

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

Case no.: 3222/24

In the matter between:

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

Applicant

and

**SPEAKER, NORTHERN CAPE
PROVINCIAL LEGISLATURE**

First Respondent

**NORTHERN CAPE GAMBLING
AND LIQUOR BOARD**

Second Respondent

**THE PREMIER OF THE
NORTHERN CAPE PROVINCE**

Third Respondent

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

Fourth Respondent

and Eighteen Others

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I. INTRODUCTION

1. This matter concerns the constitutional validity of section 93(2)(c) and sections 93(4) – (6) of the Northern Cape Gambling and Liquor Act, 6 of 2024¹ (“*the NCGLA, 2024*”). The Applicant’s constitutional challenge is based on three grounds, namely that when enacting these provisions, the Northern Cape Provincial Legislature (“*NCPL*”) failed to comply with its constitutional obligation to: (i) respect, promote, and fulfil the rights enshrined sections 10,² 12(1)(c),³ 27(1)(a)⁴ and 28(1)(d)⁵ of the Constitution; (ii) observe the principles of legality and/or rationality in the Constitution; and (iii) facilitate public involvement in the legislative process in terms of section 118 of the Constitution.

2. Harmful use of alcohol is a threat to health and wellbeing, with vulnerable populations experiencing greater relative health and social harms. Communities in the Northern Cape, particularly women and children, pay a high social cost as a result of the harmful use of alcohol. Greater alcohol availability in the form of longer or extended trading hours, particularly late-night trading, increases alcohol harm burdens carried by individuals, communities, health services and the police services. Regulatory mechanisms to limit trading hours is a “best-buy” policy measure, as it yields significant health benefits without requiring excessive resources. None of these facts are in dispute.

3. The NCPL’s liquor regulatory action over the last two decades have been marked by pro-health trading hours being swiftly replaced by pro-industry

¹ PGE no. 2673 of 4 April 2024.

² The right of everyone to dignity.

³ The right of everyone to freedom and security of the person.

⁴ The right of everyone to have access to health care services.

⁵ The right of every child to be protected from maltreatment, neglect, abuse or degradation.

trading hours with little to no meaningful public participation. The impugned provisions represent the most recent manifestation of this pattern, with the NCPL enacting pro-industry trading hours which deviated materially from those published in the first version of the Bill.

4. With effect from 25 September 2009, the Northern Cape Liquor Act, 2 of 2008 (*"the NCLA, 2008"*) governed liquor regulation in the province,⁶ which permitted on-consumption licenced premises to sell liquor from 10h00 to 24h00 (Mon-Sun), while liquor sales at off-consumption licenced premises were limited to 08h00 until 20h00 (Mon-Fr) and from 08h00 to 17h00 (Sat. and public holidays).⁷
5. A mere six months later, the then MEC responsible for liquor matters, John Block, introduced an Amendment Bill on an expedited basis to extend these trading hours.⁸ The amendments came into force on 21 September 2010,⁹ extending the closing time for on-consumption licenced premises by 2 hours to 02h00 (Mon-Sun), and extending the closing time for off-consumption licenced premises by 3 hours to 20h00 (Saturdays and public holidays).¹⁰
6. In February 2015, the Minister of Trade and Industry made National Liquor Norms and Standards,¹¹ after adoption by the National Liquor Policy Council,¹²

⁶ No 4 in PGE 1290 of 18 March 2009 (repealing and replacing the Liquor Act, no 27 of 1989); see Record: p 87, FA, "**SN3**".

⁷ Record: p 36, FA, para 62 (comparative overview).

⁸ Northern Cape Liquor Amendment Bill, 2010 (PN 49 in PGE 1417 of 10 May 2010), calling for written comments by 28 May 2010; Record: p 103, FA, "**SN4**" (newspaper article: "MEC to ask for extra two hours").

⁹ Northern Cape Liquor Amendment Act, 2 of 2010 (*"the NCL Amendment Act, 2010"*) (PN 9 in PGE no. 1466 of 21 September 2010).

¹⁰ Record: p 36, FA, para 62 (comparative overview table).

¹¹ In terms of sections 2 and 39 of the Liquor Act, 2003; No. R. 85 in GG38459 of 13 February 2015.

¹² Whose voting members include provincial representatives.

for implementation throughout the country.¹³ The Norms and Standards were the product of extensive consultation, including public workshops at provincial level,¹⁴ and sought *inter alia* to reduce the socio-economic and other cost of alcohol abuse by reducing access to and the availability of liquor.¹⁵ This included setting uniform trading hours.¹⁶ In contrast to the NCLA, 2008, the uniform trading hours provided for earlier closing times in respect of licenced premises located in residential areas and - bar on-consumption nightclubs - provided for closing times that were at least 2 hours *earlier* than those provided for under the NCLA, 2008.¹⁷

7. In 2023, the NCPL set about merging the legislative frameworks governing the liquor and gambling sectors, with the publication of the Northern Cape Gambling and Liquor Bill, 2023 for written comment.¹⁸ In its written comment, the Applicant commended the reduction of trading hours, which generally reverted to the earlier closing times provided for under the NCLA, 2008 (prior to the 2010 amendment), but called upon the NCPL to amend the trading hours to differentiate between licenced premises in business and residential areas.¹⁹
8. Nine months after the publication of the first version of the Bill, the NCPL hastily convened a single hybrid public meeting on 6 working days' notice for invited stakeholders to "solicit input" on a second version of the Bill.²⁰ At the time, the NCPL said that amendments to the impugned provisions were necessary

¹³ Record: 24, FA, para 31. See Record: p66, FA, "**SN1**", para 6.

