

Executive summary of the Review of the South African Gambling Industry and its regulation

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Introduction

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.

Concerns about the socio-economic impact of gambling in South Africa, especially on the poor, have been lingering since the legalization of the industry. A substantial body of research has been conducted over the period and enables a better assessment of the impact of current gambling activities on society.

The recent debates about the possible legalization and regulation of interactive gambling have opened up broader questions about the appropriateness of current gambling policy, regulation, and the proliferation of gambling opportunities. To consider these broad questions, as well as specific challenges around the regulation of particular forms of gambling, the Minister of Trade and Industry appointed a five-member Gambling Review Commission (“the Commission”) in December 2009 with a broad remit to “consider if the currently legalised gambling activities can/should be expanded or curtailed considering the number of casinos, limited payout machines and bingo outlets already licensed”, having regard for the “socio-economic consequences attached to gambling, such as problem gambling, youth gambling and other social concerns”.

The Commission was specifically requested to review the evolution of the gambling industry since 1996; to assess its social and economic impact, with specific reference to the demography of gambling participants, the incidence of problem gambling and gambling addiction, youth gambling; and the efficiency and effectiveness of current strategies to mitigate the negative effects of gambling. The Commission was further tasked with an assessment of proliferation in South Africa, considering licensed and unlicensed activities and technological developments and the viability of new gambling activities. Lastly, the Commission was required to consider the extent to which regulatory bodies have met their legislative objectives, to benchmark with international jurisdictions and to make policy recommendations regarding the gambling industry on the basis of its assessment. The Commission’s mandate included a consideration of the national lottery.

The current policy framework

The policy on gambling that has been guided by the 1995 report of the Lotteries and Gambling Board, also known as the Wiehahn Commission. The Board was established in August 1994 by the Minister of Justice with a mandate to advise the government on the establishment of a national policy on gambling for South Africa, given that gambling, other than betting on horseracing was illegal at that time. The report of the Wiehahn

Commission has guided the managed rollout of gambling in South Africa since 1996, having identified the following key objectives for gambling policy: -

1. The protection of society from the over-stimulation of latent gambling through the limitation of gambling opportunities;
2. The protection of players and integrity and fairness of the industry through the strict control and supervision of the industry;
3. The uniformity and harmonization of policy and legislation at all levels of government and across provinces through minimum norms and standards, co-operation and co-ordination;
4. The generation of revenue and taxes for provincial government and for good causes;
5. The economic empowerment of the historically disadvantaged;
6. The promotion of economic growth, development and employment.

Pursuant to the report, the policy and regulatory framework was put in place, closely following the recommendations and objectives of the Wiehahn Commission report. The National Gambling Act, 1996 and the National Lotteries Act, 1997 were promulgated and the National Gambling Board and the National Lotteries Board were established. The National Lotteries Board was responsible for the regulation of a state-owned but independently operated national lottery and sports pools, as well as for the administration of the National Lotteries Distribution Trust Fund (NLDTF). The National Gambling Board was not a regulatory body, but rather a body established to provide policy advice and to promote uniformity among provincial gambling regulators, who had the responsibility for the licensing and regulation of gambling activities in their respective provinces. Each province also formulated and promulgated its own gambling legislation. Within this regulatory context, the roll out of gambling activities began, starting with the licensing of casinos within the maximum number of licences that had been set in national legislation. Bingo was also licensed initially, but its rollout was limited to the Gauteng Province. Next the roll out of Limited Payout Machines (LPMs) began.

The first review of gambling policy and legislation occurred in 2002. This review was propelled by three matters, namely the ongoing disputes and contestation between provincial gambling regulatory authorities ("PGRAs") and the National Gambling Board ("NGB"), the rising concerns about the potentially negative socio-economic impact of gambling, and thirdly, to deal with forms of gambling that had not been dealt with or anticipated in the National Gambling Act, 1996, in particular interactive gambling and horseracing.

What began as a set of amendments resulted in a substantial policy review and new piece of legislation (National Gambling Act 2004). The legislation sought to clarify and review the respective roles of the NGB and the PGRAs and to sought to institutionalize co-operative governance in a statutory body called that National Gambling Policy Council ("Policy Council"). The role of the NGB was changed from being purely advisory to having an oversight function as well. The legislation further introduced new regulatory measures to mitigate the potential social harm of gambling. The current review will consider the impact of those changes and assess their effectiveness.

The South African gambling policy adopted conforms largely to a sumptuary model. This is an approach, which seeks to contain excessive demand for gambling and to satisfy only existing demand and is consistent with restrictions on the advertising of gambling. A

revenue maximisation approach on the other hand imposes few restrictions on advertising. This is the approach that has been adopted with respect to the National Lottery.

Overview of the gambling industry

Since its legalisation in 1996, the gambling sector has grown into a small but maturing sector. Gross gaming revenues have doubled in real terms between 2001 and 2009 and now stand at R15.921 billion (R18.129 billion, if the lottery is included). In 2009, the sector generated R1.5 billion in tax revenues for provincial government and is the second highest generator of “own revenues” for provincial governments. In addition, the national lottery generated R1.4 billion in funds for good causes. The sector accounts for substantial employment, with a total of 56,958 direct jobs created and sustained in the industry. The casino industry alone accounts for 51, 317 jobs (90%), 85% of the GGR and 80% of the tax revenues.

