[Minister]** National Liquor Regular of this Chapter is subject to an internal review process **[review or appeal to the extent provided for, and]** in accordance with, the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

3.17 Clause 19: Insertion of section 24A in Act 59 of 2003

3.17.1 Constituencies agreed to the Clause 19 (1) as amended to read: **[24A. Internal review process]** The Minister may establish an internal review process within the National Liquor Regulator which will deal with administrative issues and objections against decisions by the National Liquor Regulator and inspectors executed under this Act.

3.17.2 Government clarified that the intention of this review is to deal with administrative issues within the Regulator. It was therefore not the intention to create an independent structure that will deal with reviews.

- 3.17.3 Constituencies agreed to Clause 19 (3) as amended to read: Any person whose rights have been adversely affected by any decision taken by the Minister, National Liquor Regulator, inspectors or designated inspectors in the exercise of their powers and duties under this Act, may –
- 3.17.4 Constituencies agreed to Clause 19 (3) (a) as amended to read: within thirty (30) days after the date of such person became aware of the decision or such longer period as may be allowed by the internal review committee on good cause shown –
- 3.17.5 Constituencies agreed to Clause 19 (3) (a) (i) as amended to read: lodge an application for review of decisions to the appropriate internal review committee in the prescribed manner and form against such decision.
- 3.17.6 Constituencies agreed to Clause 19 (4) (a) as amended to read: The internal review committee shall be responsible for – considering applications and adjudicating grievances lodged in terms of this Act; and
- 3.17.7 Constituencies agreed to Clause 19 (4) (b) as amended to read: make a finding.
- 3.17.8 Constituencies agreed to Clause 19 (5) as amended to read: If the internal review committee is of the view that any matter under its adjudication involves fronting in terms of the Broad-Based Black Economic Empowerment Act, 2013 (Act 46 of 2013) as amended, must refer the matter to the Broad-Based Black Economic Empowerment Commission for investigation.
- 3.17.9 Constituencies agreed to Clause 19 (6) as amended to read: If a person is not satisfied with the decision of the internal review committee, such person may approach a court of competent jurisdiction for an appropriate relief.
- 3.17.10 Constituencies agreed to Clause 19 (7) (a) as amended to read: Any member of the internal review committee shall declare any direct or indirect interest, financially or otherwise, to the National Liquor Regulator whether or not such declaration –

- (a) may constitute a conflict of interest in respect of the role of the member in the matter under review; or

3.17.11 Constituencies agreed to Clause 19 (7) (b) as amended to read: may compromise the decision-making process of the committee.

3.17.12 Constituencies agreed to Clause 19 (8) as amended to read: If any member of the committee acquires any interest as contemplated in subsection (5), the member must within thirty (30) days, make a declaration in writing, to the Minister and the National Liquor Regulator.

3.17.12.1 Business agreed to the provisions; however, if the person has a conflict they should not be deemed to be independent and therefore cannot serve on the committee.

3.17.13 Constituencies agreed to Clause 19 (9) as amended to read: A member with a conflict of interest must not be present at, or take part in, the discussion of, or the taking of any decision on any matter before the internal review committee.

3.17.13.1 Business agreed subject to the clarification of the conflict and quorum issues in the review committee.

3.17.14 Constituencies agreed to Clause 19 (10) as amended to read: A member of the internal review committee must not use his or her position or privilege or information obtained as a member of the internal review committee for personal gain or to improperly benefit another person.

3.17.14.1 Business agreed to the provisions; however, if the person has a conflict they should not be deemed to be independent and therefore cannot serve on the committee.

3.18 Clause 20: Section 25 of the principal Act is hereby amended by the insertion of the following subsections after subsection 3

3.18.1 Constituencies agreed to the new sub-section 20 (4) as amended to read:
Designated inspectors, as contemplated in this section, must satisfy any prescribed education, training, experience or competency requirements as approved by the National Liquor Regulator.

3.19 Clause 21: Section 32 of the principal Act is hereby amended by-

3.19.1 Constituencies agreed to Clause 21 (1) (a) as amended to read: Any person issued with a compliance notice may object to it by **making [representations to the Minister within -]** an application for internal review established in terms of section 32A within –

(a) **[21]** 30 days of receipt of that notice; or

(b) such longer period as may be allowed by the **[Minister]** internal review process on good cause shown.

3.19.2 Constituencies agreed to Clause 21 (2) as amended to read: After considering any representations by the objector and any other relevant information, the **[Minister]** internal review committee may confirm, modify or cancel any compliance notice or any part of such notice.

