



REPORT: LIQUOR REGULATION CONFERENCE 8 MARCH 2012: GALLAGHER ESTATE, MIDRAND, GAUTENG

The National Liquor Authority hosted a one-day Liquor Regulation Conference on 8 March 2012 at Gallagher Estate in Midrand, Gauteng. The purpose of the conference was to solicit inputs from various stakeholders within the liquor industry and the public to enable the Department of Trade and Industry (**the dti**) to formulate a national liquor policy framework for the regulation of liquor in South Africa.

1. BACKGROUND

In 1996, a draft liquor policy was developed and approved as a Bill by Parliament. The Bill could not be signed off by the then President as it was deemed unconstitutional because it did not separate the competencies of provinces from those of national Government in the liquor licensing framework. The Liquor Act 59 of 2003, however, was enacted without being aligned to an approved National Liquor Policy. As a result, there is no current approved policy that forms the basis for the regulation of liquor.

The lack of a relevant and current policy has created a void and a challenge to address issues that relate to the licensing of alcohol and the combating of alcohol abuse. The Biennial Summit on Anti-Substance Abuse, held at eThekweni in KwaZulu-Natal in March 2011, highlighted some of the challenges facing South Africa. It highlighted pertinent areas of liquor regulation that required standardization and possible synchronization.

Resolutions related to the liquor environment taken from the summit include the need to:

- Harmonise all laws and policies to facilitate effective regulation of liquor;
- Minimise access to alcoholic beverages to vulnerable groups, including minors, visibly pregnant women and people who are already intoxicated;
- Reduce and harmonise the hours of sale of liquor;
- Harmonise the standards in relation to the location of liquor outlets, particularly around schools and places of worship, and their density;
- Raise the legal liquor consumption age from 18 to 21 years; and
- Conduct education and awareness campaigns on alcohol abuse.

In an endeavour to implement the resolutions taken at the summit, the Inter-Ministerial Committee on Anti-substance Abuse approved the Government's Programme of Action that emphasized the role of

each national government department in combating substance abuse. As the key role player in liquor regulation, **the dti** was tasked with developing a liquor policy by March 2013.

As most of the outcomes allocated to **the dti** were policy matters, the department adopted the approach of addressing them simultaneously in its quest to draft the new policy. **the dti** then held a conference to consult with and get broad views from stakeholders on matters relating to the legal consumption age, trading hours, compliance enforcement, density of outlets, and models to combat alcohol abuse.

2. THE FORMAT OF THE CONFERENCE

The conference was facilitated in the form of a plenary and commissions. The plenary comprised presentations by experts and concentrated on broader policy issues that lay the foundation for the commissions. There were four commissions that focused on different topics and looked more closely at areas that needed input for the policy. In the commissions, experts presented their views and delegates gave their inputs in support of or against these views.

2.1. The Plenary

The topics presented at the plenary included:

- The Liquor Act 59 of 2003: The highlights and gaps;
- How much is enough? The effectiveness of a liquor policy;
- Global status report on alcohol abuse: How is South Africa rated and the implications for a policy;
- Licensing framework and its impact on rural communities; and
- Effects of location of outlets, density and trading hours on communities.

2.2. The Commissions

The commissions were held concurrently and covered the following topics:

- Legal consumption and purchase age limit;
- Enforcement to engender compliance;
- Coordinating efforts to mitigate the effects of abuse; and
- Outlet location, density and trading hours.

3. SALIENT POINTS FROM THE PLENARY

3.1. Licensing framework and its impact on rural communities: Chief Phatekile Holomisa (CONTRALESA)

Chief Phatekile Holomisa presented on the impact of liquor laws on customs and customary laws. He highlighted the following:

- Government should consult with traditional leaders before it enacts any liquor law to enable traditional leaders to indicate how the promulgation of such liquor policies and laws would impact on the customary way of living;
- According to customary law, not everyone is allowed to consume liquor. Children are not supposed to consume at all; only men who are initiated into manhood, at around the age of 25, are allowed to consume liquor. Younger women are not allowed to consume alcoholic beverages. In instances where women drink, age will be taken into consideration and the volume of alcoholic beverage given to older women and young men is less than that consumed by matured men; and
- Liquor is not readily available at any time of the day or week. It is mostly made available on weekends when there is an occasion or celebration. This is to foster a culture of productivity.