Casinos

The casino industry in South Africa is well run and compares favourably with casinos anywhere else in the world. A limit of 40 casinos in the country has been set in legislation and 37 licences have been issued by PGRAs, of which 36 are operational. While the number of casinos increased from 31 to 36 between 2004 and 2008, there appears to have been considerable organic growth of gambling activities at the respective casinos, with the result that the total number of slots in all SA casinos increasing by 4,725 (27%) between 2004/05 and 2008/9 and the total number of “positions” by 6,125 (22.5%). There appears to be some consolidation among casino operators, with the number of licence holders raising possible issues about increased concentration levels. Casinos have made significant contributions to infrastructure development, with a cumulative capital expenditure of R18.8 billion as at March 2009. Casinos are expecting to have achieved level four compliance with the B-BBEE Codes by the end of 2010.

Bingo

Until 2005-2006, bingo remained a relatively insignificant gambling mode in South Africa. In this period, bingo was played in its traditional format, in bingo halls or casinos with players marking off numbers as the host called them out. With the controversial introduction of electronic bingo terminals (EBTs) in September 2005, and the opening of bingo clubs in shopping malls across Gauteng, bingo revenues have increased considerably. This form of bingo, which is dependent on revenues from electronic gaming devices rather than traditional paper-based bingo games, has become a viable component of the gambling sector.

At present, there are 10 bingo halls in Gauteng, ranging in size from the 720 seats to the 153 seats, and are run by one of the main operators, Galaxy Bingo (3 clubs, 1,620 seats) or the Viva Bingo Group (7 clubs, 1,802 seats). Of the total 3,422 bingo positions available, just over a third is taken up by EBTs, with the current rollout standing at 1,242 in the Gauteng province alone. This must be contrasted with just over 5,000 LPMs nationally. Although three provinces have awarded bingo operator licences, bingo halls currently only exist in Gauteng. KwaZulu-Natal appears poised to roll out bingo and EBTs in their province. Of great concern is the location of bingo halls with large numbers of EBTs in shopping centres with easy access from the centres themselves.

Limited payout machines (“LPMs”)

The LPM industry has not grown in the manner initially anticipated. Although a limit of 50,000 LPMs was set for the country, with an initial maximum rollout of 25,000 by March 2009 across all nine provinces, to date only 5,381 LPMs have been rolled out.

The objective of creating a sector within the gambling industry that has low barriers to entry, which facilitates PDI ownership and control, and which contributes to the sustainability of existing (primary) businesses, has not been achieved. This is partly due to delays, inconsistencies and capacity shortcomings within the regulatory bodies, some of which resulted from caution amongst regulators about making machine gambling conveniently available where fairly poor people live. However, in part the problems encountered are inherent in the design of the LPM sector. The requirement that large number of LPM sites should be PDI owned and should be geographically spread outside urban centres may be both economically mistaken and socially undesirable. From an economic perspective, the location of LPMs in typically lower-income to poor areas jeopardises the viability of the industry. Route Operators are required to keep these operations going in order not to jeopardise their licences, but it undermines the viability of the sector. From a social perspective this criteria is also questionable. If the intention is to restrict problem gambling and, in particular, to protect the poor, then the insistence that a high percentage of LPMs are located in areas that, by the nature of South Africa's history, are disproportionately poor is inherently counterproductive.

National lottery

The principle of a state lottery concerned exclusively with revenue maximisation appears to have worked. The national lottery has generated significant funds for the government over the past decade, and is the largest source of funding for good causes in the country. In many sectors, i.e. the arts, funding via the National Lotteries Distribution Trust Fund ("NLDTF") exceeds what is provided through traditional government channels. Unfortunately the popularity of the lottery has declined in the past three years. Internationally, there has been a tendency for lottery expenditure to tail off over time, although the evidence suggests that this expenditure spikes dramatically when there are large roll over prizes.

Betting

Horseracing is a well-established and reasonably well-managed industry in South Africa. Although it is clearly facing major challenges, it appears set to ride out the economic downturn as well as declining on-course and off-course betting on horseracing. Horseracing is a major employer in South Africa, and for this reason alone, it is hoped that the industry prospers. In order to survive, the horseracing industry has to modernise itself and become more attractive to new, especially younger, punters. This requires a combination of two things: modernising existing venues and race formats, and developing new business models more closely integrated with other forms of gambling. Both of these changes are in line with world trends.

The social impact of gambling

Gambling participation

South Africa is the only developing country in the world that can claim to have good information about gambling behaviour. The information available indicates that the number of adults who gamble regularly has dropped from 86% in 2005 to 42% in 2008. Overall, the three most popular forms of gambling are casino gambling, the lotto and scratch cards, irrespective of race or income group. It would appear that levels of participation correlate closely with income. Persons in lower income groups are less

likely to gamble than persons in higher income groups, with 71% of the lowest income cluster abstaining from gambling, while 58% and 65% in the two highest income clusters do not participate in gambling at all. A worrying trend is the growing significance of informal (and hence illegal) gambling in South Africa.