3.19.3 Constituencies agreed to Clause 21 (3) as amended to read: The **[Minister]** internal review must serve a copy of the notice made in terms of subsection (2) on the objector and, if the objector is not a person registered in terms of this Act, any registered person affected by the notice.

3.19.4 Constituencies agreed to Clause 21 (4) as amended to read: If the **[Minister]** internal review confirms or modifies the notice or any part of the notice, the objector must comply with that notice, within the time period specified in that notice.

3.20 Clause 22: Repeal of section 33 of Act 59 of 2003

3.20.1 Constituencies agreed to the repeal of section 33 as outlined in the Bill.

3.21 Clause 23: Amendment of section 34 of Act 59 of 2003

3.21.1 Constituencies agreed to the addition of Clause 23 (1) (c) without amendment: manufacture, distribute, sell, supply or possess any counterfeit liquor or methylated spirits;

3.21.1.1 Business agreed and proposed that government and industry should conduct research on illicit alcohol and the loss to the fiscus of much needed revenue for the developmental objectives of government.

3.21.2 Constituencies agreed to the addition of Clause 23 (1) (d) as amended to read: distribute liquor to an unlicensed premises; or

3.21.3 Constituencies agreed to the addition of Clause 23 (1) (e) as amended to read: engage in any fronting practice as defined by the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003), as amended.

3.22 Clause 25: Amendment of section 35 of Act 59 of 2003

3.22.1 Constituencies agreed to Clause 25 (1) (a) as amended to read: Any person who contravenes or fails to comply with the provision of –

(a) section 4(2), 5(1), 6, 7, 8, 10, is liable on conviction to a fine not exceeding R1 000 000, or imprisonment for a period not exceeding five years; or

(b) Business needs certainty on what the fine will be and a fixed sum in Rands (R5 million) offers that not the reference to a percentage of turnover, which becomes complex if the company in question also generates turnover from products not related to alcohol. Would one calculate the percentage of turnover on the total turnover of those retailers, which would

seem unreasonably excessive, or would it only be calculated on the turnover generated from the sale of alcohol.

3.22.2 section 9, 13A, 34 and 34A may –

- (i) be issued with compliance notice where necessary in terms of section 31;
- (ii) be liable to a fine not exceeding ten (10) percent annual turnover of the registrant;
- (iii) be liable to imprisonment of its managers or supervisors responsible at the time of contravening the Act, for a period not exceeding five (5) years ; or
- (iv) both fine and imprisonment.

3.23 **Clause 26: Amendment of Chapter 6 of Act 59 of 2003**

3.23.1 Constituencies agreed to Clause 26 (a) as amended to read: the substitution for the heading of the following heading:

“[NATIONAL LIQUOR POLICY COUNCIL] INSTITUTIONAL ARRANGEMENTS”

3.24 **Clause 27: Insertion of section 39A in Act 59 of 2003**

3.24.1 Constituencies agreed to Clause 27 (1) as amended to read: The National Liquor Regulator is hereby established as a unit within the administration of the Department –

- (a) has jurisdiction throughout the Republic;
- (b) is a juristic person;
- (c) is independent and subject only to the Constitution of the Republic and the law;
- (d) must exercise its functions in accordance with this Act;
- (e) must be impartial; and

- (f) must perform its functions –
 - (i) in a transparent manner as is appropriate having regard to the nature of the specific function; and
 - (ii) without fear, favour or prejudice.

3.24.2 Constituencies agreed to Clause 27 (2) (a) (b) as amended to read: The Minister may appoint a suitably qualified and experienced person as Chief Executive Officer of the National Liquor Regulator, who –

- (a) holds office for an agreed term not exceeding five (5) years; and
- (b) may be re-appointed for a second term of office at the expiry of the term of office contemplated in paragraph (a) above.

3.24.3 Constituencies agreed to Clause 27 (3) (a) (b) (c) (d) (e) as amended to read: The Chief Executive Officer of the National Liquor Regulator, who is a suitably qualified and experienced person shall be responsible for –

- (a) all responsibilities pertaining to the functions of the National Liquor Regulator;
- (b) all income and expenditure of the National Liquor Regulator;
- (c) all revenue collected by the National Liquor Regulator;
- (d) all assets and the discharge of all liabilities of the National Liquor Regulator; and
- (e) the proper and diligent implementation of the principal Act.

