



UNIVERSITIES SOUTH AFRICA

REPRESENTATIONS ON THE PROPOSED NATIONAL LIQUOR POLICY:¹ THE DEPARTMENT OF TRADE AND INDUSTRY, CONSUMER AND CORPORATE REGULATIONS DIVISION

1. These representations are made on behalf of *Universities South Africa*, formerly known as Higher Education South Africa (HESA). The organisation represents all 26 public universities in South Africa and is a Section 21 non-profit company (NPC).

2. The main aim of Universities South Africa is to:
 - 2.1 Give advice on, inform and seek to influence government policy.
 - 2.2 Ensure that the sector's policy outputs are authoritative and solution driven.
 - 2.3 Effectively communicate our policy work to stakeholders.
 - 2.4 Act as a primary advocate of the sector's interests on key issues.
 - 2.5 Protect, defend and promote the interests of the higher education sector across society.
 - 2.6 Foster collaboration across the sector.

3. It is with the above objectives in mind that these representations are made on the proposed National Liquor Policy ("the Policy").

4. The Policy seeks to amend the provisions of the Liquor Act 59 of 2003 ("the Act"), *inter alia*, as set out in paragraphs 6 to 12 below.

¹ *Government Gazette*, 20 May 2015.

5. Harmonization of the provincial liquor legislation with the Act, in consultation with the National Liquor Policy Council (“the NLPC”), and subsequent repeal of the Act

5.1 Review and reform of the national, provincial and local departments of government responsible for liquor regulation are encouraged. It is envisaged that unitary processes will minimize confusion, poor and delayed investigation of complaints, and the ineffective enforcement of licensing conditions.

5.2 Collaboration and standardised enforcement by the three spheres of government, including coordinated training and support, as well as additional capacity to enforce by the proposed appointment of SAPS officials as inspectors, are encouraged.

5.3 Integrated norms and standards and improved provisions to combat illegal manufacturing of and trading in alcohol are supported.

5.4 Enhancing and launching pro-active campaigns in order to improve consumer awareness in regard to the dangers and extent of the crisis of alcohol abuse, specifically amongst the younger generation, and pertinently of concern to all academic institutions as pertains to their students, *are regarded as critical*.

5.5 The Policy appears to have the above amongst its objectives and this is supported and encouraged.

6. Amendment of section 9 of the Act in order to determine and limit advertising and marketing of liquor products in line with the Control of Marketing and Alcoholic Beverages Bill

6.1 With regard to the restriction of the advertising of alcoholic beverages, the prohibition of sponsorship and promotion associated with alcoholic beverages, it is submitted that such promotion and advertisements should be conducted in a responsible manner and should not be singularly aimed at reckless abuse of for example, markets that are easily exploited as a result of their youth, economic circumstances, or any other factor. Whilst **Universities South Africa is not in favour of a blanket ban on all marketing activities and sponsorships**, it is opposed to the use of marketing ploys that are

aimed at captive audiences such as the youth and/or students and encourage them to abuse alcohol. The so-called “happy hours” are a case in point.

- 6.2 It should be noted a ban on sponsorships provided to schools, universities and other educational institutions could have potential financial implications for these institutions, especially for universities. In order to curb the potential negative financial implications for universities, the National Liquor Policy should clearly define the terms “sponsorships” and “advertising” in order to exclude from such definitions any financial assistance made available by those who profit from the manufacture or sale of alcohol beverages to universities and students in the form of bursaries, educational funding or any other financial aid.
- 6.3 Advertising should specifically also be in line with the provisions of the Consumer Protection Act 68 of 2008, pertinently with regard to fair and responsible marketing and related provisions of the aforementioned Act. Other pieces of legislation e.g. Access to Information Act, should also be taken into consideration.
- 6.4 **It is submitted that further discussion of this point is required.**

7. Strict liability imposed upon manufacturers and suppliers of alcohol down the value chain

It is submitted that liability as envisaged by these proposals will be very difficult to prove, and to liquidate damages perceived to have been the result of the manufacturing and sale of alcohol by any specific manufacturer or supplier, to a specific consumer will be even more difficult to prove.

The *versari* doctrine which holds that liability may be found for consequences which are accidentally realised as a consequence of a prohibited conduct, is no longer applied in South African law. Hence, we should guard against re-introducing discredited legal rules that can lead to major injustice and hardship.