¹⁴ Record: 56, FA, "**SN1**" (Norms & Standards), para 1.1 – 1.2

¹⁵ Record: p 57, FA, "**SN1**" (Norms & Standards), para 3.1.4.

¹⁶ Record: p 64, FA, "**SN1**" (Norms & Standards), para 4.14.

¹⁷ As amended.

¹⁸ Record: p 28, FA, para 45; see also R: 105, FA, "**SN5**" (GN 375 in PG 2595 of 15 May 2023).

¹⁹ Record: p 30, FA, para 50.2; Record: p 143, FA, "**SN7**".

²⁰ Northern Cape Gambling and Liquor Bill [B3-2-24]. Record: p 34, FA, para 54 (2nd version of Bill was not published in the Provincial Gazette for public comment).

because the NCPL was “bound” by the Norms and Standards, and that “operational times” in the impugned provisions must “align” with the proposed “operational times” with the Norms and Standards.²¹ The second version of the Bill contained material changes to the liquor trading hours. Trade on Sundays and public holidays: off-consumption licenced premises from 09h00-17h00 (vs. previous sales bar); Closing time extensions for on-consumption premises: (i) in respect of nightclubs, by 6 hours (Mon-Sat) (06h00 vs. 24h00); and (ii) in respect of all other on-consumption licenced premises, by 2 hours (Mon-Sun) (02h00 vs 24h00); and Special events: closing time extended by 2 hours (02h00 vs. 24h00).

9. Notwithstanding the stated purpose of these material changes, only the extended Sunday trading hours of off-consumption licensed premises and the closing time of nightclubs (on-consumption) tracked the Norms and Standards. Within less than a month of the hybrid meeting, the NCPL adopted the second version of the Bill, with the NCGPLA, 2024 coming into operation on 1 April 2024.²²
10. The Applicant details the incontrovertible link between alcohol consumption and significant health, social and economic impacts. This is not disputed. The Applicant presents stark evidence of high rates of alcohol abuse in the Northern Cape Province and the devastating impacts, particularly on children, with the province suffering the highest rates of foetal alcohol syndrome disorder in the country. This is not disputed. The Applicant highlights that socio-economic

²¹ Record: p 33, FA, para 52.7; Record: p 35, FA, para 59; see also Record: pp 156- 157, FA, “**SN8.2**” (explanatory memorandum).

²² Record: p: 36, FA, para 60; Record: p: p 178, FA, “**SN10**” (NCGLA, 2024).

inequality exacerbates alcohol-attributable harm. This is not disputed. The Applicant sets out the evidence-based link between availability of alcohol and alcohol consumption. This is not disputed. The Applicant explains the rationale for trading hour limitations with reference to the well-documented causal link between *extended* trading hours and *increased* harm from added availability, as well as *shorter* hours and *reduced* harm. This is also not disputed.

11. Crucially, the Applicant placed expert evidence before the Court, which quantifies the last-mentioned causal link between extended trading hours and increased levels of harm. In a single paragraph, the Respondent baldly claims that it is not necessary to deal with any of the expert evidence put up by the Applicant, because it is “not relevant” to the constitutional challenge.²³ This claim is singularly without merit. The conservative estimates of averted alcohol-related deaths and health conditions, as well as concomitant savings in public health costs and policing costs are highly relevant considerations in the reasonableness enquiry.
12. Accordingly, no real, genuine and *bona fide* dispute of fact exists in respect of the Applicant’s evidence regarding the qualitative impact of reduced trading hours for midnight, 1am and 2am closing times.²⁴
13. There is no evidence to suggest that the NCPL gathered data to assess the qualitative and quantitative health, social and economic impacts of the extended trading hours. Pro-industry hours were enacted without ensuring that the impacts were reasonable, especially in light of the significant socio-

²³ Record: p 1083, AA, para 80.

²⁴ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 at para 13.

economic inequalities in the province. In so doing, the NCPL failed in its duty to take reasonable legislative measures to protect, promote and fulfil sections 10, 12(1)(c), 27(1)(a) and 28(1)(d) of the Constitution.

14. Moreover, no rational connection can be discerned between the impugned trading hours enacted by the NCPL and the intended purpose of the legislative power, namely to reduce the socio-economic and other costs of alcohol abuse. Central to this disconnect is the NCPL's failure to appreciate that it was not "bound" by the Norms and Standards, but retained a discretion to determine trading times which deviated from the Norms and Standards if justified by local evidence of increased alcohol-related harm due to longer trading hours, including additional late-night availability of alcohol.
15. This irrationality is further underscored by the clear contradiction between the NCPL's explanation that it was "bound" by the Norms and Standards and its enactment of trading hours for certain licence categories which either exceeded or fell below the "uniform trading hours" under the Norms and Standards.
16. To compound matters, the NCPL violated its obligation under section 118 of the Constitution by - (i) failing to ensure compliance with mandatory publication requirements under Rule 164(1) of its Standing Rules when the first version of the Bill was published in 2023, with publication only in English (hereafter referred to as the "first version" of the Bill); (ii) failing to convene any, alternatively adequate, public hearings in respect of the first version of the Bill; (iii) thereafter failing to ensure publication for comment of the second version of the Bill, which provided for material amendments by extending the proposed trading hours for the retail sale of liquor and motivating these amendments on

the basis that it was “bound” by the Norms and Standards; and (iv) failing to hold adequate public participation meetings on the second version of the Bill ultimately passed by the NCPL in April 2024.

