Contents

1. INTRODUCTION .......................................................................................................................... 4
   2.1 General Background .................................................................................................................. 5
   2.2 Purpose of Document ............................................................................................................... 6
   2.3 Approach and Structure .......................................................................................................... 6

2. WESTERN CAPE LIQUOR AUTHORITY ......................................................................................... 8
   2.1 WCLA Mandate ....................................................................................................................... 8
      2.1.1 Introduction ....................................................................................................................... 8
      2.1.2 Establishment of the Current WCLA & Provincial Constitutional Mandate ............. 8
      2.1.3 Other Legislative Role Players .......................................................................................... 10
      2.1.4 Legislative Mandate of the WCLA ................................................................................. 12
      2.1.5 Meaning of “in the public interest” .................................................................................. 13
      2.1.6 The Management Board .................................................................................................. 14
      2.1.7 Application Process ......................................................................................................... 14
      2.1.8 The LLT ............................................................................................................................. 16
      2.1.9 The Fund and Scope of Social Responsibility Parameters ........................................... 17
   2.2 WCLA Programmes and Integration ....................................................................................... 19
   2.3 Potential Future Role .............................................................................................................. 19

3 INSTITUTIONAL RECOMMENDATIONS ......................................................................................... 20
   3.1 Introduction ............................................................................................................................. 20
      3.1.1 General Comments and Remarks ...................................................................................... 20
      3.1.2 Policy and Policy Formulation ........................................................................................... 21
      3.1.3 Partnerships and Organisational Alignment ..................................................................... 22
      3.1.4 Current WCLA Institutional Model .................................................................................. 23
      3.1.5 Hybrid Model .................................................................................................................... 30
      3.1.6 Commission Model .......................................................................................................... 32
      3.1.7 In-House Model ............................................................................................................... 34
      3.1.8 Conclusion ......................................................................................................................... 34

4 GENERAL COMMENTS ON GREEN PAPER .................................................................................. 35
   4.1 Overview ................................................................................................................................ 35
   4.2 Pricing and the Economy – Green Paper Chapter 1 ................................................................ 36
      4.2.1 Trading Times ..................................................................................................................... 36
      4.2.2 Increase Tax on Alcohol Products & Introducing A Minimum Unit Price .................. 36
      4.2.3 Change in the Definition of Liquor Products .................................................................... 37
      4.2.4 Tracking System of Liquor Products Through the Market ............................................ 37
      4.2.5 Increased Enforcement of Underage Drinking ................................................................. 37
   4.3 Unlicensed Liquor Outlets and Illicit Liquor Trade – Green Paper Chapter 2 ....................... 38
   4.4 Enforcement – Green Paper Chapter 3 ..................................................................................... 39
      4.4.1 General ............................................................................................................................... 39
      4.4.2 Assisting the Industry with Compliance and Licencing ................................................... 40
      4.4.3 Sanctions for Liquor Related Transgressions ................................................................. 40
4.5 Alcohol and the Road – Green Paper Chapter 4
   4.5.1 Restriction on Premises Near National Roads and Premises 40
   4.5.2 Traders to make up for more Dangerous Aspects of their Business 41

4.6 Health and Social Services – Green Paper Chapter, Community Based Action – Green Paper Chapter 6 and Education and Awareness – Green Paper Chapter 7 41

4.7 Information, Data Collection, Monitoring and Evaluation – Green Paper Chapter 8 41

5 GENERAL RECOMMENDATIONS........................................................................43

5.1 Training for Licence Holders 43
5.2 Administrative Burden and Cost of Liquor Licence Applications should be Shifted to SAPS 44
5.3 Prior Approval from the municipality, in consultation with the WCLA for the activity to be carried out on the premises 44
5.4 Statistically High Risk Areas Should Be Barred from Increasing Licenced premises / Relationship Between Liquor Licencing, Trading Hours, Lighting and Pedestrian Infrastructure to be Introduced. 44
5.5 Increase in Liquor Licence Categories 44

6 SUMMARY........................................................................................................45

6.1 Multiple Role Players 45
6.2 Balancing Between Economic Benefit and Harms Reduction 45
6.3 Institutional Arrangements 46
6.4 General Comments on Chapters 1 to 8 of the Green Paper 47
6.5 In Conclusion: 48
1. INTRODUCTION

The following meanings apply to abbreviations used throughout the document:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT</td>
<td>Appeal Tribunal</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
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<tr>
<td>DoH</td>
<td>Department of Health</td>
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<tr>
<td>DLO</td>
<td>Designated Liquor O</td>
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<tr>
<td>DOL</td>
<td>Department of Labour</td>
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<tr>
<td>DPSA</td>
<td>Department of Public Services</td>
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<tr>
<td>DSD</td>
<td>Department of Social Development</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>HoD</td>
<td>Head of Department</td>
</tr>
<tr>
<td>LLT</td>
<td>Liquor Licensing Tribunal</td>
</tr>
<tr>
<td>SAPS</td>
<td>South African Police Services</td>
</tr>
<tr>
<td>WCED</td>
<td>Western Cape Educational Department</td>
</tr>
<tr>
<td>WCG</td>
<td>Western Cape Government</td>
</tr>
<tr>
<td>WCLA</td>
<td>Western Cape Liquor Authority</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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2.1 General Background

The Western Cape Liquor Authority (WCLA) would like to thank the Department of the Premier for granting the WCLA the opportunity to comment on the Western Cape Alcohol-Related Harms Reduction Policy Green Paper (the Green Paper) as published in the *Western Cape Government Gazette, 7681 Gazette on 19 September 2016*. The WCLA has reviewed the Green Paper with interest and has after internal deliberation composed this response paper which we hope will assist the role players in stimulating debate about the various issues introduced in the Green Paper.

During 2015 the Western Cape Provincial Cabinet agreed that an Alcohol-Related Harms Reduction Policy should be developed to guide the Western Cape Government’s approach to the regulation of alcohol. A diverse public sector working group was established, comprising of representatives from relevant provincial departments, local government, the South African Police Services, the Western Cape Liquor Authority, the South African Medical Research Council and Academia. The purpose of the working group was to drive the process of developing the draft Alcohol-Related Harms Reduction Green Paper, as part of the overall policy development process to develop an Alcohol-Related Harms Reduction Policy.

To ensure a thorough and collaborative process, external stakeholder groups were consulted and their inputs included in the Green Paper development process. The Western Cape Alcohol-Related Harms Reduction Policy Green Paper (the Green Paper) has now been completed, the final copy having been published for comment.

The primary purpose of publishing a Green Paper (policy paper) is, as a rule, to elicit comment and discussion on the contents of the policy paper to assist government with the:

- Development of further policy statements; and
- Development of possible legislative amendments or drafting of new legislation to address policy changes forthcoming from the policy development process.
Public participation may take place through the submission of written comments or actual stakeholder verbal sessions facilitated by the policy developer. One information session has been facilitated by the Department if the Premier with the assistance of the Authority. Since the Green Paper only invites written comment, it is not clear from its contents how many further opportunities to provide verbal submissions or stakeholder sessions will be attended to.

2.2 Purpose of Document

The purpose of this document is to provide the official response and comments of the Western Cape Liquor Authority to the Green Paper, as part of the process going forward.

2.3 Approach and Structure

The WCLA’s response is based on the interpretation and understanding that the Green Paper acknowledges the economic benefits derived from the liquor industry, specifically in the Western Cape where agriculture and agricultural by-products contribute about R19.3 billion Rand to the provincial GDP\(^1\). It is also our understanding that the Green Paper calls for the balancing of alcohol-related harms reduction with the economic benefit that the liquor industry offers.

The WCLA agrees with the principle that the abuse of alcohol leads to various social ills and harms in society. It therefore seems as if the Green Paper intends to find a balance by weighing up the negative social harms caused by the abuse of liquor against the positive aspects of the liquor industry, which approach is sound and in principle supported by the WCLA.