It is submitted that licences should rather be awarded strictly in accordance with the relevant regulatory provisions, that the licensing conditions of any licensee of a liquor licence be strictly enforced, that inspections should be conducted regularly, and that complaints should be investigated diligently.

8. Availability of alcohol

- 8.1 The setting of national, provincial and municipal legislation which regulate the days and hours when liquor sales are permitted, specifically in zoned areas like places of worship, schools, recreation facilities, rehabilitation or treatment centres, residential areas and public institutions, as well as academic institutions is supported. However, the list of establishments is poorly defined. We are in support of restriction around schools, places of worships and universities, but contend that restriction around “recreation facilities” (unspecified), “rehabilitation and treatment centres” (unspecified), “public institutions and residential areas” is both too vague and too inclusive. It is submitted that the trading hours within which licensed establishments may sell alcohol in certain zoned areas should be restricted. It is proposed that in the vicinity of universities alcohol should not be sold after 00H00 (12 o'clock at night), and that liquor may not be sold at all in any establishment situated closer than 500 metres from a university.
- 8.2 The regulating of days and hours of availability of alcohol is supported, specifically in zoned areas as noted. This should be done in an integrated manner in national, provincial and municipal legislation.
- 8.3 The number of licences issued or renewed to establishments situated in close proximity to each other or in zoned areas should be investigated and prohibited upon review. Currently this specific aspect is really problematic.

9. Minimum legal age to be raised from 18 (eighteen) to 21 (twenty one) years

- 9.1 It is submitted that proscription or prohibition has not been proven to be successful in combating the abuse of alcohol in the past, and that making the sale of alcohol to the 18 to under 21 year old group illegal will merely make them more susceptible to the workings of the “illegal and criminal market” that will undoubtedly be created and more difficult to control and carries greater risk to the youth as consumers of alcohol. **The main aim should be to teach the youth about the responsible use of alcohol; a total ban will not accomplish this.** Once again it is submitted that licenses should rather be awarded strictly in accordance with the relevant regulatory provisions, the licence conditions of any licenser of a liquor licence be strictly enforced, inspections regularly conducted, and complaints diligent investigated.

- 9.2 According to Children's Act 38 of 2005 a child means a person under the age of 18, which means any person above the age of 18 years is an adult according to South African law. An adult has the full capacity to Act, which means any adult person can make his/her own choices. E.g. enter into contracts, can vote etc. Does this mean a definition of the child is going to change to a person under 21 years of age? It should further be noted that some students complete their studies / get employment before they reach the age of 21 years. Does this mean that they should be prohibited to buy / consume alcohol?
- 9.3 In addition to the issue of age, the conditions regarding zoning and a five hundred metre prohibition of licensed establishments from places of worship, schools, recreation facilities, rehabilitation or treatment centres, residential areas and public institutions, as well as academic institutions should be strictly enforced. (Based on clear definitions for the respective establishments.)
- 9.3 The termination of any such existing licences or restricting of the license conditions, depending on the circumstances, with due notice given, subject to an internal review process for aggrieved licensees is supported.

10. Education and awareness initiatives and investment in the combating of alcohol abuse

- 10.1 Government managed funding specially earmarked for combating alcohol abuse is supported. This should include awareness campaigns, the promotion of responsible advertising and sales, and monitoring of the lawful exercise of licensing conditions.

11. General

- 11.1 The control of alcohol sale and consumption in the **informal sector** need serious attention. It would be argued that it is critical important that the informal sector, and specifically the "shebeen culture" within South African society be addressed within the range of the proposed policy.

It is submitted that the impact on the economy of increased restrictive licensing conditions and the close monitoring of compliance by the liquor industry, does not outweigh the concerns associated with increasing alcohol abuse, and the reckless marketing and sale of alcohol to

vulnerable consumers. This results in an increased financial burden on state resources, deteriorating public health and productivity, and general social and moral decay.

With regard to universities in particular, the abuse of alcohol often results in poor academic performance and is also a contributing factor in the case of students who fail to complete their studies. Furthermore, in a large number of the disciplinary cases involving university students, which range from racial harassment to sexual offences, alcohol plays a major role.

END

Submitted by Universities South Africa

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