II. **STANDING**

17. There is no merit in the Respondents’ technical defence that the Applicant has not demonstrated standing under section 38(d) of the Constitution.²⁵
18. The Applicant’s constitutional challenge seeks to prevent serious health, social and economic harm as a result of the NCPL’s 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 alcohol use.²⁶ The Applicant claims this relief in the public interest. Moreover, the Applicant seeks 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.

III. **LIMITATION OF CONSTITUTIONAL RIGHTS**

19. Before considering whether the impugned provisions limit the fundamental rights under ss. 10, 12(1)(c), 27(1)(a) and 28(1)(d) of the Constitution, it bears emphasis that the common cause facts establish an obligation on the NPCL to take reasonable and effective steps through *inter alia* licensing restrictions on

²⁵ Record: p 1081, AA, para 70 – 73.

²⁶ *National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs & Others* 2000 (2) SA 1 (CC), 2000 (1) BCLR 39 (CC) at para 9 (generous approach to standing under s. 38(d)).

trading hours to reduce alcohol-related harm. Moreover, the reasonableness enquiry proceeds on the basis that the Applicant's case regarding the nature, scope and extent of the alcohol-related harms, as well as the qualitative impact of extended trading hours, is not in dispute. We demonstrate below that the impugned trading hours do not constitute reasonable and effective measures to safeguard individuals and the community from these harms.

Ambit of the Implicated Rights

20. The right to dignity (s. 10) recognises the intrinsic worth of every person and requires treatment with respect and concern.²⁷ Freedom from inter-personal and public violence is essential to dignity.
21. Section 12(1)(c) of the Constitution aims to stop all forms of violence – from either public or private sources - that would violate the security of a person. It requires the state to “protect individuals both negatively by refraining from such invasion itself and positively by restraining or discouraging its functionaries or officials and private individuals from such invasion”.²⁸ The specific inclusion of private sources in section 12(1)(c) “has to be understood as obliging the state directly to protect the right of everyone to be free from private or domestic violence”.²⁹
22. The link between harmful alcohol use and domestic abuse is indisputable. As observed by the Constitutional Court, what distinguishes family violence from

²⁷ Provides that: “Everyone has inherent dignity and the right to have their dignity respected and protected”.

²⁸ *Law Society of South Africa v Minister for Transport* 2011 (1) SA 400 (CC) at para 59.

²⁹ *S v Baloyi (Minister of Justice and Another Intervening)* 2000 (2) SA 425 (CC) para 11.

other kinds of crime: ‘is its hidden, repetitive character and its immeasurable ripple effects on our society and, in particular, on family life. It cuts across class, race, culture and geography, and is all the more pernicious because it is so often concealed and so frequently goes unpunished’.³⁰

23. The NCPL thus has a positive duty to take reasonable, effective measures that protect the dignity, bodily and psychological integrity, and everyday life of communities from alcohol-related harms, including enacting licensing frameworks which curb alcohol-related violence in public and private spheres.³¹
24. The right to have access to health care services enshrined in section 27(1)(a) of the Constitution,³² is fundamental to the physical and mental wellbeing of all individuals and is a necessary condition for the exercise of other human rights, including the pursuit of an adequate standard of living.³³ Section 27(1)(a) goes beyond the provision of health care services to include preventative measures, in line with the Constitutional Court’s framing of individual entitlements under this right, against broader societal entitlement to access to health care.³⁴

³⁰ *Ibid.*

³¹ Sections 10 and 12(1)(a) read together with section 7(2) of the Constitution; see *Esau and Others v Minister of Co-Operative Governance and Traditional Affairs and Others* 2021 (3) SA 593 (SCA) at para 132.

³² Section 27(1)(a) provides that: “Everyone has the right to have access to – (a) health care services, including reproductive healthcare...”

³³ General Comment No 14 (2000) No.14 (2000) The Right to the Highest Attainable Standard of Health, (Article 12 of the International Covenant of Economic, Social and Cultural Rights). UN Committee on Economic, Social and Cultural Rights, 2000. para 1. *Soobramoney v Minister of Health, Kwa-Zulu Natal* 1998 (1) SA 765 (CC) at para 31 (rights contained in the Bill of Rights and specifically those in section 27 are integrally linked to the fulfilment of the commitment in the preamble of the Constitution to improving the quality of life.)

³⁴ The delineation of the scope of this right as a right to “public health” is supported by the collectivist approach adopted by the Constitutional Court in cases such as *Soobramoney* (at para 31), and *Minister of Health and Others v Treatment Action Campaign and Others* (No. 2) 2002 (5) SA 721 (CC) (at para 37).

25. In the context of liquor regulation, the NCPL's duty to ensure the progressive realisation of access to health care services includes enacting a reasonable licensing framework to limit the burden of alcohol-related harm on the resource-constrained public health-care system, thereby protecting the right of access to health care of the broader population.³⁵
26. Section 28(1)(d) provides that every child has the right "to be protected from maltreatment, neglect, abuse or degradation" and imposes a positive obligation on the state to prevent harm to children. Given the particularly destructive impacts of alcohol abuse on children, especially in alcoholic families, the NCPL is under an obligation to ensure comprehensive and effective measures to reduce children's exposure to both physical and mental alcohol-related harm as a legislative priority.

