



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable

Case no: 3222/2024

In the matter between:

**THE TRUSTEES FOR THE TIME BEING
OF THE DG MURRAY TRUST**

APPLICANT

and

**SPEAKER, NORTHERN CAPE
PROVINCIAL LEGISLATURE**

FIRST RESPONDENT

**NORTHERN CAPE GAMBLING
AND LIQUOR BOARD**

SECOND RESPONDENT

PREMIER OF THE NORTHERN CAPE PROVINCE

THIRD RESPONDENT

**MEC FOR FINANCE, ECONOMIC DEVELOPMENT
AND TOURISM, NORTHERN CAPE**

FOURTH RESPONDENT

MINISTER OF TRADE, INDUSTRY AND COMPETITION

FIFTH RESPONDENT

MINISTER OF HEALTH

SIXTH RESPONDENT

MEC FOR HEALTH, NORTHERN CAPE

SEVENTH RESPONDENT

MINISTER OF SOCIAL DEVELOPMENT	EIGHTH RESPONDENT
MEC FOR SOCIAL DEVELOPMENT AND SPORTS, ARTS AND CULTURE, NORTHERN CAPE	NINTH RESPONDENT
SPEAKER OF THE NATIONAL ASSEMBLY	TENTH RESPONDENT
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	ELEVENTH RESPONDENT
SPEAKER OF THE WESTERN CAPE PROVINCIAL LEGISLATURE	TWELFTH RESPONDENT
SPEAKER OF THE EASTERN CAPE PROVINCIAL LEGISLATURE	THIRTEENTH RESPONDENT
SPEAKER OF THE FREE STATE PROVINCIAL LEGISLATURE	FOURTEENTH RESPONDENT
SPEAKER OF THE GAUTENG PROVINCIAL LEGISLATURE	FIFTEENTH RESPONDENT
SPEAKER OF THE KWAZULU-NATAL PROVINCIAL LEGISLATURE	SIXTEENTH RESPONDENT
SPEAKER OF THE LIMPOPO PROVINCIAL LEGISLATURE	SEVENTEENTH RESPONDENT
SPEAKER OF THE MPUMALANGA PROVINCIAL LEGISLATURE	EIGHTEENTH RESPONDENT
SPEAKER OF THE NORTHWEST PROVINCIAL LEGISLATURE	NINETEENTH RESPONDENT

**SOUTH AFRICAN LIQUOR TRADERS
ASSOCIATION (SALTA)**

TWENTIETH RESPONDENT

**NATIONAL LIQUOR TRADERS
COUNCIL (NLTC)**

TWENTY-FIRST RESPONDENT

**FEDERATED HOSPITALITY ASSOCIATION
OF SOUTH AFRICA (FEDHASA)**

TWENTY-SECOND RESPONDENT

Neutral citation: *The Trustees for the time being of the DG Murray Trust v Speaker of the Northern Cape Provincial Legislature and Others* (3222/2024) (17 April 2026)

Heard: 16 October 2025

Delivered: 17 April 2026

Summary: *Constitutional law* – Legislation – Validity – The Northern Cape Gambling and Liquor Act 6 of 2024 (the Act) – Principle of legality – ss 93(2)(c) and 93(4), (5) and (6) – Failure to facilitate public involvement in the legislative process under s 118 of the Constitution of the Republic of South Africa, 1996 – The Act declared invalid and unconstitutional.

ORDER

1. It is declared that the Northern Cape Provincial Legislature (NCPL) failed to comply with its constitutional obligation to facilitate public involvement before passing the Northern Cape Gambling and Liquor Act 6 of 2024 as required by s 118(1)(a) of the Constitution of the Republic of South Africa, 1996.
2. The Northern Cape Gambling and Liquor Act 6 of 2024 is accordingly declared invalid and unconstitutional.
3. It is declared that in respect of sections 93(2)(c) and 93(4) of the Northern Cape Gambling and Liquor Act 6 of 2024, the NCPL failed to comply with its constitutional obligation to observe the principles of legality and rationality.
4. Sections 93(2)(c) and 93(4) of the Northern Cape Gambling and Liquor Act 6 of 2024 are declared invalid and unconstitutional.
5. The Registrar of this Court is directed to forward a copy of this judgment and order to the Registrar of the Constitutional Court, within 15 (fifteen) days of this order, in terms of rule 16(1) of the Constitutional Court Rules for the consideration of the declaration of constitutional invalidity made by this Court.
6. The first to fourth respondents are to pay the costs of the application jointly and severally, the one paying the other to be absolved; such costs are to include senior and junior counsel fees on scale C and B, respectively, as set out in rule 67A read with rule 69 of the Uniform Rules of this Court.

JUDGMENT

Phatshoane DJP

Introduction

[1] The applicant, the trustees for the time being of the DG Murray Trust, challenges the constitutional validity of ss 93(2)(c) and 93(4) to (6) of the Northern Cape Gambling and Liquor Act 6 of 2024 (the Act). These sections regulate the hours of trade for certain liquor outlets. The applicant seeks a declaratory order, substantially in these terms:

(a) that the Northern Cape Provincial Legislature (NCPL), in enacting the impugned provisions failed to comply with its constitutional obligation to (1) facilitate public involvement in the legislative process as contemplated in s 118 of the Constitution of the Republic of South Africa, 1996 (the Constitution); (2) to observe the principle of legality and rationality and (3) to respect, protect, promote and fulfil the right to dignity (section 10), the right to freedom and security of the person (section 12(1)(c)), the right to an environment that is not harmful to a person's health and wellbeing (section 24(a)), the right of access to health care services (section 27(1)(a)) and the children's right to be protected from maltreatment, neglect, abuse or degradation (section 28(1)(d)) enshrined in the Constitution.

(b) that ss 93(2)(c) and 93(4) to (6) of the Act violate the foregoing constitutional rights. Accordingly, the applicant urged that the impugned sections of the Act be declared invalid and unconstitutional.

[2] The Speaker of the NCPL (the Speaker), the Northern Cape Gambling and Liquor Board, the Premier of the Northern Cape Province (the Premier) and the Member of Executive Council for Finance, Economic Development and Tourism, Northern Cape (MEC), the first to the fourth respondents (collectively referred to as the respondents), opposes the relief sought and questioned the *locus standi* of the applicant to litigate in the public interest under s 38 of the Constitution. They argued that the applicant failed to demonstrate that it is genuinely acting in the public interest

or that it has a real and legitimate concern for the public good rather than acting for personal gain or an ulterior motive.

The question of the applicant's standing

[3] The applicant submitted that the present application is brought in its own name and in the public interest as contemplated in s 38(a) and (d) of the Constitution. It contended that anyone listed in s 38 has the right to approach a competent court to allege that a right in the Bill of Rights has been infringed or threatened, and that the court may grant appropriate relief, including a declaration of rights. The persons who may approach the court include, inter alia, anyone acting in their own interest¹ and anyone acting in the public interest.²

[4] Section 38 requires a generous approach to standing in constitutional cases.³ In determining a litigant's standing, a court must, as a matter of logic, assume that the challenge the litigant seeks to bring is justified.⁴ Insubstantial differences of opinion on legislative policy or an advancement of an abstract concern would not be adequate to establish legal standing under s 38.⁵

[5] In *Minister of Home Affairs v Eisenberg & Associates: In re: Eisenberg & Associates v Minister of Home Affairs and Others*⁶ in respect of 'own interest standing', counsel for the Minister had accepted that the respondent, a law firm practising mainly in immigration law, had standing to challenge the constitutional validity of the regulations to which the Constitutional Court agreed. There, the question was whether the Minister could issue regulations without following the statutory consultative process, which includes a public notice-and-comment procedure. The Court held that a law firm practising mainly in immigration law had an own-interest standing to challenge regulations that the Minister issued without following that process. The Court noted that the law firm would have had the right to comment on the draft regulations

¹ Section 38(a).

² Section 38(d).

³ *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* [1995] ZACC 13 (CC); 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (CC) para 165.

⁴ *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others* [2012] ZACC 28 (CC); 2013 (3) BCLR 251 (CC) para 32.

⁵ *Supra* fn 3 para 164.

⁶ [2003] ZACC 10 (CC); 2003 (5) SA 281 (CC); 2003 (8) BCLR 838 (CC).

had the consultative process been applicable to the impugned regulations. The law firm, therefore, 'had an interest as a member of the public in asserting the right that it claimed to have and had standing to raise that issue in its own interest'. On that conclusion on own-interest standing, the Court found it unnecessary to address the public-interest standing asserted by the respondent.⁷

[6] In *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and others*⁸, following a survey of case law, the Constitutional Court held:

'These cases make it plain that constitutional own-interest standing is broader than the traditional common law standing, but that a litigant must nevertheless show that his or her rights or interests are directly affected by the challenged law or conduct. The authorities show:

- (a) To establish own-interest standing under the Constitution, a litigant need not show the same "sufficient, personal and direct interest" that the common law requires, but must still show that a contested law or decision directly affects his or her rights or interests, or potential rights or interests.
- (b) This requirement must be generously and broadly interpreted to accord with constitutional goals.
- (c) The interest must, however, be real and not hypothetical or academic.
- (d) Even under the requirements for common law standing, the interest need not be capable of monetary valuation, but in a challenge to legislation, purely financial self-interest may not be enough – the interests of justice must also favour affording standing.
- (e) Standing is not a technical or strictly-defined concept. And there is no magical formula for conferring it. It is a tool a court employs to determine whether a litigant is entitled to claim its time, and to put the opposing litigant to trouble.
- (f) Each case depends on its own facts. There can be no general rule covering all cases. In each case, an applicant must show that he or she has the necessary interest in an infringement or a threatened infringement. And here a measure of pragmatism is needed.'