3.2. Effect of location of outlets, density and trading hours on communities: Ms Zandile Mdhladhla (Moral Regeneration Organisation)

Ms Zandile Mdhladhla presented on the effect of outlet density and trading hours on communities. She indicated that:

- Location of outlets, density and trading hours are some of the challenges experienced in all the provinces, particularly the location of taverns and shebeens; and
- Location of outlets around schools, places of worship and main routes are a concern, because the discipline in schools is greatly impacted by this. Scholars are encouraged to bunk classes to go to consume liquor.

3.3. How much is enough? The effectiveness of the current policy: Prof. Charles Perry from the Alcohol and Drug Abuse Research Unit, SA Medical Research Council

Prof. Charles Perry focused on the harmful use of liquor in South Africa and the associated consequences. He reported on the policy shift in dealing with alcohol abuse. In his presentation he highlighted that:

- Based on research conducted, South Africa falls into the highest category of countries with harmful patterns of drinking. South Africa rated a score of four out of five in the dimension of engaging in heavy episodic drinking, for both males and females;
- In relation to young people, about a third of male learners in Grade 8 – 11 are reported to binge drink;
- The liquor industry makes a large portion of its profits from people consuming harmful levels of alcohol. People die early or live with disability as a result of alcohol abuse; the burden of disease in South Africa is the cost that Government has to incur;
- The total tangible cost of alcohol abuse in the country was estimated at R37,9 billion, which is 1,6% of the GDP based on the study conducted by **the dti** in 2010;
- In dealing with abuse, Government seems to be moving towards a position where public health perspective is given more prominence over commercial interest; and
- In relation to Government's liquor policies, development and implementation in South Africa, there has been a shift in policy development and implementation over time and, on average, the country rates three-and-a-half out of 10 in terms of policy development.

3.4. Global status on alcohol abuse: Dr Francis Kasolo (World Health Organisation, Pretoria)

Dr Francis Kasolo's presentation outlined a comparative study made within the BRICS and SADC countries on alcohol policies.

He highlighted the following:

- Impact of alcohol consumption on diseases and injury is largely determined by the total volume of alcohol consumed and the pattern of drinking;
- The policy on the national minimum legal blood alcohol concentration when driving a vehicle in South Africa is 0,5, whereas in Brazil it is 0,2 and in Russia 0,3;
- Compared to the BRICS countries, South Africa is rated second. South Africans consume liquor produced by commercial breweries as opposed to other African countries that consume the African traditional beer; and
- Most of the liquor consumed in South Africa is commercially produced and this calls for collaboration between the industry and Government in policy decisions.

3.5. Liquor Act 59 of 2003: The highlights and gaps: McDonald Netshitenzhe (the dti)

The purpose of Mr McDonald Netshitenzhe's presentation highlighted certain problematic areas in relation with the present Liquor Acts. In his presentation, he highlighted the following:

- There are two national Acts at present: the 1989 legislation, which is still applicable in certain provinces, and the 2003 Act;
- The Liquor Act 59 of 2003 is the legislation that should be operational and sets norms and standards; and
- Problematic areas include:
 - Issues of concurrent jurisdiction, where provinces are coming up with their own legislation; how should provincial legislation migrate to the new legislation?
 - There should be co-ordination between all spheres of Government and with similar standards, i.e. if the norm is that the legal age is 21, no province should go below 21, and uniform trading hours across provinces should be adhered to;
 - Other government departments are involved in the regulation and enforcement of liquor i.e. health, social development, SAPS, SARS and Agriculture;
 - The criteria for B-BBEE should be applicable to all;
 - Competition laws to deal with issues of dominance, meaning competition law should be effected; and
 - Municipalities issue zoning certificates differently and the liquor regulators do not want to undermine the competencies of the municipalities.