Reasonableness of the impugned trading hours

27. As previously noted, the Respondents do not dispute the "general harm caused by alcohol"³⁶ or the "validity of alcohol related harms".³⁷ They do not dispute the general patterns of alcohol consumption in South Africa and the Northern Cape, including rates of risky and hazardous drinking which rank among the highest

³⁵ Section 7(2) read together with section 27(1)(a). *British American Tobacco South Africa (Pty) Ltd v Minister of Health* [2012] 3 All SA 593 (SCA) at para 20 and 60.

³⁶ Record: p 413 – 414, Parry Affidavit, para 9 – 11 (alcohol consumption contributes to more than 200 different diseases, injuries and conditions and imposes significant health, economic and social costs on societies); see also Record: p 423, Parry Affidavit, para 29 – 25 (well-documented relationship between alcohol consumption and major non-communicable diseases, e.g. cardiovascular diseases, hypertension, cancer and liver disease) and Record: p 421, Parry Affidavit, para 24 – 28 (alcohol consumption increases risk of infectious diseases, such as HIV/AIDS, tuberculosis); Record: p 426, Parry Affidavit, para 36 (some 13 mental, behavioural or neurodevelopmental disorders are caused by alcohol, ranging from short-term to lifelong disabling conditions). Record: p 1083, AA, para 79.

³⁷ Record: p 1083, AA, para 80.

in the world.³⁸ Similarly, they do not dispute the causal link between longer or extended trading hours and increased alcohol-related harm across all spectrums.³⁹

28. The Respondents also fail to raise a *bona fide* and real dispute of fact regarding the qualitative impact of reduced trading hours at specific closing times.⁴⁰
29. The independent expert modelling report demonstrates that all three of the modelled closing time scenarios (midnight, 1am and 2am) correspond to decreases in the number of alcohol-related deaths and cases of the six alcohol-related conditions considered, decreases in the hospital costs of addressing these conditions and decreases in the cost of combating alcohol-related crime. While all closing times correspond with a decrease in the revenue accruing from alcohol sales and alcohol taxation, the estimated hospital savings and reduction in the cost of combating alcohol-related crime would significantly exceed the concomitant tax revenue lost over a 20-year period. While this report was based on Western Cape figures, the experts confirm that the qualitative impacts would be similar in the Northern Cape Province.⁴¹
30. In respect of the right to dignity (s. 10) and the right to freedom and security (s. 12(1)(c) in general, the nature and extent, as well as increased risk due to

³⁸ Record: p 414 – 415, Parry Affidavit, para 11 – 14; Record: p 1083, AA, para 79 – 81.

³⁹ Record: p 42, FA, para 76; Record: p 720, Filby Aff, para. 6.1. Record: p 1083, AA, para 79 – 81.

⁴⁰ Record: p 43, FA, para 76 - 77; Record: p 728, Filby Aff, para. 26, Record: pp 729 - 733, Filby Aff, para. 29 – 39; and Record: p 1083, AA, para 79 – 81.

⁴¹ Record: p 43, FA, para 77; Record: p 729-733, Filby Affidavit, para 29 - 39.

longer trading hours of alcohol-related injuries, violence, homicides and poisonings are common cause.⁴²

31. In respect of the right to dignity (s. 10) and to freedom and security (s. 12(1)(c)), and children's rights to be protected from maltreatment, neglect, abuse, or degradation (s. 28(1)(d)), the nature and extent, as well as increased risk due to longer trading hours of alcohol-related impacts on newborn, child and adolescent physical and mental health⁴³ and domestic violence⁴⁴ are common cause. It is common cause that children are particularly vulnerable to alcohol related harm, both as a result of their own consumption⁴⁵ and as a consequence of adult consumption, which includes childhood psychopathology and problem drinking later in life.⁴⁶ The paramountcy principle enshrined in section 28(2) of the Constitution calls for appropriate weight to be given to the interests of children who will suffer severe harm as result of these extended trading hours.⁴⁷
32. Finally, in the context of the right to access to health care (s. 27(1)(a)), the nature and extent, as well as increased risk due to longer trading hours of alcohol attributable infectious diseases,⁴⁸ major non-communicable diseases,⁴⁹ and mental health⁵⁰ are common cause. Given that socio-economic inequalities exacerbate these impacts, including increased rates of death and

⁴² Record: p 426, Parry Aff, para 37 – 44.

⁴³ Record p: 417, Parry Affidavit, para 16 – 23.

⁴⁴ Record p: 427, Parry Affidavit, para 42.

⁴⁵ Record: p 417, Parry Affidavit, para 20 (alcohol use in adolescence associated with neurocognitive alterations).

⁴⁶ Record: p 418, Parry Affidavit, para 21 (parental heavy drinking associated with worse outcomes in children).

⁴⁷ *S v M (Centre of Child Law as Amicus Curiae)* 2008 (3) SA 232 (CC).

⁴⁸ Record p: 421, Parry Affidavit, para 24 - 28.

⁴⁹ Record p: 423, Parry Affidavit, para 29.