3.24.4 Constituencies agreed to Clause 27 (4) (a) (b) (c) as amended to read: The Chief Executive Officer of the National Liquor Regulator shall –

- (a) report to the accounting officer of the Department of Trade and Industry;

- (b) assign management or other duties to employees with appropriate skills to assist the National Liquor Regulator in the management or control over the functioning of the National Liquor Regulator;
- (c) delegate with or without conditions, any of the powers or functions of the National Liquor Regulator to any suitably qualified employee of the National Liquor Regulator, but such delegation does not divest the Chief Executive Officer of the National Liquor Regulator of responsibility for the exercise of any power of performance of any duty.

3.24.5 Constituencies agreed to Clause 27 (5) as amended to read: The Minister must appoint at least one (1) person and appoint other persons with suitable qualifications and experience as Deputy Chief Executive Officer of the National Liquor Regulator to assist in carrying out the functions of the National Liquor Regulator.

3.24.6 Constituencies agreed to Clause 27 (6) as amended to read: Each organ of state must assist the National Liquor Regulator to maintain its independence and impartiality and to perform its functions effectively.

3.24.7 Constituencies agreed to Clause 27 (7) (a) (b) (c) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) as amended to read: The National Liquor Regulator must –

- (a) promote and support the development, where the need exist of a fair, transparent, competitive, sustainable, responsible and efficient liquor trade;
- (b) receive and decide on applications for liquor licences in the manufacturing and distribution of liquor;
- (c) receive applications for review of licence for manufacturing or distribution of liquor;

- (d) ensure that registrants comply with the Broad-Based Black Economic Empowerment Act, Code of Good Practice and compliance level imposed by the Minister in terms of this Act;
- (e) suspend or cancel any registration issued in terms of this Act;
- (f) verify the Broad-Based Black Economic Empowerment compliance of the registrants, anytime in the duration of registration;
- (g) establish and maintain registries and make information from the registries available to provincial boards;
- (h) produce a regular update and a standardised procedure manual for itself and the provincial boards, municipalities, contracting authorities in respect of their activities in terms of this Act;
- (i) in the case of an application for a liquor licence for inter-provincial manufacturing or distribution of liquor, the National Liquor Regulator must consult the relevant provincial boards in the prescribed manner;
- (j) in the case where there is no compliance with the objects of this Act, exercise the authority or power to request compliance;
- (k) within two (2) years of coming into operation of this Act, the National Liquor Regulator must formulate an implementation plan for capacitating its personnel for implementing this Act; Labour proposed 12 months and Government agreed.
- (l) ensure proper enforcement of this Act, in a concerted effort with any person envisaged in the Act;
- (m) conduct education and awareness programmes of the provisions of this Act;
- (n) conduct research and disseminate information which may contribute to the liquor industry and socio-economic dynamics;

- (o) comply with liquor laws and relevant legislation; and
- (p) The Minister may delegate powers of the Minister in terms of the Act to the Chief Executive Officer of the National Liquor Regulator.

3.24.8 Constituencies agreed to Clause 27 (8) (a) as amended to read: For purposes of collaborative work with other government departments responsible for matters related to liquor –

- (a) The Department of Trade and Industry must enter into an agreement with the Department of Health, Social Development, Finance, Justice and Correctional Services, Communications, Cooperative Governance and Traditional Affairs, Police Service, provinces, municipalities and more, to provide for the joint exercise or performance of their respective powers and functions contemplated in this Act and may establish a forum or similar body in this regard, subject to this provision.
- (b) Business proposed that the industry could be an innovative partner in achieving the objectives of the Act, specifically in respect of programmes to combat alcohol abuse. Communities should also form part of the solution.

3.25 Clause 29: Amendment of section 42 of Act 59 of 2003

3.25.1 Constituencies agreed to Clause 29 (a) (iii) (iv) as amended to read: by the addition in paragraph (a) of subsection (2) of the following subparagraphs:

- (iii) determining trading days and hours for manufacturers and distributors, set out in the prescribed manner;
- (iv) the nature of information any registered person must keep and the duration such information must be retained; and

3.25.2 Business agreed to this provision provided that Business is consulted on the proposed changes and that the socio economic impact of the

amendments is considered. The objectives of the Act are shown to be advanced by empirical research/evidence.

3.25.3 Government clarified that ito of section 43 of the principal Act, all stakeholders will be consulted on any legislation to be promulgated

3.25.4 Constituencies agreed to Clause 29 (b) (3) as amended to read: by the addition of the following subsections after subsection (2):

(3) The Minister has the power to determine and amend fees imposed in terms of this Act, by notice, from time to time.

3.25.5 Business agreed to the provisions provided that the application fee does not become a barrier to entry for emerging businesses.