[7] The respondents did not challenge the applicant's own-interest standing, grounded in the applicant's core objectives, which include supporting and developing policy and legislation that create an enabling environment for human development in an inclusive society and the realisation of the fundamental human rights enshrined in

⁷ Ibid para 28.

⁸ [2012] ZACC 28 (CC); 2013 (3) BCLR 251 (CC) para 41.

the Constitution. On this score, the applicant has commissioned reports on the development of legislation and policy which aim to curb heavy alcohol consumption in South Africa's vulnerable communities, the impact of liquor trading times on alcohol consumption, and alcohol related harms. In furtherance of its objectives, the applicant submitted written representations regarding the first version of the Bill to the NCPL in June 2023. In my view, the applicant has established its own interest standing, which is neither hypothetical nor academic, because the impugned provision directly impacts its fundamental objectives and/or interests.

[8] As to the applicant's submission that it also acts in the public interest, it is important to refer to the factors relevant to determining whether a person is genuinely acting in the public interest which were laid down in a minority judgment of the Constitutional Court in *Ferreira v Levin NO*⁹, and endorsed in subsequent decisions.¹⁰ They include these considerations:

'(W)hether there is another reasonable and effective manner in which the challenge can be brought; the nature of the relief sought, and the extent to which it is of general and prospective application; and the range of persons or groups who may be directly or indirectly affected by any order made by the court and the opportunity that those persons or groups have had to present evidence and argument to the court. These factors will need to be considered in the light of the facts and circumstances of each case.'

In *Lawyers for Human Rights and Another v Minister of Home Affairs and Another*¹¹ Jacobson and Madala JJ added the following to the non-exhaustive list of relevant factors in deciding whether a party has public-interest standing: 'the degree of vulnerability of the people affected, the nature of the right said to be infringed, the consequences of the infringement of the right, and the egregiousness of the conduct complained of'.

[9] Here, too, a broader approach to standing is indispensable. The applicant contended that the constitutional challenge seeks to prevent serious health, social, and economic harm as a result of the NCPL's alleged failure to take reasonable and effective measures to protect the dignity, bodily and psychological integrity, access to health care of communities, and safety of children in local communities from harmful

⁹ Above fn 3, para 234.

¹⁰ *Lawyers for Human Rights and Another v Minister of Home Affairs and Another* 2004 (4) SA 125 (CC) paras 14 – 22 and 65 – 79.

¹¹ *Ibid* paras 18 and 73.

alcohol use. It further argued that it claims this relief in the interest of all persons who were denied the opportunity to participate meaningfully, or at all, due to material defects in the process and are unable to bring their own separate challenges.

[10] The constitutional obligations presently implicated are those imposed on the state to respect, protect, promote, and fulfil the rights in the Bill of Rights (s 7(2)) and the obligation imposed on the NCPL to facilitate public involvement in the legislative and other processes of the legislature and its committees (s118(1)(a)) of the Constitution. The human rights in issue, as already briefly stated, include inherent dignity and the right to have everyone's dignity respected and protected (s 10); the right to be free from all forms of violence from either public or private sources (s 12(1)(c)); the right to have access to health care services (s 27(1)(a)) and the right of every child to be protected from maltreatment, neglect, abuse or degradation (s 28(1)(d)) of the Constitution. The impugned provisions are of significant public importance and may be adversely affecting the specified constitutional rights.

[11] In my view, the respondents' objection is not well-founded, so much so that they barely marshalled an argument for it in their oral submissions. It is axiomatic that the relief sought, if granted, would be of general and prospective application throughout the Northern Cape Province, requiring the NCPL to reconsider the enactment of the challenged provision having regard to its constitutional obligation to respect, protect, promote and fulfil the rights in the Bill of Rights, to act rationally and to facilitate public involvement in its legislative process and those of its committees. Undoubtedly, the relief, if sanctioned, would affect the inhabitants of the province. The applicant has complied with the Uniform Rule 16A(1) notice requirement by bringing to the attention of persons (who may be affected by or have a legitimate interest in the case) the particularity of the constitutional challenge, so that they may take steps to protect their interests.¹² The impugned provisions are presently in operation; thus, the challenge is not brought in the abstract. I am of the view that the applicant has demonstrated a real and legitimate connection to the relief claimed and to litigate in the public interest.

¹² *Shaik v Minister of Justice and Constitutional Development and Others* 2004 (3) SA 599 (CC) para 24; see also *Phillips v SA Reserve Bank and Others* 2013 (6) SA 450 (SCA) paras 8, 32, and 65.

The legislation history and some factual background

[12] Prior to the promulgation of the Act, with effect from 01 April 2010, the Northern Cape Liquor Act 2 of 2008 (the 2008 Act) governed the liquor industry in the province. It repealed the Liquor Act 27 of 1989, which applied nationally, insofar as it applied to the Northern Cape Province. The 2008 Act originally permitted on-consumption licensed premises to sell liquor between 10:00 and 24:00 (Monday to Sunday), whereas off-consumption licensed premises were restricted to 08:00 and 20:00 (Monday to Friday) and 08:00 and 17:00 (Saturdays and public holidays other than a closed day).

[13] The hours of trade for the different kinds of licenses provided for in the 2008 Act were extended by the Northern Cape Liquor Amendment Act 2 of 2010, which came into operation on 21 September 2010. In terms of the amendment, the holders of on-consumption licenses (e.g. hotels, restaurants, nightclubs) were permitted to sell liquor on the licensed premises between 10:00 and 02:00 on Monday to Sunday (two-hour extension). The holders of off-consumption licenses (liquor stores, grocers, and sorghum beer traders) were permitted, except on a closed day, to sell liquor on the licensed premises between 08:00 and 20:00, Monday to Friday and between 08:00 and 20:00 on a Saturday or public holiday (three-hour extension). Further amendments to the 2008 Liquor Act were brought by the Northern Cape Liquor Amendment Act 3 of 2011 on 30 September 2011 by introducing certain subsections to occasional liquor licenses (s 18 of the 2008 Act) and the Northern Cape General Law Amendment Act 1 of 2013, which deleted paragraph (h) of s 9(1) of the 2008 Act, that dealt with the disqualification from being appointed to the Provincial Liquor Board.

[14] On 15 May 2023, by means of a General Notice in a Provincial Gazette¹³, the MEC published the Northern Cape Gambling and Liquor Bill (the first version of the Bill) in terms of Rule 164 of the NCPL's Standing Rules of Order and called for written comments within 30 days of the publication thereof. The first version of the Bill proposed reducing hours of trade to those originally provided for in the 2008 Act, before its 2010 amendment.

¹³ GN 375, PG 2595, 15 May 2023.

[15] The applicant commended and supported the introduction of significant alcohol harm reduction measures, particularly in relation to trading hours, in its written comments on the first version of the Bill. The applicant further states that despite diligent search of the NCPL's public records, the applicant's legal representatives could not locate the agenda and minutes of any relevant committee meeting which discuss, inter alia, the result of the public participation process or any proposed changes to the first version of the Bill and or documents provided to the NCPL prior to its vote on that Bill.

[16] Nine months later, on 29 February 2024, Ms Z Mitchell, the Committee Coordinator, on behalf of the Chairperson of the NCPL Portfolio Committee on Finance, Economic Development and Tourism addressed an email to stakeholders informing them of a "hybrid public hearing" to be held on 8 March 2024, thus affording stakeholders a six working days' notice, to 'solicit inputs' from them on a Bill manifestly different from the first. The e-mail was distributed to municipal functionaries (mayors, speakers, municipal managers and councillors, district directors in various regions of the province), NGO's, Trade Unions (NEHAWU and PSA), licensees (Gambling and Liquor), South African Breweries, Casinos (Flamingo Casino, Leitho Casino, Vukani Gaming, Oasis Casino, UM Africa Gaming Technologies, Sun International), Lange Carr & Wessels Attorneys, DG Murray Trust (the applicant), employees of the Gambling and Liquor Boards, and the Public Protector.

[17] The following aspects of Ms Mitchell's e-mail and its accompanying 'Explanatory Memorandum on the objects of Northern Cape Gambling and Liquor Bill' (Explanatory Memorandum) are highlighted: The public hearing would be held virtually on Microsoft Teams to accommodate stakeholders. The addressees were asked to email the committee coordinator by 5 March 2024 to receive a link to the virtual meeting. Stakeholders who were unable to attend the public hearing were invited to make written submissions on the Bill to the committee coordinator on or before 13 March 2024 (within nine working days). Copies of the second version of the Bill could be obtained from the committee coordinator by e-mail.