⁵⁰ Record p: 426, Parry Affidavit, para 36.

hospitalisation,⁵¹ the burden on already strained public health services cannot be overstated.

33. There is no evidence that the Respondents gathered data to ascertain the qualitative or quantitative impact of the extended trading hours on the health and wellbeing of local communities in the province or the attendant public health costs. Without more, the NCPL also failed to draw any distinction between the trading hours of licenced premises in residential and business areas, notwithstanding that the Norms and Standards draw this distinction. The unavoidable inference is that the NCPL opted for pro-industry hours without any evidence as to how this would affect communities or whether these impacts were reasonable, especially in light of the significant socio-economic inequalities in the province.
34. Unlike most reasonableness enquiries, this case does not turn on available resources. That regulatory limitations on trading hours yield significant health benefits without requiring excessive resources, is not in dispute⁵²
35. For these reasons, it is submitted that by enacting the impugned provisions, the NCPL failed in its duty to take reasonable legislative measures to protect, promote and fulfil sections 10, 12(1)(c), 27(1)(a) and 28(1)(d) of the Constitution.

⁵¹ Record: p 428 - 429, Parry Affidavit, para 45 - 47.

⁵² Record: p 724, Filby Affidavit, para 15.

IV. RATIONALITY/LEGALITY CHALLENGE

36. Law or conduct which is not rational offends the principle of legality inherent in the Constitution and must be held to be invalid.⁵³ The rationality review is concerned with the connection between the means employed to achieve a particular purpose on the one hand and the purpose or end itself on the other hand.⁵⁴
37. The impugned provisions 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.⁵⁵ This disconnect arises from the NCPL's failure to appreciate that it was not “bound” by the Norms and Standards. It 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 warranted such a deviation.⁵⁶
38. The NCPL justified the extension of trading hours in section 93 of the second version of the Bill on the basis that it had “incorporated the National Norms and Standards ... with regard to uniform times for liquor sales”.⁵⁷ While the

⁵³ *Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) at para 85 and 90.

⁵⁴ *Albutt v Centre for the Study of Violence and Reconciliation* 2010 (3) SA 293 (CC) at para 51 (where a “decision is challenged on the grounds of erosion of rationality, courts are obliged to examine the means selected to determine whether they are rationally related to the objective sought to be achieved”).

⁵⁵ Section 2(1)(a) of the NCGLA, 2024.

⁵⁶ The decision in *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill* 2000 (1) SA 732 (CC) requires the retention of such a discretion in order to render section 2(1)(a) of the NCGLA, 2024 consistent with section 44(2)(c) and (d) of the Constitution.

⁵⁷ Record: p 156, FA, “**SN8.2**” (explanatory memorandum).

explanatory memorandum only made express reference to two of the material changes in trading times - viz. in respect of off- consumption liquor stores⁵⁸ and night clubs⁵⁹ - both were motivated on the basis that these changes bring the provisions “in line with clause 4.14 of the National Norms and Standards...”⁶⁰ This justification was repeated in the presentation at the hybrid meeting, with the “explanation” that the extended trading hours provided for in sections 93(2)(a) and section 98(6) “align [the Bill’s] operational times with the Norms and Standards...”⁶¹ The reasoning underpinning this explanation was three-fold:

“[F]irstly, 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 amendment to such legislation.”⁶²

39. This reasoning is repeated in the Department’s Status Report submitted to the NCPL after comments had been received from the 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 section 100

⁵⁸ Section 93(2)(a) (permitting liquor sales from 09h00 – 17h00 on Sundays and public holidays); see also R: p 197, FA, “**SN10**” (NCGLA, 2024).

⁵⁹ Section 93(6) (a 6-hour extension of Mon – Sat closing time to 06h00 vs. 24h00 under the 1st version of the Bill). Record: p 156, FA, “**SN8.2**” (explanatory memorandum) and R: p 197, FA, “**SN10**” (NCGLA, 2024).

⁶⁰ Record: p 156-157, FA, “**SN8.2**”.

⁶¹ Record: p 174 – 175, FA, “**SN9**” (Presentation at hybrid meeting).

⁶² *Ibid.*

(renumbered as section 93 in the NCGLA, 2024) on the following basis: “Bound by norms and standards on operating times as per page 53”.⁶³

40. By considering itself “bound” by the Norms and Standards as aforesaid, the NCPL unduly abdicated its exclusive constitutional competence in respect of Schedule 5 subject-matter by failing to determine the effectiveness and reasonableness of its “uniform trading hours” in respect of local communities in the province.
41. The lack of any objectively justifiable rationale for these extended trading times is further revealed by the inherent contradiction in the NCPL’s reasoning. On the one hand, the NCPL justified these changes on the basis that it was bound by the Norms and Standards, but on the other hand it enacted trading times for certain licensed premises which exceeded or fell below those provided for under the Norms and Standards.⁶⁴ Firstly, certain trading hours *exceeded* those outlined in the Norms and Standards, namely: (i) by 2 hours in the case of “other” on-consumption premises in a business zone (02h00 closing time vs. 00h00 closing time); (ii) by 5 hours, Mondays to Saturdays, in the case of “other” on-consumption premises in a residential zone (02h00 closing time vs. 21h00 closing time); (iii) by 9 hours on Sundays, in the case of “other” on-consumption premises in a residential zone (02h00 closing time vs. 17h00 closing time); and (iv) by a maximum of 2 and 4 hours in respect of occasional liquor licences (i.e. special events) at residential and business zoned premises, respectively (22h00 vs. 02h00 closing time, and 00h00 vs. 02h00 closing time). Secondly,

⁶³ Record p: 1170, AA, “AA3”.