Problem gambling

There is considerable debate over the nature and cause of problem gambling. Typically, this is understood to involve an uncontrollable urge to gamble, such that the persons involved cause significant harm to themselves and to others. There is considerable debate about the usefulness of the different tests to measure the extent of problem gambling and different measures are used in different countries. As a result, it has been argued that the absolute values of problem gambling are not as important as the longitudinal trend. In South Africa, three categories of gamblers are identified, namely:

1. Recreational gamblers who gamble on social occasions with friends or colleagues.
2. Problem gamblers in the broader sense of gamblers who spend more time and money than they are able to afford on gambling.
3. Problem gamblers in the narrow sense of compulsive or pathological gamblers.

Treatment of compulsive gamblers is especially difficult and has low success rates. Compulsive gamblers invariably have multiple addictions (i.e. to gambling and to alcohol and substance abuse), which contributes to their poor prognosis. Problem gambling in the broader sense is believed to be informed, in part, by particular beliefs about luck, chance, fate and “the odds”. These give the gambler the false confidence that they can “beat the system”, and can be often be challenged and addressed through a range of educational and therapeutic interventions.

In South Africa, we find that the level of problem gambling rose significantly in 2003 due to the novelty factor associated with the introduction of the national lottery, but declined shortly thereafter. Since 2005 it has remained relatively constant. The fact that problem gambling levels have remained relatively constant, despite the significant growth in the size of the gambling industry in this same period, suggests that the regulators as well as the National Responsible Gambling Programme have been relatively successful in their harm minimisation measures. However, there is no room for complacency. Although comparisons between different countries are difficult to make, it appears as if South African problem gambling levels are higher than those encountered in Europe, roughly in line with the United States of America (“USA”), and slightly lower than the levels found in Asian countries.

Furthermore, the relationship between problem gambling and informal gambling is especially problematic, and requires careful attention. South Africa should pay particular attention to new forms of gambling. We simply do not know what the impact of online gambling will be.

Youth gambling

Although it would be wrong to conclude that there is an underage gambling crisis in South Africa, it is clear that this is a troubling and possibly growing trend. The Commission is especially concerned about reports that some youth in impoverished areas claim that they gamble in order to buy basic necessities and pay schools fees.

Regulatory measures

The National Gambling Act, 2004 contains a range of measures to protect the vulnerable and minimise the potential negative socio-economic impact of gambling. These measures include the limitation of entry to gambling premises by minors and by excluded or self-excluded persons, a prohibition on extending credit to punters directly or through a third party, the enforcement of debts by minors or excluded persons, restrictions on advertising and the placement of cash dispensing machines in designated spaces or within a prescribed distance from those spaces.

These measures are currently implemented with mixed success. Of greatest concern is the effectiveness of the self-exclusion measures, as well as the enforcement of some of the advertising restrictions.

Research, education, prevention and treatment

PGRAs generally have limited budgets available and focus their resources on education programmes. The budgets vary substantially, ranging from R500, 000 to R12 million in the case of the Gauteng Gambling Board.

A number of treatment and rehabilitation programmes exist, including programmes registered with the Department of Health and/or other government departments, such as Social Development, coalitions of church fraternities and other concerned individuals like JASA and advocacy and private research bodies such as the Family Policy Institute. Doctors for Life International has a gambling addiction counselling programme and Gamblers Anonymous, a fellowship support group, is fairly well represented in the country, with branches in KwaZulu-Natal, Gauteng and Western Cape. In addition, private centres offering treatment for a range of addictions and dependence are offered, but are expensive and therefore out of reach for most South Africans. None of these programmes or centres receives funding from industry.

Those that cannot afford private treatment for gambling addiction are reliant on the National Responsible Gambling Programme (NRGP) and its network. The NRGP is supervised by the South African Responsible Gambling Trust (SARGT), which was established by the South African Advisory Council on Responsible Gambling under the auspices of the National Gambling Board. The NRGP is funded from voluntary contributions by licensed gambling operators. Some provincial regulators have made contributions to specific programmes. It had a total budget of R15 million in the 2009 financial year.

The NRGP runs a free 24/7 counselling line service manned by professional counsellors and operates through a national network of counsellors. 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. The NGB website reported that 25,740 calls having been received by the toll free programme gambling counselling line, with about 8,795 being referred for treatment since the inception of the NRGP in 2000.

Gidani, the operator of the National Lottery, runs its own Responsible Play Programme. The programme focuses on education, awareness creation and providing support services and self-exclusion programmes for problem gamblers. Although it claims to have a national reach, the scope of the programme limited in comparison with the NRGP

and is not widely published and easily accessible. Gidani was reported to be considering a possible partnership with the NRGP.

Adequacy and effectiveness of current regulatory framework

Concurrent jurisdiction

The regulatory framework for gambling is shaped by the fact that gambling, other than lotteries and sports pools, is an area of concurrent legislative competence between national and provincial government. Thus gambling in South Africa is currently regulated by eleven acts of law. Concurrent jurisdiction raises a number of particular challenges for the regulatory framework:

1. The effective resolution of disputes between provincial regulators and the NGB and between provinces.
2. The effective implementation of co-operative governance, requiring a co-operative and consultative approach to policy-making and a relationship between all parties that is based on mutual respect and trust.
3. Ensuring consistency and uniformity in regulation through the development and consistent implementation of national norms and standards.