The approach followed in this document is in line with the themes of the chapters of the Green Paper with an emphasis on the 10 key health aspects identified by the World Health Organisation that are relevant to the WCLA.

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General responses and comments are provided as per the relevant Green Paper chapter. Issues relating to the institutional structure of the WCLA are responded to in a separate chapter due to the uniqueness and relevance to the WCLA of these issues compared to other policy issues raised. Finally, general overall recommendations are provided in the last chapter of this submission paper.

This submission paper provides a brief introduction and background to the WCLA before dealing with specific comments on the Green Paper. This is to clarify the role and mandate of the WCLA, within the wider liquor industry and in relation to other stakeholders.
2. WESTERN CAPE LIQUOR AUTHORITY

2.1 WCLA Mandate

The responses and comments provided in this document are made taking into consideration the mandate of the WCLA. Any comments in the submission must therefore be read and interpreted taking into consideration the background, knowledge and mandate of the WCLA. A summary explanation of the mandate, structure and WCLA’s function is therefore provided for hereunder for context purposes.

2.1.1 Introduction

The WCLA derives its mandate and operational framework from various documents that together form its regulatory framework. These include constitutional, legislative and policy mandates, court rulings and planned policy initiatives. These documents are discussed in more detail below. Note that for purposes of this discussion, it is not necessary to provide details of all specific or general provisions that impact on the mandate and operational framework of the WCLA, but only those that support and / or provide context and insight to the responses and comments submitted.

2.1.2 Establishment of the Current WCLA & Provincial Constitutional Mandate

The Authority became operational on 1 April 2012 in terms of the Western Cape Liquor Act, 2008 (Act 4 of 2008), (the Act) as mandated by the exclusive provincial legislative function contained in Schedule 5A of the Constitution of the Republic of South Africa, 1996 (the Constitution), (functional areas of exclusive provincial legislative competence) being “liquor licences”.

Local Government’s role in liquor licencing is dealt with in Schedule 5B of the Constitution (local government matters to the extent set out for provinces in section 155(6)(a) and (7) of the Constitution) such as “control of institutions selling liquor to the public”, giving local government a definite oversight function over, inter alia, retail outlets selling liquor. All policy statements made in the Green Paper must be interpreted and given effect to in accordance with this constitutional framework.
The constitutional mandate to establish independent provincial liquor authorities was already introduced in the 1995 amendments of the Liquor Act, 1989 (Act 27 of 1989) (the 1989 Act) that dictated the establishment of provincial liquor boards. Section 5 of the 1989 Act reads-

“Section 5
Institution of Liquor Boards.
A separate Liquor Board is hereby instituted for each province of the Republic of South Africa.

[S. 5 substituted by s. 5 (1) of Act No. 57 of 1995.]”

Because the amendments to the 1989 Act, preceded other legislation such as the Public Finance Management Act, 1999 (Act 1 of 1999) (The PFMA), which had a profound influence on the structure and financial oversight of public entities, the 1989 Act only envisaged a board that comprised of a mixture of provincial government officials and nominated members, supported by an administration that was employed as provincial government officials in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).

In 1998 the National Government introduced the Liquor Bill (B 131B-98), which was referred to the Constitutional Court for constitutional confirmation after questions relating to its constitutional soundness was raised. In October 1999, the Constitutional Court ruled the Liquor Bill unconstitutional and provided confirmation that “retail liquor licencing” was an exclusive provincial competency (Ex Parte President of the Republic of South Africa Constitutionality of the Liquor Bill 2000 (1) SA 732 (CC)).

In 2001 the Provincial Government, presumably partly in response to this Constitutional Court ruling, published a Green Paper titled “A Liquor Licencing Policy for the Western Cape”, where the policy direction associated with liquor licencing was stated, which document served as the forerunner of the current Western Cape Liquor Act, 2008 (Act 4 of 2008), (the Act).

The WCLA currently derives its powers and functions primarily from the following legislative documents:

- Western Cape Liquor Act, 2008 (Act 4 of 2008) (the Act);
Western Cape Liquor Amendment Act, 2010 (Act 10 of 2010); and
Western Cape Liquor Regulations issued in terms of the Act.

Legislative changes to the above suite of legislation is currently in process and are noted. These changes are however not referred to since these changes have not yet been enacted.

In the Western Cape, the Act provides for the licencing of the retail sale and the micro-manufacture of liquor and several matters incidental to liquor licencing. At the time of enactment of the Act, the WCLA was a provincial public entity linked to the Western Cape Department of Economic Development and Tourism. In 2016, the WCLA was paired with a new parent department, being the Western Cape Department of Community Safety.

It is against this legislative mandate that the WCLA’s current constitutional -, legislative mandate, and role within the economic development versus the social responsibility debate must be explored and balanced.

2.1.3 Other Legislative Role Players
There are many role players in the liquor harms reduction debate including national government departments (such as but not limited to the Department of Trade and Industry, Department of Agriculture, Department of Health, Department of Justice, South African Police Services (SAPS) and South African Revenue Services (SARS) or Customs), local government and provincial government (such as but not limited to the Departments...
of Economic Development and Tourism, Health and Community Safety). The WCLA is therefore only one role player within this group of role players. When liquor related matters are discussed, all three spheres of government are involved:

- **At national level**, macro manufacturing and aspects associated with it such as the contents of wine and spirits are regulated by means of for example the following legislation-
  - The Liquor Act, 2003 (managed by Department of Trade and Industry); and
  - The Liquor Products Act, 1989 (managed by the National Department of Agriculture);

- **At provincial level**, provincial legislatures have legislative capacity in regulating the licensing for the retail sale and micro-manufacture of liquor within the provincial space-
  - Example - Western Cape Liquor Authority Act, 2008 (The Act);

- **At local government level**, local government regulates trading hours and zoning associated with business-
  - Example – City of Cape Town Liquor Trading Days and Hours By-Law, 2010.

The inter-governmental inclusive policy statements contained in the Green Paper are consequently supported by the WCLA, because no issue associated with liquor and alcohol abuse harms reduction can effectively be discussed or addressed in isolation.

However, given the WCLA’s specific legislative mandate (and legislative obligations), all comments provided by the WCLA in response to the Green Paper must be contextualised against the background of the WCLA’s specific legislative mandate. Since the WCLA is not an expert on all harms reduction policy issues raised and addressed in the Green Paper, it is not able to comment or respond in its official capacity on issues that fall outside the ambit of its immediate legislative mandate.

Socio-economic and other external factors that may impact on alcohol-related harms and the potential reduction thereof and are referred to or raised in the Green Paper, should be responded to by institutions or interest groups geared for, obligated or mandated with these specific oversight roles. This is specifically the case with matters
touching on drugs, violence, alcohol abuse and misuse associated with the wider liquor harms reduction discussion.

The successful and expedited execution of certain policy statements in the Green Paper may be burdened or delayed by the policy statement’s implied intergovernmental co-ordination and co-operation requirements. This is because not only one government agency or department will have the full and sole capacity or mandate to give effect to most of the Green Paper policy statements.

2.1.4 Legislative Mandate of the WCLA

The WCLA functions in accordance with the provisions of the Act and the Regulations issued in terms thereof, within the boundaries of the following mandate and operational framework-

To provide for the licensing for the retail sale and the micro-manufacture of liquor in the Western Cape Province.

The WCLA is therefore in essence a licencing authority, evaluating applications for licencing, awarding or denying licence applications and monitoring compliance with licence conditions.

The organogram and functioning of the WCLA is discussed in more detail in Chapter 3 of this response. Considering the functions and organogram of the WCLA, the scope of the Green Paper is much wider than the legislative mandate of the WCLA.

