



**the dti**

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Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

# NATIONAL GAMBLING POLICY:

## Final Policy

**November 2015**

## LIST OF ACRONYMS

<b>ATM</b>	Automated Teller Machine
<b>B-BBEE</b>	Broad Based Black Economic Empowerment
<b>CEO</b>	Chief Executive Officer
<b>CEMS</b>	Central Electronic Monitoring System
<b>CSI</b>	Corporate Social Investment
<b>EBT</b>	Electronic Bingo Terminal
<b>GBGB</b>	Greyhound Board of Great Britain
<b>GGR</b>	Gross Gambling Revenue
<b>GRC</b>	Gambling Review Commission
<b>KZN</b>	Kwa Zulu Natal
<b>LPM</b>	Limited Pay-out Machine
<b>MEC</b>	Member of Executive Council
<b>NGB</b>	National Gambling Board
<b>COUNCIL</b>	National Gambling Policy Council
<b>NHA</b>	National Horseracing Authority
<b>NRGP</b>	National Responsible Gambling Programme
<b>NSW</b>	New South Wales
<b>PFMA</b>	Public Finance Management Act
<b>PLA</b>	Provincial Licensing Authority
<b>SARGF</b>	South African Responsible Gambling Foundation
<b>the dti</b>	Department of Trade and Industry

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## 1. EXECUTIVE SUMMARY

- 1.1 The National Gambling Policy Review Document (policy) outlines the policy position that intends to review the gambling landscape in South Africa. The policy is premised partly on the Gambling Review Commission (GRC) Report, reports from Parliament on the GRC Report, stakeholder engagements, benchmarks and excursion conducted.
- 1.2 The policy position was subjected to consultations at relevant fora and with the public at large. The National Gambling Policy Document was published for broader public comments on 15 May 2015 which closed on 05 July 2015. In addition to the written submissions direct engagements were held with stakeholders like government departments, provincial government, gambling regulators, gambling operators for all gambling modes and the public at large. Since gambling is a matter of concurrent jurisdiction between national and provincial spheres of government, the final policy will be tabled for debate and final inputs at the National Gambling Policy Council (Council) meeting convened in terms of section 62 of the National Gambling Act No. 07 of 2004 (the Act). This process was to ensure policy and legislative harmonisation between provincial and national spheres of government.
- 1.3 Having reviewed the comments received, the Department of Trade and Industry (**the dti**) completed a final policy document with recommendations to enhance the current legislative framework. The following are the key policy positions:
  - 1.3.1 **Regulatory structures and framework:** The regulatory framework looks at the effectiveness of the Council and the role of the NGB. The Council is empowered to take binding resolutions if there is no quorum in the first meeting and the same happens in the next meeting. The Council agreed to this proposal at its meeting of 5 September 2014. The National Gambling Board (NGB) must be revamped to be a strategic trading entity of **the dti** for regulating gambling.

The NGB will accordingly be repositioned and changed into the National Gambling Regulator (NGR) headed by a Chief Executive Officer, as the case may be. The NGR will continue to conduct oversight as it currently is empowered to assist with monitoring coherence and policy coordination, conduct research, develop and implement education and awareness, develop and implement measures to combat illegal gambling, effectively operate the Central Electronic Monitoring System (CEMS) and to combat problem gambling by providing treatment for problem gamblers. The treatment programme will be funded by the industry through a levy at a rate that will be determined by the Minister through regulations.

- 1.3.2 **Casinos:** The policy requires the enhancing regulation of casinos in order to ensure the destination approach for location of casinos is maintained. In this regard, there must be a requirement for different entrances and exits for gambling venues in cases where there have been developments around them. The provinces should assess policy implications when considering the request to relocate a casino venue from one area to another. Although the limitation of casino licences is 40, the Minister in resolving the issue relating to the North-West licence should allocate one additional licence. The Council agreed to this proposal at the meeting of 5 September 2014.
- 1.3.3 **Limited Pay-out Machines (LPMs):** Section 27 should be amended to clearly state that the CEMS operator must acquire a national licence to operate. This matter is currently managed through an agreement reached between regulators and need to be clarified in the legislation. Measures should be put in place to capacitate the NGR to be in a position to manage the operation of CEMS as that will help in revenue generation for the NGR to be self-funded. Other technical amendments affecting LPMs involves clarification on the role of the NGR during approval for extra LPM machines in line with a court decision in this regard. It is important for the NGR to be consulted when extra machines are required to ensure that the agreed criteria are entrenched nationally. However, the NGR must ensure that the process is streamlined and that

decisions are not delayed. Further, the consideration about the review of stakes and betting limits in respect of LPMs was raised, although supported; it is a matter for regulations.

- 1.3.4 **Bingo:** There is a need to create a national framework to regulate Electronic Bingo Terminals (EBTs), which will include regulation of the overall number of bingo licenses, including EBTs, and bingo seats in the country should be limited. The Minister may review the limits from time to time after consulting provinces through the Council. As bingo venues are usually located in common public areas, there should be restrictions on operation times. Further, the entrance and exits should be separated from the main entrances of such public spaces like malls.
- 1.3.5 **Betting by Horseracing Operators and Bookmakers:** The policy states that horseracing be statutorily regulated in that the self-regulation model must be formally recognised subject to being monitored by the newly structured NGR. An assessment may be conducted in future to determine if self-regulation should continue under the oversight of the NGR, or whether full regulation will be required. At this point a case for full regulation has not been made in the various consultative processes and the industry seems to have its processes in order. However, based on the challenges raised around failure to recognise certain stakeholders, entrenched barriers to entry, proper governance and fair play imperatives, limited oversight by the state is recommended. Although concerns were raised about bookmakers taking open bets, it is emphasised that where intellectual property rights are involved, they should be respected in accordance with South African Laws. If the exploited product is not an IP right, PLAs must be empowered to determine a reasonable rate to be paid for exploitation of such product.
- 1.3.6 **Unlawful Winnings Trust:** The provisions relating to Unlawful Winnings Trust need to be reformed to ensure that the costs burden of approaching the High Court for a forfeiture order is eliminated. Funds in the Unlawful Winnings Trust

administered by the NGR should automatically be forfeited to the NGR. The forfeited money will be utilised for responsible gambling programmes managed under the NRGP.

- 1.3.7 **Social Impact Minimisation:** The research and findings from the GRC highlighted that problem gambling remains a challenge in South Africa. The policy requires that the NGR be empowered to provide problem gambling treatment. Funding towards problem gambling treatment will be sourced through an industry levy at a rate that will be determined by the Minister. This will ensure that the treatment assistance to problem gamblers is accessible throughout the country.
- 1.3.8 **Enforcement:** The policy focuses on the penalties of perpetual transgressors in respect of illegal gambling including illegal online gambling. Measures must be implemented to combat illegal gambling, including empowering the regulatory bodies to be able to block online gambling websites. The inspectorate must be improved, resourced and empowered to ensure that cases can be investigated and prosecuted without significant involvement of the South African Police Services if the latter happens to be over committed in other crimes. Education and training of police and prosecutors by the NGR must be improved to ensure that cases in the gambling sector are successfully prosecuted.
- 1.3.9 **Economic and employment benefits within the gambling sector:** The gambling industry makes a significant contribution towards the country's economy in terms of taxes paid and contributes towards job creation. There should be continuous balance on the value that new forms of gambling potentially bring into the country's economy against the value and contributions derived from existing forms of gambling.
- 1.3.10 **New forms of gambling:** No new forms of gambling will be allowed at this point and that rather improved controls should be implemented to address issues arising from currently legalised modes of gambling in South Africa.

Improved provisions will be included in the legislation to deal effectively with illegal gambling. The capacity to regulate online gambling currently is not adequate, but can be streamlined to prevent illegal operations. Provisions must be included to prohibit illegal winnings, with amendments to prohibit Internet Service Providers (the latter must not knowingly host an illegal gambling site) banks and other payment facilitators from facilitating illegal gambling, transferring, paying or facilitating payment of illegal winnings to persons in South Africa. The prohibition will require the NGR to be vigilant in terms of alerting the institutions above of such illegal operators. If the notification by NGR is not implemented the affected institution or facilitating body should be criminally liable in terms of the Act. Such winnings should be paid over to the Unlawful Winnings Trust as indicated above.

- 1.4 There are technical amendments in terms of clarifying certain statutory provisions in the Act in addition to policy issues addressed above, but such are not exhaustive. More technical amendments may be considered and assessed during the public consultation process and in the drafting of the Bill to amend the Act.

## **2. INTRODUCTION**

- 2.1 Prior to 1994 gambling was prohibited in South Africa and only took place in the nominally independent homelands (Transkei, Bophuthatswana, Venda and Ciskei). Betting in the then South Africa was only allowed in horseracing (although not regulated under the current Act), as this was the only legal form of gambling during that time. The absence of a proper regulatory framework, coupled with poor policing of this sector led to a proliferation of an illegal industry prior to 1994. This led to the loss of revenue to the economy and little or no protection against the negative socio-economic impact of this unregulated sector.
- 2.2 Subsequently the Wiehahn Commission was constituted to conduct the feasibility study of having a national policy on gambling in South Africa post democracy,



and it made recommendations for the regulation of gambling and state-run lottery system in its report of 1995. Pursuant to the Wiehahn Commission Report, the National Gambling Act, 1996 and the National Lotteries Act, 1997 were promulgated.