[18] The National Liquor Norms and Standards under the Liquor Act 59 of 2003 (the National Liquor Act) were adopted by the National Liquor Policy Council on 05 September 2014.¹⁴ The Council consists of, amongst others, the MECs responsible for liquor licensing in each province and the Minister of Trade and Industry (the Cabinet member responsible for liquor matters in the national sphere of government).¹⁵ Its role is to facilitate consultation between the national and provincial governments on the national liquor policy, national norms and standards, liquor legislation or regulations; to promote uniform national and provincial laws in respect of liquor norms and standards; and to consult on any matter concerning the management and monitoring of the liquor industry in South Africa or licensing in any province. It facilitates the settlement of intergovernmental disputes and promotes intergovernmental relations concerning the liquor industry.¹⁶

[19] The Explanatory Memorandum to the second version of the Bill stated that the Bill essentially combined the provincial gambling and liquor legislation. As to clause 93 of the Bill, the Explanatory Memorandum recorded:

‘This clause has incorporated the National Norms and Standards made in terms of section 2 of the Liquor Act, 2003...with regard to uniform times for liquor sales.

Clause 93(2)(a) now provides for off-consumption liquor stores (i.e. bottle stores) to sell alcohol on Sundays and Public Holidays from 9h00 to 17h00 in line with clause 4.14 of the National Norms and Standards on “Uniform Trading Hours”.

Clause 93(6) now provides for club licence holders to operate from 18h00 to 06h00 from Monday to Saturday and from 18h00 to 00h00 on Sundays and Public Holidays in line with clause 4.14 of the National Norms and Standards on “Uniform Trading Hours”.’

[20] The virtual hearing was held on 8 March 2024, during which Mr Sipho Gxotha from the Department of Economic Development and Tourism in the province, delivered an oral presentation on the draft Bill, supported by a 25-page written presentation. The explanation of clause 93, the present impugned section of the Act, is recorded in the presentation as follows:

¹⁴ The National Liquor Norms and Standards were published under GN R85 in GG 38459 of 13 February 2015. See also clause 4.3.9.3 of the Final National Liquor Policy published by the Minister of Trade and Industry under GN 1208 in GG 40321 of 30 September 2016.

¹⁵ Section 38 of the National Liquor Act 59 of 2003.

¹⁶ Section 39 of the National Liquor Act 59 of 2003.

- The Bill aligns its operational times with the Norms and Standards, firstly, because some provinces have already drafted their legislation in line with them.
- Secondly, it is a provision within the Norms and Standards that, where national and provincial regulations are not aligned, the former would prevail.
- Further, if legislation does not allow for matters allowed by the Norms and Standards, the NLPC must propose [an] amendment to such legislation.'

[21] Following the presentation on 8 March 2024, the Act was passed by the NCPL and assented to by the Premier with the commencement date of 1 April 2024. The Act repealed both the Northern Cape Gambling Act¹⁷, and the Northern Cape Liquor Act¹⁸. The Act seeks to unify the regulatory frameworks governing the gambling and liquor sectors under the oversight of a single statutory body. Its objects, in relation to the liquor industry, are: to reduce the socio-economic and other costs of alcohol abuse by, inter alia, implementing essential national norms and standards in the liquor industry as determined by the National Liquor Act; and to promote the development of a responsible and sustainable liquor industry in a manner that facilitates-(i) the entry of new participants into the industry; (ii) diversity of ownership in the industry; (iii) ethos of social responsibility in the industry; and (iv) local tourism and economic growth.¹⁹

The issues of contestation

[22] Section 93(1) of the Act provides for 12 categories of on-consumption liquor licenses: a hotel liquor licence, a restaurant liquor licence, a wine-house liquor licence, a theatre liquor licence, a club liquor licence, a sorghum or traditional African beer drinking house liquor licence, a tavern liquor licence, a guesthouse liquor licence, a nightclub liquor licence, a gambling house liquor licence, a sports club liquor licence and an occasional liquor license. Section 93(2) of the Act provides for three categories of off-consumption liquor licences: a Liquor store licence, a grocer's wine licence, and a sorghum or traditional African beer licence for off-consumption.

[23] The relevant part of s 93 of the Act under attack provides:

'93 Description of licences and hours of business

...

¹⁷ 3 of 2008.

¹⁸ 2 of 2008.

¹⁹ Section 2(1) of the Act.

(2)(c) The holder of a sorghum or traditional African beer licence for off-consumption may, subject to subsection (5), sell only sorghum or traditional African beer procured from a holder of a licence, on the licensed premises for a period of more than 30 minutes after 02:00 issued under any law, to produce such beer on the licensed premises.

- (4) The holder of a liquor licence contemplated in subsection (1), may sell liquor on the licensed premises between 10:00 and 02:00, Monday to Sunday, and no liquor may be consumed on the licensed premises for a period of more than 30 minutes after 02:00.
- (5) The holder of a liquor licence contemplated in subsection (2), may, except on a closed day, sell liquor on the licensed premises:
 - (a) between 09:00 and 20:00, Monday to Friday; and
 - (b) between 09:00 and 17:00 on a Saturday, Sunday or public holiday other than a closed day.
- (6) The holder of a liquor licence contemplated in subsection (1)(i) may sell liquor on the licensed premises:
 - (a) between 18:00 and 06:00, Monday to Saturday; and
 - (b) between 18:00 and 00:00 on a Sunday or public holiday other than a closed day.'

[24] Section 93(2)(c), 93(4), (5) and (6) of the Act differ from the corresponding provisions of the first version of the Bill in the following respect. The Bill in issue defined "closed day" in clause 1 as "Sunday, Good Friday, and Christmas Day", whereas the Act defines "closed day" as Good Friday and Christmas Day only. Clause 100(4) of the Bill provided that the holders of on-consumption liquor licenses contemplated in clause 100(1), which are essentially the same as the on-consumption liquor licences contemplated in section 93(1) of the Act, may sell liquor on the licensed premises between 10:00 and 24:00, Monday to Sunday. Furthermore, no Liquor may be consumed on the licenced premises for a period of more than 30 minutes after 24:00. Section 93(4) of the Act, the counterpart of clause 100(4), extends the selling time by two hours, from 24:00 to 02:00. In case of the holders of nightclub liquor licences, s 93(6) changes the hours entirely to between 18:00 and 06:00, Monday to Saturday and 18:00 to 00:00 on Sundays or public holidays other than a closed day.

[25] Clause 100(5) of the first version of the Bill provided that the holder of off-consumption licences contemplated in clause 100(2), which are essentially the same as the off-consumption licenses contemplated in s 93(2) of the Act may except on a

closed day sell liquor on the licensed premises between 08:00 and 20:00, Monday to Friday and between 08:00 and 17:00 on Saturday or public holiday other than a closed day. Section 93(5) of the Act, which is equivalent to clause 100(5) of the Bill, changes the opening time from 08:00 to 09:00 and permits sales on Sundays between 09:00 and 17:00, whereas s 93(2)(c) permits the holders of sorghum or traditional African beer licences for off consumption, to sell for a period of more than 30 Minutes after 02:00.

[26] The applicant assails the constitutionality of the enactment of s 93(2) and (4) to (6) of the Act on three bases. Firstly, it argued that the NCPL failed to facilitate public involvement in its legislative process and those of its committees, as required by s 118 of the Constitution. Secondly, the NCPL failed to comply with the obligation imposed on it by s 7(2) of the Constitution to respect, protect, promote and fulfil the rights enshrined in s 10, 12(1)(c), 27(1)(a) and 28(1)(d) of the Bill of Rights. Thirdly, the NCPL acted irrationally and contrary to the principle of legality in enacting the impugned provisions of the Act.

Public participation

[27] As already stated, the applicant assails the process leading to the enactment of the Act. It contended that, despite material changes to the first version of the Bill, neither the MEC nor the NCPL published for comment the 2024 amended Bill, which ultimately became the law; informed members of the public generally of the existence of the amended Bill or invited them to public hearings in respect of the 2024 amended Bill.

[28] In terms of s 118(1)(a) of the Constitution, a provincial legislature must facilitate public involvement in the legislative and other processes of the legislature and its committees. This is an imperative requirement of a law-making process. It is trite that legislation must conform to the Constitution in terms of both its content and the manner in which it was adopted. Failure to comply with the manner and form requirements in enacting legislation renders the legislation invalid. And courts have the power to

declare such legislation invalid.²⁰ The poignant remarks by Theron J in *Mogale and Others v Speaker, National Assembly and Others*²¹ are quite instructive:

[2] The Constitution's vision of democracy includes representative and participatory elements. In *August*²² this court said that the ability to participate in the electoral process through voting is "a badge of dignity and of personhood". Similarly, when people — particularly the disempowered — participate in the making of laws that affect them, as is their constitutional entitlement, this enhances their dignity. Before Parliament enacts legislation, it must take reasonable steps to facilitate public participation.

[3] The importance of public participation in South Africa cannot be understated. Affected persons must be afforded the opportunity to meaningfully participate in the legislative process. Public participation acts as a safeguard to prevent the interests of the marginalised being ignored or misrepresented. The significance of public participation for the advancement of South Africa's democratic project is underscored by the colonial and apartheid governments' complete disregard of the views of the people in legislating their lives.'

And at para 33

'Public participation is a crucial part of participatory democracy and the law-making process, as it affords the public a meaningful opportunity to participate in the legislative process and 'strengthens the legitimacy of legislation in the eyes of the people'. This court has set a standard for public participation facilitated by Parliament and the provincial legislatures. Parliament and the provincial legislatures have also set their own standards in the Public Participation Framework (Framework) and the Practical Guide for Members of Parliament and Provincial Legislatures (Practical Guide).'