Co-operative governance

The National Gambling Policy Council, a statutory body established in terms of the National Gambling Act, is charged with providing for consultation between the national and provincial governments on matters of national gambling policy, the promotion of uniform national and provincial laws, norms and standards. In addition the Policy Council is mandated to deal with the management or monitoring of gambling and to deal with the resolution of disputes that may arise between the provincial gambling regulators. The Policy Council has not been effective in settling disputes or in reaching agreement on policy matters, especially where there is a conflict of objectives, usually between national and provincial government. The structure and working of the Policy Council requires review.

The regulatory framework

The regulatory framework consists of two national regulators and nine provincial regulators.

Lotteries and sports pools are an exclusive national competence and the regulatory responsibility of the National Lotteries Board (NLB). The NLB has three main functions, namely to provide advice the Minister on matters relating to the National Lottery and the lotteries legislation; regulating and policing lotteries and sports pools; and administering the National Lottery Distribution Trust Fund (NLDTF). The NLB appears to have considerable capacity problems, and is not always able to exercise its mandate effectively. In particular, the NLB struggles to oversee the operation of the NLDTF and the distribution of monies from the NLDTF remains a serious problem.

The National Gambling Board ("NGB") is responsible for monitoring and investigating the issuing of national licences by the provinces; monitoring compliance by PGRA's with the National Gambling Act, 2004 and entering into agreements with them to rectify any deficiency. It further has responsibility for establishing and maintaining a number of registers and a national central monitoring system. The NGB is also responsible to monitor the socio- economic impact of gambling and the causes of addictive or problem gambling, advising the National Gambling Policy Council on norms and standards, as

well as monitoring competition in the industry. The NGB has struggled to fulfill key areas of its mandate, such as exercising oversight over provincial regulators and the establishment of registers. This is largely due to the fact that the organisation depends on co-operation and support from PGRAs, which is often not forthcoming. Furthermore, PGRAs tend to default to provincial legislation, where there is a difference between the national norm or standard and the provincial law, undermining efforts to achieve uniformity. Other ways of ensuring accountability of provinces and promoting uniformity must be found.

Each province has its own gambling regulatory authority. In terms of the National Gambling Act, 2004, PGRAs are responsible for issuing national and provincial licences; monitoring compliance with national and provincial legislation and with licence conditions; and combating illegal gambling. In general PGRAs appear to be effective in monitoring compliance with licence conditions and with legislation. There appears to be a lack of uniformity in the application with licensing criteria and a lack of compliance with the norms and standards set out in the National Gambling Act, 2004. The effectiveness with respect to enforcement of illegal gambling is mixed across provinces – some have been very committed and effective, whereas in other provinces, there has been no capacity and no will to close down illegal operations. Finally, from an efficiency perspective, it appears that resources are not necessarily targeted in the most efficient manner and there may be excess capacity in some regulatory institutions. It is suggested that a more risk-based approach to regulation would allow for a better targeting of resources, possibly directing more resources towards the eradication of illegal gambling.

Taking stock of gambling policy

Based on the above discussion, the Commission assessed the success of existing gambling policy against the objectives set out in the Wiehahn report.

Protection of society from the over-stimulation of latent gambling

The Commission is of the view that limitations imposed on gambling opportunities in terms of the policy of a managed rollout of gambling, have indeed restricted the size of the gambling sector. At present, South Africa has a total of 22,206 gaming machines, which means that there are presently a gaming machine per 2,193 persons. At maximum LPM rollout, this would come down to a machine per 608 persons. This can be contrasted with Italy, which has a gaming machine per 171 persons, or New South Wales, Australia, which has a machine per 69 people.

Equally important appears to be the distinction between open-access public spaces and dedicated gambling and entertainment spaces. One of the intentions of the destination style gambling approach is to create dedicated gambling-entertainment venues to which punters must travel. This protects the general public from accidental exposure to gambling activities and minimises opportunities for impulse or convenience gambling. The decision to limit LPMs to a maximum of 50,000 licences is in keeping with this sentiment. It places an absolute cap on convenience gambling on gaming machines whilst allowing the public to enjoy gambling entertainment in a restricted number of carefully regulated sites with a very limited number of machines at each site.

In order to preserve this cap on convenience gambling, it is important that large numbers of gaming machines should not be easily accessible from shopping malls. This would apply to bingo halls that can be accessed with ease from shopping centres and contain

large numbers of EBTs, as well as casinos that are integrated into and easily accessible from shopping malls. In both cases, it dramatically increases the public's "accidental" exposure to gaming machines leading to a proliferation of convenience gambling.

While this approach has limited the introduction and number of gambling activities, a number of worrying trends can be identified.

1. There appears to be a trend for the distinctions between public spaces and gambling spaces to become eroded, due to the integration of casino complexes with local shopping malls and due to the location of bingo halls in major shopping centres.
2. In those areas where clear limits have not been set, there has been creeping proliferation. The number of slot machines and tables in casinos has increased at a steady rate over the past five years. If bingo is rolled out to other provinces, there is the potential that for a large number of gambling venues with a significant number of positions to be rolled out in addition to the limited number of casinos.
3. The poor appear to be especially vulnerable to problem gambling, in large part because of the proliferation of informal gambling activities in low-income communities.

