
GENERAL NOTICE

NOTICE 416 OF 2015

DEPARTMENT OF TRADE AND INDUSTRY

NATIONAL GAMBLING POLICY

INVITATION FOR THE PUBLIC TO COMMENT ON THE NATIONAL GAMBLING POLICY

I, Dr. Rob Davies, MP, Minister of Trade and Industry having obtained Cabinet approval and after consulting the National Gambling Policy Council, hereby publish the National Gambling Policy for broader public comment.

Interested persons may submit written comments on the proposed National Gambling Policy within 45 calendar days from the date of publication to:

Director-General, Department of Trade and Industry

Private Bag X84

Pretoria

0001

Or, Hand deliver to:

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Block B, 1st Floor

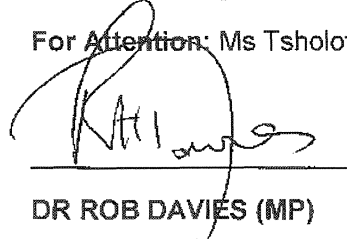
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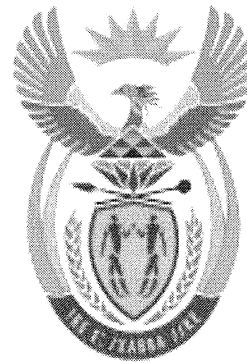
DR ROB DAVIES (MP)

MINISTER OF TRADE AND INDUSTRY

DATE: 8/5 /2015

the dti

CONSUMER AND CORPORATE
REGULATIONS DIVISION
SOUTH AFRICA



GAMBLING POLICY REVIEW:

A discussion document

For Public Consultation

April 2015

LIST OF ACRONYMS

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

LIST OF REFERENCES

Gambling Review Commission Report, 2010

Vukani presentation to the Gambling Review Commission, April 201

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

National Responsible Gambling Programme Annual Report – 2012-2013

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1. EXECUTIVE SUMMARY

- 1.1 The draft National Gambling Policy Review Document(policy) outlines the policy proposals that intend to review the gambling landscape in South Africa. The policy proposals are 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 proposals will be subjected to consultations at relevant fora and with the public at large. Since gambling is a matter of concurrent jurisdiction between national and provincial spheres of government, the policy proposals will be finalized after consultation through the National Gambling Policy Council (Council) in line with its functions in terms of section 62 of the National Gambling Act No. 07 of 2004 (the Act). This process aims to ensure policy and legislative harmonisation between provincial and national spheres of government.
- 1.3 Having reviewed the status of gambling in South Africa since its legalization in 1996, the Department of Trade and Industry (the dti) has developed this policy with recommendations intended to enhance the current legislative framework. The following are the key policy proposals:
- 1.3.1 ***Regulatory structures and framework:*** The regulatory framework looks at the effectiveness of the Council and the role of the NGB. It is proposed that Council be empowered to take binding resolutions if there is no quorum in the first meeting and the same happens in the next meeting. Council agreed to this proposal at its meeting of 5

September 2014. The policy proposes a revamp of the National Gambling Board (NGB) as a strategic trading entity of the dti for regulating gambling. The NGB will accordingly be repositioned and changed into the National Gambling Commission or Regulator headed by a commissioner or chief executive officer, as the case may be. The NGB 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 oversee programs to combat problem gambling through the administration of the revamped National Responsible Gambling Programme (NRGP).

1.3.2 **Casinos:** The policy proposes enhancing regulation of casinos in order to ensure the destination approach for location of casinos is maintained. In this regard, the policy proposes that there be a requirement for different entrances for gambling venues in cases where there have been developments around them. Further, the policy proposes that provinces should assess policy implications when considering the request to relocate a casino venue from one area to another. It is proposed in the policy that 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. Council agreed to this proposal at the meeting of 5 September 2014.

1.3.3 **Limited Payout Machines (LPMs):** The policy proposes to only provide clarity in respect of a few matters. In this regard, it is proposed that section 27 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. The policy proposes that measures be put in place to

capacitate the NGB to be in a position to manage the operation of CEMS as that will help in revenue generation for the NGB to be self-funded. Other technical amendments affecting LPMs involves clarification on the role of the NGB during approval for extra LPM machines in line with court decision in this regard. It is important for the NGB to be consulted when extra machines are required to ensure that the agreed criteria are entrenched nationally. However, the NGB 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:** The policy proposes the creation of a national framework to regulate Electronic Bingo Terminals (EBTs), and in this case it is proposed that the overall number of bingo licenses, including EBTs, and bingo seats in the country should be limited. Minister may review the limits from time to time after consulting provinces through 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. The EBTs must not have the look and feel of the slot machines, which are operated in casinos.