[29] Ultimately, the test is whether the legislature has taken steps to afford the public a reasonable opportunity to participate effectively in the law-making process.²³ A reasonable opportunity to participate in legislative affairs must be an opportunity capable of influencing the decision to be taken.²⁴ The provincial legislatures have a broad discretion to determine how best to fulfil their constitutional obligation to facilitate public involvement in a given case, provided they act reasonably. This obligation might

²⁰ *Doctors for Life International v Speaker of the National Assembly and Others* [2006] ZACC 11 (CC); 2006 (6) SA 416 (CC); 2006 (12) BCLR 1399 (CC) para 208.

²¹ *Mogale and Others v Speaker, National Assembly and Others* [2023] ZACC 14 (CC); 2023 (6) SA 58 (CC).

²² *August and Another v Electoral Commission and Others* [1999] ZACC 3 (CC); 1999 (3) SA 1 (CC); 1999 (4) BCLR 363 (CC) para 17.

²³ *Doctors for Life International v Speaker of the National Assembly and Others*, above fn 20, para 129.

²⁴ *Mogale and Others v Speaker, National Assembly and Others*, above fn 21, para 35.

be fulfilled in different ways and is open to the legislature's innovation.²⁵ In the final analysis, the public must be afforded a meaningful opportunity to be heard. The question for a court is whether the legislature has acted reasonably in all the circumstances. In making this determination, the court will accord due deference to the legislature's assessment of the appropriate method of public participation. What constitutes a reasonable method and degree of participation will vary from case to case, depending on factors such as the nature and importance of the legislation and the extent of its impact on the public.²⁶ Relevant considerations in assessing reasonableness include any rules adopted by the legislature to facilitate public participation, the nature of the legislation, whether it was necessary to enact the legislation urgently, and the associated costs. Courts will generally defer to the legislature's choice of method. In doing so, however, they must balance respect for the legislature's institutional autonomy with the public's right to participate in public affairs.²⁷

[30] Rule 163(1) of the Standing Rules of Order adopted by the NCPL²⁸ provides that an MEC may, in his or her discretion, besides any other form of public involvement, publish a draft Bill in order to, at the early drafting stage, obtain comments from stakeholders and interest groups. In the present case, the MEC did not invoke his or her discretionary powers in terms of Rule 163(1), thus the first version of the Bill was not preceded by the publication of a draft Bill to solicit early comments from stakeholders and interest groups. However, in terms of rule 164(1), an MEC must publish a Bill intended for introduction in the House in at least two predominant languages of the province for purposes of public comment.

[31] Public participation constitutes a fundamental component of participatory democracy and the legislative process. It serves to enhance the legitimacy of legislation by ensuring that the voices and interests of the public are duly considered. In recognition of this imperative, Parliament and the provincial legislatures, collectively referred to as the South African Legislative Sector, adopted the Public Participation

²⁵ *Doctors for Life International v Speaker of the National Assembly and Others*, above fn 20, para 145.

²⁶ *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* [2008] ZACC 10 (CC); 2008 (5) SA 171 (CC); 2008 (10) BCLR 969 (CC) para 27.

²⁷ *Doctors for Life International v Speaker of the National Assembly and Others*, above fn 20, para 146.

²⁸ Rules of the Northern Cape Provincial Legislature, 2016.

Framework for the South African Legislative Sector (2013). The Framework sets out written guidelines that establish the minimum norms and standards for public participation within the Legislative Sector. The Framework requires both Parliament and provincial Legislatures to fashion their own Public Participation Models accordingly. It defines public participation as a two-way communication and collaborative problem-solving mechanism aimed at achieving representative and more acceptable decisions. It is essentially a process by which Parliament and provincial legislatures consult with the people and interested or affected individuals, organisations and government entities before making a decision.²⁹ The Framework defines “Public involvement” as a process wherein people in South Africa exercise their collective and individual initiatives to promote their interests in decision-making and oversight. Following the Constitutional Court’s decision in *Land Access Movement of South Africa and Others v Chairperson, National Council of Provinces and Others*³⁰, the Legislative Sector developed the Practical Guide for Members of Parliament and Provincial Legislatures (the Guide), which includes guidelines for determining whether the Legislature has facilitated sufficient public involvement.³¹ Clause 4.3 of the Guide provides for the General Procedure for Provincial Bills. Step 3 reads:

“Committee facilitates public involvement and considers the Bill.

1. The Bill is advertised and public input is invited
2. If a hearing is held the public is briefed on the Bill
3. Public input is recorded and analysed”

[32] The Minister of Trade and Industry published a comprehensive Final National Liquor Policy on 30 September 2016.³² Both the applicant’s papers and the Final National Liquor Policy detail the significant public health impacts as well as the extent to which socio-economic factors exacerbate alcohol attributable harm. It is therefore important that the citizens and those who are relatively disempowered be afforded a meaningful opportunity to be heard in the making of liquor laws that will govern them.

²⁹ See also Venter, F. (2023) ‘Consulting citizens: Addressing the deficits in participatory democracy’, *South African Journal on Human Rights*, Volume 39 – Issue (4), pp. 251–273. (Published online); see also Creighton, J.L. (2005) ‘The Public Participation Handbook: making better decisions through citizen involvement’. John Wiley & Son, Inc, San Francisco, page 7 – 8.

³⁰ *Land Access Movement of South Africa and Others v Chairperson, National Council of Provinces and Others* 2016 (5) SA 635 (CC) (2016 (10) BCLR 1277; [2016] ZACC 22).

³¹ See Clause 5 of the Guide.

³² GN 1208, GG 40321, 30 September 2016.

[33] Contrary to rule 164(1), the first version of the Bill was only published in English as opposed to the two predominant languages of the Province. No public hearings were conducted in respect of the first version of the Bill. By means of the Provincial Gazette,³³ the MEC called only for written comments within 30 days of the publication of the Bill. The Notice is to the effect that comments submitted after the closing date would not be considered.

[34] An email notice of a hybrid public hearing, in respect of the second version of the Bill, was sent merely six working days prior to the hearing. The notice in issue was not widely publicized in mainstream media, including local newspapers circulating in the province, on NCPL's social media platforms, through website posts, or on the radio. As already stated, only a select group of stakeholders was notified. No physical location was provided for the hybrid hearing. This means the hearing effectively excluded rural and indigent communities that lacked internet access or were unable to attend the meeting in person. The email notice did not include a copy of the second version of the Bill. Even more troubling is that the Explanatory Memorandum did not alert readers to all amendments made to the second version of the Bill, save for a perfunctory statement that the Bill aligns its operational times with the national Liquor Norms and Standards. The second version of the Bill contained material departures from the trading hours stipulated in the first Bill. That notwithstanding, the NCPL failed to ensure publication of the second version of the Bill for public comment, which introduced significant amendments to trading hours for the retail sale of liquor.

[35] In the deposition made on the respondents' behalf by the Speaker, the respondents attached a letter from the Provincial Legislature's Acting Executive Manager: Committees, Research and Information Services, Public Participation and Communication, dated 28 February 2025, to serve as evidence that invitations to the public participation process were sent to "key stakeholders". What they do not mention, however, is the following material deviation from the NCPL's public participation practice identified in this correspondence. The relevant part reads:

³³ GN 375, PG 2595, 15 May 2023.

- '4. The Northern Cape Legislature usually also raises awareness on the NCPL social media platforms about Bills to encourage stakeholder consultation. I have reviewed the NCPL Facebook and Instagram posts and, unfortunately, [I] have to state that I cannot find a record that it was publicised using these channels.
- 5. The Northern Cape Legislature usually also raises awareness via radio jingles, adverts, and/or interviews, informing communities on these Bills. To date, I have not received any information in this regard.'

[36] In the respondents' written heads of argument, counsel makes the following points for consideration:

'The process was not without difficulties. Reports reflect logistical and budgetary constraints, limited facilities in some districts, and uneven circulation of the Bill and its supporting materials. While summaries were distributed, there is some uncertainty as to whether the full Bill and translations were consistently made available.

Participation levels varied between districts. In certain areas attendance was low, and capacity for virtual hearings was restrained by lack of resources. Despite these challenges, efforts were made to notify stakeholders, share information, and allow input in the available formats.

The Respondents emphasise that these steps were taken in good faith and within the resource constraints faced by the NCPL. The standard remains one of reasonableness, not perfection, and the Respondents do not suggest that the procedural shortcomings identified necessarily rendered the process unconstitutional.

Post-hearing processes are also an important part of participation. The reports from RLOs varied in quality and detail and it is not clear to what extent submissions were recorded or synthesised in a way that would shape legislative deliberations.

In light of these factors, counsel for the Respondents cannot say with certainty whether the process fully met the constitutional standard.