It can be concluded that the managed rollout of gambling opportunities since 1996 has stood us in relatively good stead. Although levels of problem gambling are higher than those encountered in European jurisdictions, these are roughly in line with levels in the USA and slightly less than those in Asia. More significantly, longitudinal trends in South Africa suggest that levels of problem gambling have remained stable, despite the massive growth in the size of the legal gambling industry and the proliferation of informal gambling. Problem gambling is especially problematic in poorer communities with ready access to informal gambling activities. Other jurisdictions, which have less restricted gambling markets and which have allowed a massive proliferation of slot machines outside of casinos, are experiencing growing problems.

The Commission is concerned that there appears to be pressure building from the gambling industry and from regulators to allow more gambling activities. In the absence of a clear policy and regulatory framework this has the potential to increase dramatically the level of demand for gambling, and may not readily be contained.

Strict control and supervision of industry

Overall, South Africa has a relatively well-regulated gambling environment. We have good legislation in place and a high level of compliance with day-to-day activities, making South Africa an internationally respected jurisdiction.

Uniformity and harmonization of policy at all levels of government

One area of distinct weakness in the current framework is the ability to ensure proper uniformity, consistency, and accountability. It appears that provincial and national laws are sometimes not harmonized and differences exist in the application of the legal framework between provinces, resulting in a lack of uniformity. The inconsistencies and differences impact negatively on the industry, and create weak spots in the regulatory framework that can be exploited by less scrupulous operators.

Current mechanisms to achieve uniformity have not been successful, despite the efforts of the NGB. There appears to be little accountability of provincial regulators in terms of the overall policy, and a fragmentation of gambling policy is occurring because policy decisions are not made with sufficient speed and because of provincial disregard with no effective sanctions. An added concern is what appears to be a conflict in the regulatory objectives of provincial and national government. Provincial government and regulators seem to be largely driven by revenue maximisation, while national government is concerned with the managed rollout of gambling activities and monitoring its social impact. The balance between these objectives must be struck in the national policy framework and there must be provincial participation in the policy formulation process, but also accountability in terms of those policy objectives.

Economic impact

Gambling taxes have raised significant revenues for provinces and are the second largest generator of “own revenue” for provinces. The lottery has generated substantial funding for good causes.

In general, there has been Black Economic Empowerment in all gambling sectors, with the exception of the bookmaking sector. However, there are some inconsistencies between original licence requirements and the current requirements of the Codes of Good Practice. An overarching target of level two compliance with the B-BBEE Codes by 2015 has been set for the sector and it has been left to individual provinces to ensure that their licensees meet the target. It is not clear that there is accountability and periodic disclosure by provinces on progress towards this target.

In total, the gambling industry (excluding the national lottery) directly employs 59,958 people, or 0.57% of people in formal employment.

On the basis of the above findings, the Commission believes that while gambling policy and regulation has been largely successful, there is a need to strengthen aspects of policy, particularly with respect to the management of potential proliferation, to review some of the regulatory structures and co-ordination mechanisms and possibly to enhance some of the harm mitigating measures. Furthermore, building on the existing foundation, and in cases where there is a clear indication of an existing demand that cannot otherwise be accommodated or curtailed, there is scope for the introduction of a limited number of new forms of gambling. Finally, the Commission sees no reason to depart from the current approaches to gambling, namely a revenue maximisation approach to the lottery and a sumptuary approach to other forms of gambling.

The managed rollout of licensed gambling activities

As part of its mandate, the Commission was requested to consider the potential expansion of existing (licensed) gambling activities in the light of broader concerns regarding proliferation of gambling opportunities. In making its recommendations, the Commission considered each licensed gambling mode, the current state of the industry, international trends and lessons, as well as the possible social impact.

Casinos

The Commission is of the view that the current limit of 40 casinos in the country is appropriate and should be maintained in future. There is a need to monitor the growth of slot machines and tables at casinos. The Commission recommends that limits on the

total number and type of slot machines should be set. This would include both casino-based and non casino-based slot machines.

Casino CSI expenditure needs to be benchmarked against other sectors and re-assessed by the casino industry in line with local economic and social realities, as well as commitments made by the casino industry in other jurisdictions. The assessment would also need to consider the industry contribution to the National Responsible Gambling Programme.

The Commission recommends that the New South Wales approach of comprehensive licence reviews every five years be considered. There is a need for a clear and consistent policy on B-BBEE in the gambling industry as a whole to be developed, with particular emphasis on casinos. Currently, there is an overarching target of level two compliance by 2015. It is recommended that a consistent approach should be proposed by the DTI for discussion with and adoption by provinces once agreement has been achieved.

Limited payout machines

In South Africa, we only allow two types of slot machines at present – those in casinos, which tend to be the high-stake slots, and LPMs. There is currently no distinction between LPMs in convenience or non-gambling venues, such as bars and restaurants, and LPMs in clearly defined gambling venues, such as racecourses and tote outlets. One could argue that LPMs in non-gambling venues should be lower stake and payout machines than LPMs in gambling venues that are licensed to allow other modes of gambling as well. This is in keeping with the distinction between convenience and destination-style gambling discussed above.

The Commission therefore recommends that instead of simply allowing for two categories of slot machines in South Africa (casino and LPM), some flexibility in the rules governing LPMs be introduced. LPMs located in convenience venues should retain the current maximum stake and payout limit, whilst LPMs located in dedicated gambling venues should be allowed machines with higher stakes and payouts. These latter might appropriately be described as medium payout machines or MPMs.