- 2.3 The National Gambling Act of 1996 made provisions for the regulation of gambling activities and promotion of uniform norms and standards in relation to gambling throughout the country. It gave definitions to different gambling notions, described how the 40 gambling licences should be distributed among the provinces and provided information on liability. It also established the NGB as an organisation responsible for the supervision and regulation of the gambling industry. This change in legislation saw the establishment of legal casinos, a national lottery and other forms of gambling.
- 2.4 The National Gambling Act of 1996 was later repealed by the National Gambling Act 7 of 2004 (the Act). This was instigated by the ongoing disputes and contestation between PLAs and the NGB, concerns about the negative socio-economic impact of gambling and addressing forms of gambling that had not been dealt with in the National Gambling Act, 1996, particularly interactive gambling and horseracing. In 2008 the National Gambling Amendment Act was introduced to regulate interactive gambling, but the National Gambling Amendment Act has not been implemented due to concerns regarding proliferation and potential easy access by minors.
- 2.5 Since the legalization of gambling in South Africa in 1996, the gambling industry has grown and evolved substantially. Technological advancements on existing forms of gambling and new forms of gambling have emerged and have created challenges for regulators and policy makers. Furthermore, some forms of illegal gambling have persisted and appear to be growing in popularity. There were also concerns that the negative socio-economic impact of gambling in South Africa, especially on the poor, has been lingering since the legalization of the industry. Therefore, policy direction is required to provide guidance in this regard.

- 2.6 Subsequently, in 2009, the Minister established the GRC to holistically review the gambling industry since its legalisation in 1996 to date. The review process included research to consider whether the current legalised gambling activities can/should be expanded or curtailed considering the number of casinos, limited payout machines and bingo outlets already licensed, assess socio-economic impact of gambling, and consider the extent to which regulatory bodies have met their legislative objectives. The review identified a number of recommendations regarding the gambling industry on the basis of its assessment.
- 2.7 In September 2010, the GRC submitted its report to the Minister. The report was subsequently tabled before Cabinet, the Portfolio Committee for Trade and Industry (Portfolio Committee) and Select Committee for Trade and International Relations (Select Committee) to facilitate inputs from the public. The Portfolio Committee conducted public hearings from October 2011 to March 2012. The Portfolio Committee submitted a final report containing the recommendations in March 2013 and the Select Committee submitted its final report in July 2013 respectively.
- 2.8 The policy took into account recommendations of the GRC, the two reports from Parliament, as well as inputs from various engagements with stakeholders, and has also considered the possible implications of the recommendations on the gambling industry and the existing policy. The recommendations will not be implemented without analysing their implications to the society and the gambling industry.
- 2.9 The Wiehahn Commission set principles, which became the yardstick for the national gambling policy as enshrined in the Act. It is important to analyse these policy objectives to determine if they have been achieved and if not where the gaps still exist. The table below provides a high level analysis on the Wiehahn Commission policy objectives.

Policy Objective	Achievement Status
<ul style="list-style-type: none"> <li>▪ Protection of society from over-stimulation of latent gambling through the <b>limitation of gambling opportunities</b></li> <li>▪ Protection of players and integrity and fairness of the industry through <b>strict control and supervision</b> of the industry.</li> <li>▪ <b>Uniformity and harmonisation</b> of policy and legislation at all levels of government across provinces through minimum norms and standards, cooperation and coordination.</li> <li>▪ Generation <b>of revenue and taxes</b> for provincial governments and for good causes.</li> <li>▪ Economic empowerment of the <b>historically disadvantaged</b>.</li> <li>▪ Promotion of <b>economic growth, development and employment</b>.</li> </ul>	<ul style="list-style-type: none"> <li>• Opportunities for gambling are increasing with more demand for new games, and proximity to people – <b>3-4.7% problem gambling</b></li> <li>• Inadequate access control for <b>excluded persons and minors</b>, and increase in seats and tables in gambling outlets.</li> <li>• <b>Lack of uniformity</b> with inconsistent provincial requirements, coordinating structure not effective and roll out contrary to policy.</li> <li>• <b>Significant</b> taxes and revenue generated.</li> <li>• <b>Limited</b> transformation in the gambling industry, but some progress recorded.</li> <li>• Employment largely in casinos, industry <b>contribution is large</b> and growth continued despite recession.</li> </ul>

2.10 The policy objectives above have not been achieved in regard to minimization of the negative social harms but progress is recorded in respect of taxes, revenue generation and employment contribution. The casino survey of 2013 and the recent annual reports of Phumelela and Gold Circle indicate that the industry has attained level 2 Broad-Based Black Economic Empowerment (B-BBEE). There is still a concern in that the achievement has not improved the representations on the ownership by previously disadvantaged and female persons. The progress is mainly on the employment and senior management positions.

2.11 Considerations towards the current draft policy have been more on the role of each gambling mode towards the economy, employment and the improvement of measures to combat social harms attached to gambling. Additions of new gambling activities will need to be paralleled against the impact they will have on existing gambling activities in relation to the economic and employment benefits.

It is undisputable that the existing gambling activities have contributed seriously towards the economy and employment.

- 2.12 The policy does not propose introduction of new gambling activities like online casino gambling, greyhound or animal racing. Introduction of online casino gambling requires a policy shift in regard to the destination approach to gambling as it proposes bringing gambling activities more closer to people. This aspect is considered against the concern regarding problem gambling in South Africa, and measures to combat it successfully. The possible expansion of animal racing beyond horseracing also poses challenges, including significant animal welfare concerns and proliferation. Other forms of gambling should remain illegal as the proliferation of gambling, rising levels of problem gambling, employment and inadequate enforcement capacity weigh more against any argument in support of lifting the ban on this activity at this point.
- 2.13 Casinos continue to be a significant employer in the country. Casino Association of South Africa's 2012 survey reflects 34 019 direct employment and other facilities within casinos directly employ 18 242. Recent statistical analysis have indicated consistent growth in gambling turnover Gross Gambling Revenue (GGR) and taxes or levies paid to government for all form of regulated gambling, casinos, betting, LPMs and Bingo.
- 2.14 The assessment process identified a number of challenges within the regulatory framework, legal gambling activities and new gambling activities. This document will address these challenges that require legislative amendments. The challenges identified were in relation to the following:

- 2.14.1 In respect of casinos, the policy will focus on the destination approach for location of casinos, relocation of casinos and the developments around casinos.
- 2.14.2 In regard to LPMs the policy focus on removing bottlenecks hindering the effective rollout of LPMs countrywide, licensing of the CEMS operator in the event that a private entity is appointed to operate, and other technical amendments in the Act.
- 2.14.3 In regard to Bingo, the policy provides for the expansion of this sector to recognise the electronic form of bingo in order to enhance the economic viability of the sector.
- 2.14.4 Regarding horseracing and betting, the policy recognises the need for modernisation of this sector and also recommends the statutory recognition of the self-regulatory model within this industry. Further recommendations are made to address transformation and basic conditions of employment in this sector.
- 2.14.5 On the regulatory framework, the policy looks at the effectiveness of the Council and the role of NGB as a body that conducts oversight on provincial regulatory authorities. It further acknowledges the need for the secretariat function to be adequately capacitated.
- 2.14.6 Regarding the Unlawful Winning Trust, the policy looks at a way to reform provisions relating to this to ensure that the costs burden of approaching the High court for a forfeiture order is eliminated. It further proposes how the forfeited funds should be utilized.
- 2.14.7 On the minimisation of the social impact, brings about the proposal to empower the NGB to provide problem gambling treatment.

- 2.15 In these discussions, the first issue to deal with is the traditional gambling that is allowed in South Africa. The challenges of the current regime are discussed and they can be eliminated and therefore recommendations are made for each gambling activity.
- 2.16 New forms of gambling will be discussed in the context that they were raised in the GRC report and Parliamentary reports. In this regard, it is argued that it is premature to allow new forms of gambling to be legislated. Reasons will be advanced and recommendations for each will be made.

### **3. PROBLEM STATEMENT**

- 3.1 In South Africa there are limited legalised forms of gambling namely, casinos, bingo, LPMs and horseracing. The developments of business and residential places around casinos poses policy challenges especially when looking at the destination style of locating casinos. Casinos are now closer to residential areas than it was intended when casinos were introduced. EBTs have been allowed to exist in the absence of a national policy framework thus posing policy challenges, as the addictive nature of gambling was not properly monitored as far as EBTs were concerned. The rollout of EBTs must not be done in a manner that will undermine the gains derived from casinos and LPMs in terms of taxes, employment and infrastructure development.
- 3.2 The rollout of LPMs has raised questions as to the role of NGB in approving the second category of LPMs. The role of the NGB needs to be clarified as supported by case law. The status of the CEMS in regard to licensing requires statutory entrenchment to avoid the previous conflict over the legitimacy of a third party operator of the CEMS.
- 3.3 Horseracing is self-regulated and the Act does not provide criteria how this regime should be managed given emanating challenges. Problems range from labour disputes, transformation of the sector and inclusion of other horseracing activities, e.g. trotting and bush racing. More, the growth and development of this

industry from a trade and agricultural perspectives may require some form of government intervention.