3.25.6 Constituencies agreed to Clause 29 (4) (a) (b) as amended to read: The Minister may make regulations with regards to –

(a) any matter that in terms of this Act may or must be prescribed;
and

(b) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for proper implementation and administration of the Act.

3.26 Clause 30: Insertion of section 46A in Act 59 of 2003

3.26.1 Constituencies agreed to insertion of Clause 30 (3) to read: The provisions in the Liquor Act 59 of 2003 which provide for structures, different procedures and functions in respect of the regulation of liquor, are consolidated, amended or repealed to the extent set out and indicated for harmonization with the Act.

4 AREAS OF DISAGREEMENT

4.1 Clause 1 – Definitions

4.1.1 “‘**educational institution**’ means a place where people of different age attend to gain knowledge and education which includes, private and public institutions, childcare, preschools, elementary schools, high schools and institutions of higher learning;”;

4.1.2 Labour agreed to the provision as amended in the Bill. Business disagreed and stated that the definition of “educational institution” has broader implications than the position adopted by the previous draft of the bill which referred to “schools”. The new definition will now include universities. There are some unintended consequences of further extension of the definition. Many universities prefer students to use the bars and pubs on campus because it means that students do not have to drive or walk back to campus. A socio economic impact assessment must be conducted on the implications for university campuses, especially considering that students are of a legal drinking age under the current definition.

4.1.3 Business proposed that the definition of a minor being a person under the age of 18 years be retained. The Age of Majority Act affords 18 year olds the right to get married, sign a contract and to vote. They should be allowed to consume alcohol responsibly. Government Stated that the intention is not to change the age of majority. Consideration was given to health related diseases and the intention is to delay the initiation of liquor consumption by young people. Further, the Firearms Controls Act, No. 60 of 2000 allows eligibal people to carry firearms to be of age 21.

4.2 Clause 2 - Amendment of section 9 of Act 59 of 2003

4.2.1 Labour agreed to Clause 2 (a) (1) (a) (i) (ii) (iii) (iv) as amended to read: A person must not advertise –

(a) any liquor or methylated spirits –

(i) in a false or misleading manner;

(ii) in a manner intended to target or attract a **[minor]person** under the age of twenty one (21);

(iii) (which depict a person under the age of twenty one (21) in an act of consuming liquor; or

(iv) with content which has images or icons that have unique appeals to persons under the age of twenty one (21).”

(v) Government committed to consider the ARA guidelines with the view of clarifying the current clause.

4.2.2 Business agreed with (i) (ii) (iii) and disagreed that the legal drinking age should be 21. Business indicated that it would be amenable to discussing ways of ensuring that adverts are not deemed to be specifically appealing to consumers under the age of 18. The industry, under the auspices of the Industry Association for Responsible Alcohol Use (ARA) has devised a number of guidelines that provide guidance to marketers. It is trite law that where a person could be held criminally liable for his or her actions, the law must provide clear guidance to ensure that those who must abide by the law and those who must enforce the law are clear on what is expected.

4.2.3 Business proposed that the Bill should apply the guidelines in the ARA code of commercial communication which govern alcohol advertising content and times. These codes represent global best practice, addressing not only advertising content and times, but how alcohol consumption is presented, such as never allowing drunkenness to be portrayed and only using actors over the age of 25. Industry further proposes working in partnership to create

marketing campaigns that actively promote responsible consumption in a way that is appealing to consumers and will shift behaviors in the long-term.

4.2.4 Labour agreed to Clause 2 (b) (3) as amended to read: The advertisement of liquor is prohibited in the following:

(a) billboards placed less than hundred [100] 500 meters away from educational institutions, junctions, street corners or traffic circles;

4.2.4 Business disagreed and indicated that the current proposal is too broad and too far reaching, without necessarily achieving the regulators' objectives and will impact negatively on the entrepreneurs who are increasingly using billboards as a platform to enter the media industry.

5.2 Clause 2 - Amendment of section 9 of Act 59 of 2003

5.2.1 Labour agreed to Clause 2 (3) (b) as amended to read: unsolicited short message service (sms), multi-media messaging service(mms), fax or internet pop-ups;

5.2.2 Business disagreed and stated that social media, movies, cinemas provide the easiest means of ensuring that persons under the legal drinking age are not exposed to alcohol advertising. Social media platforms such as Facebook are able to provide reliable data of their users and advertisers can specifically choose an appropriate target audience. Restricting these media platforms will impact negatively on the potential to create jobs without making a meaningful impact on preventing alcohol abuse amongst the youth. Statistics can be provided on the use of social media through research.