1.3.5 **Horseracing and Betting:** The policy proposes that horseracing be statutorily regulated in that the self-regulation model be formally recognised subject to being monitored by Provincial Licensing Authorities (PLAs), and the minimisation of animal welfare issues. An assessment may be conducted in future to determine if self-regulation should continue with oversight of PLAs, 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 proposed that only a provision addressing that intellectual property of other players should be used with necessary consent, and/or compensation relating thereto.

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. It is proposed that funds in the Unlawful Winnings Trust should automatically vest in the trust held by the NGB after lapse of three years. 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 makes recommendation that the NRGP be included in the legislation to ensure that it derives its powers from the legislation. Further, it is proposed that the contribution to national responsible gambling imperatives by industry should continue through NRGP that will be administered by the revamped NGB. While the money will be paid directly into the coffers of the NRGP, the NGB should have direct control over the NRGP and will direct and monitor its activities to widen its reach and impact.

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 involving the South African Police Services if the latter happen to be over committed in other crimes.

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:*** It is proposed that no new forms of gambling 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. It is proposed that improved provisions 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 banks and other financial institutions from transferring, paying or facilitating payment of illegal winnings to persons in South Africa. 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 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 has not been implemented due to concerns regarding proliferation and access to 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 proposals take into account recommendations of the GRC, the two reports from Parliament, as well as inputs from various engagements with stakeholders, and have 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"> ▪ Protection of society from over-stimulation of latent gambling through the limitation of gambling opportunities ▪ Protection of players and integrity and fairness of the industry through strict control and supervision of the industry. ▪ Uniformity and harmonisation of policy and legislation at all levels of government across provinces through minimum norms and standards, cooperation and coordination. ▪ Generation of revenue and taxes for provincial governments and for good causes. ▪ Economic empowerment of the historically disadvantaged. ▪ Promotion of economic growth, development and employment. 	<ul style="list-style-type: none"> • Opportunities for gambling are increasing with more demand for new games, and proximity to people – 3-4.7% problem gambling • Inadequate access control for excluded persons and minors, and increase in seats and tables in gambling outlets. • Lack of uniformity with inconsistent provincial requirements, coordinating structure not effective and roll out contrary to policy. • Significant taxes and revenue generated. • Limited transformation in the gambling industry, but some progress recorded. • Employment largely in casinos, industry contribution large, growth continued despite recession.

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 gambling, greyhound or animal racing. Introduction of online 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 horse racing 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 will 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 makes recommendations for the expansion of this sector to include EBTs 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 makes proposal for 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 formal recognition of the NRGP and introduces further advertising restrictions to improve on the existing ones.
- 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 will be discussed and they can be eliminated and therefore recommendations will be 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 will be 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, bingos, LPMs and horse racing. 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 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 horse racing activities, e.g. trotting and bush racing. More, the growth and development of this industry from a trade, agricultural and global competitiveness perspectives may require some form of government intervention.

- 3.4 he 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 little is known about online 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.

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.

Recommendation

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.

Recommendation

It is proposed that 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 NGB 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 machines¹.

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 allowed². The economic viability of LPMs has also been affected as licensing authorities apparently have a requirement for 60% of LPMs to be rolled out in previously disadvantaged communities.

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 contracting the service of another fit and proper person. 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

¹Gambling Review Commission Report, 2010 page 57

²Vukani presentation to the Gambling Review Commission, April 2010

that the contracted person must not be disqualified as a licensee in terms of section 50 of the Act.

4.2.4 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.

4.2.5 The revamped NGB must implement measures to acquire the skills to operate the CEMS in the long run without appointing a third party. The NGB will be able to generate funds to be self-sustainable financially. This will entail that the NGB appropriate the operation fees from the CEMS operation to sustain and assert its financial independence.

Recommendation

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

4.2.6 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.

4.2.6.1 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.

Recommendation

It is proposed that these retained regulations must be properly promulgated in terms of the Act in order to avoid confusion. It is also proposed that regulation 10 of the 2000 Regulations be reinstated and promulgated in terms of the Act with the other regulations. It is noted that regulation 10 offers clarity on the considerations to be made in regulation 3(2) of the 2000 Regulations (2000 National Gambling Regulations are herein attached and marked as Annexure A).