When considering the complete provisions of the Act, the WCLA is essentially a regulatory entity or authority. A regulatory authority is normally referred to as:

“a government body formed or mandated under the terms of a legislative act (statute) to ensure compliance with the provisions of the act, and in carrying out its purpose. Also, called regulatory authority or regulatory body. The WCLA is mandated to issue retail liquor licences in various forms and to ensure compliance with retail and micro brewing licencing conditions. In chapter 3 of

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2 www.businessdictionary.com/definition/regulatory-agency.html, accessed 22 September 2016
In its capacity as a regulatory entity, the WCLA’s focus areas that overlap with the World Health Organisation’s (WHO) ten recommended target areas for policy intervention are:

- The availability of alcohol through licencing retail outlets;
- Monitoring and surveillance (mainly within the retail licenced liquor space and compliance with liquor licencing conditions); and
- To a lesser degree, leadership, awareness and commitments combined with community action limited to the WCLA legislative framework, as described below.

### 2.1.5 Meaning of “in the public interest”

The balancing of public interest is resonated in the constitutional principle of weighing up rights and obligations attributed to a specific constitutional matter. Within the scope of the discussion on liquor licencing, the right of economic activity must be compared to the right to freedom of association, freedom of religion and the right to safety. This means that although a person has the right to economic activity such as liquor retailing, the activity may not unduly influence another person’s rights of, for example, freedom of religious activity and the freedom to have uninterrupted education.

The balance between economic benefit and harms reduction previously discussed in Chapter 1 of this document, is already imbedded in the Act, both institutionally and by means of its legislative mandate. The phrase utilised by the WCLA to refer to this concept within this context, is mainly “in the public interest”.

The WCLA Management Board has the legislative mandate to investigate and attend to research into socio-economic costs to ensure public interest is attended to. Section 9 of the Act provides *inter alia* for-

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“(m) to conduct an ongoing study of and investigation into—
(i) the retail liquor trade and micro-manufacturing of liquor throughout the Province and elsewhere in order to ascertain whether there are any deficiencies in this Act and to discover any abuses or violations of the procedures contained in this Act; and
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(ii) reducing the socio-economic and other costs associated with the abuse of liquor.”.

2.1.6 The Management Board

The WCLA’s Management Board has specific members dedicated to combating the abuse of liquor, to ensure an awareness of and representation in actively considering the public interest.

Section 3(1)(b) of the Act reads-
“3(1)(b) one member who has appropriate knowledge of or experience in dealing with the combating of the negative social consequences of the abuse of liquor, …”

2.1.7 Application Process

As previously stated, the Act provides for the utilisation and application of the concept “in the public interest” as the method to ensure the balancing of social harm with economic activity or benefit. To ensure due consideration and application of the Act, this concept is already taken into consideration and applied during the licence application process. The application process for a new liquor licence can be illustrated as follows:

Figure 2: Public Interest in Main Liquor Licence Application Process

The interest of the public is taken into consideration already at a very early stage of the application process, by obtaining documented representations from various society representatives. The national government sphere is represented by the SAPS, while the
municipal sphere provides input as to appropriate zoning and planning. The public may comment on any aspect of the application related to the premises, applicant or the process in general. All negative comments (or comments that may impact on the public interest) are referred to the Applicant for response. Only once a fair period for comments and representations has expired, does the licence application process proceed to the next phase, namely evaluation by the Liquor Licencing Tribunal (LLT), illustrated in the figure below.
2.1.8 The LLT

The compilation of the Management Board and LLT provides for public representation, ensuring the consideration of public interest during the decision-making process. The LLT consists of:

- One member representing organised local government, appointed by the Management Board after consultation with the Minister responsible for local government in the Province;
- One member who is a police officer of the rank of Superintendent or above, appointed by the Management Board in consultation with the Provincial Commissioner of the South African Police Service and the Minister responsible for community safety in the Province; and
- Two citizens of the Republic, who are permanently resident in the Province, appointed by the Management Board.

LLT considers suitability of person applying:
- Criminal Record History,
- Mental Illness

Suitability of Premises:
- If it is near Old Age Home, Rehabilitation Centre, Place of Worship, School

Comments taken into consideration from DLO, Municipality & Public, Possible hearing and in loco inspection if required.

Award or Refuse Application

• Evaluation of Person Applying

• Evaluation of Premises

• Consideration of Comments

• Outcome of Application

Figure 3: Public Interest in Main Application Process - Evaluation Phase
The LLT is obliged to (must) take into consideration various aspects when considering an application, balancing economic activity and harms reduction, by considering the person (where legislative guidance is utilised) applying for a licence, the premises as well as the larger community surrounding the premises. Section 59(5) of the Act (as it reads at the time of writing this document) provides for various public interest considerations—

“59(5) The Liquor Licensing Tribunal may not grant an application referred to in subsection (4) unless it is satisfied on a balance of probabilities that the granting thereof—

(a) is in the public interest; and
(b) does not prejudice—
   (i) the residents of a residential area;
   (ii) the residents of an institution for the aged or frail;
   (iii) the learners of an educational institution who are under the age of eighteen (18) years;
   (iv) the patients of an institution for drug or alcohol related dependencies; or
   (v) the congregants of a religious institution located in the vicinity of the licensed premises concerned.”.

2.1.9 The Fund and Scope of Social Responsibility Parameters

In terms of section 31 of the Act, the WCLA must give effect to its social harms reduction mandate by establishing a fund. Section 31 of the Act reads—

“Establishment of fund

31.(1) The Authority must establish a fund for the purpose of -
   (a) combating the negative social consequences of the abuse of liquor;
   (b) educating persons engaged in the sale and supply of liquor; and
   (c) educating the general public in the responsible sale, supply and consumption of liquor.

(2) The Authority must, in consultation with the Minister, provide for the terms of reference for and administer the fund referred to in subsection (1).
The budget of the fund must be included within the budget of the Authority that must be submitted in accordance with the Public Finance Management Act, 1999.

The Authority must open an account for the fund in the name of the Authority with an institution registered as a bank in terms of the Banks Act, 1990 (Act 94 of 1990).

The WCLA has already established a section 31 fund at the date of this document. The fund has further been operationalised by means of a policy framework and bank account. Severe funding restrictions have limited the level of execution of this legislative obligation and operationalisation of the fund to give effect to this legislative policy. While a similar national fund, (funded through levies payable by liquor distributors) has been adequately funded to ensure harms reduction programmes, a policy decision by the previous Management Board of the WCLA not to accept funding from the liquor industry has hampered the funding for the fund. The current Management Board is at present developing an action plan to address this challenge and will produce an updated funding policy by the end of this financial year, informed by engagements with role players.

The WCLA gives effect to its social responsibility mandate towards harms reduction associated with liquor abuse within the following focus points:

- Leadership and Awareness; and
- Education and Awareness,

with the focus on responsible consumption and liquor retailing, linked to the WCLA’s prime legislative mandate being licensing, control and related matters on liquor retailing. This focus also falls within principles 1 and 3 of the World Health Organisation’s ten recommended areas for policy and intervention at a national level. The WCLA’s mandate does not extend to other aspects of harm reduction such as health care or rehabilitation programmes.

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3 Page 19 of the Western Cape Alcohol Related Harms Reduction Policy
2.2 WCLA Programmes and Integration

The WCLA gives effect to its harms reduction programs by partnering with other entities, government spheres and structures by means of two levels of integration -

- LLT regulatory integration through representation; and

2.3 Potential Future Role

Since the WCLA is a dynamic organisation that recognises the delicate balancing of economic benefits flowing from liquor trading with the reduction of harms related to alcohol abuse, the WCLA is constantly developing new programs to expand its future role in partnership with other role players as identified in the Green Paper.
3 INSTITUTIONAL RECOMMENDATIONS

3.1 Introduction

3.1.1 General Comments and Remarks

The WCLA takes note of the fact that Chapter 9 of the Green Paper is exclusively dedicated to a short, but, in the opinion of the WCLA, incomplete and one-sided, discussion on possible institutional arrangement changes applicable to the WCLA. The reason for the exclusive or isolated discussion of the WCLA in this chapter remains unclear. The approach followed is specifically surprising given the fact that the Green Paper acknowledges the multi-sectorial (integrated) and disciplinary approach required to address alcohol-related harms reduction within the Western Cape.