5.2.3 Business emphasized that Social media also remains a very feasible option for small businesses to advertise because of the relatively low costs. Prohibiting the use of this space would have the unintended consequence of penalising small businesses and brands. Business proposes that social media should be retained as a medium to advertise. The "age gate controls" that exist can and should be strengthened to ensure that under 18s do not access liquor adverts. Movies, cinema and theatre have controls in place to ensure that those under the legal drinking age are not exposed to alcohol advertising. Controlling the internet is impossible. Multinationals operate websites outside the jurisdiction of South Africa and users of the internet can access these sites. Research shows that the youth do not use newspapers nor do

they use the pamphlets contained in the newspaper to inform them. Restricting this platform will result in job losses in the print sector without having the impact that the regulator intends.

- 5.2.4 Labour agreed to Clause 2 (3) (c) as amended to read: distribution of pamphlets containing liquor advertisement;
- 5.2.5 Business disagreed and indicated that Government's restriction of pamphlets would result in job losses. Government clarified that advertisements in newspapers would be allowed, however the pamphlets distributed or Liquor inserts placed inside newspapers will not be allowed.
- 5.2.6 Labour agreed to Clause 2 (3) (d) as amended to read: in and around cinemas and theatres. Business disagreed as theatres/cinemas, were controlled environments.
- 5.2.7 Labour agreed to Clause 2 (3) (f) as amended to read: movies, radio and television airing beyond the time slots, as prescribed by the Minister.
- 5.2.8 Business disagreed and indicated that radio is one of the media platforms that are not favored by the youth. It will result in loss of revenue for the radio stations with potential job losses, without having the intended benefits. Business advertising of alcohol before 19h00 from Monday to Sunday and that advertiser should apply the 70/30 rule. Targeting only programmes that can demonstrate that at least 70% of their viewers are over the age of 18.
- 5.2.9 Government indicated that restricting advertising is not only targeting youth but to reduce the social harm associated with liquor abuse.
- 5.2.10 Labour and Business disagreed to clause 2 (4) as amended to read: No contest, competition or recreational event may be conducted to promote or aimed at promoting any liquor product or brand.

5.3 Clause 3 - Amendment of Section 10 of Act 59 of 2003

- 5.3.1 Labour agreed to Clause (3) (a) (b) (1) (a) as amendment to read: "Prohibition of supply of liquor and methylated spirits to [**minor**] persons under the age of twenty one (21);

- 5.3.2 Business disagreed and proposed that the definition of minor be retained being under the age of 18. Business was of the view that the current laws needs to be enforced more effectively to prevent underage drinking and to increase efforts to educate the youth about the dangers of abuse and underage drinking. Furthermore industry would make resources available to run educational programmes and conduct research.
- 5.3.3 Labour agreed to Clause 3 (b) (2) as amendment to read: Despite subsection (1), the parent, adult guardian of a **[minor]** person under the age of twenty one (21) or a person responsible for administering a religious sacrament, may on occasion supply to **[that minor]** such a person, such **[a]** moderate quantity of liquor to be consumed by **[the minor]** such a person in the presence and under the supervision of that parent, guardian or other person;
- 5.3.4 Business disagreed and stated that the provision was incongruent with progressive constitution and the age of majority act. A 19 year old may marry without the consent of his or her parents but would need his parents' consent to celebrate the occasion with a glass of sparkling wine.
- 5.3.5 Labour agreed to Clause 3 (b) (3) as amended to read: A person must request that a formal form of identification be produced **[take reasonable measures to determine accurately whether or not a person is a minor]** to verify whether the person is under the age of twenty one (21), before selling or supplying liquor or methylated spirits to **[that]** such person;
- 5.3.6 Business agreed and stated that Producing ID's should be the norm in any establishment selling or serving alcohol. Enforcing the law will be a step in the right direction. The new ID card also means that consumers should have their ID available at all times, should they choose to drink. Business however disagreed with age.
- 5.3.7 Labour agreed to Clause 3 (b) (4) (5) as amended. Business disagreed and stated that consumers also need to understand the nature of the sanction for breaking the law. Under the current definition of a minor, the law treats under 18's as minor's who are usually processed in a juvenile court. Persons over the age of 18 are treated as adults and are prosecuted as such. Consumers who are between 18 and 21 who lie about their age will be prosecuted as adults and we are therefore creating a new category of criminals. Government has always held the view that they seek to

regulate the selling of alcohol to minors and not the purchasing of alcohol. This provision will create a new crime, with a new set of criminals.