4. PROMINENT POINTS FROM THE COMMISSIONS

4.1. LEGAL CONSUMPTION AGE LIMIT

Section 10 of the Liquor Act prohibits the sale or supply of liquor to minors. Three experts shared their expertise and research on the ideal age limit for the consumption of alcohol. The delegates contributed to the discussion on the basis of information shared and their contributions have been separated into those that supported and those that opposed the proposal.

4.1.1. Presenter: Prof. Charles Perry

- In South Africa, more than 2,5 million people use alcohol and over 44 000 have problems associated with alcohol use;
- In SADC countries, referrals to rehabilitation centres are mainly related to alcohol, followed by other drugs;

- Research indicates that the brain is not fully developed until the age of 25, at least. This seems to emphasise that traditional leaders know something about the development of the brain;
- If a person starts consuming liquor early, it takes about six to 18 months to become addicted, while if delayed, it can take about five years. The longer a person delays alcohol use, the better the chance that that person will not experience problems with or addictions to alcohol and its harmful effects; and
- South Africa has a solid legislation, but there has been no co-ordinated effort to enforce, implement and monitor the legislation. If South Africa wants to increase the age limit for consumption, then partnerships involving civil society and the public sector have to be established to implement and monitor the current legislation vigorously.

4.1.2. Presenter: Prof. Neo Morojele

- Alcohol consumption before driving should be completely prohibited for persons under the age of 21;
- Increased drinking age should be incremental and should, at this stage, only be increased to 19 years of age;
- Policy changes should be adopted and implemented incrementally, trailed by public participation and a broad-based conference strategy. Other interventions should be implemented and law enforcement should be strict and consistent;
- There should be a review on the licensing fees and licence renewals should be linked to compliance of the applicable laws; and
- Public drinking and drunk driving should be dealt with effectively and harshly, particularly if young persons are involved.

4.1.3. Presenter: Mr Mkoka

- Increase the legal age for consumption, as most people who indulge are tertiary students;
- Access and restrictions should be tightened at outlets and enforced; and
- Regulate advertising and encourage more advertisements of the negative consequences of the use of alcohol.

4.1.4. Input from delegates

4.1.4.1. Those FOR the proposal of increasing the age limit to 21

- Government should increase the age limit to assist liquor traders to comply with the law;
- Increasing the age limit would make the retail set-up more conducive and sustainable; and

- A pilot should be conducted first to test if increasing the age limit would yield the desired results.

4.1.4.2. Those AGAINST the proposal of increasing the age limit to 21

- The increase should only be limited to drivers, not to all members of the public;
- Abuse of alcohol is not common to all who drink it; the problem lies with abusers. Research presented for the argument reflects the dynamics of the United States of America, which are different to that of South Africa. As a result, the evidence used should be based on the experiences of the South African youth;
- More research should be conducted to investigate the root causes of why youth consume and abuse alcoholic beverages; and
- Law enforcement and monitoring should be intensified so that liquor is not sold to underage persons and those who contravene should be dealt with.

4.2. ENFORCEMENT TO ENGENDER COMPLIANCE

4.2.1. Presenter: Brig. Lebeso – Challenges experienced by South African Police Service (SAPS) in enforcing regulation

- Inconsistency of trading hours and different operational procedures from **the dti** and the different provinces;
- Withdrawal of cases from courts and lack of co-operation from the Department of Justice;
- Road fatalities caused by people driving under the influence;
- A person operating with both the national and provincial licences on the same premises;
- A high number of fraudulent licences and illegal outlets; and
- Inconsistent municipal by-laws and some municipalities with no by-laws.