As indicated in the Green Paper and acknowledged by the WCLA, to achieve the balancing of economic activity and harms reduction, an intergovernmental collaboration of various government spheres and entities is required. It is submitted that the isolated focus on the WCLA institutional structure in Chapter 9, may be contra-productive and cause digression from the centralised collaborative theme of the Green Paper. It is therefore suggested that a Green Paper chapter dedicated to the discussion of a constructive intergovernmental and inter-organisational structure, that would address the overlapping institutional and intergovernmental issues of balancing economic activity with harms reduction, may contribute substantially more to the balancing of economic interest and harm within the liquor environment than a discussion on the WCLA institutional arrangements.

The WCLA acknowledges the following general statements made in Chapter 9 of the Green paper being:

- The LLT, as a regulator, must be able to make decisions in terms of empowering legislation without fear or favour, while adhering to legislative power. However, the absolute independence of the WCLA is neither possible nor desirable;
- Independent regulators are expected to be subject to government policy, oversight and a system of checks and balances; and
• The regulating body must be an impartial and transparent enforcer, free of transitory political influences, by taking decisions in line with the empowering legislation of the regulator.

### 3.1.2 Policy and Policy Formulation

The WCLA strongly disagrees with the Green Policy statement suggesting that government may have abdicated its policy making mandate in the current structure. The WCLA subscribes and acknowledges the fact that the mandate to formulate and issue policy rests with the government sphere in the South African constitutional setup, read with the provisions of the current Act. The caveat to this statement is that policy and changes in legislative direction resulting from policy changes ultimately rest with the legislative power and parliamentary standing committee structures, tasked with overseeing and formulating legislation on behalf of the legislator.

Although many definitions for ‘policy’ exist, public policy normally refers to a proposed course of action of government, or guidelines to follow to reach goals and objectives, and is continuously subject to the effects of environmental change and influence. Public policy is also an authoritative statement on what government chooses to do or not to do and incorporates or implies the authoritative allocation of values for the whole society. Of importance is the fact that policy should never be static. It should always relate to current issues in society (for example, the continuous processes of change, transformation and globalisation which have been taking place in South Africa since 1994). It should constantly be adapted to match the impact of environmental variables and influencing factors. Policy ought to be dynamic without the exclusion of other influencing factors.

The WCLA has guidelines to follow in its decision-making process in the form of the provisions of the Act. These guidelines are reviewed and examined on a regular basis to ensure relevance to all influences. Examples of this policy framework is section 34 read

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1 Green Paper page 66 paragraph 1
5 Public policy-making and policy analysis in South Africa amidst transformation, change and globalisation: Views on participate and role players in the policy analytic procedure N.L. Roux; School of Public Management and Administration University of Pretoria, Journal of Public Administration, Vol 37 no 4, December 2002, page 425
with section 36 of the Act, stating which criteria must be taken into consideration for certain types of liquor licence applications. The Act therefore does not allow the WCLA or LLT to pass policy, but it does allow the WCLA as an entity to interpret and apply its legislative mandate within the scope of its empowering legislation, being the Act as amended from time to time.

It is the opinion of the WCLA and its Management Board’s that the correct way of dealing with a change in policy direction is to engage in a policy forming and review exercise, like the one the Provincial Government is currently engaging in with stakeholders. The WCLA will be an important stakeholder in this process as the regulating (and mandated) institution on liquor sales and micro manufacturing. The WCLA, through section 9(v) of the Act, has a mandate to advise the Minister on any matter that the Minister has referred to it for advice. This process may lead to appropriate legislative changes. Such legislative changes must then be filtered through, resulting in new interpretation and relevant decision making parameters being set or reset for the regulating entity to comply with the new needs that may influence policy direction.

Changes in an institutional design of an entity such as the WCLA will most probably not address the above-mentioned policy argument. If the legislative decision making framework has not been appropriately structured and determined, no institutional design will yield the required results, since a legislative body’s mandate is set legislatively. Change should be legislative mandate driven and not institutionally structured driven.

3.1.3 Partnerships and Organisational Alignment

The WCLA disagrees with the statement that the current operational model does not provide for adequate partnership-forming and alignment of operations. The WCLA believes the current public entity is ideally suited for partnerships and collaboration and has in fact attended to various such collaborations. Some of these collaborations are described hereunder:

The WCLA structure as a public entity makes it easier for the WCLA to collaborate and enter into partnerships due to its independent status from government. The Act empowers the WCLA to enter into collaboration arrangements in section 9(k) of the Act-
9(k) to enter into agreements with or obtain the assistance of any department or organ of state, including the South African Police Service, to conduct or assist it in conducting its investigations;”

3.1.4 Current WCLA Institutional Model

The WCLA is a provincial public entity duly listed in Schedule 3 Part C of the Public Finance Management Act, 1999 (Act 1 of 1999) (PFMA) as a Western Cape provincial public entity. The Figure below provides an oversight of the institutional structure of the WCLA.

In terms of the PFMA a provincial public entity is defined as to mean:

“provincial public entity” means—

(a) ....

(b) a board, commission, company, corporation, fund or other entity (other than a provincial government business enterprise) which is—

(i) established in terms of legislation or a provincial constitution;
(ii) fully or substantially funded either from a Provincial Revenue Fund or by way of a tax, levy or other money imposed in terms of legislation; and

(iii) accountable to a provincial legislature;”.

Section 49 of the PFMA describes very clearly the accounting authority concept within public entities.

“49. Accounting authorities —

(1) Every public entity must have an authority which must be accountable for the purposes of this Act.

(2) If the public entity—

(a) has a board or other controlling body, that board or controlling body is the accounting authority for that entity; or

(b) does not have a controlling body, the chief executive officer or the other person in charge of the public entity is the accounting authority for that public entity unless specific legislation applicable to that public entity designates another person as the accounting authority.”

One of the distinctive aspects of a public entity is the fact that it functions to some extent separate from its parent department, with an independent oversight structure that acts as an accounting authority (in the case of the WCLA, the Management Board). Public entities further have the benefit of ring-fencing a specific legislative function within a dedicated operational institution exclusively focussed on the specified function. The institutional independence and dedication to an exclusive core function imbeds public trust towards the institution to independently and without fear or influence conduct its business. Thus, in a constitutionally acceptable objective manner.

But what parameters can be utilised to measure the best practice principles for the governance structures of regulating entities? This measure of independence is key to the existence and success of a regulatory entity. The OECD (Organization for Economic
Cooperation and Development\textsuperscript{6} has developed certain international best practice principles for regulatory entities. The Table below indicates the international best practice principle, with a description and brief discussion of the principle in the centre column. In the far-right column, compliance by the WCLA’s current institutional structure to the best practice principle is indicated.