5.4 **Clause 6: Amendment of Section 13 of Act 59 of 2003**

5.4.1 Labour agreed to Clause 6 (a) as amended in Bill. Business disagreed and stated that it was committed to compliance with BBBEE and individual businesses will continue to engage with the Department of Trade and Industry on BBBEE targets and plans to exceed those targets. However, the provision that allows the Minister to set a compliance level must be considered within the following context;

- (a) The wine industry is an instructive example in that it has a number of plans to speed up the pace of land transfer, but is frustrated by inaction of key government departments. For land transfer to take place, seven (7) government departments need to be consulted. Within that context, it was difficult to guarantee a level of compliance without the government departments' commitment to honoring their respective obligations.
- (b) To ensure effective implementation of the Bill's provisions in this area, it will be important that the BBBEE score level is set appropriately and with sufficient time to allow for businesses to agree on transition plans and to share and monitor these with the BBBEE commission.
- (c) A socio-economic impact assessment should be conducted on the delays occasioned by departments not approving water rights.

5.4.2 Labour agreed to Clause 6 (b) as amended. Business disagreed and stated that it was unclear as to whether these provisions would apply only to applicants and registrants who acquire their licences after the proposed bill is enacted or if it would apply to existing licence holders. Compliance by most major businesses with a level 4 rating in terms of the latest B-BBEE Codes (as mentioned in the Final National Liquor Policy) will also not be possible and will have a direct negative impact on employment and economic growth. Any possible consideration of a level 4 rating must take this into account. To conclude, the Minister's powers to regulate are too broad. Becoming compliant and remaining compliant is not as simple as suggested in the provisions of the bill. Businesses could fall 2 or 3 levels because black shareholders choose to sell shares in a business to a white investor. It would

severely restrict the black entrepreneur's right to sell his or her shares and make a profit from the sale if the seller has restrictions placed on him or her because the business wishes to retain its BBEEE score. Furthermore, if the business could potentially lose its licence because it's BBEE score is likely to change, it will affect the price that the seller could obtain for his shares.

5.4.3 Government indicated that the provision is to empower the Minister to come up with the level of compliance. All stakeholders will be consulted. However it is worth noting that transformation is required in this industry.

5.4.4 Business proposed that each business and the dti should discuss and agree to a BBEEE compliance road map with each applicant with targets and commitments from both industry and government to achieve those targets.

5.5 **Clause 7: Insertion of Section 13A in the Act 59 of 2003**

5.5.1 Labour agreed to Clause 7 (1)(a) as amended to read: When considering an application in terms of section 12 of the Act, the National Liquor Regulator must ensure that no application is granted for premises situated in areas such as-

(a) premises not zoned for the purposes of trading in liquor by local authority; with a concern that schools may be able to sell alcohol. Government undertook to consult with the Department of Education on the sale of liquor in schools.

5.5.2 Business disagreed and stated that the zoning provisions of the Bill will disproportionately impact on businesses in townships throughout the country. One of the legacies of apartheid was that townships have not been zoned for trading purposes which will make it practically impossible for the applicant in the township to obtain a license. Rural areas also face huge problems since the zoning and distribution of the land is not done by Government or municipalities but by land owners and kings. This makes it virtually impossible for people in the rural areas to get licences. Furthermore Transformation remains a significant challenge in the liquor industry. This provision would essentially prohibit the creation of viable competitors to the incumbent players and severely limit the transformational agenda of government.

5.5.3 Business proposed that unlicensed outlets should be brought into the regulatory fold in order to be regulated, rather than adding further barriers to entry to the industry.

The retailers can also be used to encourage responsible consumption at the point of purchase, and be held accountable for enforcing the law.

- 5.5.4 Labour agreed to Clause 7 (1) (b) as amended to read: premises attached to petrol stations; Business stated that the bill should make exemptions for petrol stations that are part of a mall. There are a number of malls/shopping centers that have petrol stations on the premises. That would automatically mean that restaurants in the mall would not be licensed. A socio-economic impact assessment should be conducted.
- 5.5.5 Labour agreed to Clause 7 (1) (c) as amended to read: premises situated five hundred (500) metres radius away from public transport facilities; Business stated that encouraging responsible consumption of alcohol and educating consumers will have a greater impact than closing outlets. These outlets simply will pop up illegally elsewhere and will lead to the illegal trade in alcohol outside the regulators control.
- 5.5.6 Business proposed that the current license holders should not lose their license to trade and that spatial planners for cities should plan ahead so that schools etc. are not built close to existing licenses in future. Industry further proposes that applications for licenses should be considered on the merits of each application. There is sufficient guidance under the current laws that give licensing authorities the autonomy to assess whether granting the license will be a nuisance to the community and if so to decline the application or approve with conditions. We would argue that licensing authorities should apply the current laws rather than be restricted by an artificial rule about the distance.
- 5.5.7 Labour agreed to Clause 7 (2) (a) (b) (3) as outlined in the Bill. Business stated that this provision seek to usurp the constitutional powers of the provincial authorities. The NLA published the norms and standards and were at pains to point out that the norms and standards are not law but are guidelines. This clause seeks to elevate the norms and standards to legislation.