The Commission recommends that the maximum number of slots per gambling establishment should remain at the current number of 40 machines. In addition, the Commission offers three recommendations relating to the existing policy framework:

1. The weaknesses and inconsistencies of the provincial regulatory authorities need to be addressed.
2. The rules stipulating that a high percentage (typically 60%) of host sites need to be owned by PDIs needs to be reconsidered carefully.
3. Decisive action against the “illegal slot-casinos” needs to be taken.

Bingo

The Commission appreciates that Bingo, in its traditional form, has not done particularly well in South Africa and that alternative revenue sources for the industry should be considered to make the sector viable. Under the current regulations, bingo operators wishing to install slot machines are free to apply for licences to operate 40-machine LPM sites, but must do so under the same terms and conditions as any other player in the LPM industry. Due to the proliferation of bingo halls and gaming machines currently

observed, the Commission believes 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.

Betting

The horseracing sector is a declining sector, which is struggling to modernize and transform itself. The current ownership and funding arrangements do not provide sufficient impetus for modernization. Furthermore, the sector seems constrained in its ability to make commercial decisions by its licensing conditions. The Commission therefore offers the following recommendations:

1. Market forces should be allowed to dictate the number and location of tracks, as well as the number of races. Consideration should be given to separating the ownership of the tracks and the tote. The tracks could be funded through a combination of a levy on the gambling tote, bookmakers and online betting operators, as well as commercial rights, such as broadcasting rights for races.
2. The current funding models for the industry should be reviewed to ensure that the tax rates and levies paid to the industry are standardised across the board to create a level field.
3. The horseracing industry should be enabled to integrate its operations with other forms of gaming, especially slots.
4. Current proposals that the former Jockey Club, now known as the Horseracing Authority, should become a statutory regulator should be considered. What is required is a more complete review of the horseracing sector, particularly the integration of the ownership of the tracks and the tote, as well as the competitive challenges of the future, and an appropriate industry and regulatory structure should be researched and developed.

Lottery

The national lottery is an important source of funding for good causes, arts and culture and sport development. The Commission therefore sees no reason for the operation of the lottery to be changed, or for a shift in focus away from the revenue maximisation mandate of the NLB.

Minimising the negative social impact of gambling

Expanding research, education and treatment

At present in South Africa, all industry funding goes to the NRGF or, in the case of the lottery, to the Lotteries Responsible Play Programme. The Commission recommends that consideration be given to the following with respect to the NRGF:

1. Provision could be made through the NRGF to fund other independent organizations in a partnership model. This would enable other providers to receive funding and increase the reach of the NRGF.

2. A fund should be established for independent research. The fund could be housed under the auspices of the NRGP, but should have a more independent evaluation panel to adjudicate applications.
3. The NPS studies should receive additional funding to allow them to focus on more than just the three provinces in which most gambling takes place, and to place greater attention on informal gambling outside the major urban centres.
4. The above proposals will probably require the increase of industry funding for the NRGP. The NRGP should be requested to provide an estimated budget and industry contribution in this regard. Another suggestion is to combine the resources allocated to the NPS and the NGB studies.
5. National and provincial government should develop a national strategy for responsible gambling jointly with inputs from the industry, NRGP and other civil society organizations involved in the education and treatment of problem gambling. The implementation of the strategy should be monitored through the National Gambling Policy Council.

Implementing regulatory measures to protect the vulnerable

South Africa has a host of measures in place at present, which would assist with the minimization of the negative impact of gambling. Some of the measures are not effectively implemented at present and some gaps exist. Particular areas of concern relate to the effective exclusion of minors and self-excluded persons from gambling activities. The Commission is of the view that more onerous requirements, such as mandatory identity checking, as is the case in Singapore, should be considered only if the industry cannot find ways to effectively implement current provisions. These measures need to be applied consistently across all modes of gambling

Improving uniformity and accountability in the regulatory framework

Although South Africa is a well-regulated jurisdiction overall, there appears to be overlap and a degree of inefficiency in the regulatory framework. The biggest source of conflict appears to be the respective roles of national and provincial government. The Commission is of the view that a clearer delineation of the roles of national and provincial government needs to occur. Furthermore, there are currently inconsistencies between provincial gambling regulatory authorities in the implementation and interpretation of laws, as well as in the enforcement of illegal activities. Current mechanisms aimed at ensuring uniformity need are not effective and need to be reconsidered. The Commission offers the following recommendations:

1. The present licensing and regulatory functions of the provinces should remain as they currently are, but there is a greater need for accountability and transparency on the implementation of gambling policy and national norms and standards. The Commission recommends that the oversight role of the NGB should be removed. Instead, the auditors of provincial regulators could be required to audit provincial compliance with national norms and standards on an annual basis and this should be disclosed in annual reports.
2. The DTI, together with the South African Bureau of Standards, should be responsible for developing national norms and standards. These norms and

standards should be comprehensively tested and there should be adequate consultation with all gambling regulators about these norms and standards.