⁶⁴ Record: p 50, FA, para 99.2.

the Sunday trading hours of night clubs (on-consumption premises) located in a business zone, are 6 hours *shorter* than the outer limits under the Norms & Standards (viz. 18h00 – 00h00 vs. 18h00 – 06h00).⁶⁵ Finally, the NCPL also failed to draw any distinction between the trading hours of licenced premises in residential and business areas, notwithstanding that the Norms and Standards draw this distinction

V. THE NCPL FAILED TO FACILITATE PUBLIC PARTICIPATION

42. The NCPL has a constitutional obligation to facilitate public involvement in their legislative and other processes.⁶⁶ Public participation is a “crucial part of participatory democracy and the lawmaking process, as it affords the public a meaningful opportunity to participate in the legislative process”.⁶⁷ It “strengthens the legitimacy of legislation in the eyes of the people”⁶⁸ and “acts as a counterweight to secret lobbying and influence-peddling”.⁶⁹
43. Given the significant and increasing socio-economic differences in alcohol-related harm,⁷⁰ “participatory democracy is of special importance to those who are relatively disempowered”.⁷¹ Affording them a meaningful chance to “[have]

⁶⁵ Record: p 36, FA, para 62.

⁶⁶ Section 118(1)(a) of the Constitution.

⁶⁷ *Mogale and others v Speaker, National Assembly and Others* 2023 (6) SA 58 (CC) at para 33.

⁶⁸ *Mogale* at para 33, citing *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (6) SA 416 (CC) at para 115.

⁶⁹ *Doctors for Life* at para 115.

⁷⁰ Record: p 39, FA, para 66.6; Record: pp 428 - 429, Parry Affidavit, para 45 – 47 (socio-economic inequalities exacerbates alcohol attributable harm, with higher mortality rates and hospitalisation for poorer drinkers and their families).

⁷¹ *Doctors for Life* at para 115.

their voices heard and taken account of” not only “enhances their civic dignity” but is also more likely to result in laws that are “effective in practice”.⁷²

The Reasonableness Standard

44. While the NCPL has a considerable discretion to “determine the manner in which to fulfil [its] obligation to facilitate public involvement”,⁷³ the question before this Court is whether the NCPL’s process was reasonable.⁷⁴ In this enquiry, the following factors are of particular importance: (i) what the legislature itself has determined is reasonable, and how it has decided it will facilitate public involvement; (ii) the importance of the legislation and its impact on the public; and (iii) time constraints on the passage of a particular Bill, and the potential expense.⁷⁵
45. The Standing Rules of Order adopted by the NCPL⁷⁶ and the Public Participation Framework for the South African Legislative Sector (June 2013) (*“the PPF”*)⁷⁷ indicates the level of public participation deemed reasonable by the NCPL.
46. In this regard, the NCPL’s Rules provide that an MEC may publish a draft Bill to obtain comment from stakeholders and interest groups at the early drafting stage.⁷⁸ When publishing a Bill intended for introduction in the House, an MEC must publish the Bill “in at least two predominant languages of the Province for

⁷² *Ibid.*

⁷³ *Mogale* at para 34.

⁷⁴ *Ibid.*

⁷⁵ *Mogale* at para 37.

⁷⁶ Rules of the Northern Cape Provincial Legislature. 2016; see Record: p 134, FA, “**SN6**”.

⁷⁷ *Mogale* at para 33.

⁷⁸ Rule 163(1); see Record: p 29, FA, para 47 and Record: p 135, FA, “**SN6**” extract.

purposes of public comment”.⁷⁹ Features of reasonable public participation in terms of the PPF include prehearing workshops in order to establish relationships with stakeholders and to develop effective communication and awareness programmes. Invitations to public hearings should be sent out five weeks in advance, albeit that the Practical Guide only requires seven working days’ notice.⁸⁰

47. We have dealt with the importance and significant impact of the NCGLA, 2024. This legislation sought to unify the regulatory frameworks governing the liquor and gambling sectors under the oversight of a single statutory body, which in and itself rendered the subject-matter of great public interest. The significant impact of this legislation on public health, social wellbeing and provincial development is incontrovertible. The Applicant’s papers detail the significant public health impacts, both nationally and in the specific socio-economic context of the Northern Cape Province, as well as the extent to which socio-economic inequalities exacerbate alcohol attributable harm.⁸¹ None of these aspects are disputed by the Respondents.

48. As such, the subject-matter of the NCGLA, 2024 required the NCPL to consult “thoroughly and carefully” with members of the public, particularly those who live “away from centres of power, in rural areas and in some of the poorest parts of our country”.⁸² The NCGLA, 2024 is of “paramount importance and public interest, requiring by its very nature “extensive and meaningful public

⁷⁹ Rule 164(1); see Record: p 28, FA, para 46; Record: p 135, FA, “**SN6**” extract.

⁸⁰ *Mogale* at para 33 (referring to the Practical Guide for MPs and Members of Provincial Legislatures, 2019).

⁸¹ Record: p 46, FA, para 87.1.