- 3.4 The researches show that problem gambling levels are higher, and that the effectiveness of the NRGP requires a focused attention. The Council has not been able to perform efficiently in ensuring policy coordination country wide due to challenges relating to quorum.
- 3.5 South Africa is also deviled with the mushrooming of new forms of gambling that various players wish to introduce, and attempts to proliferate through extension of existing games without a national framework to guide implementation. These new forms are still illegal in South Africa.
- 3.6 Illegal gambling remains a huge challenge for South Africa. Not only does it threaten the current legitimate gambling operations, but also impacts the capacity of enforcement agencies that continue with the battle to eradicate it. The fact that operators of illegal gambling modes find it possible to make payments to players continues to give the impression that these modes are legitimate in South Africa.
- 3.7 After careful consideration **the dti** has noted that too many challenges come into play about online casino gambling and greyhound racing to support the legalization of the sectors. More research and impact assessment need to be conducted to inform whether these new forms of gambling should be allowed. It is important to develop an enforcement capacity to deal with illegal operations before new activities like online casino gambling are permitted.

## **4. DISCUSSION**

### **4.1 CASINOS**

- 4.1.1 There is empirical evidence that of all gambling sectors, casinos are the biggest creators of jobs. Notwithstanding that casinos are providers of employment; they have some weakness that **the dti** believes can be remedied.

- 4.1.2 Transformation relating to ownership and management control by previously disadvantaged persons is still a matter of concern. This matter needs a concerted action by the owners of casinos and adherence to government priorities on transformation, e.g. BBBEE Codes and Competition laws may be employed to deal with transformation.
- 4.1.3 Location of gambling venues next to malls that are accessible to minors should be discouraged and improved controls must be put in place to ensure that there are different entrances to malls and such gambling venues. It is recognised that casino operators at times might find that areas in which they are located are no longer viable for them to compete and be profitable; however, relocating to areas close to where people live or shop undermines the destination approach to gambling. Therefore, policy implications must be considered at all times when such applications are made by casinos to relocate. It must be understood that the policy position does acknowledge that Casino venues do have shopping and other entertainment facilities integrated together in one establishment. The policy is looking at general shopping mall independent from Casino infrastructures.

***Policy Position:***

*Casinos must maintain separate entrances in cases where other public spaces have developed around them. Policy implications must be considered prior to such applications being granted by the relevant licensing authorities.*

- 4.1.4 Location of ATM within casino venues has come through as another concern that should be addressed. The current practice is that ATMs are located at least 5 (five) meters away from the gambling floor. The casino community has been observing this practice to the latter but a concern is that in other premises the location is too visible from the gambling area. Further, concerns still exist regarding the bussing of people to gambling venues, as well as the laxity in preventing excluded persons from entering gambling venues.



**Policy Position**

*The location of ATMs within casinos be located in a place that is not directly visible from the gambling floor in addition to the requirement of 5 meters radius from gambling floor. Monitoring and inspections should be conducted frequently to identify bussing and instances of exclude persons being allowed, and sanctions be imposed accordingly on the operators.*

**4.2 LIMITED PAYOUT MACHINES**

- 4.2.1 LPMs were introduced as the only compromise to allow slot machines outside casinos. The machines are limited to R5.00 for bets and R500.00 for winnings. However in general each licensed site on which LPM's are exposed for play may not allow an excess of 5 LPMs, which are owned and maintained by the route operator, unless the provincial licensing authorities in consultation with the NGR permits LPMs in excess of 5 per site.
- 4.2.2 A further limit is in the form of capping the number of machines nationally and provincially. The regulations anticipated a rollout of 50,000 machines across the country. This was supposed to occur in two phases. In the initial phase, site operators would install the first 25,000 machines, after which a socio-economic impact study would be commissioned. The granting of second phase licences was made contingent on the outcome of this study. The initial rollout was supposed to have been completed by March 2009 but the total LPMs rolled out represent less than half of the targeted 25 000 machines<sup>1</sup>.
- 4.2.3 The delay is attributed to a number of factors like the zoning issues at municipal levels, unreasonable consultations requirements with affected communities like churches and the reliance on the Business Act, which at the most contradicts the gambling legislations in terms of what should be allowed<sup>2</sup>. The economic viability of LPMs has also been affected as licensing authorities apparently

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<sup>1</sup>Gambling Review Commission Report, 2010 page 57

<sup>2</sup>Vukani presentation to the Gambling Review Commission, April 2010

have a requirement for 60% of LPMs to be rolled out in previously disadvantaged communities. The 60% roll out requirement must be removed altogether.

4.2.4 The NGB has been mandated in terms of section 27 of the Act to establish and maintain the CEMS. The function could be exercised by the NGB directly or by contracting the service of another fit and proper person to perform the function on behalf of the NGB. The NGB has opted for the latter; but operation of the CEMS has been affected by resistance from provincial gambling authorities who required that the contracted operator be licensed as stipulated in the relevant section that the contracted person must not be disqualified as a licensee in terms of section 50 of the Act.

4.2.5 The resistance led to long protracted disagreement between provinces and the NGB until there was a compromise, which was endorsed by the Council. In the compromise agreement it was agreed that the operator of the CEMS must obtain a national licence, which shall be issued by Gauteng. The continued status of the agreement cannot be guaranteed and that necessitate the need to have legislative certainty around this issue. When reading the provision it could not be said that the provision envisaged the licensing of the contracted CEMS operator but only that it must meet similar probity requirement as required for the issuing of a gambling operator's licence. To avoid all the interpretation jargons it will be better to amend the provision in order to clarify this aspect so in future when the licence of the current operator expires there are no such confusions. The policy proposal is to adopt the approach of the signed agreement to require that the appointed third party must acquire a national licence.

4.2.6 The revamped NGB, which will be known as the National Gambling Regulator (NGR), must implement measures to acquire the skills to operate the CEMS in the long run without appointing a third party. The NGR will be able to generate funds to be self-sustainable financially. This will entail that the NGR

appropriate the operation fees from the CEMS operation to sustain and assert its financial independence. Submissions received commenting on this policy was that the policy should rather leave the CEMS responsibility to provinces or let operators develop their own CEMS similar to casinos. This, it was argued, will help with the technology innovation as the current system is out-dated and leads to loss of information. As highlighted above, there is no need to take away this role from the NGR and if the argument is to eliminate poor service, the policy is addressing that by requiring the NGR to acquire the skills to operate the CEMS independently. A sharing formula may be developed for NGR to share the CEMS revenue with PLAs.

- 4.2.7 The operation of the CEMS should not be limited to LPMs as PLAs struggle to collect information from other gambling modes which operate their own CEMS. The existing CEMS operated in other gambling modes must be linked to the CEMS established and maintained by the NGR. The licensees affected must pay the prescribed monitoring fee in respect of such machine tested to the NGR. The Minister will, after consulting Council and the industry, determine when the operation of the CEMS should be extended to all other gambling modes.
- 4.2.8 There is persistent disregard of the NGB's role in approving the stage two of LPMs and some provinces have gone to the extent of rolling 40 machine sites without approval of the NGB; thus without complying with the national norms and standards set out in the Act. This should be discouraged as the law is very clear on this issue. The intention here is to ensure the reduction of harm which will arise if we permit the uncontrolled roll out of gambling activities. The NGR must ensure that there was consideration for the socio-economic effects attached to gambling before approval for extra machines is granted. The agreed framework of considerations to be made when approving extra machines must be published as regulations to afford the industry certainty on what they are expected from them.

***Policy Position***

- *The provision must be amended to clearly require that the appointee of the NGR acquire a national licence in order to provide the CEMS service.*
- *Further that the NGR must implement measures to acquire the skills to operate the CEMS and that will assist for NGR to be financial self-sustainable and have direct control over CEMS.*
- *The NGR must ensure that they develop capacity so in future the CEMS operation is extended to all forms of gambling.*
- *The Act must make it clear that CEMS operator must obtain a national licence.*
- *The role of the NGR in granting extra LPMs per site must be clarified to indicate that the NGR's role is to ensure harm minimization and national harmony. Consultation with the NGR before LPM machines are increased is necessary and must be entrenched.*

4.2.9 There are technical amendments that may be added any time during consultations and will be fully addressed in the Bill but below are the provisions that are already identified.

4.2.9.1 Item 2 in the Transitional Provisions of the Act retains a number of regulations from the previous National Gambling Act, 1996, Regulation No. R 1425 promulgated under section 17 of the 1996 Act on 21 December 2000 to be of effect as if they were promulgated under section 87 of the Act. Retaining the regulations in terms of a transitional provision can be confusing to the public mainly because transitional provisions are supposed to apply permanently.