4.2.2. Presentation by Mr Jonas – SARS

Mr Jonas presented on the tax contribution of the liquor industry to state revenue.

	Amount of Liquor Produced in ℓ	Duties collected for 2010/11 in R
Local	3,808,121,983	11,368,589,249
Imported	28,165,273	196,022,994
TOTAL	3,836,287,256	11,564,612,243

4.2.3. Input from delegates

- A forum comprising the liquor industry, law enforcement agencies and liquor associations should be established to focus on issues of compliance and update one another on any changes in regulation;
- Police officials should be regularly trained in all liquor laws, and penalties should be introduced for those who supply liquor to illegal traders;
- Education and awareness should be prioritised to promote compliance with liquor laws and by-laws;
- Drinking licences/permits should be considered for those who wish to consume alcohol and those licences/permits should be produced at retail points, as is the case in other countries;
- An over-arching legislation for harmonisation of norms and standards should be developed, and there should be co-ordination among government departments that deal with liquor regulation; and
- To curb illegal trading, eradicate importable substances (concoctions) and ease the regulatory burden. The processing of liquor applications should also be reviewed.

4.3. CO-ORDINATING EFFORTS TO MITIGATE THE EFFECTS OF ABUSE

4.3.1. Presenter: Dr Ray Eberlein – Representative from the Central Drug Authority (CDA)

- The major problem South Africa has is that there is no single effective policy on substance and alcohol abuse;
- The CDA is mandated to co-ordinate activities relating to illicit drugs, alcohol, medication and other substances;
- Every province and municipality in the country is expected to have a local drug action committee to drive the provincial plan, which at present is not happening;
- The community's needs should form the basis for the impact of the drug master plan and the areas of focus should include education, recreation, reduction of harm, enforcement of laws, rehabilitation of those addicted, and employment opportunities; and
- Strategies to combat abuse should concentrate on restricting the access, affordability and availability of liquor and deterrence to curb drunk-driving.

4.3.2. Presenter: Mr Adrian Botha – Representative from the Association for Responsible Alcohol Use

- The industry has no view on increasing the age limit, however, there is existing legislation and Government should enforce the existing laws and prosecute those that infringe them;

- Harmonization of legislation is critical (trading hours) for the entire country for ease of enforcement; and
- No single action is likely to reduce alcohol problems; a mix of self-regulation and enforcement or co-regulation governing the sale of alcohol, as well as awareness creation, and targeted interventions combined with individuals taking personal responsibility for their choices, would be the ideal approach to combat alcohol abuse.

4.3.3. Input from delegates

- There should be harmonisation of legislation/regulation. There should be a code of conduct for media, approved by ICASA;
- The CDA should involve the communities in the development and implementation of the drug master plan;
- Education and awareness on alcohol abuse should start at schools and there should be more stakeholder participation;
- Government should not ban alcohol advertising, but instead use the media as a platform to raise awareness and educate communities. There is a need for monitoring and evaluating the programmes/ projects that are targeted at combating alcohol abuse; and
- The industry should be more involved and advertising should be directed towards messages related to responsible drinking. There should be willingness from the industry to partner with civil society to raise awareness and educate the public in general.

4.4. OUTLET LOCATION, DENSITY AND TRADING HOURS

4.4.1. Presenter: Mr Max Mupariwa – Representative from the South African Local Government Association (SALGA)

- Municipalities have different by-laws and standards. Some municipalities take into consideration the zoning/land use by-laws when considering applications for liquor outlets while others do not;
- There is no consistent control and regulation, in relation to noise, littering and the parking of cars in and around liquor outlets; and
- Big trucks moving in townships cause damage to roads and this is a cost to the municipalities.