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|}
\hline
International best practice principle & Description & Compliance by WCLA’s institutional structure \\
\hline
\end{tabular}
\caption{International best practice principles for regulatory entities.}
\end{table}

<table>
<thead>
<tr>
<th>Item</th>
<th>Principle</th>
<th>Description</th>
<th>WCLA Compliance to Principle</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Role clarity</td>
<td>For a regulator to understand and fulfill its role effectively it is essential that its objectives and functions are clearly specified in the establishing legislation. The regulator should not be assigned objectives that are conflicting or should be provided with management and resolution mechanisms in case of conflicts. The legislation should also provide for clear and appropriate regulatory powers in order to achieve the objectives and regulators should be explicitly empowered to co-operate and co-ordinate with other relevant bodies in a transparent manner.</td>
<td>The WCLA functions within the legislative framework of the Act that provides the perimeters of its regulatory functions. For as far as policy guidelines to the WCLA is concerned, please see our comments above.</td>
</tr>
<tr>
<td>2</td>
<td>Preventing undue influence &amp; maintaining trust</td>
<td>Independence from the government and from the industry that is regulated can improve the regulatory outcomes by allowing the regulator to make decisions that are fair and impartial. It is important that regulatory decisions and functions are conducted with upmost integrity to ensure that there is confidence in the regulatory regime. This is even more important for ensuring rule of law, encouraging investment and having an enabling environment for inclusive growth built on trust. This requires a proactive approach to regulating that is accessible by regulated entities and yet within the national strategic priorities.</td>
<td>The current provincial entity structure with a separate management board overseeing (with no influence over the outcome of applications) a licencing authority and appeal authority ensures licencing decisions that is fair and impartial.</td>
</tr>
<tr>
<td>3</td>
<td>Decision making &amp; governing body</td>
<td>Regulators require governance arrangements that ensure their effective functioning preserve its regulatory integrity and deliver</td>
<td>The WCLA has an independent Board that brings a wide variety of skills from</td>
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<tr>
<td>Item</td>
<td>Principle</td>
<td>Description</td>
<td>WCLA Compliance to Principle</td>
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<td></td>
<td>structure for independent regulators</td>
<td>the regulatory objectives of its mandate. The governing body structure of the regulator (e.g. a single head or a board of directors) should be determined by the nature of the regulated activities and their motivation. The membership of the governing body should also protect from potential conflicts of interest or influence from the political process and should be ultimately for the public interest.</td>
<td>the public and private sector, such as governance and social responsibility. None of the Board members have an interest in the liquor industry by legal requirement.</td>
</tr>
<tr>
<td>4</td>
<td>Accountability &amp; transparency</td>
<td>Businesses and citizens expect the delivery of regulatory outcomes from government and regulatory agencies and the proper use of public authority and resources to achieve them. Regulators are generally accountable to three groups of stakeholders: • ministers and the legislature; • regulated entities; and • the public. The expectations for the regulator should be published and regulators should regularly report on the fulfilment of their objectives, including through meaningful performance indicators.</td>
<td>Although the entity has political oversight from the MEC responsible for Community Safety the LLT is overseen by an independent Board with reporting to the legislature which reporting is public against pre-set annual performance targets that has been published. This structure provides comfort to the public as to the independence of decision making in the entity.</td>
</tr>
<tr>
<td>5</td>
<td>Engagement</td>
<td>Good regulators have established mechanisms for engagement with stakeholders as part of achieving their objectives. The WCLA regularly engages with various role players, the public,</td>
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<tr>
<td>Item</td>
<td>Principle</td>
<td>Description</td>
<td>WCLA Compliance to Principle</td>
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</tr>
<tr>
<td>6</td>
<td>Funding</td>
<td>The amount and source of funding for a regulator will determine its organisation and operations. It should not influence the regulatory decisions and the regulator should be enabled to be impartial and efficient to achieve its objectives. Funding levels should be adequate and funding processes should be transparent, efficient and simple.</td>
<td>The WCLA are funded via public funds and some private funding as per the Act. The WCLA are subject to the strict PFM rules for public funding and parliamentary oversight. The Social Fund is however underfunded and the funding model for this should be revisited.</td>
</tr>
<tr>
<td>7</td>
<td>Performance evaluation</td>
<td>It is important that regulators are aware of the impacts of their regulatory actions and decisions. This helps drive improvements and enhance systems and processes internally. It also demonstrates the effectiveness of the regulator to those it is accountable toward and helps to build confidence in the regulatory system. The regulatory decisions, actions and interventions of the regulator should be evaluated through</td>
<td>The WCLA is held accountable as per its annual performance plan with set KPIs that is monitored by parliamentary oversight.</td>
</tr>
<tr>
<td>Item</td>
<td>Principle</td>
<td>Description</td>
<td>WCLA Compliance to Principle</td>
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<td>performance indicators. This creates awareness and understanding of the impact of the regulator's own actions and helps to communicate and demonstrate to stakeholders the added value of the regulator.</td>
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3.1.5 Hybrid Model

The Hybrid Model described in the Green Paper can also be described as a so called “shared services” model. The Figure below provides a graphic oversight of the interaction and possible challenges such a model may present.

![Figure 5: Representation of Shared Services Model](image)

The main challenge foreseen with the Hybrid Model is independence and integrity in the decision-making process. Other perceived or real challenges in this model will have long term adverse consequences that are much more likely to hamper the constitutional acceptability of this model, as opposed to the more widely accepted, independent (current) model. As mentioned in Chapter 2 of this document, the application process starts well before evaluation thereof by the LLT, with aspects of public interest already imbedded through the independent board oversight and compilation of the Board. Staff attending to the liquor licence application process already takes into consideration aspects of public interest via its application process, such as through publication and interaction with other government sectors such as the SAPS and municipalities.
If the Hybrid Model is to be accepted and implemented, the LLT (the main executing body of the liquor licencing process, the independence of which as has been acknowledged in the Green Paper), will be appointed directly by government, and be completely dependent on government appointed staff. Its independence will therefore be severely tarnished, and the integrity of its processes sacrificed. In terms of lessons learned from the 1989 Liquor Act it can be categorically stated that the absence of independent oversight and management of support staff, results in serious conflict and service delays in an organisation. Issues such as performance management, hours of work and job descriptions are hampered by non-flexible public service employment requirements. The back-log case load of approximately 8000 cases inherited by the WCLA from the old 1989 Act system (which has since been eradicated by the WCLA over a comparatively short period of just more than 3 years) serves to prove the efficiency argument in favour of entities.

With regards to the concern about costs, it should be noted that no actual costing calculations are argued and / or reflected in the Green Paper to serve as validation for the statement that the Hybrid Model will in fact result in more cost-effective operations. The assumption of increased effectiveness is a risky one and may it be said, controversial, in today’s public environment. The argument re the most cost effective model can be supported and substantiated by valuable lessons learned from the model utilised in the 1989 Act, which looks very similar than the proposed hybrid model. In the 1989 Act, the Liquor Board was supported by an administrative staff component appointed in terms for the Public Service Act, 1994 (Proclamation 103 of 1994) with salaries and benefits as per the Public Service Act scales.

Further to this is the fact that the current Constitution of the Republic also brought with it the requirement of transparency and participation by the citizenry of the country. The Hybrid Model is not the desired model when tested against such requirements and should therefore be researched properly and thoroughly prior to proposing it as the solution to certain regulatory challenges, it is submitted. The Green Paper does not provide a firm or broad enough foundation to propose this model as part of the solution to a problem, the core of which is nestled outside rather than inside the regulatory field. Socio-economic
factors, criminal behaviour that has become acceptable to certain sectors of society as well as educational factors, are regarded as prime factors contributing to alcohol and drug misuse and abuse. We maintain that alcohol-related harms cannot be addressed through the redesign of a regulatory institution that deals with law abiding business people and citizens as the core of its obligations and mandate.

Currently WCLA staff payments per post description is less than in the public sector, rendering the per capita cost lower in the current structure than in the proposed Hybrid Model. The cost of the LLT will in any event remain as is in this Hybrid Model, the only apparent saving being that of the Management Board’s value resides within its independent oversight role and very limited staff responsible for HR and Financial functions. It should be noted that specialist support personnel must be appointed or retained to provide support services to the WCLA, since these functions do not exist in the Department of Community Safety at present.

As to the comments from the National Treasury and a reduction in the number of public entities, it should be noted that integrity and transparency cannot be weighed against what may be perceived to be a saving in costs.

The biggest challenge associated with the Hybrid Model may however be items 2 (Preventing Undue Influence & Maintaining Trust) and 4 (Accountability & Transparency) of the OECD list of best practice rules. Licence holders and members of the public want the insurance that transparency forms part of the decision-making process. This means that the integrity of the licencing evaluation body itself must be ensured by a transparent and independent support structure and oversight.