***Policy Position***

*The retained regulations must be properly promulgated and consolidated together in terms of the Act in order to avoid confusion.*

4.2.9.2 Section 18(2) provides that the operation of LPMs must be incidental to and not be the primary business conducted in any premises licensed as a site, if that site falls within an incidental use category determined by the Minister in terms of section 26(1)(b). It has been found that section 26(2)(b) does not exist and in fact section 26(2)(e) was the correct section referred by section 18(2). The provision merely requires editorial amendment to address the error. It has also transpired that a loophole in the Act is used to issue licences that are in fact licences for operation of a lottery at provincial level. The Lotteries Act of 1997, as amended, governs the issuing of lottery licences.

***Policy Position***

*Section 18(2) must be amended to correctly reference section 26(2)(e) instead of section 26(1)(b). There is a need to add in section 30 a provision that prevents provincial licensing authorities from issuing lottery licences or any other conduct that may contravene other legislations. The oversight body needs to ensure compliance with the provision.*

**4.3 BINGO**

**4.3.1 Background**

4.3.1.1 The introduction of the Electronic Bingo Terminals (EBTs) requires some policy shift from the original intend in the legalization of gambling in the country. Slots machines were not allowed to be made available for play outside casinos and the LPMs were introduced as the exception to permit slot machine gambling outside casinos. That explains why LPMs have stringent limitations on the stakes and winnings.

4.3.1.2 It has been argued by proponents that EBTs are a technological advancement to the traditional bingo game. While on the other side those opposed to the introduction of the EBTs have argued that EBTs are nothing but slot machines which should be played in casinos only.

4.3.1.3 However the Act defines the game of Bingo as a game that can be offered wholly or part by electronic means, but the definition read holistically it envisages that players will match the spaces for the cards. With the EBTs, the machine matches the numbers while players only press the start button. The provision does not envisage bingo development as proposed in terms of the EBTs.

4.3.1.4 The issue of EBTs came before court<sup>3</sup> and the court ruled in favour of the applicants, and held that because EBTs were not interactive (as the game of paper bingo is) they were not simply a technological development in the field of bingo. The court held that EBTs are nothing but slot machines, which should not be played outside casinos. Due to the proliferation of bingo halls and gaming machines currently observed, the GRC believed that a policy on bingo should be developed as a matter of urgency, which should include limits on the number of Bingo licences and seats per province<sup>4</sup>. A policy shift needs to be adopted to ensure that there is no enforcement nightmare against EBTs.

4.3.1.5 The need to prohibit EBTs is outweighed by the demand to regulate the industry. However there should be limitations to ensure that the operations of EBTs do not pose unfair competition to existing forms of gambling especially the LPMs and casinos. The policy should focus on the numbers of licences and machines per province and per site; the location and accessibility; Corporate Social Investment (CSI) and contribution to the responsible gambling programmes.

4.3.1.6 It is argued during the comments stage that there should either be no licence limits or there must be limit on one aspect as oppose to having limits on licences and seats. It is argued that EBTs have already been rolled out in some provinces and any limits below what is already out there will affect employment

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<sup>3</sup>*AkaniEgoli (Pty) Ltd & Others v Chairperson Gauteng Gambling Board & Others*, Transvaal Provincial Division, Case no 187891/06

<sup>4</sup>Gambling Review Commission Report 2010 page 137

created in those provinces. While the policy should have regard for machines that have been permitted out there, the argument should not supersede what will be in the best interest of the country. The proposal to limit licences and seats does not come as a surprise as the Wiehahn Commission recommended that gambling must be strictly controlled with limitations to minimize the harm effects. The limitations are not peculiar to bingo as all activities have limitations peculiar to each sector, bingo licences and seats must be limited.

#### 4.3.2 **Definition of Bingo**

4.3.2.1 The current definition of bingo game envisages that players must match the numbers whereas EBTs do not afford the players such an opportunity to match the numbers. With EBTs the machines match the numbers.

##### ***Policy Position***

*If EBTs are to be permitted as an advancement of a bingo game, then the definition of bingo must be changed to accommodate the electronic version in which the machine is the one that matches the numbers instead of the players themselves matching them. So the definition must recognize the bingo game whether players match the numbers or the matching is done electronically.*

#### 4.3.3 **Number of licences per province**

4.3.3.1 It is important to determine the numbers of bingo licences, inclusive of EBTs, within the country and per province. Determination of the licence numbers in the country will help in ensuring that the latent socio-economic effect inherent to gambling are closely monitored and contained to the minimum as far as it is possible. The numbers of licences and seats will be set out in the regulations after a full consideration of EBTs already rolled out and what the country can afford. The licence numbers should continue being reviewed by the Minister after consulting provinces through the Council.

***Policy Position***

*Numbers of bingo licences in the country should be limited and only be reviewed by the Minister after consulting provinces through Council.*

**4.3.4 Number of bingo seats nationally and per site**

4.3.4.1 The GRC raised a concern on the fact that there is no limit on the number of EBT machines that bingo operators may have. This could lead to a proliferation of gambling machines in the country, and arguably already has<sup>5</sup>. Numbers of bingo position, which includes EBT machines nationally, should be limited in order to prevent the proliferation of machines in the country.

4.3.4.2 The number of bingo seats shall be determined and only be reviewed by The Minister after consulting provinces through Council. The two bingo activities must be allocated together per licence and venues. This is done in order to contain a situation where there will be a proliferation of EBTs over the traditional bingo positions, which has a potential to negatively affect the casino businesses, especially where the EBTs are retained in their current form.

***Policy Position***

*The number of EBTs must be limited nationally, and seats should be limited per site. A further roll out of EBT machines should not be the same as the existing ones that were rejected by the courts in the case of AkaniEgoli (Pty) LTD which have the look and feel of a casino slot machine. Manufacturers must amend the existing version of EBTs.*

**4.3.5 Technical Gambling Testing Standards for all gambling modes to include EBTs**

4.3.5.1 There is no SABS standard specific for EBTs and as a result the standards for casinos are used to test EBTs. SABS and NRCS must be given a period for which they must develop standards to differentiate EBTs from casino slot

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<sup>5</sup>Gambling Review Commission Report 2010 page 161



machines. This will ensure that the EBTs do not resemble casino slot machines.

***Policy Position***

*SABS and NRCS must develop standards to test EBTs in order to avoid using casino slot machine standards.*

**4.3.6 Location of bingo premises and server**

4.3.6.1 Regulatory authorities must observe the B-BBEE laws in their allocation of bingo licences and maintain that bingo halls must not be located within the catchment areas of casinos, as stipulated above that in their current form, EBTs have a potential of eroding the LPM and casino business. PLAs will determine the radius of what will constitute a catchment area. Regulatory authorities must impose social investment contribution conditions on the bingo operators as part of the licence conditions.

4.3.6.2 Since bingo is a server based game, it is important that the server is located within the licensed bingo hall to avoid any potential for interactive gambling operating as a disguised bingo licence.

***Policy Position***

- *The rollout of EBTs must embrace the spirit enshrined in the B-BBEE Act and its Codes to ensure that the ownership, control and management have the representation across all social background.*
- *The location of EBT sites must be far from the catchment areas of casinos and LPMs to avoid unnecessary competition that will affect the continued viability of those activities.*
- *Bingo server must be located within a licensed venue.*

**4.3.4 Operation Hours**

4.3.4.1 Permitting EBTs to be introduced as another form of gambling require some measures to limit their accessibility and any negative impact they might have on

the society. Unlike LPMs it will be impossible to impose bet or winning limits on EBTs given their peculiar nature compared to the LPMs. Additions of EBTs will increase availability of gambling activities within the country. It is necessary to restrict operation times since the bingo premises are located in places that provide easy access to the public. It will not be ideal to allow bingo games to be played 24 hours every day.

- 4.3.4.2 In the comments submitted on the policy, it is argued that there is no empirical evidence that the operation hours will cause the negative harms associated with gambling. Empirical evidence may mean that we wait to see if there is harm then we can be able to propose policy intervention. As indicated the regulation of gambling is to ensure the strict control of gambling to prevent harm. Anything that may help to reduce the harm must be taken into account. To afford stakeholders to propose suitable operation times the prescribed operation hours will be dealt with properly by way of regulations prescribed by The Minister after consulting Council.

***Policy Position***

*In order to curb the socio-economic effects of gambling in relation to the operation of bingo the operation hours must be limited. It is recommended that EBT halls be limited to operate within time as shall be stipulated by way of regulations. The Minister may change the operation times anytime through regulations after consultation with Council.*

**4.4 HORSERACING AND BETTING**

**4.4.1 Horseracing in South Africa**

- 4.4.1.1 Horseracing in South Africa is a self-regulated industry under the auspices of the South African National Horseracing Authority (NHA). The NHA is not a statutory regulator but is responsible for licensing horse trainers, owners and monitor all the race meetings. Phumelela and Gold Circle (Gold Circle operates only in the KwaZulu-Natal (KZN) and Western Cape provinces) own the tracks

in the country and conduct the race meetings. The two companies also own a large share of betting on horses through their jointly owned tote betting operator.