4.4.2. Presenter: Dr Andrew Charman

- Some of the proposed interventions will not reduce outlet density as most of the interventions do not fundamentally address the key factors and demand that account for entry and the great number of people involved in liquor retailing;

- The majority of traders fall outside the regulating framework as they are informal and are sustained by a need for a service and the need by the retailer to survive; and
- Inappropriate liquor policy will increase the harm and may exacerbate the problem.

4.4.3. Input by delegates

- Government should consult with traders and research should be conducted to form a basis for policy formulation;
- There should be harmonization of the legislation/regulation within the three spheres of Government and the imbalances of the past should be considered when crafting the national policy; and
- There is a need for all spheres of Government and communities to work together.

5. DEDUCTION FROM THE DIFFERENT COMMISSIONS FOR POLICY INPUT

5.1 Increasing the legal consumption and purchase age from 18 to 21

- South Africa needs to develop a policy to increase the drinking age from 18 to 21, even though the research available is mostly from the USA. There should be a South African study conducted to support a South African approach;
- The legal consumption age should even be increased up to the age of 25, to be in line with customary laws, where people are considered to be of age at ± 25 ;
- Other interventions, such as stricter laws on drunk driving and harsher penalties for traders who sell to minors, should be implemented simultaneously; and
- Advertising of liquor should be restricted to ensure that children are not exposed to liquor and the glamour associated with it.

5.2 Enforcement to engender compliance

- There is too much reliance on self-regulation. Government needs to work with the liquor industry and associations on their code of conduct;
- Monitoring and surveillance is important to improve quality and to control production and distribution to the informal market;
- Education and awareness has to be intensified to sensitise the public about the dangers of consuming illicit alcohol;
- Government has to provide alternatives to drinking and create recreational facilities and permanently close down outlets that contravene the law;

- Recreational facilities should be created to keep young people from misusing and abusing alcohol; and
- Educate traders on their responsibilities and obligations to enhance compliance.

5.3 Co-ordinate efforts to mitigate the effects of abuse

- Policies and interventions to prevent diseases and alcohol-related harm should be guided and formulated by public health interests, and should be based on clear public health calls and the best available evidence;
- Policies should be equitable and sensitive to national, religious and cultural contexts;
- Intervention strategies should be evidence-based and programmes should be monitored and evaluated regularly for effectiveness; and
- All parties involved, i.e. Government, industries and civil society, have the responsibility to act in ways that do not undermine the implementation of public policies and the interventions to prevent and reduce the harmful use of alcohol.

5.4 Outlet location, density and trading hours

- Government should use its regulatory powers to create healthy and safe communities by making rules that set minimum distances between liquor outlets;
- Trading hours should be regulated by Government and should harmonise the national, provincial and local legislations; and
- In line with the customary laws, liquor availability should be restricted, in terms of trading hours and days of sale, to inculcate a culture of productivity.

6. RECOMMENDATION

6.1 The presentations and inputs received supported the move to increase the legal consumption and purchase age from 18 to 21 years. It should not be a stand-alone strategy, but should be supported by other interventions that will ensure that younger persons are deterred from consuming liquor.

6.2 There is a need for a master plan to deal with alcohol abuse. **the dti** as lead regulator needs to take leadership in the development of a national plan to combat alcohol abuse. This should be separate from the drug master plan to enable industry, the media and the public to understand where each one fits.

- 6.3 There should be standardised trading hours to limit access to liquor supported by consistent law enforcement. Government should ensure that there are national standards on the location of liquor outlets in relation to other amenities.
- 6.4 There should be a concerted effort to educate police officials on all liquor laws and the traders on their obligations and responsibilities.
- 6.5 The proposed policy should include penalties for traders that do not comply with applicable laws. A licence should be renewed when the holder has complied with the licence conditions.
- 6.6 The policy on advertising should be incorporated into the broader liquor policy so that all the applicable legislations can be based on the national liquor policy.
- 6.7 Traditional authorities should be consulted during the drafting of legislation and when considering liquor licence applications to give consent and comments relevant to customs, rural areas and tribal authorities.