3. The role and composition of the Policy Council should be reviewed. Policy Council should not have a decision-making role, but should rather be a body where the Minister and Ministers of Executive Council (“MECs”) discuss policy matters with a view to achieving policy coherence, consistency and consensus.
4. The Commission recommends that a professional grant-making institution should be established with a board to provide strategic direction and oversight for the NLDTF. The grant-making body could be directly accountable to the DTI or to the NLB.
5. In the context of illegal lottery activity, legal certainty must be created about the responsibility for Sports Pools in South Africa.
6. Finally, the roles of the NGB and the NLB will need to be reviewed and consideration should be given to the continued need for two separate bodies, should the recommendations regarding the mandates of the two institutions be adopted. This is explored further in chapter 6 of the report.

New forms of gambling

Several unlicensed and therefore by definition illegal forms of gambling are evident in South Africa. These include technological advancements on existing forms of gambling, as well as forms of gambling that have been in existence for a while and remain unregulated. The range of unlicensed gambling activities extends from fahfee, cards and dice; bush racing; greyhound racing, interactive gambling, to betting exchanges and certain forms of poker. For the most part, very little is known about the size and impact of these gambling activities. As part of its mandate, the Commission considered each of these forms of gambling in terms of set criteria for assessment and also took into consideration international best practice before making a recommendation. The criteria considered include:

1. Demand
2. Proliferation
3. Punter protection
4. Geographical location
5. Economic viability
6. Economic impact
7. Competition
8. *Enforcement*
9. *Revenue*
10. Animal welfare (where relevant)

Greyhound racing

The Commission carefully evaluated the evidence regarding greyhound racing. A majority view and a minority view on the legalisation of the industry were formed. The majority view is that greyhound racing should not be legalised in South Africa. This view was formed on the basis of the following considerations:

1. There is significant popular opposition to greyhound racing and legitimate concerns about animal welfare.
2. The industry is unlikely to generate significant revenues.
3. In order to become successful, greyhound racing would have to stimulate demand for a new gambling product, which is at odds with the philosophy behind the controlled rollout of gambling in South Africa, and is likely to lead to a proliferation of gambling.

The minority view is that more research will need to be conducted, specifically with respect to the over breeding and retirement of racing animals, before a decision can be made with regard to the possible legalisation of greyhound racing in South Africa.

Should a decision be made to legalise dog racing, the Commission recommends that the following points should be kept in mind in creating a regulatory regime:

1. A breeding programme needs to be properly monitored from the outset.
2. A robust licensing system needs to be put into place to ensure that the persons involved are fit and proper people. This is especially important, as racing is predominantly a cash economy, which can attract unsavoury elements.
3. A proper rulebook needs to be developed, and accepted by all parties. This can be adapted from other jurisdictions.
4. An effective drug control/management framework needs to be put into place. This is important from both an animal welfare and gambling integrity perspective. People will only bet on the industry if it is fair.
5. A strong policy framework for animal welfare across the entire lifecycle of the dog needs to be developed and put into place. The framework developed in other jurisdictions, as well as the “duty of care” imposed by the Animal Welfare Act in the UK, should be considered here.

Fahfee

The Commission did not have the time or opportunity to conduct independent research into this inherently illegal component of the gambling sector. On the basis of information supplied by PGRAs and the limited extant studies on fahfee, the Commission raised concerns about the following:

1. Fahfee is an entirely cash-based business that does not pay tax.
2. Significant concerns have been raised about the involvement of fahfee operators in other illicit activities, including rhino and abalone poaching, trading counterfeit goods, and cash-in-transit robberies.
3. Fahfee is particularly appealing to underage gamblers and elder women, and is a high-risk game in terms of its propensity to encourage problem gambling.

Given the significance of various forms of unlicensed and hence illegal gambling in South Africa, particularly games like fahfee (and dice) that target young people and the poor, the commission is of the view that additional research needs to be carried so that appropriate policies regarding these gambling activities can be developed.

Bush racing

Bush racing are informal horse races, which usually take place in rural area, making policing and prohibition difficult. Given the nature of the activity, it seems unlikely to see substantial growth and therefore contribute to proliferation or cannibalization of legal activities. In order to create some regulatory framework for this type of activity, the Commission recommends that consideration be given to establishing a system of occasional licences or notices, issued by or to the local authorities, as is the case in Great Britain. In Great Britain, informal racing activity is allowed for a maximum of eight (8) times per year per venue. These races would have to be properly supervised by the appropriate animal welfare authorities.

Bingo and electronic bingo terminals ("EBTs")

EBTs, as introduced into South Africa, are gaming machines on which bingo can be played. These machines look, sound and feel like slot machines. Although there are differences between EBTs and slot machines, the spinning wheel symbols of traditional slot machines create a visual similarity with a slot machine. Thus, while EBTs may differ from slot machines, the fact that they look, feel and sound like slot machines serves to confuse punters.

The Commission is of the view that EBT's in their current form should not be allowed in the country, as it creates a third category of gaming machine with no limit on the stake or payout. At present, bingo operators may apply for LPMs and may qualify for up to 40 LPMs upon application. The Commission sees no need for changing the current policy. Should a decision be made to permit EBTs more widely, the Commission offers the following recommendations:

1. The approach adopted in the United Kingdom with respect to VBTs is instructive and a similar approach would be recommended in South Africa. Should EBTs be retained, they should retain to the look, feel and sound of bingo, implying that the spinning wheels, lights and sounds of slot machines should be removed.
2. Furthermore, clear limits on the number of EBTs should be set.