Ultimately, the Respondents leave it to this Court to determine whether the NCPL's process amounted to sufficient facilitation of public participation under section 188. . . . '

[37] The respondents failed to show that there was an objective deadline that required the urgent passage of the Bill. It is not for the state to simply plead lack of

resources. It was necessary for the respondents to provide cogent justificatory evidence detailing the resource constraints they faced that may have impeded the conduct of public hearings at multiple locations or the publication of the Bill in more than one language. The second version, despite introducing significant and substantive changes, was never made publicly available. Instead, it was circulated exclusively among 'key stakeholders.' This approach is concerning, as it suggests a fundamental misinterpretation of the Legislature's obligations under section 118 of the Constitution. The Constitution does not require the Legislature to facilitate participation only from selected stakeholders. It imposes a duty to ensure meaningful public participation. By prioritising a handful of 'key stakeholders', who may have the capacity to challenge the process legally, over the broader public, particularly affected communities, the Legislature has effectively breached the spirit and purpose of this constitutional requirement. Such an approach risks excluding those whose voices matter the most: the poor, the marginalised, and the vulnerable. This runs counter to the well-established jurisprudence on public participation, which places the indigent and the vulnerable at the centre of the legislative process in order to give real substance to participatory democracy.

[38] The apparent preference for a limited consultative process over an open and inclusive one creates the impression of lawmaking that is not only exclusionary but also lacking in transparency. Ultimately, transparency, openness, and inclusivity are foundational constitutional values. Any legislative process that diminishes these principles not only weakens public trust but also falls short of the democratic ideals the Constitution seeks to uphold.

[39] In my view, given the number and nature of procedural flaws identified, the applicant and the wider public were denied the opportunity to make representations regarding their concerns about the Act. As a corollary to the foregoing, an order should therefore issue declaring that the Northern Cape Provincial Legislature failed to comply with its constitutional obligation to facilitate public involvement before passing the Northern Cape Gambling and Liquor Act 6 of 2024 as required by s 118(1)(a) of the Constitution. Consequently, this Act was adopted in a manner that was inconsistent with the Constitution and should therefore be declared invalid.

[40] The matter does not end here because not only is the process by which the provincial legislation was adopted in issue, but also the substance thereof. Where, as here, the constitutionality of a provision is challenged on a number of grounds and the Court upholds one such ground, it is desirable that it should also express its opinion on the other challenges to avoid remittal of the matter to the High Court to deal with the remaining issues with the resultant delays in the disposal of the case. This assumes particular significance in the event that the Constitutional Court declines to confirm the declaration of invalidity on the ground upheld by the High Court.³⁴ I now consider the two challenges raised on substantive grounds.

Challenge to the alleged violation of the Bill of Rights

[41] Affixed to the applicant's founding papers are the affidavits of two experts, Prof Charles Parry, a substance abuse epidemiologist and policy analyst, and Ms Samantha Filby, an economist. Prof Parry deals with the incidence of risky drinking in South Africa and its adverse health effects, including in children born to women who drink heavily during pregnancy. He found, *inter alia*, that the Northern Cape has the highest level of hazardous or harmful drinking among pregnant women (24.9%) and alarmingly high rates of foetal alcohol syndrome prevalence (ranging between 139 and 282 per 1000 persons at study sites in the Province).

[42] Ms Filby deals with the correlation between lengthening late-night alcohol retail trading hours and alcohol consumption, and the correlation between increased alcohol consumption and the incidence of the six alcohol-related conditions, ie, road injury, intentional injury, liver cirrhosis, HIV, TB, and breast cancer. According to Ms Filby, shortening the closing time for on-consumption liquor outlets to 24:00 or 01:00, rather than 02:00, will reduce alcohol consumption. She also opined that a reduction in alcohol consumption will reduce the six alcohol related conditions, hospital costs, and the costs of combating alcohol-related crime.

[43] The applicant argued that regard being had to the negative effects of harmful alcohol use on the achievement of fundamental rights in the province, the NCPL's

³⁴ *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae)* [2002] ZACC 22 (CC); 2002 (2) SACR 499 (CC); 2002 (6) SA 642 (CC); 2002 (11) BCLR 1117 (CC) para 21.

decision, to extend liquor trading hours at on-consumption retailers in 2024, amounted to failure to take reasonable legislative measures to respect, promote, and realise the rights set out in ss 10, 12(1)(c), 27(1)(a), and 28(1)(d) of the Constitution. The applicant further contended that the pro-industry hours were enacted without sufficient consideration of whether their impacts were reasonable, considering the significant socio-economic inequalities within the Province. Additionally, it argued that the NCPL failed to draw a distinction between trading hours in residential and business areas, despite the Norms and Standards requiring such a distinction.

[44] The respondents did not address the two experts' reports in their answering affidavit and submitted that they are irrelevant and/or do not bear upon the constitutional validity of the impugned provisions. It was argued on their behalf that, at its core, the applicant's case is a policy disagreement dressed in constitutional terms. In addition, so it was argued, the applicant has not established a causal link between the impugned provisions and the alleged harms. The generalised evidence about the dangers of alcohol consumption cannot ground a finding that the statutory extension of trading hours, itself, limits constitutional rights, the argument continued.

[45] In my view, the expert evidence presented is not irrelevant to the issues raised in the application. Needless to say, the respondents must be acutely aware of the harmful effects of alcohol abuse. They do not dispute this. The recommendations contained in the National Liquor Policy³⁵ took into account the respective mandates of the national, provincial, and local governments. Although this may make the judgment somewhat lengthy, I briefly restate some key aspects thereof as an important reminder. Under its Executive summary, the Policy acknowledges and recommends that: 'To reduce the harmful use of alcohol, it is also important to regulate the availability of liquor. One of the strategies to reduce the availability of liquor includes the need to regulate days and hours when liquor sales should be permitted. Liquor authorities and municipalities need to control access to liquor by restricting times for sales of liquor. This should be done by setting norms and standards around trading hours. The set uniform trading hours within the norms and standards should be integrated in national, provincial and municipal legislation'.³⁶

³⁵ Published under GN 1208 in GG 40321 of 30 September 2016.

³⁶ Clause 1.6.5 of the Policy.

[46] The Policy further sets out the following pertinent recommendations for the purposes of this judgment:

'In order to standardise licensing requirements, liquor premises should be located at least five hundred meters (500 m) away from schools, places for worship; recreation facilities, rehabilitation or treatment centres, residential areas and public institutions. Further, no liquor licences shall be issued to petrol service stations; premises attached to petrol service stations; premises near public transport; and areas not classified for entertainment or zoned by municipalities for purposes of trading in liquor. Premises already licensed within the 500 m radius and premises within high density locations will have to comply with the Norms and Standards issued from time to time providing for amongst others, the issue of trading hours, noise, nuisance and pollution. In this regard, licensing authorities with their discretion may impose tighter trading conditions that trading hours of the outlets should not coincide with lessons during school hours.'³⁷

...

Harmonisation of the provincial liquor legislations with the Act [Liquor Act 59 of 2003] and subsequent repeal of the Liquor Act, 1989 ("1989 Act") should be encouraged and monitored for timely implementation. The reviews and reforms of national and provincial policies, legislation and norms and standards should be processed after consultation at the National Liquor Policy Council (Council) for harmonisation to be effectively achieved in the manner envisaged in the Act. This will improve enforcement and monitoring of compliance. It will also strengthen national and provincial strategies to eradicate liquor abuse and reduce the harmful effects of liquor.'³⁸

[47] Under the rubric 'Socio-economic impact of liquor and other costs of alcohol abuse', the Policy states, *inter alia*:³⁹

'Alcohol abuse is on the increase, leading to increasing levels of conflict in the family, violence, crime and alcohol related diseases, sexual violence and high-risk sexual behaviours, as well as road accidents feature high on the impact list. Currently, alcohol is easily available in an estimated 230 000 liquor outlets in South Africa. According to a report by the Medical Research Council, South Africa consumes about 5 billion litres of alcoholic beverages per year. The recent study by Goldstein (2015) stated that South Africa has some of the worst drinking habits in the world. While only 60% of South Africans drink alcohol-higher than the worldwide average of 52%- the level of alcohol consumed amounts to each citizen drinking between 10 and 12.4

³⁷ Clause 1.6.8 of the Policy.

³⁸ Clause 1.6.16 of the Policy.

³⁹ Clause 3.4.1 of the Policy.

litres of pure alcohol per year. Worldwide consumption is, on average, 6.2 litres. Alcohol is estimated to cost South Africa R37.9 billion annually. This includes costs around health care, crime and social welfare, alcohol treatment and prevention and road traffic accidents.

Further, South Africa has one of the highest rates of foetal alcohol syndrome (FAS) in the world. FAS have also reached endemic proportions in some parts of the country. The Western Cape, Northern Cape and Gauteng are reported to have the highest FAS prevalence in the world. The WHO has revealed that FAS is a leading cause of mental retardation in a number of countries, including South Africa. The research by the Foundation for Alcohol Related Research (FARR) reported an increase in the prevalence of FAS in school-aged children in the Western Cape (Wellington). Between 1997 and 2001, the rate of FAS increased from 4.8 percent to 8.8, whilst worldwide, the FAS rate is estimated to be 0.97 births out of 1,000. Nationally, the FAS rate is estimated to be 14 out of 1,000 births. FARR estimates that there are 1 million FAS people in the population, plus another 5 million alcohol-damaged individuals. This means that there are 6 million people that are mentally or physically disabled by the effects of alcohol (Graham: 2012).

...

In view of the above, Government should use a comprehensive and coordinated approach in order to deal with the social harm resulting from alcohol abuse.'