- 4.4.1.2 Another important role player in the horseracing industry is the bookmakers who collect bets from horseracing. Bookmakers also collect bets from other sporting activities like soccer, car racing and others. Bookmakers contribute 6% as retained tax from the winnings to the PLAs of which 3% is paid to the horseracing operators towards funding the development of horseracing.
- 4.4.1.3 There are concerns which cannot be ignored that not all horseracing operators use the said 3% collected towards the development for horseracing, but pay it as dividends to their shareholders. The practice must be discouraged and there must be accountability to PLAs to ensure that the 3% was used for the purpose for which they have been paid for. This is to ensure that the 3% is used to fund the horseracing development.
- 4.4.1.4 The Act and provincial gambling legislations only regulate betting on horses and says nothing about the entire industry, which is self-regulated under the NHA.
- 4.4.1.5 It must be borne in mind that there are concerns raised regarding the transformation of the industry and its willingness to participate in the creation of a fertile environment to accommodate transformation targets. Issues of ownership and entry for new role players in the industry were found wanting in that there seem to be no space for new entrants to enter the industry.
- 4.4.1.6 It is argued in the submissions commenting on this policy that horseracing is a sports and policy must only focus on betting which is gambling. It is further argued that no other sporting activity which has gambling that is regulated as proposed for horseracing. The argument is not supported as horseracing from breeding stage survives through funds generated from gambling. But the proposal is to ensure that there is an extra layer of monitoring especially during the race meetings to assure the public that the race was not in any way

manipulated as the NHA composition has elements that may lead to conflict of interest. The bets heavily depend on the results of the race and it is important that there is no influence on how the race was presented.

- 4.4.1.7 NGR must conduct oversight on the provincial regulatory authorities in respect of horseracing to ensure that national policies and laws are complied with.

***Policy Position***

*The horseracing operators must account to the PLAs on how the 3% collected from Bookmakers as retained tax from winnings is used. The money must be used to fund the development of horseracing not to pay dividends.*

*The recognition and monitoring of the self-regulation body to ensure the smooth running of the horseracing industry.*

**4.4.2 Horseracing Regulatory Structure**

- 4.4.2.1 The industry will be left to continue with the self-regulation that is statutorily entrenched giving policy guidance on how the industry should be managed. The independence of each role player must be properly outlined to ensure that all stakeholders participate equitably. It will be important that the regulatory structure maintain a high level of independence from the ownership and control of the entire industry.

- 4.4.2.2 Board members must maintain independence from the ownership and control while ensuring that all participants are treated fairly in all levels of command.

- 4.4.2.3 The self-regulation approach is a reasonable approach considering that horseracing has been under self-regulation process since its inception over a century ago. Further the administrative and financial burden to the provincial regulatory authorities will be minimised.

- 4.4.2.4 Self-regulating body will be accountable to the NGR in all their administrative and financial performance. The Self-Regulating body will ensure that there are

more accessible mechanisms in place whereby complaints and concerns may be reported and investigated to ensure success.

- 4.4.2.5 The regulatory authorities will jointly develop criteria whereby the self-regulating body can be evaluated. How the self-regulating body meets the above criteria is to be determined in the said criteria. These requirements should appear in the internal controls of the self-regulating body. NGR will develop criteria for the efficient operation of the self-regulating body. The coordination of developing the criteria should be vested on the NGR and the criteria must eventually be approved by Council to ensure harmony.
- 4.4.2.6 In the event the self-regulating body fails to comply with the systems and procedures the Minister may upon report and investigation empower the NGR to take over the interim administration of the self-regulatory body until the Minister is satisfied that the self-regulating body will effectively comply.
- 4.4.2.7 The standards will enable all forms of horse sporting activities and the betting thereon.

***Policy Position***

*That horseracing continues to be regulated under a statutorily recognized self-regulating body, which will be monitored by the NGR. The NGR will develop the criteria for the self-regulator to function. Council must finally approve the criteria.*

**4.4.3 Funding of the Regulatory Authority**

- 4.4.3.1 Funding model for the regulator must be outlined in terms of the legislations and Regulations, since certainty for the funding of the regulator will ensure independence from the industry role players especially if self-regulation is adopted. Under self-regulation the provincial regulatory authority will conduct regulatory oversight and table the reports to the Executive Authorities within the respective provinces.

4.4.3.2 Consistent funding can be derived from the following:

4.4.3.2.1 Any fees payable to a horseracing authority in terms of the horseracing authority's constitution or rules;

4.4.3.2.2 Fees paid to the horseracing authority by racing operators in terms of the number of scheduled race meetings per year;

4.4.3.2.3 Income derived by the horseracing authority from its investment and deposit of surplus money;

4.4.3.2.4 Fees payable to the horseracing authority in terms of the Act or any other national or provincial legislation, and

4.4.3.2.5 Other money accruing to a horseracing authority from any source.

***Policy Position***

*Funding for the Regulatory Authority must be determined and provided for in terms of the legislation and regulations as outlined above.*

**4.4.4 Betting on Lotteries**

4.4.4.1 Regulated betting operations collect bets on lottery results. Lottery in the country is regulated under a separate legislative framework. The mandate of lottery operation and its regulation is different from the mainstream gambling activities as it is primarily established to raise funds for good cause organisations. It is therefore illegal for provincial licensing authorities to licence beyond their mandate and authorize licences that can be used for lottery betting. Lottery is exclusively a national competence.

4.4.4.2 Betting on lottery results by establishments outside the lottery legislation does not only undermine the lotteries legislation but also impact of the viability of lottery operation to achieve its mandate. There has been reluctance by regulators to act decisively on this issue. This practice must be prohibited unless it is authorised under the lotteries legislation. A licence issued in terms of the gambling legislations across the country will not validly empower the bets operators to take bets on lottery results.

- 4.4.4.3 Comments received on this issue indicated that the definition of bet and wager as outlined in section 4 of the Act permits betting on any contingency and thus it allows betting on lotteries results. Some argue that the practice of taking bets on lottery results only encourage people to bet on lotto then after bet with the bookmakers. The prohibition, if implemented should only apply to local lottery and not to bets on foreign lottery. When such a bet is offered, it is just lotto and as such it must be sanctioned under the Lotteries Act. Section 4 of the Act must be amended to remove the unintended consequences leading to this practice. The provision will not be adequate unless it prohibits taking of bets on foreign lotteries too as they will also bring that undue competition to the lottery operator. The prohibition will then apply to both local and foreign lotteries.
- 4.4.4.4 In exceptional circumstances, a person wishing to bet on the outcome of the lottery must first apply to the National Lotteries Commission (NLC), and the NLC before authorizing such a request will consult with the Minister. The person must satisfy the following criteria:
- 4.4.4.4.1 The person requesting permission to bet on the outcome of the lottery must be a registered bookmaker or a horseracing operator.
- 4.4.4.4.2 The lottery results bet on should be for the national lottery only.
- 4.4.4.4.3 A contribution will be made to the National Lotteries Distribution Trust Fund at a rate to be determined by the Minister after consulting the industry and Council.
- 4.4.4.5 Sports pools are also constitutionally the sole mandate of the lottery and it is noted that the horseracing operators are conducting totalizator or pool betting on other sporting activities other than horseracing. This contravenes the Lotteries Act and must be discontinued. It has been argued that horseracing operators have been exempted and permitted to take betting on other sports other than horseracing. Such exemption was never presented to **the dti** team to establish its existence.

4.4.4.6 In the event that the practice of offering sports pools by horseracing operators is permitted, then it must also require that they pay into the National Lotteries Distribution Trust Fund (NLDTF) a reasonable percentage of their gross gambling revenue to compensate for the use of the lottery space. The percentage will be determined by the Minister from time to time after consulting the Council.

***Policy Position***

- *Operators in the business of taking bets or wagers should be prevented from collecting bets on the lottery results or conduct sports pools in terms of a licence issued under gambling legislations across the country. Bets on lottery results and sports pools must only be authorised in terms of the lottery legislation; or*
- *Operators must be required to contribute a reasonable percentage from their gross gambling revenue into the NLDTF as shall be prescribed by the Minister after consulting Council.*

**4.4.5 Bookmakers**

4.4.5.1 There is a longstanding dispute between the bookmakers, operators and the horseracing industry. The dispute is about bookmakers collecting open bets or bets on the results of totalisator betting without contributing to the intellectual property of the owners as operators to the horseracing industry or towards the development of the horseracing sport. There must be respect for any proven Intellectual Property rights (IP) in the horseracing and bookmakers industry. Assessing the whole argument, it is important to also address this matter in the event the results of a totalisator are not found to be an IP right as there will be continuous arguments about what should be paid by bookmakers. The results should not be to eliminate bookmakers from the betting industry as feared by bookmakers that the horseracing operators would like to use the rate of payment as a means to eliminate competition. It would rather be appropriate that such dispute be prevented by requiring the PLAs to set a reasonable



amount payable to the owner of the totalisator instead of leaving this matter for the operators to resolve between themselves as they will never agree.