3.1.6 Commission Model

It is interesting that the Commission Model is listed as a separate model in the discussion. For purposes of our argument, the model will be discussed as per the Competition Commission structure as mentioned in the Green Paper. It should be noted that not all commission structures will be like the Competition Commission structure but will depend on the legislative purpose designed for the commission.
The Competition Commission model seems to be a variant of the public entity model, one which places extreme emphases on the separation of functions within a specific legislative function. This separation is given effect by ring-fencing various competition activities through the establishment of a completely independent body for each of the 3 functions.

The Competition Commission is one of three independent bodies, the second and third being the Competition Tribunal and the Competition Appeal Court (formerly the Competition Board), established to oversee the competition function. While the Commission is the investigative and enforcement agency, the Tribunal is the adjudicative body and the Competition Appeal Court considers appeals against decisions of the Tribunal. Competition authorities are functionally-independent institutions, but are administratively accountable to the Department of Economic Development.7

If this model is to be superimposed on the WCLA, it would mean that the WCLA, LLT and AT will all be turned into separate entities with completely independent staff. It is agreed that this model will mean a considerable investment in personnel and resources leading to considerable cost. It is submitted that the best practice requirements for regulating entities as stated in the OECD can sufficiently be met in the current WCLA structure which is more suitable to execute a licencing function linked regulating entity than a more sophisticated “higher level economic regulating entity function” such as that of the Competition Commission.

The WCLA does not agree with the statement that this model also places considerable power in the hands of one individual with no clear separation between the judicial and the administrative functions. Risks of concentrated power in one individual is the exclusion of differing opinions and provides a single target for external powers to attempt to influence. As has been explained, this model has been designed to ensure rather the opposite, namely extreme separation of functions. This model is also untested and proposals of this nature should be based on fact and even more so, upon research with

7 Competition Act, 1998 (Act 89 of 1998)
positive outcomes. Within the current context of the Green Paper there is no mention of this.

### 3.1.7 In-House Model

This model seems to replicate the current In-House model used by the Western Cape Department of Health for licensing private hospitals. The model requires the Head of Department to be directly involved in the issuing of authorisations, such as liquor licenses. The WCLA agrees that the In-House Model is inappropriate for the liquor licencing function. This model will offer the least separation of powers, transparency and accountability due to the direct involvement of government in the award, evaluation and oversight of retail liquor licencing.

### 3.1.8 Conclusion

As will be seen from the OECD based analyses above, the current institutional arrangement is best suited to comply with the current regulatory function of the WCLA, is a provincial public entity established in terms of section 2 of the Act. The WCLA subscribes and complies with the attributes listed hereunder, being-

- Good governance and integrated service delivery that is embedded through partnerships and spatial alignment;
- Good use of limited public resources, that must be used prudently, considering the multitude of demands on public funds;
- Objective decision making, with high levels of accountability, effectiveness, efficiency and accessibility, where discretion is exercised cautiously and the rights of individuals are weighed against the interests of society more broadly; and
- Rotation of the Management Board and LLT members provides a constant flow of industry expertise and ensures a new pool of people for the WCLA to remain relevant.
4 GENERAL COMMENTS ON GREEN PAPER

4.1 Overview

In general, it seems as if the Green Paper extends itself wider than current legislation applicable to the WCLA. Whereas the WCLA is mandated to regulate the retail sale and micro-manufacturing of liquor in the Western Cape and to ensure that the industry is well run and responsible, the Green Paper speaks to all alcohol related harms from a wider social perspective with an obvious, strong focus on socio-economic, criminal and educational issues.

Distinction is therefore drawn in the responses and comments provided, between the WCLA response to issues raised by the Green Paper that fall outside the WCLA mandate, and those that impact on the mandate and responsibilities of the WCLA – in other words, those that are the responsibility of the WCLA. The WCLA has for this reason selected not to comment on each statement made in Chapters 1 to 8 of the Green Paper.

The Green Paper provides certain facts, assumptions and detailed problem statements, the content of which is acknowledged and noted by the WCLA. For purposes of this document, the statistics and supporting factual statements included in the problem statement are accepted as those of the authors of the Green Paper. It is also noted that certain facts and statistics quoted are not recent and it is understood and accepted that, for a more accurate and comprehensive and thorough insight into the cause and core of problems relating to alcohol and drug abuse, intensive research and focus will be essential. It is noted that the core issue supported by these statistics and statements, is alcohol-related harms, and the regulation of alcohol with the specific intention or focus to reduce these harms. The problem statement therefore refers to and / or relates to the regulatory role and function of the WCLA, and its duty to ensure that the sales and micro manufacturing of liquor as defined in the Act, is well managed, regulated by, as far as humanly possible, responsible industry role players and consumers.

The Problem Statement does however lay a good foundation from which policy decisions and solutions can be developed. Potential solutions will not only relate to when and how
liquor licences are issued, but various other interventions will be vital to achieve the policy objectives. These may include, but not be limited to-

- Funding, resources and integrated solutions;
- Alcohol and informally produced alcohol; and
- Monitoring and surveillance.

A substantial challenge with most of the policy interventions suggested in the Green Paper is the requirement for lobbying other spheres of government to give effect to the relevant policy statement. Lobbying is of course required because of the overlapping constitutional functions and mandates as discussed in detail in Chapter 2 of this document. It will be difficult to give effect or to measure the success of any of these policy statements or intervention statements, because the successful execution thereof does not lie in the hands of the WCPG. The Green Paper may also be criticised for encroaching on national government sphere’s legislative and regulative mandate, deflecting attention from the importance of harms reduction.

4.2 Pricing and the Economy – Green Paper Chapter 1

4.2.1 Trading Times

In the experience of the WCLA the difference in liquor outlet trading times across different municipal areas (due to this constitutional function allocated to municipalities) has created some challenges in the effective monitoring and enforcement of liquor retail. The harmonisation of trading hours and days may lead to more effective enforcement of licence conditions with the understanding that the right to set trading hours is a protected constitutional function allocated to the local government spheres, which will require voluntary harmonisation and co-operation by municipalities. A proposal on standardisation of certain Liquor related by-laws may assist in this matter.

4.2.2 Increase Tax on Alcohol Products & Introducing A Minimum Unit Price

The WCLA supports in principle an increase in the tax on alcohol products but not a minimum unit price. Both suggestions may have unintended consequences. An increase
in liquor product pricing (either by an increase of tax or a minimum unit price) may lead to a demand increase towards illegal liquor products.

### 4.2.3 Change in the Definition of Liquor Products

This suggestion is supported.

### 4.2.4 Tracking System of Liquor Products Through the Market

This lobbying is supported in principle, since such a system will assist the WCLA (specifically its inspectorate) with enforcement issues, tracking illegal liquor throughout the supply chain. This intervention will however only be successful if the tracking is attended throughout the complete national supply chain, requiring the coordinated co-operation of all government spheres and entities involved in the liquor supply chain. A tracking system will also be relevant and helpful only to the extent to which distributors, retailers and wholesalers are regulated and monitored in terms of who they sell too.

The system will need to be developed in conjunction with the WCLA as they would have to manage and regulate.

### 4.2.5 Increased Enforcement of Underage Drinking

Increased lobbying for enforcement of underage drinking legislation must be supported without any hesitation. The WCLA is however severely hampered by a lack of funding to assist with this enforcement issue on licensed premises. At present, enforcement exercises are attended to as joint exercises between SAPS and Municipal Police. The WCLA Inspectorate is not equipped or sufficiently manned to attend to independent law enforcement exercises.

A Memorandum of Understanding (MOU) has been drafted and awaiting the vetting to formalise a relationship between various law enforcement players as discussed below. Once this document has been signed off it should formalise the relationship. The purpose of the MOU is to formalise the cooperation between the WCLA Compliance and Enforcement component and the City’s Liquor Enforcement and Compliance Unit, in the enforcement of the Western Cape Liquor Act (Act 4 of 2008), Control of Undertakings that
Sell Liquor to the Public By-Law and all other applicable legislation, to ensure the achievement of their common objective of reducing alcohol related harms.