[48] The Policy discusses in depth the socio-economic impact of liquor on the South African population⁴⁰ and the enormous costs of alcohol abuse to the public sector.⁴¹ One of its key recommendations for addressing these challenges is the regulation of liquor availability. In this regard, the Policy provides that:

'To reduce the harmful use of liquor, it is also important to regulate the availability of liquor. One of the strategies to reduce the availability of liquor includes the need to regulate days and hours when alcohol sales should be permitted. Liquor authorities and municipalities need to control access to alcohol by for example restricting times for sales of liquor and sales of liquor in zoned areas. *The set uniform trading hours within the norms and standards should be integrated in national, provincial and municipal legislation.*⁴² (My emphasis.)

[49] The Policy contemplates the standardisation of key regulatory aspects and improved regulatory collaboration. To this end, amongst others, it proposes that the

⁴⁰ See generally, Clause 4 of the Policy.

⁴¹ Clause 4.1.1.5 of the Policy.

⁴² Clause 4.1.1.24.3 [*sic*] of the Policy.

norms and standards should be integrated in both national and provincial legislation and regulations, as the case may be, to ensure coherence and harmony.⁴³

[50] The question whether ss 93(2)(c) and 93(4) to (6) of the Act violate the rights in s 10, 12(1)(c), 27(1)(a), and 28(1)(d) of the Constitution lies in the sensitive area of the separation of powers because the regulation of alcohol is an accepted function of the government. However, where a court scrutinises the provisions of a statute to determine their consistency with the Bill of Rights, it does so in the exercise of its constitutional mandate to uphold the principle of constitutional supremacy and to enforce checks and balances on the exercise of legislative/executive power. The focus, therefore, is on whether the impugned provisions offend against the Bill of Rights, rather than on whether the Legislature has discharged its procedural obligations. In *Doctors for Life*⁴⁴ it was said:

'In the case of a law that infringes a right in the Bill of Rights, the primary source of the dispute is the breach of a right. This dispute flows directly from the infringement of a right in the Bill of Rights. Although inevitably this means that Parliament has failed to comply with its constitutional obligation, this is not an obligation contemplated in s 167(4)(e). It concerns the validity of the impugned law and not the failure to fulfil an obligation. Sections 167(5) and 172(2)(a) of the Constitution contemplate that such disputes will be considered in the first instance by the High Courts, which are given the power to declare laws invalid, subject to confirmation by this Court. In doing so, the High Court would not be deciding whether Parliament has failed to fulfil an obligation, but only whether the statute is consistent with the Bill of Rights.'

[51] Section 10 of the Constitution, on which the applicant relies for its challenge to s 93, provides:

'Everyone has inherent dignity and the right to have their dignity respected and protected.'

Section 12(1)(c) of the Constitution provides that:

'Everyone has the right to freedom and security of the person, which includes the right- to be free from all forms of violence from either public or private sources.'

⁴³ Clause 4.3.9.3 of the Policy.

⁴⁴ *Doctors for Life International v Speaker of the National Assembly and Others*, above fn 20, para 18.

[52] The right to dignity is a cornerstone of the constitutional entrenchment of fundamental rights.⁴⁵ It performs dual functions as a guaranteed right and as a foundational value of our constitutional order: it reinforces rights claims, provides guidance on the scope and extent of other rights, and is used to determine whether such rights have been violated.⁴⁶ In *Law Society of South Africa and Others v Minister for Transport and Another*⁴⁷, the Constitutional Court observed thus:

‘Section 12(1) of the Constitution is directed at protecting the physical integrity of a person. In its terms, everyone has the right to “security of the person”. It is clear from s 12(1)(c) that the protection includes the right “to be free from all forms of violence from either public or private sources”. It seems correct, as some commentators suggest, that the right is engaged whenever there is an “immediate threat to life or physical security” deriving from any source’.

[53] The NCPL has a positive duty under s 10 and s 12 of the Constitution, to take reasonable and effective measures to protect the dignity, bodily and psychological integrity, and daily life of communities from alcohol-related harms. This includes enacting licensing frameworks that reduce alcohol-related violence in both public and private spheres.⁴⁸

[54] A reading of the National Liquor Norms and Standards, the National Liquor Policy and the overall scheme of the Act reflects measures undertaken by the national government and the NCPL in execution of their constitutional duty to protect the dignity, bodily and psychological integrity, and daily life of communities from alcohol-related harms. This regulatory framework imposes safeguards against alcohol abuse and ensures that liquor sales occur in a structured and enforceable framework that reduces illicit trade and aligns licensing practices with the broader public interest. Unquestionably, the legislation serves a legitimate governmental purpose.

[55] Section 27(1)(a) of the Constitution guarantees the right of everyone to have access to health care services, including reproductive health care. Section 27(2)

⁴⁵ H Cheadle, D Davis and N Haysom *South African Constitutional Law: The Bill of Rights*, (LexisNexis, Last updated: December 2025 – Service Issue 37 – Chapter 5: Dignity) at 5.2.1. See also *S v Makwanyane and Another* 1995 [1995] ZACC 3 (CC); 1995 (3) SA 391 (CC); 1995 (2) SACR 1 (CC); 1995 (6) BCLR 665 (CC) para 329.

⁴⁶ H Cheadle, D Davis and N Haysom *South African Constitutional Law: The Bill of Rights* (supra) at 5.2.2.

⁴⁷ [2010] ZACC 25 (CC); 2011 (2) BCLR 150 (CC); 2011 (1) SA 400 (CC) para 58.

⁴⁸ *Ibid* para 59; see also Section 7(2) of the Constitution.

obliges the state to take reasonable legislative and other measures, within its available resources, to progressively realise the right to health care services, among others. The applicant contended that s 27(1)(a) extends beyond providing health care services to include preventive measures, aligned with the Constitutional Court's framing of individual entitlements under this right, against broader societal entitlement to access to health care.

[56] In *Minister of Health and Others v Treatment Action Campaign and Others (No 2)*,⁴⁹ the Constitutional Court said that the State is expected to act reasonably to provide access to the socio-economic rights identified in ss 26 and 27 on a progressive basis.⁵⁰ The Courts' function, in respect of socio-economic rights, is to ensure that legislative and other measures taken by the State are reasonable. The Court recognised that the State could adopt a wide range of measures to meet its obligations.⁵¹ In the context of socio-economic rights, the Constitution contemplates rather a restrained and focused role for the Courts, namely, to require the State to take measures to meet its constitutional obligations and to subject the reasonableness of those measures to evaluation.⁵²

[57] The applicant's submission that, in the context of liquor regulation, the NCPL's duty to progressively realise access to health care services entails enacting a reasonable licensing framework to reduce the burden of alcohol-related harm on the public health care system's limited resources, thereby safeguarding the general population's right to health care, is manifestly good. I have already stated that the liquor trade is subject to extensive regulation under the national and provincial liquor laws. What can be gleaned from those measures is a reasonable, concerted national and provincial effort to balance economic activity with public health.

[58] Section 28(1)(d) of the Constitution, on which the applicant also relies for its challenge to s 93 of the Act, provides that:

'Every child has the right-

to be protected from maltreatment, neglect, abuse or degradation.'

⁴⁹ [2002] ZACC 15 (CC); 2002 (10) BCLR 1033 (CC); 2002 (5) SA 721 (CC).

⁵⁰ Ibid para 35.

⁵¹ Ibid para 36.

⁵² Ibid para 38.

[59] The applicant's contention is that, given the particularly damaging effects of alcohol abuse on children, the NCPL must implement comprehensive and effective measures to minimise children's exposure to both physical and mental alcohol-related harm as a legislative priority. The "best-interests" or "paramountcy" principle entrenched in s 28(2) of the Constitution calls for appropriate weight to be given to the interests of children who will suffer severe harm as a result of the extended trading hours.

[60] It is so that the state must provide the legal and administrative infrastructure necessary to ensure that children are accorded the protection contemplated by s 28. This obligation would normally be fulfilled by passing laws and creating enforcement mechanisms for the maintenance of children, their protection from maltreatment, abuse, neglect, or degradation, and the prevention of other forms of abuse of children mentioned in s 28.⁵³

[61] There are myriad statutes in South Africa that protect children's rights and interests.⁵⁴ Chief among these is the Children's Act 38 of 2005, which gives effect to the children's constitutional rights as set out in s 28. Section 8 of the Children's Act provides that the rights which a child has in terms of that Act supplement the rights which a child has in terms of the Bill of Rights. Additionally, all organs of state in any sphere of government and all officials, employees, and representatives of an organ of state must respect, protect, and promote the rights of children contained in that Act.⁵⁵

[62] The Children's Act recognises that competing social and economic needs exist and that organs of state in all spheres of government must, in the implementation of that Act, take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of that Act.⁵⁶ One of the important objects of the Children's Act is to give effect to the following constitutional rights of children, inter

⁵³ *Government of the Republic of South Africa and Others v Grootboom and Others* [2000] ZACC 19 (CC); 2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC) para 78.

⁵⁴ Some of these important pieces of legislation are: the Child Justice Act 75 of 2008, the Domestic Violence Act 116 of 1998, the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, and the Basic Conditions of Employment Act 75 of 1997.

⁵⁵ See Section 8(1) and (2) of the Children's Act 38 of 2005.