***Policy Position***

*The Act must be amended to require that there must be respect for intellectual property right within the horseracing and bookmakers industry. PLAs must set the reasonable amount payable for using the results of the totalisator, television rights, development of horseracing industry and any proven claim for payment that may arise after consulting industry players.*

**4.5 New Forms of Gambling**

4.5.1 When drafting the policy, **the dti** has drawn from the recommendations of the GRC Report, Portfolio Committee and Select Committee Reports and have endeavored to address the new forms of gambling that were suggested by these Reports. These include, greyhound racing, bush racing, fahfee, poker (including online poker), betting exchanges, virtual racing and online gambling. It has been resolved that the policy must not attempt to introduce any new activities due to the reasons that will be outlined below.

4.5.1 The policy must ensure that gambling does not grow in such a way that may exacerbate social harms associated with gambling. Problem gambling is rising while there are weaknesses in regulating current gambling modes that are legalized and removing illegal operators. This contributes to the decision to not allow any further gambling activities. New forms of gambling such as greyhound racing, online gambling, fahfee, poker etc. will require further scrutiny before they could be permitted.

4.5.2 There is no information to clarify if online gambling will likely produce significant jobs compared to other regulated activities like casinos. Online gambling is not inherently labour intensive. While managing the sever could create few jobs, there is constant motivations that there should be no requirement to locate the sever locally. The country has already benefited from the taxes collected from

the likes of casinos, the significant employment created directly or indirectly by casinos and the glittering infrastructures developed by casinos while online gambling is not likely to match that.

- 4.5.3 Higher tax rate for online gambling is not an option as that may even give rise to constitutional challenges. It is important that government protect gambling activities that create jobs from unwarranted competition. Too little is known about the activities mentioned above in terms of their potential benefits to the country and its development plan.
- 4.5.4 Online gambling should not be implemented because the country does not have adequate capacity to enforce the regulation of online gambling. The winnings from online gambling are illegal similar to any winning on an unlawful gambling activity. Such winnings should be paid over to the Unlawful Winnings Trust. Banks must not process any payment to the winner from an unlawful gambling activity.

***Policy Position***

*Online gambling and greyhound racing should remain illegal as per the reasoning above alongside other illegal gambling activities like Fahfee and Dice, as well as other gambling activities not regulated in terms of the Act.*

**4.5.5 Regulatory Framework**

- 4.5.5.1 The Council was established in terms of section 61 of the National Gambling Act, 2004. The main objective for the establishment of the Council was to ensure policy alignment between national and provincial regulatory bodies, hence the rationale to have the Minister and MECs as voting members for the Council. That was to ensure that all policy related issues at national and provincial level are considered by these joint forum to eliminate policy contradictions at these two levels of government.

4.5.5.2 It is important for national government and provinces to table their policy processes before the Council in order to ensure the harmony between national and provincial policy processes. As indicated above the Council forum is meant to ensure policy alignment in this environment of concurrent jurisdiction. Policy alignment will be achieved once national and provinces each submit their policies before the Council for consultation and that spirit must be encouraged at all costs. It should be standard practice that all policies are tabled before the Council and deliberated at that level. If for some reasons Council cannot sit and the policy at national or provincial level has to be passed then the policy should be circulated to all Members of the Council for their inputs before such policy is passed.

4.5.5.3 Both the national and provincial government must consult through the Council on matters of gambling policy and legislation. This is important to entrench the principle and practice of cooperative governance required in gambling regulation to eliminate contradictions and misalignments in the policy implementations. The effective functioning of the Council will be realised in ensuring that there is policy harmony throughout the country. Similar to national government provincial policy should be invalid if there was no consultation with the Council. The argument of the provincial autonomy has been considered and comments received were also not in support that the consultation is not mandatory. The reason advanced is that the compulsory consultation with the Council will only ensure the respect for the Constitution and cooperative governance principles.

***Policy Position***

*Consultation on policy by national and provincial government at the Council must be entrenched to ensure the elimination of all policy contradictions and unnecessary disputes. National and provincial policies should not be valid unless there has been consultation with Council for cooperative governance purposes.*

#### 4.5.6 **Policy Alignment between National and Provincial Government**

4.5.6.1 The Council is always affected by the lack of quorum enabling meetings to take resolutions. This has negative impact on the Council's ability to coordinate policy at national and provincial government. This has resulted in a number of policy discrepancies at national and provincial level.

4.5.6.2 The Council must be empowered to make resolutions in the second meeting if the first did not have a quorum regardless whether the second meeting has or does not have a quorum. Documents that will be discussed at the Council must be circulated before meetings to enable Members who cannot attend to make recommendations or inputs. That will ensure that even the resolution adopted without proper quorum was at least considered by all Members. It must be understood that the general rule is that meetings must have quorum hence the proposal that the second meeting should be the one to make a resolution if the matter could not be resolved in the first instance.

##### ***Policy Position***

*In the event the quorum issues persist for two consecutive meetings, in the second meeting the Chairperson of the Council and Members present should be empowered to make a resolution on outstanding issues from the previous no quorate meeting's agenda as if there was quorum for the meeting. Discussion documents must also be circulated to all MECs for their inputs to ensure that all views are considered before resolutions are made.*

#### 4.5.7 **Role of The National Gambling Board**

4.5.7.1 The functions of the NGR are currently contained in section 65 of the Act, which includes the oversight function over provincial gambling authorities to ensure their compliance with the Act. The policy proposes a revamp of the NGR as a strategic trading entity of **the dti** to be known as the National Gambling Commission or Regulator headed by a Commissioner or CEO, as the case may be.

- 4.5.7.2 The NGR will conduct oversight as it currently is empowered to assist with monitoring coherence and policy coordination. The NGR will implement treatment for problem gamblers to fight problem gambling – this will ensure that the responsible gambling programme is broadly accessible across the country. This will be a similar approach to the NLDTF used to fund good cause organisations.
- 4.5.7.3 The NGR will combat illegal gambling working together with provincial gambling regulatory authorities. The NGR will conduct education, awareness and research on gambling harms and benefits. The NGR will operate the CEMS. The NGR will advise the Minister on the implementation of the national norms and standards across the country.
- 4.5.7.4 The NGB needs to be repositioned into a trading entity of **the dti** also advising the Minister of the norms and standards from time to time. This entails that the NGR should be placed in a position to perform its functions in the most effective manner and in accordance with the values and principles mentioned in Section 195 of the Constitution.
- 4.5.7.5 The NGR will be operating within the administration of the department and the head of the trading entity will report to the accounting officer of **the dti** meaning the latter will be the ultimate accounting official of the NGR. Governance of the NGR as trading entity should be in line with the, PFMA regulations issued by the Treasury. Eventually that will mean the employees of the NGR will be reincorporates into the public services workforce and regulated according to the similar prescripts as all public servants.
- 4.5.7.6 Comments submitted argued that the NGR will not be effective if it no longer has the board as it will entrust a decision taken by a team of experts will now be placed under a single person in the form of a CEO. The argument cannot be sustained as the CEO will be working with an executive team that will guide the decisions taken. The proposal should remain.

***Policy Position***

- *The NGR should be transformed into a trading entity of **the dti** to be known as the National Gambling Commission or Regulator.*
- The NGR should implement treatment programme for problem gamblers and acquire the skill to run the CEMS directly without using the service of a third party so in future the service is rendered independently by the NGB.

**4.5.8 The Gambling Regulators Forum**

4.5.8.1 The function of the Regulator's Forums should be used to enhance the work of the Council. The items to be discussed at Council may be subjected to consultation with the Regulator's Forum who will in turn brief their respective MECs before the Council. Consultation will not be compulsory to ensure that if the Forum is not able to reach a quorum that is not affecting the subsequent Council meeting. While the consultation of the Agenda Items will not be compulsory, this should be embraced to enhance and improve cooperative governance.

***Policy Position***

*There need to be consultations with the Regulators Forum prior to Council Meetings although this will not be compulsory.*

**4.6 Transformation**

4.6.1 Transformation in the gambling industry does not manifestly account for the racial and gender demographics in the country. The ownership and management continues to be concentrated on one racial group. The casino survey and Annual Reports of horseracing operators indicates that the industry has achieved a Level 2 compliance with the B-BBEE Act. Casinos must ensure that they improve on their adherence and commitment to the B-BBEE Act.

4.6.2 It is important for B-BBEE compliance to not only ensure level compliance but to ensure that there is significant participation of historically disadvantaged

individuals. For example the reports affecting grooms in the horseracing industry should not be happening at the moment. It should naturally be easy for all industry participants to find it easy to have a forum to meet and discuss issues affecting grooms with any representatives of the grooms. This should be done in order to ensure that the industry reputation is preserved. There should not be concerns that historically disadvantaged individuals are not able to participate unhindered by the industry especially looking at the fact that it is under self-regulation.

- 4.6.3 All forms of gambling operators must comply with the Employment Equity Act, the Labour Relations Act, the Basic Conditions of Employment Act and the B-BBEE Act and Codes. There must be a conducive environment for new role players to enter the industry so as to promote transformation within the gambling industry. All associations must be recognized and must be given an opportunity to affiliate with the regulatory bodies where possible. Provinces must strive for harmonious implementation of employment and economic equity legislations.