⁸² *Mogale* at para 46.

participation”.⁸³ To be effective, it was also necessary to conduct consultation “in good faith, through culturally appropriate measures and procedures”.⁸⁴

49. Finally, as to considerations of timing and expense, the Respondents claim that the Bill was urgent, but fail to demonstrate that there was an objective deadline requiring urgent action.⁸⁵ Moreover, neither the Respondents’ papers, nor the NCPL’s records disclose when the MEC identified the need to rationalise the regulatory framework governing liquor and gambling⁸⁶ or why he waited until May 2023 to initiate the legislative process.⁸⁷ The Respondents also do not allege that they lacked the resources to hold more in-person public hearings at multiple locations or to publish the first version of the Bill in more than one language.⁸⁸

Unreasonable Conduct

50. In respect of the publication of the first version of the Bill, it is common cause that: (i) it was not preceded by the publication of a draft Bill under Rule 163(1)

⁸³ *Mogale* at para 47.

⁸⁴ *South Durban Community Environmental Alliance and Another v The Ministry of Forestry, Fisheries and the Environment and Others* (479/2023) [2025] ZASCA 134 (17 September 2025) at para 28.

⁸⁵ While the Executive Council Resolution of 11 January 2023 refers to “short-term plans for the rationalization” and the approval of the “immediate start of the amalgamation process”, there are no claims or urgency (Record: p 1087, AA, “**AA1**”). Similarly, grounds for urgency appear in the email invitation to attend the hybrid public hearing dated 29 February 2023 or the accompanying Explanatory Memorandum (Record: pp 148 - 150, FA, “**SN8.1**”- “**SN8.2**”); the Department’s Status Report (Record: p 1164, AA, “**AA3**”), or the Memorandum of the Director-General in the Premier’s office dated 15 August 2023 (Record: pp 1171 - 1172, AA, “**AA4**”).

⁸⁶ Record: pp 1068 - 1069, AA, para 13 – 14 (deliberations within the executive followed the MEC’s assessment in this regard, “culminating” in resolution 003/2023(1) on 17 January 2023). See also Record: p 1087, AA, “**AA1**” (resolution).

⁸⁷ Record: p 1068, AA, para 13.

⁸⁸ *Mogale* at para 52 (government reliance on limited resources needs to be supported by facts).

to facilitate early comment from stakeholders;⁸⁹ and (ii) contrary to Rule 164(1), the Bill was only published in English.⁹⁰

51. No public hearings were conducted in respect of the first version of the Bill;⁹¹ the MEC only called for written comments within 30 days of publication of the Bill (notice published only in English).⁹²
52. While a “hybrid” public hearing was convened in respect of the second version of the Bill, this was wholly inadequate. The NCPL gave insufficient notice of the hearing in circumstances where: (i) the email notice was sent six working days beforehand;⁹³ (ii) the general public was not notified of the meeting *via* newspapers, social media, website posts or radio,⁹⁴ but unduly limited to a handful of stakeholders; (iii) no physical location was provided for the “hybrid public hearing”;⁹⁵ (iv) the email notice was not accompanied by a copy of the second version of the Bill;⁹⁶ and (v) the explanatory memorandum did not alert the reader to all the amendments in respect of section 93 and for the first time claimed that the NCPL was “bound” by the National Norms and Standards.⁹⁷ Moreover, convening a single hybrid public hearing effectively excluded rural

⁸⁹ Record: p 29, FA, para 47.

⁹⁰ Record: p. 45, FA, para 85. *South Durban Community Environmental Alliance* at para 35 (held: inadequate public participation in respect of environmental authorisation where newspaper advertisements of availability of environmental reports for public comment were only published in Afrikaans and English newspapers, despite isiZulu being the most commonly spoken language in the area; notices on notice boards also written in English with no translation).

⁹¹ Record: p 29, FA para 48.

⁹² Record: p 28, FA, para 45.

⁹³ Record: p 32, FA, para 52 and Record: p 45, FA, para 86.

⁹⁴ Record: p 1174, AA, “AA5”, para 4 – 5.

⁹⁵ Record: p 32, FA, para 52.

⁹⁶ Record: p 33, FA, para 52.5.

⁹⁷ Record: p 33, FA, para 52.7 - 53.

and indigent communities who lacked internet access and/or were unable to attend the meeting in person.⁹⁸

53. Finally, the second version of the Bill contained material departures from the trading hours proposed under the first version and expressly motivated these changes on the incorrect basis that the NCPL was bound by the Norms and Standards.⁹⁹ Materiality triggered the need for further participation,¹⁰⁰ but the NCPL failed properly to call for further submissions from the public. As such, the Applicant and the wider public were denied the opportunity to make representations as to raise their concerns regarding the material extensions of liquor trading times, or the NCPL's aforesaid rationale underpinning these changes.¹⁰¹

VI. CONCLUSION

54. For these reasons, it is submitted that the impugned provisions fail to pass constitutional muster and must be declared invalid in terms of section 172(1)(a) of the Constitution.
55. The Applicant further submits that the First to Fourth Respondents should be directed to pay the costs of this application, jointly and severally, the one paying

⁹⁸ Record: p 46, FA, para 87.3. *South Durban Community Environmental Alliance* at para 35 (inadequate public participation in respect of environmental authorisation *inter alia* for lack of consultation with local communities or their leaders, including consultation with vulnerable people).