- 4.2.6.2 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.

Recommendation

It is recommended that section 18(2) 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 intent 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. 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 court³ 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

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

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 province⁴. 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.

4.3.2 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.

⁴Gambling Review Commission Report 2010 page 137

Recommendation

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 licence numbers should continue being reviewed by Minister after consulting provinces through the Council.

Recommendation

Numbers of bingo licences in the country should be limited and only be reviewed by 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 has⁵. 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 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.

Recommendation

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. Manufacturers must amend the existing version of EBTs. The EBTs must not have the look and feel of a slot machine.

4.3.5 Location of bingo premises and accessibility

- 4.3.5.1 The distribution of bingo licences must ensure a wider geographic reach so that this form of gambling will be accessible to all adult population in the country. 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

⁵Gambling Review Commission Report 2010 page 161

stipulated above that in their current form, EBTs have a potential of eroding the casino business. Regulatory authorities must impose social investment contribution conditions on the bingo operators as part of the licence conditions.

Recommendation

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 has 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.

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.

Recommendation

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 until 22h00 starting from 08h00 in the morning. 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 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 contributes 3% of their total revenue towards the horse industry in the form of a levy paid to the provincial regulators who will in turn pay it over to the horseracing operators.

4.4.1.3 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. The policy consideration need to determine if the self-regulation model in the horseracing industry should be retained as it is or a totally new model should be adopted.

4.4.1.4 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.

4.4.2 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 respective provincial regulatory authority 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. PLAs will develop criteria for the efficient operation of the self-regulating body. The coordination of developing the criteria should be vested on the NGB 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 Executive Authority may upon report and investigation empower the provincial regulatory authority to take over the interim administration of the self-regulatory body until the Executive Authority 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.

Recommendation

That horseracing continues to be regulated under a statutorily recognized self-regulating body, which will be monitored by the relevant PLA. The PLAs will develop the criteria for self-regulator to function under the coordination of the NGB and Council must 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.

Recommendation

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

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.

4.4.4.2 Betting on lottery results by establishments outside the lottery legislative 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.

Recommendation

Operators in the business of taking bets or wagers should be prevented from collecting bets on the lottery results in terms of a licence issued under gambling legislations across the country. Bets on lottery results must only be authorised in terms of the lottery legislation.

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. The bookmakers must be required to contribute a market related amount towards the Intellectual Property rights affected. On the same issue the bookmakers keep on taking bets from the lotteries results and that undermines the *Lotteries Act* – Paragraph on lotteries above applies to bookmakers as well.

Recommendation

Definition of bookmakers should be amended to that Bookmakers pay for the Intellectual Property (IP laws) rights attached to the totalisator system. A market related rate should be determined in terms of the IP laws.

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.

4.5.2 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 and 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.

4.5.3 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.

4.5.4 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.

4.5.5 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.

Recommendation

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.

4.5.6 Regulatory Framework

4.5.6.1 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.

4.5.6.2 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 Council for consultation and that spirit must be encouraged at all costs. It should be standard practice that all policies are tabled before 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 Council for their inputs before such policy is passed.

- 4.5.6.3 Both the national and provincial government should be encouraged to consult through 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.

Recommendation

Consultation on policy by national and provincial government at Council must be entrenched to ensure the elimination of all policy contradictions and unnecessary disputes.

4.5.7 Policy Alignment between National and Provincial Government

- 4.5.7.1 Council is always affected by the lack of quorum enabling meetings to take resolutions. This has negative impact on 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.
- 4.5.7.2 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 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.

Recommendation

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.

4.5.8 Role of The National Gambling Board

4.5.8.1 The functions of the NGB 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 NGB 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.

4.5.8.2 The NGB will conduct oversight as it currently is empowered to assist with monitoring coherence and policy coordination. The NGB will administer the NRGP to fight problem gambling – the revamped NRGP will be operating directly under the administration of the NGB.

4.5.8.3 The NGB will combat illegal gambling working together with provincial gambling regulatory authorities. The NGB will conduct education, awareness and research on

gambling harms and benefits. The NGB will operate the CEMS. The NGB will advise Minister on the implementation of the national norms and standards across the country.

4.5.8.4 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 NGB 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.

4.5.8.5 The NGB 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 NGB. Governance of the NGB as trading entity should be in line with the, PFMA regulations issued by the Treasury. Eventually that will mean the employees of the NGB will be reincorporates into the public services workforce and regulated according to the similar prescripts as all public servants.