This MOU will be entered into if agreed by all role players to establish a Joint Liquor Enforcement Task Team (JLETT) between the WCLA Compliance and Enforcement component and the City’s Liquor Enforcement and Compliance Unit.

Until the MOU is signed off and agreed to by all parties, the Compliance and Enforcement component of the WCLA engages informally with the SAPS, City of Cape Town Law Enforcement monthly to co-ordinate and plan joint operations within the Province.

4.3 Unlicensed Liquor Outlets and Illicit Liquor Trade – Green Paper Chapter 2

The content of Chapter 2 is supported in principle. Once again it is noted that the success of most of the interventions suggested in this chapter depends on co-operation or support from other government spheres, which, for reasons stated in comments associated with Chapter 1 of the Green Paper above, may be challenging. The powers and functions associated with law enforcement is a complex affair, which is not addressed in detail as part of this document. The WCLA will at any time on request of an interested party elaborate on this issue if necessary.

The 2015 amendments to the Act expanded enforcement powers and functions of the WCLA inspectorate to some extent. Law enforcement powers of the WCLA inspectorate are mostly associated with licenced premises, although all liquor inspectors are also appointed as peace officers with the powers and functions associated therewith. WCLA inspectors already form part of a co-ordinated and multi-disciplined enforcement strategy with SAPS and municipal police officers, as indicated in Chapter 2 of this document.

Regarding the zoning issue, the following comments are forwarded. Zoning is an exclusive municipal function that constantly provides challenges for the drive to legalise illegal liquor outlets. As is correctly stated in Chapter 2 of the Green Paper, a rethink of zoning is

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8 See sections 73 and 74 of the Act as amended
required to identify appropriate alternative land for the relocation of illegal liquor outlets to more appropriately zoned land. Large pockets of land in the Western Cape is currently not represented on zoning plans, mostly found in what is termed “previously disadvantaged areas”. This backlog is partly due to capacity in municipalities and partly due to the inherent nature and history of these more informal developments. This absence of appropriate zoning and zoning schemes makes it impossible for some liquor traders who wish to trade as legal outlets to obtain liquor licences, since appropriate zoning is now considered a prerequisite for granting a liquor licence. Relocating existing liquor outlets to what may be regarded as more appropriate business trading areas within informal developments, is also not possible due to the non-existence of appropriate zoning. Some illegal traders have therefore resolved not to apply for liquor licences because it is regarded as a futile exercise.

4.4 Enforcement – Green Paper Chapter 3

4.4.1 General

The WCLA supports a zero tolerance towards the illegal trade in liquor and the enforcement of liquor licencing condition transgressions. Law enforcement efforts and restrictions associated with the WCLA have already been discussed in the comment above associated with Chapter 2 of the Green Paper. The WCLA further supports additional efforts to transfer more powers and functions to peace officers to assist with liquor trade monitoring and evaluation, through memoranda of agreement between governmental spheres.

Due to the unique knowledge of the WCLA on liquor, liquor products, the liquor trade and industry, it will be beneficial to the combined enforcement effort if the WCLA forms the hub and focus of an illegal liquor trade focus group and centre within the Western Cape. Main legislation dealing with liquor licencing forms is currently the mandate of the WCLA, which has specialised knowledge of the liquor industry.

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9 Section 63(1)(b) of the Act
4.4.2 Assisting the Industry with Compliance and Licencing

The WCLA has identified the need for an internal support structure within the WCLA to assist applicants with liquor applications and liquor matters. By providing this service the WCLA will lower the cost of entry into the licenced market considerably, by eliminating substantial consultancy fees that may be too expensive for small and micro enterprises to pay. The WCLA has already requested that an organisational design exercise be held to investigate the personnel and organisational structure that will be required for this purpose.

4.4.3 Sanctions for Liquor Related Transgressions

The WCLA supports any effort to identify and establish specialised liquor courts. The relevant government sphere associated with this function is the National Department of Justice, while the process to establish these courts will require intergovernmental co-operation to be successful. Given the considerable challenges and resource limitations within this department it may be difficult to establish specialised courts.

The WCLA does not support the suggestion of alternative dispute resolution for liquor offences. Alternative dispute resolution is traditionally found in the civil law domain and is not generally considered an appropriate criminal law resolution method.

The WCLA does support the idea of a system of rigorous compliance notice enforcement for liquor licence offences. Continuous non-compliance must be followed by an escalation of rapidly increasing fines to force compliance issues.

4.5 Alcohol and the Road – Green Paper Chapter 4

4.5.1 Restriction on Premises Near National Roads and Premises

The WCLA does not support this policy statement. From previous experience associated with the so-called service station restriction on licencing\(^\text{10}\), it became apparent that designing suitable criteria that can be interpreted, but is flexible enough, not to result in unintended consequences, is a challenge. Similar challenges relating to the practical

\(^{10}\) Section 81 of the The Western Cape Liquor Act, 2008 (Act 4 of 2008) provided for licencing of an erf on which a service station is allocated only in exceptional circumstances. To be appealed by Section 34 of the Western Cape Liquor Amendment Act, 2015 (Act 3 of 2015) when enacted.
enforcement have been experienced with the radius argument banning liquor premises within a predetermined radius of schools, places of worship and places of rehabilitation. The logical link between liquor related trauma and the distance of the source of the liquor from/to national roads must be substantiated with detailed statistical information and analyses.

4.5.2 Traders to make up for more Dangerous Aspects of their Business

If this policy statement is enforced, it would require the WCLA to attend to specific licencing conditions (such as contracts with approved public transport providers) that fall outside the current scope of licensing criteria. The decision of patrons to utilise public transport services should be voluntary and cannot be included in licence conditions in terms of the current legislation.

4.6 Health and Social Services – Green Paper Chapter, Community Based Action – Green Paper Chapter 6 and Education and Awareness – Green Paper Chapter 7

The WCLA already supports the various other departments and organisations involved in the health sector and community based harms reduction programs, as indicated previously in this document. WCLA programs dealing with awareness and education are also dealt discussed under a separate heading to this document.

4.7 Information, Data Collection, Monitoring and Evaluation – Green Paper Chapter 8

The WCLA supports data collection and research associated with the liquor industry and is already participating in various studies.

The WCLA regards itself as the main innovation and data collection hub for the facilitation and collection of data and research in the liquor industry. The social fund is the ideal financial resource to fund such research and data collection initiatives, if properly funded and resourced. A thorough understanding of the industry, coupled with the use of technology in the collection and analysis of data, are absolute necessities for effective
monitoring and evaluation. A discussion on the existing legislative mandate of the WCLA to collect data and attend to research (section 9(m) of the Act, is set out in Chapter 2 of this response. To fully understand the liquor industry, the collection of retail data from distributors and retail sellers of alcohol will be required to be able to track data throughout the liquor supply chain.
5 GENERAL RECOMMENDATIONS

5.1 Training for Licence Holders

The requirement of obtaining a liquor licence should be amended to ensure that licence holders and the managers who will be on site, comply with the condition to have undergone training and must pass a test on the Western Cape Liquor Act and the rights and obligations of licence holders (Page 69 of the Green Paper).

The WCLA already provides training to liquor license holders on liquor legislation and regulations. However, it is not compulsory for license holders to attend. Even though all license holders are invited many of them do not attend. When licenced premises are visited by liquor inspectors and non-compliance with legislation or their conditions is highlighted, staff do not understand the basic compliance legislation or liquor licence conditions that form part of their liquor licenses. Consultants apply for liquor licences on behalf of the licensee and once the licence is approved and received by the consultant, it is handed to the licensee without any knowledge transfer taking place.

It is suggested that legislation be enacted that makes it mandatory for each licensee or his or her appointed manager and all the staff working at the licenced premises to undergo a training session annually, and upon successful completion, be submitted with a certificate which is valid for one year. Non-attendance will render the liquor licence invalid.