⁹⁹ Record: p 49, FA, para 97.

¹⁰⁰ *South African Iron and Steel Institute and others v Speaker of the National Assembly and others* 2023 JDR 2331 (CC) at para 43.

¹⁰¹ *South African Iron and Steel Institute* at para 49.

the others to be absolved, such costs to include the costs of one senior counsel on Scale C and the costs of one junior counsel on Scale B.

Chambers, Cape Town
22 September 2025

Andrew Breitenbach S.C.
Louise Ferreira
Applicant's counsel

LIST OF AUTHORITIES

1. *Albutt v Centre for the Study of Violence and Reconciliation* 2010 (3) SA 293 (CC).
2. *British American Tobacco South Africa (Pty) Ltd v Minister of Health* [2012] 3 All SA 593 (SCA).
3. *Doctors for Life International v Speaker of the National Assembly and Others* 2006 (6) SA 416 (CC).
4. *Esau and Others v Minister of Co-Operative Governance and Traditional Affairs and Others* 2021 (3) SA 593 (SCA).
5. *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill* 2000 (1) SA 732 (CC).
6. *Law Society of South Africa v Minister for Transport* 2011 (1) SA 400 (CC).
7. *Minister of Health and Others v Treatment Action Campaign and Others* (No. 2) 2002 (5) SA 721 (CC).
8. *Mogale and others v Speaker, National Assembly and Others* 2023 (6) SA 58 (CC).
9. *National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs & Others* 2000 (2) SA 1 (CC), 2000 (1) BCLR 39 (CC).
10. *Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC).
11. *S v Baloyi (Minister of Justice and Another Intervening)* 2000 (2) SA 425 (CC).
12. *S v M (Centre of Child Law as Amicus Curiae)* 2008 (3) SA 232 (CC).
13. *Soobramoney v Minister of Health, Kwa-Zulu Natal* 1998 (1) SA 765 (CC).
14. *South African Iron and Steel Institute and others v Speaker of the National Assembly and others* 2023 JDR 2331 (CC).
15. *South Durban Community Environmental Alliance and Another v The Ministry of Forestry, Fisheries and the Environment and Others* (479/2023) [2025] ZASCA 134.
16. *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371.

CHRONOLOGY OF EVENTS

Date	Event	Record
25 Nov 2009	Northern Cape Liquor Act, 2 of 2008: effective date:	Record: p 27, FA, para 42 Record: p 98, "SN3" (s. 17(4)-(5))
21 Sept 2010	Northern Cape Liquor Amendment Act, 2 of 2010 (PN9 in PGE no. 1466 of 21 Sept 2010).	Record: p 27, FA, para 44.2
5 Sept. 2014	National Liquor Policy Council adopts National Norms & Standards.	Record: p 23, FA, para 29
13 Feb. 2014	Minister makes National Norms & Standards in terms of Liquor Act, 59 of 2003 (No. R. 85 in GG38459 of 13 Feb. 2014).	Record: p 54, FA, "SN1".
30 Sept. 2016	Minister publishes National Liquor Policy (GN1208 of 30 Sept. 2016)	Record: p 24, FA, para 34; Record: p 62, FA, "SN2".
17 Jan. 2023	Provincial Executive resolves to rationalise the Northern Cape Gambling and Liquor Boards.	Record: p 1069, AA, para 14; Record: p 1086, AA, "AA1".
15 May 2023	Publication of 1 st version of Northern Cape Gambling and Liquor Bill (PN375 in PGE 2595 of 15 May 2023) for 30-day comment period	Record: p 28, FA, para 45; Record: p 105, "SN5"; Record: p 1069, AA, para 15.
27 Jun 2023	Applicant submits written comment on 1 st version of Bill.	Record: p 29, FA, para 50; Record: p 143, FA, "SN7"
? 2023	Status Report on Bill "after comments were received from stakeholders" presented to Portfolio Committee	Record: p 1070, AA, para 19; Record: p 1164, AA, "AA3".
1 Aug 2023	Executive Council adopts resolution no 036/2023(8) approving bill.	Record: p 1070, AA, para 21; Record: p 1171, AA, "AA4".
29 Feb 2024	NCPL sends email invitation to attend "hybrid public meeting" on 2 nd version of Bill, accompanied by "explanatory memorandum".	Record: p 32, FA, para 52; Record: p 148, FA, "SN8.1" (email); Record: p 150, FA, "SN8.2" (memo) Record: p 1072, AA, para 29
4 Mar 2024	Alleged publication of social media advertisement to invite public to hybrid meeting (NCPL could not locate documentary evidence).	Record: p 1073, AA, para 30; Record: p 1174, AA, "AA5", para 4.
5 Mar 2024	Deadline for sending email to committee coordinator to request link to virtual meeting.	Record: p 32, FA, para 52.3
8 Mar 2024	Hybrid meeting: • Presentation repeats contents of explanatory memorandum.	Record: p 35, FA, para 56-59 Record: p 163, FA, "SN9" (presentation); Record: p 1072, AA, para 28
13 Mar 2024	Deadline for written comments for stakeholders unable to attend hybrid meeting.	Record: p 33, FA, para 52.4
1 Apr 2024	Northern Cape Gambling and Liquor Act, 6 of 2024 (GN536 in PGE 2673 of 4 April 2024).	Record: p 36, FA, para 60 Record: p 178, FA, "SN10"