Poker

The game of Poker like bingo can be delivered in various forms: in the form of poker tournaments, held at casinos; social poker games held in people's homes; online poker, which is played over the internet; and poker offered on gaming machines. There appears to be substantial demand for poker to be played outside of licensed casinos and in particular, online. However, currently, poker may only be played at casinos. The current framework appears to be too restrictive, given the demand, which manifests in illegal games and tournaments.

In order to bring into line the illegal industry and to provide player protection against potentially unfair rules and rakes, the Commission recommends that the regulatory

framework should be reviewed and a particular policy on poker should be developed. In particular, the Commission offers the following recommendations for consideration:

1. It is proposed that regulators should license poker tournament operators. Licensed operators would be able to run games at licensed gambling premises (existing licensees) or at places where occasional licences can be obtained through a local government office, such as in restaurants, as determined by the proposed policy. This could provide gambling operators, such as bingo halls, with other forms of revenue.
2. The Commission is of the view that while licences should be issued to host poker events at specified venues, which could include licensed gambling venues and venues that have obtained occasional licences, standalone poker houses and clubs should not be permitted. These clubs will lead to the proliferation of gambling venues, which is undesirable from the destination approach that has been adopted in South Africa.
3. Online poker should also be regulated through online gambling legislation, but should be subject to the same rules regarding the game, as land-based poker. The regulators should ensure that operators put in place measures to check for and prevent as far as possible unfair play, such as collusion.

Betting exchanges

Betting exchanges are a market innovation in the betting area that originated in the United Kingdom, where they were first licensed in 2000. A betting exchange acts as a brokerage by allowing punters to bet against each other in a controlled market place. It is thus similar to a stock exchange, in that it provides a platform to connect gamblers with opposing views on the outcome of a sporting event, in the same way a stock exchange connects buyers and sellers of securities. The betting exchange carries no risk, as punters play against each other not “against” the house, and as such, has no incentive to manipulate the odds or the outcome. Betting exchanges maintain a full evidentiary audit trail of the betting transaction, which helps sports regulators identify corrupters or fraudsters.

The Commission recommends bringing these activities into the regulatory framework explicitly. At present, there is no transparency in the regulatory framework. The criteria of provinces that are licensing operators of similar activities are not clear, there are no standards and it opens the door for proliferation if regulatory standards and limits are not clearly set out upfront.

Bringing these activities into the regulatory net and providing punters with a (limited) choice of licensed operators is likely to provide an outlet for existing demand and will discourage punters from seeking out unlicensed sites. It would maximise punter protection and generate some tax revenues from these activities.

On the assumption that betting exchanges are unlikely to stimulate much new demand, the Commission is not greatly concerned that it will result in proliferation, provided that betting exchanges are regulated in the context of online gambling. It is recommended that the online regulation makes clear provision for such intermediaries and sets out the requirements for the regulation of betting exchanges.

Virtual racing

The Commission considered virtual racing and concluded that it an interactive gambling game. It is therefore recommended that this game should be regulated accordingly.

Online gambling

While there are still a number of international jurisdictions that prohibit interactive gambling (many of those jurisdictions already allow online betting), the trend is to move towards regulation and licensing. The challenge in this sector is to provide sufficient incentives for operators to become licensed, as the borderless nature of their activity allows them to escape regulation fairly easily. One such incentive is the ability of licensed operators to advertise their services legally.

During the international visits, regulators and operators impressed on the Commission the need to regulate online or remote gambling holistically. At issue are the opportunities that the distribution mechanism, namely the Internet, telephone and cell-phone technology, offer for exploitation and for proliferation. The current distinction in South African law between interactive gambling and other forms of online gambling, such as bookmaking, the tote and the lottery, which offer their services online as well, is artificial and does not provide punters with uniform protection.

The Commission is therefore of the view that a holistic view of online gambling should be taken to its regulation that includes interactive gambling and all forms of remote gambling, such as telephone or cell phone gambling. The online gambling regulation should also provide for intermediaries, such as betting exchanges and include online betting through bookmakers and the totalisator via the Internet. The National Gambling Act would have to be amended to reflect this approach to include all forms of remote gambling rather than limiting this to games played against the “house” as is currently the situation.

It is proposed that a maximum number of licences should be determined for online gambling to allow for the controlled rollout of online gambling and to monitor its socio-economic impact over time. Too little is known at this stage about its impact on problem gambling to be able to allow a free market. In addition, the approach to limit the number of land-based gambling opportunities can be substantially undermined, if online gambling is not strictly controlled and limited. Restrictions on the number of operators and the number of games should be considered. Care should, however, be taken not to make the number of licences too few or restricted, as the intention of a licensing regime would be to attract operators, not to exclude them.

The Commission further recommends that current requirements that a server must be hosted in South Africa should be reviewed and that consideration should be given to adopting mandatory self-limitations by players, restrictions should be imposed in the ability to change those limits and strict requirements regarding identity checks should be introduced.

Finally, the Commission recommends that a single regulator be responsible for the regulation of online gambling in South Africa and that consideration should be given to combining that online regulator with the function to regulate the national lottery and sports pools. This recommendation is based on the synergies between the regulation of lotteries and sports pools with online gambling and betting in particular.