Small fees payable for training may be a source of funding for the Social Responsibility Fund. When applicants or current licence holders arrive for a hearing at the offices of the WCLA, the WCLA can draw the attendance register and the certificate as proof that they are trained. When an inspector visits a licensed premise and an employee cannot produce the certificate of training, a fine should be issued.
5.2 Administrative Burden and Cost of Liquor Licence Applications should be Shifted to SAPS

The WCLA supports this suggestion mostly due to the cost of advertisements and the administration burden in the preparation of adverts in the application process. Current licence application fees do not even cover half of the application cost associated with the liquor licence application process.

5.3 Prior Approval from the municipality, in consultation with the WCLA for the activity to be carried out on the premises

Zoning is already taken into consideration in the liquor licence application process. For as far as safety, security and traffic impact is concerned, this will require additional skills from local government sphere, which is already under pressure. The WCLA at present does not have the knowledge or capacity to address these additional evaluation criteria. Smaller municipalities will not have the capacity to provide this additional evaluation services either. If private contractor inputs are required to provide these additional evaluation criteria information, the entry cost to legal licenced premises will be increased, which will be contrary to the policy decision to encourage legalising liquor outlets.

5.4 Statistically High Risk Areas Should Be Barred from Increasing Licenced premises / Relationship Between Liquor Licensing, Trading Hours, Lighting and Pedestrian Infrastructure to be Introduced.

The WCLA supports in principle any process that will render liquor premises more safe to the consumer. It is however foreseen that it will require considerable cost and effort to gather suitable and verifiable information, combined with prolonged statistical analyses to build a sustainable analyses model to inform this principle.

5.5 Increase in Liquor Licence Categories

The WCLA supports an increase of and diversification in liquor licence types that will allow more suitable licence conditions for a diverse society.
6. **Summary**

The WCLA derives its mandate and operational framework from various documents that together form its regulatory framework, with specific reference to the Western Cape Liquor Act, 2008 (Act 4 of 2008) (The Act). The Act provides for the licencing of the retail sale and the micro-manufacture of liquor and several matters incidental to liquor licencing.

6.1 **Multiple Role Players**

There are many role players in the liquor harms reduction debate including national government departments, local government and provincial government. The WCLA is therefore only one role player within this group of role players. When liquor related matters are discussed, all three spheres of government are involved.

**Socio-economic and other external factors** that may impact on alcohol-related harms and the potential reduction thereof and are referred to or raised in the Green Paper, should be responded to by institutions or interest groups geared for, obligated or mandated with **these specific oversight roles**. The Green Paper extends itself to a wider application than the current legislation applicable to the WCLA. Using this constitutional framework as a guide, the WCLA acknowledges the following Green Paper Policy principles:

- The abuse of alcohol leads to various social ills and harms in society; and
- The negative social harms caused by the abuse of liquor must be weighed against the positive economic contributions of the liquor industry, specifically in the Western Cape.

6.2 **Balancing Between Economic Benefit and Harms Reduction**

The balance between economic benefit and harms reduction is already imbedded in the Act -

- The WCLA’s Management Board has specific members dedicated to combating the abuse of liquor, to ensure an awareness of and representation in actively considering the public interest;
• The Act provides for the utilisation and application of the concept “in the public interest” as the method to ensure the balancing of social harm with economic activity or benefit;
• The compilation of the LLT provides for public representation, ensuring the consideration of public interest during the decision-making process;
• The LLT must take into consideration various aspects when considering an application, balancing economic activity and harms reduction;
• the WCLA must give effect to its social harms reduction mandate by establishing a fund in terms of section 31 of the Act to fund social programmes; and
• The WCLA gives effect to its harms reduction programs by partnering with other entities.

6.3 Institutional Arrangements

The WCLA takes note of the fact that the Green Paper is exclusively dedicated to a short, incomplete and one-sided, discussion on possible institutional arrangement changes applicable to the WCLA. It is the firm belief of the WCLA that the current WCLA institutional arrangement is best suited to comply with the current regulatory function of the WCLA being-
• Good governance and integrated service delivery that is embedded through partnerships and spatial alignment;
• Good use of limited public resources, that must be used prudently, considering the multitude of demands on public funds;
• Objective decision making, with high levels of accountability, effectiveness, efficiency and accessibility, where discretion is exercised cautiously and the rights of individuals are weighed against the interests of society more broadly; and
• Rotation of the Management Board and LLT members provides a constant flow of industry expertise and ensures a new pool of people for the WCLA to remain relevant.

The main challenge foreseen with the Hybrid Institutional Model (the model that seem to be the preferred Green Paper Model) is the fact that the independence and integrity in the decision-making process of the liquor licencing will be challenged.
6.4 General Comments on Chapters 1 to 8 of the Green Paper

The Green Paper provides certain facts, assumptions and detailed problem statements, the content of which is acknowledged and noted by the WCLA. A substantial challenge with most of the policy interventions suggested in the Green Paper is the requirement for lobbying other spheres of government to give effect to the relevant policy statement. The WCLA in summary submits the following supporting comments on various Green Paper issues:

- **The harmonisation of trading hours and days** may lead to more effective enforcement of licence conditions with the understanding that the right to set trading hours is a protected constitutional function allocated to the local government spheres, which will require voluntary harmonisation and co-operation by municipalities;

- **The WCLA supports in principle an increase in the tax on alcohol products** but not a minimum unit price;

- The **implementation of a tracking system of Liquor Products through the market is in principle supported** but may only be successful if the tracking is attended throughout the complete national supply chain;

- **Increased lobbying for enforcement of underage drinking legislation must be supported** without any hesitation;

- **A rethink of zoning is required to identify appropriate** alternative land for the relocation of illegal liquor outlets to more appropriately zoned land;

- A **zero tolerance towards the illegal trade in liquor** and the enforcement of liquor licencing condition transgressions is supported;

- The WCLA supports any effort to identify and establish specialised liquor courts;

- The WCLA supports data collection and research associated with the liquor industry and is already participating in various studies;

- The WCLA supports the suggestion to shift the cost and administration of liquor licencing application advertisements to another party in the application process;

- The WCLA supports an **increase of and diversification in liquor licence types** that will allow more suitable licence conditions for a diverse society; and
The notion that statistically high risk areas should be barred from receiving more liquor licenced premises is in principle supported, subject to the understanding that it will require considerable cost and effort to gather suitable and verifiable information, combined with prolonged statistical analyses to build a sustainable analyses model to inform this principle.

The WCLA does not support the following Green Paper comments:

- The suggestion of alternative dispute resolution for liquor offences;
- The idea of a system of rigorous compliance notice enforcement for liquor licence offences;
- The policy statement on the Restriction on Premises Near National Roads and Premises in its current format;
- Traders to make up for more Dangerous Aspects of their Business; and
- The policy statement that would require the WCLA to attend to specific licencing conditions (such as contracts with approved public transport providers) which falls outside the current scope of licensing criteria.

**6.5 In Conclusion:**

The successful and expedited execution of certain policy statements in the Green Paper may be burdened or delayed by the policy statement’s implied intergovernmental co-ordination and co-operation requirements. This is because not only one government agency or department will have the full and sole capacity or mandate to give effect to most of the Green Paper policy statements.

The requirement of obtaining a liquor licence should be amended to ensure that licence holders and the managers who will be on site, comply with the condition to have undergone training and must pass a test on the Western Cape Liquor Act and the rights and obligations of licence holders (Page 69 of the Green Paper).

Due to the unique knowledge of the WCLA on liquor, liquor products, the liquor trade and industry, it will be beneficial to the combined enforcement effort if the WCLA forms the hub and focus of an illegal liquor trade focus group and centre within the Western Cape.
The constant under funding that restrains WCLA operations and staff employment will hamper the WCLA in assisting with the successful implementation of the Green paper.

We express the hope that our contribution to the Green Paper discussions will lead to greater appreciation and understanding of the complicated liquor retail industry.

Michael Eric Jones
Chairperson
Western Cape Liquor Authority