5.5.8 Business proposed that applications for licenses should be considered on the merits of each application. There is sufficient guidance under the current laws that give licensing authorities the autonomy to assess whether granting the license would be a nuisance to the community and if so to decline the application or approve with conditions. Licensing authorities should apply the current laws rather than be restricted by an artificial rule about the distance.

5.6 **Clause 10: Amendment of section 14 of Act 59 of 2003**

5.6.1 Labour agreed to Clause 10 (1) (e) as amended to read: Where the National Liquor Regulator deems it necessary to do so. Business stated that the powers granted to the regulator under this clause are too wide and vague.

5.6.2 Business proposed that the regulator should specifically list under what circumstances will the regulator be authorised to vary the conditions of registration.

5.6.3 Labour agreed to Clause 10 (5) (f) as amended to read: the **[Minister]** National Liquor Regulator may propose new or alternative conditions. Business stated that the NLA has the constitutional competency to propose alternative conditions for the licensing of micro manufacturers and retailers which is a provincial competency.

5.7 **Clause 13: Amendment of section 19 of Act 59 of 2003**

5.7.1 Labour agreed to Clause 13 (h) (7) (a) (b) as amended to read: The National Liquor Regulator must cancel the registration as contemplated in subsection 4, if the registrant –

(a) fails to meet the Broad-Based Black Economic Empowerment level of compliance prescribed by the Minister in terms of the Act; or

(b) fails to remain compliant with the Broad-Based Black Economic Empowerment prescribed level after being issued with the compliance notice in terms of section 31

5.7.2 Business stated that becoming compliant and remaining compliant is not as simple as suggested in the provisions of the Bill. Businesses could fall 2 or 3 levels because black shareholders choose to sell shares in a business to a white investor. It would severely restrict the black entrepreneur's right to sell his or her shares and make a

profit from the sale if the seller has restrictions placed on him or her because the business wishes to retain its BBEEE score. Furthermore, if the business could potentially lose its licence because it's BBEE score is likely to change, it will affect the price that the seller could obtain for his shares. A socio economic impact assessment should be conducted.

5.7.3 Business proposed that each applicant discusses and agrees with the NLA on a BBEE compliance road map with plans and targets to ensure that applicants are afforded an opportunity to improve their scores and that the regulator takes cognisance of the fact that in a free market system, the owner of shares/equity in a business should be allowed to sell his/her shares to a willing buyer.

5.8 **Clause 24: Insertion of section 34A in Act 59 of 2003**

5.8.1 Labour supported Clause 24 (1) (a) (b) (c) as amended. Business proposed that manufacturers and distributors be held liable for noncompliance with the regulations. If the manufacturer and distributor can demonstrate compliance with the regulations, then unless the state is able to prove the contrary there should be no liability. Furthermore, Business was willing to work with government to explore regulatory models that will bring businesses into the legal framework. We can also work with licenced businesses to ensure that they understand and honour their obligations in terms of the law.

5.8.2 Government stated that it agrees that business should honour their obligations in terms of the law or that they need to comply with conditions of their registration. However, business still needs to take responsibility of their product by ensuring that it does not end in unlicensed traders.

5.8.3 Labour agreed to Clause 24 (2) as amended to read: The manufacturer or distributor who distributes liquor to an unlicensed person shall be jointly and severally liable for any harm contemplated in subsection 1 above, irrespective of whether the harm resulted from negligence on the part of the manufacturer or distributor, as the case may be. Business disagreed and proposed that manufacturers and distributors be held liable for noncompliance with the regulations. If the manufacturer and distributor can demonstrate compliance with the regulations, then unless the state is able to prove the contrary there should be no liability.