***Policy Position***

*Gambling industry must comply with the B-BBEE Act, Labour Relations Act and the Basic Conditions of Employment Act.*

**4.7 ENFORCEMENT**

- 4.7.1 While the Act makes provision for the appointment of inspectors to ensure compliance with the Act, there is no legislative guidance on what should happen if one operator perpetually commits one offence. The policy must outline steps that must be taken once the operator repeatedly commits a similar offence. Suspension of such an operator will be a reasonable deterrence.
- 4.7.2 There are challenges in terms of getting crimes related to gambling before courts due to the over commitment of the South African Police Services in dealing with other crimes. This results with the offences in terms of gambling

legislations not receiving the necessary attention. The NGR and provincial licensing authorities must improve the inspectorate capacity to ensure efficiencies in collecting necessary evidence on gambling related crimes for submission before prosecutors. That will include capacity to investigate and gather evidence on cyber-crimes committed in illegal online gambling operations.

- 4.7.3 Violation of gambling legislation must be viewed as serious and coordination with the Department of Justice and Constitutional Development is recommended to facilitate seamless prosecution. This coordination could unlock the challenges and increase prosecution rate and convictions.
- 4.7.4 The NGR must establish and maintain a register of illegal gambling operators to ensure that these operators are barred for at least five (5) years from acquiring a licence. The register will be used to share the information with banks, Internet Service Providers and all other law enforcement agencies to prevent any facilitation of illegal gambling operations. This will ensure that they do not have bank accounts to operate their businesses, no alternative payments modes are used, no local internet domain use to offer illegal gambling. The NGR will be required to share any information of illegal operators with the relevant payment mode operators or any institution that may facilitate illegal gambling in order for them to stop association with such bodies. Any disregard of such notification should attract criminal liability.
- 4.7.5 In the alternative and as a last resort the Act must establish a tribunal to adjudicate against the illegal gambling activities. This will reduce the burden from the courts and ensure that enforcement is prioritised within the gambling industry. Funding for the Tribunal may be derived from government, the industry and the fines collected.

***Policy Position***

*Perpetual offenders must be banned from applying for a licence until after (5) five*



*years from the date of banning. The inspectorate must be enhanced at national and provincial level to ensure evidence is effectively gathered without dependency on the SAPS. Coordination with the Department of Justice and Constitutional Development is recommended to unlock challenges regarding prosecutions. NGB must work with all affected stakeholders to ensure that there is no facilitation of illegal gambling either in terms of financial transactions or illegal gambling online sites.*

## **4.8 SOCIAL IMPACT MINIMISATION**

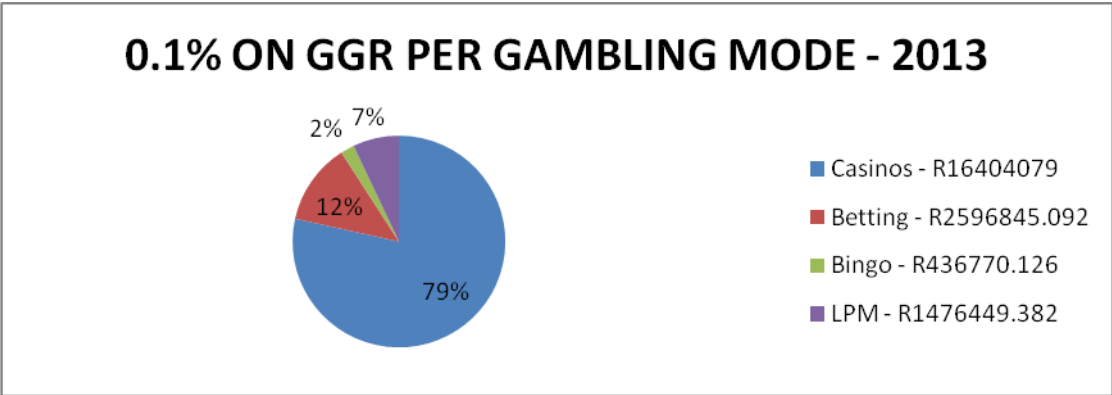
### **4.8.1 The National Responsible Gambling Programme**

4.8.1.1 NRGP is a public/private sector partnership of government regulators and the gambling industry in South Africa. Founded in 2000, and funded primarily by the private sector, it is a comprehensive response to the challenges posed by problem gambling in a developing nation such as South Africa<sup>6</sup>. It is the first national initiative including a problem gambling counselling line, treatment, research and training in a single organisation.

4.8.1.2 The NRGP is supervised by the South African Responsible Gambling Foundation (SARGF). The board of the SARGF has representatives from the regulators, industry professionals and independent persons. The NRGP is funded from voluntary contributions by licensed gambling operators and each contributes 0.1% of their GGR. The statistics compiled by the NGB in 2013 recorded a total of R20 914 143 321 GGR for all gambling modes. The total contribution to NRGP when calculating 0.1% of the GGR above is R20 914 143. 32 in 2013. The graph below describes the 0.1% contribution per gambling mode.

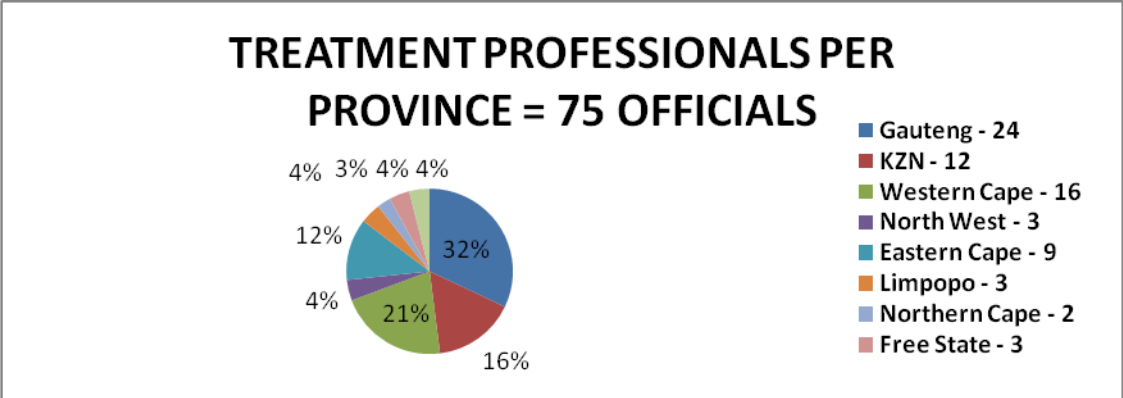
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<sup>6</sup>National Responsible Gambling Programme Annual Report – 2012-2013 page 1



**Source:** National Gambling Statistics - 1 April 2012 – 31 March 2013

4.8.1.3 The NRGP runs a free 24/7 counseling line service manned by 75 professional counselors nationally.



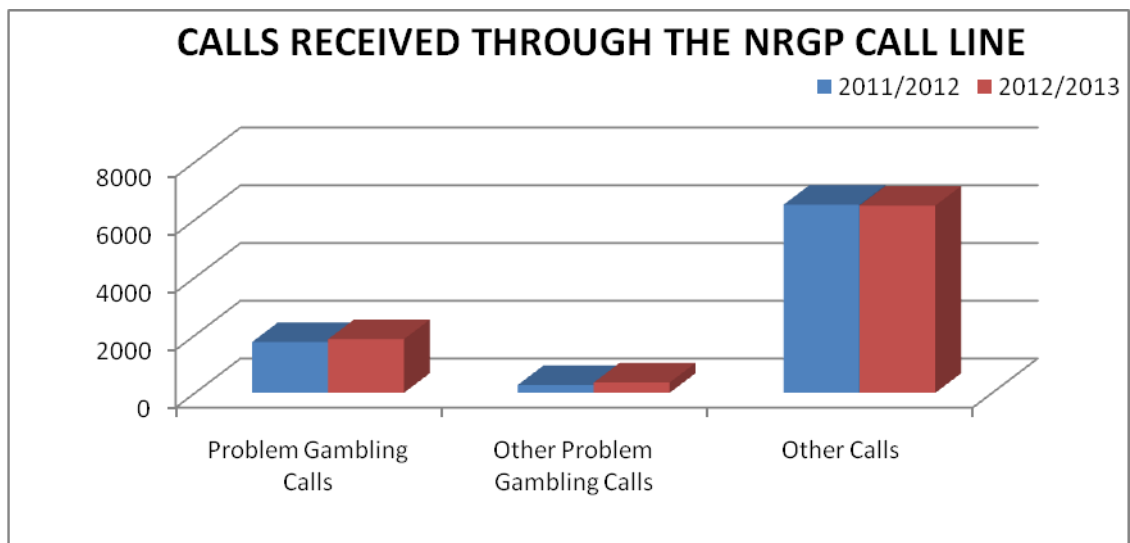
**Source:** National Responsible Gambling Programme Annual Report – 2012-2013

4.8.1.4 The graph above illustrates the distribution of counsellors in all provinces and it shows Gauteng province has more treatment professionals. The services of the NRGP extend outside the borders of South Africa to include Namibia and Swaziland with 2 and 1 treatment professionals respectively.