⁵⁶ See Section 4 of the Children's Act.

alia, protection from maltreatment, neglect, abuse or degradation; and paramountcy of the best interests of children in every matter concerning them.⁵⁷

[63] It was not argued that legislative measures protecting the interests of children were inadequate or that the impugned Act renders ineffectual the existing safeguards against alcohol related harms. On the contrary, the Act prohibits the sale of alcohol to minors and imposes strict licensing requirements on liquor outlets.⁵⁸

[64] To conclude on this subject, it bears emphasis that in *S v Lawrence; S v Negal; S v Solberg (Lawrence)*⁵⁹, the Constitutional Court had occasion to consider the constitutionality of certain provisions of the now-repealed Liquor Act 27 of 1989, which imposed controls through licences, in the same way as the present Act does. The Court remarked that liquor is a potentially harmful substance. Further that, it is part of the normal environment in which the liquor trade is conducted in South Africa and other countries, for the sale of liquor to be regulated by licences.⁶⁰ The Court found that licences issued controlled who may sell liquor, what liquor may be sold, and when and where sales may take place. Restrictions on sale hours applied to all licences, though different selling times were set for different licence types. The distinctions drawn between the different types of licences were rationally related to the differences in the nature of the businesses.⁶¹ The Court found that there was a rational basis for measures restricting the hours of sale as part of a legislative scheme designed to curtail the consumption of liquor.⁶²

[65] In my view, what was said in *Lawrence* finds application here. The present impugned legislation is premised on a recognition of the inherent dangers of alcohol abuse and the government's responsibility to regulate the sale, distribution, and consumption of liquor in a manner that balances economic activity with public welfare. This much is apparent from the preamble to the Act, which recognises a need within the province to rationalise public entities and acknowledges that socio-economic

⁵⁷ Section 2(b)(iii)-(iv) of the Children's Act.

⁵⁸ See among others, section 95, 97(a), 120(e), 120(p), 126(2)(c) of the Act.

⁵⁹ [1997] ZACC 11 (CC); 1997 (2) SACR 540 (CC); 1997 (10) BCLR 1348 (CC); 1997 (4) SA 1176 (CC).

⁶⁰ Ibid para 36.

⁶¹ Ibid para 66.

⁶² Ibid para 70.

problems in the community often emanate from alcohol abuse and excessive gambling.

[66] The licensing provisions in issue regulate commercial activity and set parameters for lawful trade. They do not directly impair human dignity, security of the person, the right to an environment that is not harmful to health or wellbeing, the right to have access to health care services, including reproductive health care, or children's rights. It is not for litigants or the Court to prescribe alternative policy choices where the NCPL has acted within its constitutional competence. The means to be adopted to control the liquor trade is a matter for the government and not the courts to decide.⁶³ The argument that s 93 of the Act violates the specified rights in the Bill of Rights cannot be sustained. The question that remains is whether the impugned provisions are arbitrary or irrational, and thus offend the principle of legality. It is to that question that I now turn.

Rationality/legality challenge

[67] It is trite that the exercise of all public power must comply with the Constitution, and the doctrine of legality, which is part of the rule of law.⁶⁴ The law or conduct that is not rational offends the principle of legality and would not withstand constitutional scrutiny. Where the decision is challenged on the grounds of rationality, courts are obliged to examine the means selected to determine whether they are rationally related to the objective sought to be achieved. This means that there must be a logical connection between the purpose of the legislation and the means used to achieve that purpose. It bears emphasis that the purpose of the enquiry is to determine not whether there are other means that could have been used, but whether the means selected are rationally related to the objective sought to be achieved.⁶⁵

⁶³ *Ibid* para 69.

⁶⁴ *Albutt v Centre for the Study of Violence and Reconciliation and Others* [2010] ZACC 4 (CC), 2010 (3) SA 293 (CC), 2010 (2) SACR 101 (CC); 2010 (5) BCLR 391 (CC) para 49.

⁶⁵ *Ibid* para 51; see also *Pharmaceutical Manufacturers Association of SA and Another: In Re Ex Parte President of the Republic of South Africa and Others* [2000] ZACC 1 (CC); 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) para 85 – 90.

[68] In *Affordable Medicines Trust and Others v Minister of Health and Others (Affordable Medicines)*⁶⁶ the Constitutional Court trenchantly stated:

'The exercise of all legislative power is subject to at least two constitutional constraints. The first is that there must be a rational connection between the legislation and the achievement of a legitimate government purpose. As this Court has observed, the idea of the constitutional State presupposes a system whose operation can be rationally tested. Thus, when Parliament enacts legislation that differentiates between groups and individuals, it is required to act in a rational manner. In *New National Party of South Africa v Government of the Republic of South Africa and Others*⁶⁷, the Court held that the rational connection test is the standard for reviewing legislation holding that:

"The first of the constitutional constraints placed upon Parliament is that there must be a rational relationship between the scheme which it adopts and the achievement of a legitimate governmental purpose. Parliament cannot act capriciously or arbitrarily. The absence of such a rational connection will result in the measure being unconstitutional".

...

The other constitutional constraint is the Bill of Rights. Legislation must not infringe any of the fundamental rights enshrined in the Bill of Rights. The rights in the Bill of Rights may, however, be limited by a law of general application. But such a limitation is limited by the limitations contained in s 36(1) of the Constitution or "elsewhere in the Bill of Rights". A limitation that does not comply with such limitations, infringes the right in question.'

[69] It was argued for the applicant that the impugned provisions of the Act are arbitrary and irrational, insofar as there is a disconnect between the means employed by the NCPL and the intended purpose of the legislative power, namely, to reduce the socio-economic and other costs of alcohol abuse. This disconnect, so it was argued, arises from the NCPL's failure to appreciate that it was not bound by the Norms and Standards. It was argued that the NCPL retained a discretion to determine trading times which deviated from the Norms and Standards whenever the nature and extent of the socio-economic and other alcohol-related harm in the local and provincial context merited the deviation.

[70] From the background sketched, both in relation to the Explanatory Memorandum and the subsequent presentation at the hybrid meeting in respect of the

⁶⁶ [2005] ZACC 3 (CC); 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) paras 74 – 76.

⁶⁷ [1999] ZACC 5(CC); 1999 (3) SA 191 (CC); 1999 (5) BCLR 489 (CC) para 19.

second version of the Bill which became law, it is apparent that the justification for the extension of the trading hours in s 93 was on the basis that this incorporated the National Norms and Standards with regard to uniform times for liquor sale and/or to align the operational times with the Norms and Standards. This rationale is buttressed in the Department of Economic Development and Tourism Status Report on the Bill submitted to the NCPL after comments had been received from stakeholders in respect of the first version of the Bill. The report refers the NCPL to the amendments in the second version of the Bill and justifies the changes in respect of clause 100 (now section 93 of the Act) on the basis that the NCPL is: "bound by the norms and standards on the operating times". It is further recorded in the said status report that: 'In terms of the Liquor Act, the norms and standards were incorporated regarding the operating times and definitions, as well as processes to be followed.'

[71] The applicant argued that by considering itself 'bound' by the Norms and Standards, the NCPL unduly abdicated its exclusive constitutional competence in respect of a Schedule 5⁶⁸ subject matter by failing to determine the effectiveness and reasonableness of its "uniform trading hours" with due regard to local communities in the province. It was contended that the extension of trading times lacked any objectively justifiable rationale, as evidenced by an inherent contradiction in the reasoning of the NCPL. To the applicant, this contradiction is manifest, in that on the one hand, the NCPL justified the changes on the basis that it was bound by the Norms and Standards, while on the other hand, it enacted trading times for certain licensed premises which exceeded or fell below those stipulated in the Norms and Standards.

[72] The respondents countered that the impugned provisions remain rational, lawful, and constitutionally compliant. According to them, ss 93(2)(c) and 93(4) to (6) refine trading hour rules in order to, firstly, regulate Sunday liquor sales in a structured and lawful manner, thereby reducing reliance on unlicensed outlets. Secondly, to ensure that nightclubs operate exclusively at night, thereby curbing the abuse of nightclub licences to run all-day drinking establishments. Thirdly, to differentiate taverns from nightclubs and ensure that each operates within its proper licensing framework. They further argued that insofar as s 93 extends the trading hours provided

⁶⁸ Schedule 5 of the Constitution sets out the "Functional Areas of Exclusive Provincial Legislative Competence".

in the Norms and Standards, this was permissible because the Norms and Standards establish minimum rather than absolute limits.

[73] The applicants contended that the belated justification, that the extension was permissible because the Norms and Standards merely provided minimum rather than absolute limits, is inconsistent with the initial justification as contained in the Explanatory Memorandum and the oral presentation regarding the alignment of the provincial legislation with the Norms and Standards. The applicant further argued that this runs counter to the principle that reasons formulated after a decision has been made cannot be relied on to render the decision rational, reasonable, or lawful.⁶⁹

[74] Section 93(2)(c) of the Act provides that:

'The holder of a sorghum or traditional African beer licence for off-consumption may, subject to subsection (5), sell only sorghum or traditional African beer procured from a holder of a licence, on the licensed premises for a period of more than 30 minutes after 02:00 issued under any law, to produce such beer on the licensed premises.'