- 5.8.4 Labour agreed to Clause 24 (3) as amended to read: The unlicensed person who sells liquor to any person, shall be jointly and severally liable for any harm contemplated in subsection 1 above, irrespective of whether the harm resulted from the negligence on the part of such person. Business stated that it agreed that persons selling alcohol illegally should be held liable; however disagreed that those other parties who comply with the law should be held accountable.
- 5.8.5 Business proposed that consumers be held accountable for their purchasing behaviour. By law licensees are required to display their licenses on the premises. Government should educate consumers to report unlicensed businesses and how to identify them.
- 5.8.6 Labour agreed to Clause 24 (4) (a) (b) (i) (ii) as outlined in the bill. Business stated that persons selling alcohol illegally should be held liable. It disagreed that other parties who comply with the law should be held accountable. However, to hold the manufacturer or distributor responsible for the misconduct of the retailer (more particularly its staff) in selling liquor to an intoxicated person was unreasonable. The manufacturers/distributors physically have no control over the retailers and their staff and if one consider the vast size of the retail industry nationwide, it would be impossible to manage such a risk on any level.
- 5.8.7 Business proposed that consumers be held accountable for their purchasing behavior. By law licensees are required to display their licenses on the premises. We should be educating consumers to report unlicensed businesses and how to identify them.
- 5.8.8 Labour agreed to Clause 24 (5) as amended to read: The manufacturer or distributor and the unlicensed person contemplated in this section shall be guilty of an offence where the liquor product found in the unlicensed premises is linked to the manufacturer or distributor. Business stated that it agrees that persons selling alcohol illegally should be held liable; however disagreed those other parties who comply with the law should be held accountable. The manufacturer and distributor should only be held accountable and liable if they did not apply the regulations.

5.8.9 Labour agreed to Clause 24 (6) as amended to read: In any proceedings in terms of section 34A, the onus of proof shall rest with the manufacturer, distributor, an unlicensed person or any such person contemplated in this section. Business disagreed.

5.9 Clause 28: Insertion of section 40A in Act 59 of 2003

5.9.1 Labour agreed to Clause 28 (1) as amended to read: Where the Minister convenes a meeting in terms of section 40(1) and the Council fails to establish a quorum in two consecutive meetings to take a decision on a particular issue, the Council shall take a decision in the third meeting, whether the meeting reaches a quorum or not. Business stated that there are other means of managing attendance of meetings than through regulations. A non-quorum cannot make a decision.

5.10 Clause 30: Insertion of section 46A in Act 59 of 2003

5.10.1 Labour agreed to insertion of Clause 30 (2) to read: The reviews and reforms of national and provincial policies, legislation and norms and standards shall be processed after consultation with the Council. Business disagreed.

5.10.2 Labour agreed to Clause 30 (1) (4) as amended to read: The national and provincial liquor laws as applicable in terms of this Act shall, as from the date prescribed by the Minister and as stipulated in the norms and standards, be amended, consolidated or repealed consistently with the policies and the Liquor Act as amended. Business does not agree that the norms and standards could be elevated to legislation and that the NLA and or Minister should be allowed to usurp the constitutional rights of the provinces. Where the Council is used to amend the provincial laws and regulations the Minister and or the NLA should only be allowed to do so with the express consent of all the provinces and not rely on Section 40A which seeks to exclude provinces.

5.10.3 Government clarified that the norms and standards are provided for ito of the Liquor Act, section 2 and 42. Section 146 (3) and 147 of the Constitution allows for national legislation to prevail over provincial legislation if it is aimed at preventing unreasonable action by the province.

5.10.4 Labour agreed to Clause 24 (5) as amended to read: The manufacturer or distributor and the unlicensed person contemplated in this section shall be guilty of an offence where the liquor product found in the unlicensed premises is linked to the manufacturer or distributor. Business stated that it agrees that persons selling alcohol illegally should be held liable; however disagreed those other parties who comply with the law should be held accountable. The manufacturer and distributor should only be held accountable and liable if they did not apply the regulations.

5.10.5 Labour agreed to Clause 24 (6) as amended to read: In any proceedings in terms of section 34A, the onus of proof shall rest with the manufacturer, distributor, an unlicensed person or any such person contemplated in this section. Business disagreed.

6 CONCLUSION

6.2 This report, therefore, concludes considerations at NEDLAC on the Liquor Amendment Bill. The Report is submitted to the relevant Ministers in terms of Section 8 of the Nedlac Act. No 35 of 1994.

6.3 It is acknowledged that the Nedlac Constituencies may continue to advocate their views in the public consultation and other structured processes with due regard to the Report.

ANNEXURE 1

BUSINESS:	<u>LABOUR</u>	<u>GOVERNMENT</u>
K. Moore O. Serrao T. Sibanda P. Pillay M. Mokhorro S. Mngadi M. von Bentheim	M. Parks Lebohang Molaisi Mpheane Lepaku	F. Adams J. Magoro M. Mgijima C. Makaepa P. Mabaso-Muvhango