4.8.1.5 In addition, the NRGP offers a National Schools Education programme, a training programme, and also has a research programme, responsible for the National Prevalence Study and other research. It is not clear from the 2012-2013 NRGP Annual Report whether the body needs more funding but there continues to be calls made by the NRGP and people aligned to it that the National Lottery must also contribute towards funding the body. They argue

that they also treat people with addictions caused by lotto. It is not clear if the request for National Lottery to fund the NRGP is as a result of insufficient funding. It is important to record however that the lottery operator on its own contributes to the National Lottery Distribution Trust Fund in excess of R1billion a year, and gambling operators' contribution is a fraction compared to this. Further, organisations dealing with all forms of gambling addiction are funded by lottery funds. The NRGP is not prevented from applying for funding like all other good cause organisations.

4.8.1.6 The graph below indicates that the counselling line received a total of 8551 call received in 2011/2012 financial year and in 2012/2013 financial year 8699 calls were received. Problem gambling calls totalled 2 035 in 2011-2012 and 2212 in 2012-2013 financial years. The rest of the calls were split between general inquiries, which had significant amount of calls at 4722 in 2011-2012 and 4441 in 2012-2013 financial years, hoaxes, silent and wrong numbers. The numbers of calls received in both financial years are consistent.



**Source:** National Responsible Gambling Programme Annual Report – 2012-2013

4.8.1.7 As indicated above, the NRGP is a voluntary organization without statutory recognition. The NGR must develop capacity to implement treatment

programme for problem gamblers in order to ensure that it is broadly accessible by all people in the country.

- 4.8.1.8 The NGR treatment programme must be funded by way of an industry levy that will be determined by the Minister from time to time after consulting all relevant stakeholders and the Council.

***Policy Position***

*The NGR must establish and manage a treatment programme for problem gamblers. The programme will be funded by the industry through a levy that will be determined by the Minister from time to time after consulting all affected stakeholders and Council.*

**4.8.2 Advertising**

- 4.8.2.1 In terms of the Act advertising restrictions only require that responsible gambling messages be displayed in every advert and that advertising must not target minors and vulnerable people. There are a number of advertising approaches that have emerged with the technological evolution which have not been catered for like promotional short messages, emails, social network and gambling schools. These messages will just pop on all forms of media unsolicited.

- 4.8.2.2 The current advertising provision must be amended to include restrictions for unsolicited promotions in ensuring that they are not deliberately sent to minors, excluded persons and any category of vulnerable people. Deliberate sending of promotions should be an offence in terms of the Act and should render the offender not being eligible to qualify for a licence should the offender apply for one. The party who commissions the unsolicited advertising and promotions must be held responsible for transgressing the legislative guidelines on advertising. The offender could however be allowed to re-enter the market and apply for a licence 5(five) years after being found guilty of such an offence.

***Policy Position***

*The advertising provision must be amended to prohibit unsolicited advertising through telecommunication messages, emails and any form of social media. The prohibition should extend to advertising, promotions and invitation for gambling schools.*

**4.8.3 Unlawful Winnings Trust**

4.8.3.1 The Act empowers the board to receive unlawful winnings involving minors, excluded persons and winnings from unlawful gambling activities and hold it in Trust. The board will after investigating whether the money was correctly appropriated approach the High court for an order declaring the money to be forfeited to the State. The challenge in relation to the High Court application as that will come with huge costs implications that at times exceed the money that should be forfeited to the State.

4.8.3.2 The requirement in the Act for a High Court order to be before the unlawful winnings are declared forfeit to the State is laborious and will prove too costly to the State. It is proposed that after determining the unlawfulness of the winnings the winnings should automatically be forfeited to the NGR. The NGR will hold the money in trust until it is transferred into the account holding industry levy to fund problem gambling treatment.

4.8.3.3 Once the unlawful winnings are forfeited the money must be appropriated by the NGR and be used to fund responsible gambling activities under the NGR.

***Policy Position***

*The funds must be held in trust by the NGB and will automatically forfeit and be used to fight the negative effects of gambling under the NRGP.*

#### 4.9 Economic and Employment Benefits within Gambling Sector

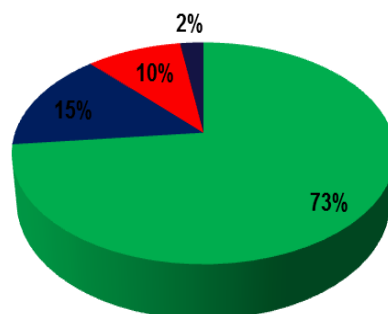
4.9.1 The gambling industry makes a significant contribution towards the country's economy in terms of taxes paid. The NGB compiled statistical data in the amount of taxes and levies collected in 2013 and a total of R2 097 993 970 was collected. Casinos continue to dominate in terms of the taxes collected followed by the betting (including horses and bookmakers) sector; Limited Bingo Terminals and Bingo (including Electronic Bingo Terminals) games are lagging behind.

4.9.2 Gauteng continues to be the dominating province in terms of the taxes collected while the Northern Cape is the smallest contributor. The contributions are however aligned with the general economic capacity of each province considering that number two and three high contributors are Kwa-Zulu Natal and the Western Cape respectively.

4.9.3 Taxes and levies per gambling mode collected from statistics covering 2013/2014 were as follows: **Casinos** – R1 639 968 977, **Betting** – R330 031 378, **Limited Pay-out Machines** – R214 492 336 and **Bingo** – R52 753 031

#### Gambling Taxes and Levies for 2013/2014

■ Casinos ■ Betting ■ Limited Payout Machines ■ Bingo



4.9.4 The contribution of bingo may rise dramatically once the gambling activity is fully regulated throughout the country. The impact of the new forms of

gambling like online/interactive gambling and animal racing is not known at this point.

4.9.5 In terms of employment created within the gambling industry it is common cause that casinos and horseracing industry are labour intensive and employ quite a significant amount of people. Although there is no recent data to back this, the GRC indicated that in 2009 casinos employed around 34 477 people and other non-casino operations within casinos employed around 16 840 people<sup>7</sup>. According to the NGB in 2014 the horseracing operators account for around 1477 permanent jobs and 80 temporary jobs while Bookmakers had around 2391 jobs in 2014. Hollywood Sportsbook Holding claim to be employing 2248 people as at 2015 adding to jobs created by other bookmakers. It must be noted though that through the value chain in the horseracing industry in terms of funding the development of the industry the horseracing industry can be said to be contributing more in terms of employment. Bookmakers can also claim to be contributing at that level as well considering that they also withhold tax of 6% from winnings and 3% of it is paid to the horseracing operators. Bookmakers have also pleaded that the 3% should at least be paid to the NHA as some operators use it to pay dividends to their shareholder which is not the intention of this payment.

4.9.6 It is clear that online gambling will not be that labour intensive. It is not clear what impact will the greyhound racing industry have on the employment scales of the country. Information from other countries may help in determining that aspect. Greyhound racing is a major sports industry in Western Australia generating over \$90 million in turnover and now represents 25.1 per cent of all totalisator betting in Western Australia second to Thoroughbreds (Wither, 2014). The activities and operations of Greyhound Racing New South Wales (NSW) generate an economic benefit in excess of \$570 million to NSW. British Greyhound Racing's core industry employed over 7,000 people in 2012 when all individuals are included. Around 1,700 of these will have full-time roles with

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<sup>7</sup>Gambling Review Commission Report, 2010 page 50

the remainder being employed part-time or on race days. Greyhound trainers employ the largest number of individuals within the industry based on the number of individuals licensed by Greyhound Board of Great Britain (GBGB) to work in kennels.

4.9.7 The numbers above may be backed by the expectations on what needs to happen from breeding until the great racing meeting day when the dog is ready to race. There are a lot of people that need to participate ranging from breeders, trainers, veterinarians, welfare officials, racing organisers and officials.

4.9.8 The gambling industry makes significant contribution towards the country's economy in terms of taxes paid and contributes towards job creation. There should be continuous balance on the value that new forms of gambling potentially bring into the country's economy against the value and contributions derived from existing forms of gambling.

## **5. CONCLUSION**

5.1 The Policy harmonisation must be emphasised to say provinces must amend their legislation to complement the policy stance. Policy must encourage working together with municipalities to ensure that bylaws are observed.

## **LIST OF REFERENCES**

AkaniEgoli (Pty) Ltd & Others v Chairperson Gauteng Gambling Board & Others, Transvaal Provincial Division, Case no 187891/06

Casino Association of South Africa's Annual Survey 2012

Gambling Review Commission Report, 2010

Inputs from the public and relevant stakeholders in the gambling industry after publication for comments and focused meetings to discuss the policy

National Gambling Board Statistics 2013/2014



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Portfolio Committee for Trade and Industry Report on the Gambling Review Commission Report recommendations, March 2012

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