[75] In terms of section 93(5) of the Act, the holder of a sorghum or traditional African beer licence for off-consumption may, except on a closed day (Good Friday or Christmas Day), sell liquor on licenced premises: between 09:00 and 20:00, Monday to Friday; and between 09:00 and 17:00 on a Saturday, Sunday or public holiday other than a closed day. Section 93(2)(c) defies logic to the extent that it provides that the holder of a sorghum or traditional African beer licence for *off-consumption* may, subject to s 93(5), sell only sorghum or traditional African beer procured from a holder of a licence, *on the licensed premises for a period of more than 30 minutes after 02:00 issued under any law, to produce such beer on the licensed premises*. In the final analysis, it bears emphasis that the test is whether the impugned provision conveys a reasonably certain meaning to those who are affected by it. In *Affordable Medicines*⁷⁰ the Constitutional Court held:

'... The doctrine of vagueness is founded on the rule of law, which, as pointed out earlier, is a foundational value of our constitutional democracy. It requires that laws must be written in a clear and accessible manner. What is required is reasonable certainty and not perfect lucidity.

⁶⁹ *National Energy Regulator of South Africa and Another v PG Group (Pty) Ltd and Others* [2019] ZACC 28 (CC); 2020 (1) SA 450 (CC); 2019 (10) BCLR 1185 (CC) para 39.

⁷⁰ *Supra* fn 67, para 108.

The doctrine of vagueness does not require absolute certainty of laws. The law must indicate with reasonable certainty to those who are bound by it what is required of them so that they may regulate their conduct accordingly. The doctrine of vagueness must recognise the role of government to further legitimate social and economic objectives and should not be used unduly to impede or prevent the furtherance of such objectives.'

[76] A plain reading of s 93(2)(c) means that the holders of the sorghum or traditional African beer licenses for off-consumption have no time limit within which to trade, which contradicts s 93(5) of the Act. That could never have been the intention of the Legislature, seen in the context of the objects of the Act, in particular, the aim of reducing the socio-economic and other costs of alcohol abuse. The statutory provision is therefore irreconcilable with the Legislature's stated reasons. Properly construed, it cannot be said that s 93(2)(c) indicates with reasonable certainty to those who are bound by it what is required of them. The deficiency identified point strongly to legislation that was drafted and enacted in haste. In its current form, s 93(2)(c) does not pass constitutional muster.

[77] The applicant argued that s 93(4) of the Act, which permits the holders of on-consumption liquor licences to sell liquor on the licensed premises between 10:00 and 02:00, Monday to Sunday, is inconsistent with the Norms and Standards for such sales because the latter provides for the trading hours between 10:00 and 00:00 on the premises zoned for business which equates to a difference of 2 hours and on premises zoned for residential purposes between 10:00 and 21:00 from Monday to Saturday whereas on Sundays the trading hours are between 10:00 and 17:00 which is a difference of five and nine hours respectively. The discrepancy between s 93(4) and the Norms and Standards, it was contended, is also apparent with regard to the holders of occasional liquor licenses or so-called special events. In this regard the Act provides for the trading hours between 10:00 and 02:00 whereas in the Norms and Standards the hours are between 10:00 and 00:00 on the day of the event in respect of premises zoned for business, presenting a difference of two hours and between 10:00 and 22:00 on the day of the event in a residential area which results in a difference of four hours.

[78] The NCPL may not enact laws that contravene national legislation or other binding legal frameworks. Section 93(4) of the Act does not draw a distinction between on-consumption sales on premises zoned for business and those for residential purposes, as the National Norms and Standards do. The applicant's argument, to the effect that where the National Norms and Standards set minimum standards of trading hours, this entails minimum restrictions on trading hours and consequently provincial legislatures may impose greater restrictions on trading hours, in other words, shorter trading hours, where they consider that the circumstances in the province require that, is compellingly convincing.

[79] To construe the "set minimum standards of trading hours" as contained in clause 4.14.2 of the Norms and Standard as literally meaning that the Legislature could provide longer trading hours than the minimum prescribed in the Norms and Standards would be subversive of the stated purpose of the Norms and Standards which seek to ensure, inter alia: that liquor regulation and practices in the Republic are harmonised; consistency in the application of liquor laws; reduction of the socio-economic and other costs of alcohol abuse by reducing access to and availability of liquor; and that distributors and retailers in all provinces operate within clear and coherent parameters. Viewed objectively, the NCPL provided no rational basis for its departure from the National Norms and Standards. An action that fails to pass the rationality threshold is inconsistent with the Constitution and therefore unlawful.

[80] As already stated, s 93(5) of the Act prescribes trading hours for the holders of a liquor store licence, a grocer's wine licence for off-consumption, and a sorghum or traditional African beer licence for off-consumption. They may, except on a closed day, sell liquor: between 09:00 and 20:00, Monday to Friday; and between 09:00 and 17:00 on a Saturday, Sunday or public holiday other than a closed day. The applicant's objection appears to be that this differed from the first version of the Bill in that Sunday is no longer a "closed day" and the opening time for trade has shifted from 08:00 to 09:00. I hasten to emphasise that the regulation of Sunday liquor sales is a matter that falls squarely within the NCPL's legislative remit. It can hardly be argued that the slight shift in the opening trading time renders the statutory provision objectively irrational. The hours of trade for off-consumption liquor outlets align with the National Norms and Standards and are not irreconcilable with the reasons stated by the NCPL.

[81] The basis upon which the applicant assails s 93(6) is unclear. Insofar as s 93(6) provides that the holders of night club liquor licenses may trade between 18:00 and 06:00 on Monday to Saturday and between 18:00 and 00:00 on Sundays, it is aligned to the National Norms and Standards save that the Norms and Standards are silent on such trading hours on public holidays. It is so that the Sunday trading hours for nightclubs located in business areas are 6 hours shorter than the limits set out in the Norms and Standards, i.e., 18:00 to 00:00, rather than 18:00 to 06:00. However, I failed to see how this restriction could be said to be irrational. This restriction is in consonance with the applicant's own submission that NCPL retained a discretion to determine trading times which deviated from the Norms and Standards whenever the nature and extent of the socio-economic and other alcohol-related harm in the local and provincial context merited the deviation by implementing shorter trading hours than the minimum set in the Norms and Standards. The trading hours in s 93(6) are directly responsive to the various socio-economic concerns already alluded to.

Conclusion

[82] Section 172(1)(a) of the Constitution obliges this Court to declare invalid the NCPL's failure to give effect to s 118(1)(a) of the Constitution when enacting the Northern Cape Gambling and Liquor Act 6 of 2024 and to act rationally in so far as ss 93(2)(c) and 93(4) of the Act are concerned.

[83] The respondents argued at length in their written heads that this Court should order a suspension of the declaration of the Act's constitutional invalidity. The power to suspend a declaration of invalidity of a provincial Act or a provision thereof is reserved for the Constitutional Court in confirmation proceedings. This is so because section 172(2)(a) of the Constitution provides that 'the Supreme Court of Appeal, the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.' It follows that any declaration of constitutional invalidity made by a court other than the Constitutional Court does not take effect unless and until it has been confirmed by that Court. In these circumstances, a suspension order

would serve no purpose. For that reason, such an order is not only unnecessary but also incompetent.⁷¹

Costs

[84] Given the importance and relative complexity of the matter, the employment of two counsel was reasonable. The applicant achieved substantial success. There is no reason to deprive it of its costs. In the result, the following order is made:

Order:

1. It is declared that the Northern Cape Provincial Legislature (NCPL) failed to comply with its constitutional obligation to facilitate public involvement before passing the Northern Cape Gambling and Liquor Act 6 of 2024 as required by s 118(1)(a) of the Constitution of the Republic of South Africa, 1996.
2. The Northern Cape Gambling and Liquor Act 6 of 2024 is accordingly declared invalid and unconstitutional.
3. It is declared that in respect of sections 93(2)(c) and 93(4) of the Northern Cape Gambling and Liquor Act 6 of 2024, the NCPL failed to comply with its constitutional obligation to observe the principles of legality and rationality.
4. Sections 93(2)(c) and 93(4) of the Northern Cape Gambling and Liquor Act 6 of 2024 are declared invalid and unconstitutional.
5. The Registrar of this Court is directed to forward a copy of this judgment and order to the Registrar of the Constitutional Court, within 15 (fifteen) days of this order, in terms of rule 16(1) of the Constitutional Court Rules, for the consideration of the declaration of constitutional invalidity made by this Court.

⁷¹ *Minister of Justice and Constitutional Development and Others v Prince and Others* [2018] ZACC 30 (CC); 2018 (10) BCLR 1220 (CC); 2018 (6) SA 393 (CC); 2019 (1) SACR 14 (CC) para 2; see also *Minister of Health and Another v New Clicks SA (Pty) Ltd and Others* [2005] ZACC 14 (CC); [2006] JOL 17488 (CC) para 20 – 21.

6. The first to fourth respondents are to pay the costs of the application jointly and severally, the one paying the other to be absolved; such costs are to include senior and junior counsel fees on scale C and B, respectively, as set out in rule 67A read with rule 69 of the Uniform Rules of this Court.




M/V PHATSHOANE
DEPUTY JUDGE PRESIDENT
NORTHERN CAPE DIVISION

Appearances

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For the Respondents:

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