Recommendation

*The NGB should be transformed into a Trading Entity of **the dti** to be known as the National Gambling Commission or Regulator.*

4.5.9 The Gambling Regulators Forum

4.5.9.1 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 Council. While the consultation of the Agenda Items will not be compulsory, this should be embraced to enhance and improve cooperative governance.

Recommendation

There need to be consultations with the Regulators Forum prior to Council Meetings.

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. The horseracing industry is worse lagging behind on transformation considering that there are few owners of horses from the historically disadvantaged individual groups.

4.6.2 The Thoroughbred Horseracing Trust seems to be making slow progress in addressing transformation issues in the industry. In addition to the lack of ownership for horses there are also reported incidences of abuses and marginalization for certain role players like the grooms in the industry and no one seems to take the responsibility to address the issue within the industry.

- 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.

Recommendation:

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. It is imperative that policy outlines steps that need to be taken once the operator repeatedly commits one 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 NGB 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 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.

Recommendation:

It is recommended that perpetual offenders 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.

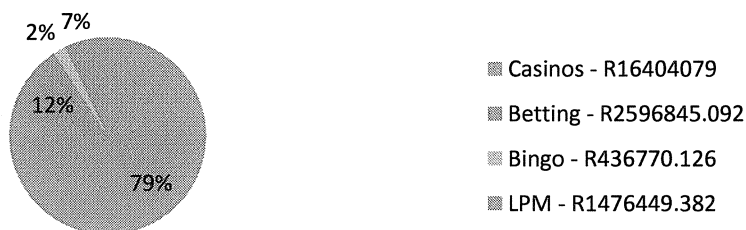
4.8 SOCIAL IMPACT MINIMISATION

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 Africa⁶. 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.

⁶National Responsible Gambling Programme Annual Report – 2012-2013 page 1

0.1% ON GGR PER GAMBLING MODE - 2013

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.

TREATMENT PROFESSIONALS PER PROVINCE = 75 OFFICIALS

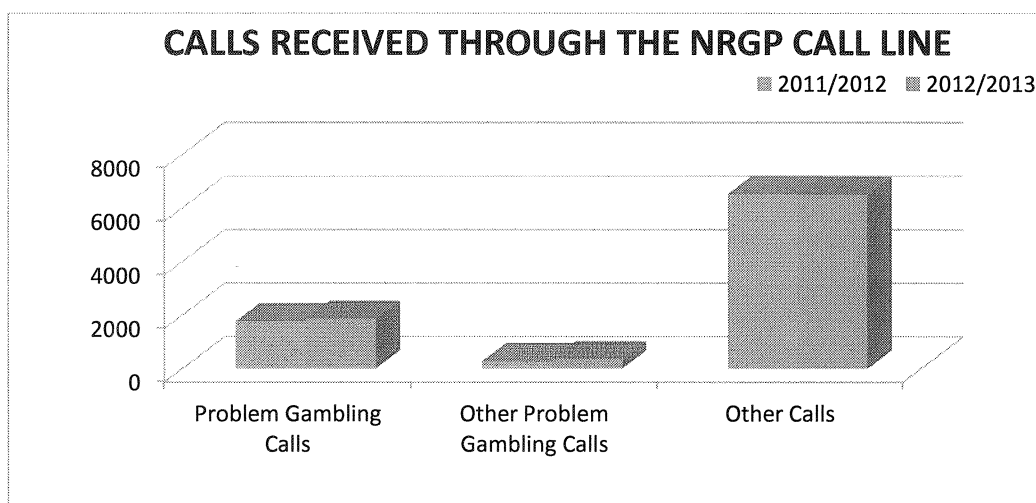
Source: National Responsible Gambling Programme Annual Report – 2012-2013

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.

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 current model can be retained with a specific requirement for the NRGP to report to the NGB. This will entail that the NRGP will be placed under the monitoring and guidance of the NGB.

4.8.1.8 The funding from the industry will continue to be paid to the NRGP and the NGB will closely oversee the performance of the NRGP.

Recommendations

The NRGP be placed under the administration and supervision of the NGB in order to ensure that its operations reach the broader community in the country.

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.

Recommendations

The advertising provision 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 NGB if there was no legal challenge to recover the winnings within three (3) years since the unlawful winnings were appropriated. The

three (3) years will be sufficient since the claim for the money must legally be conducted within three years in any event or the matter will prescribe.

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

Recommendations

The funds held in the Trust must automatically forfeit to the NGB after lapse of three (3) years after the date the funds were confiscated and the forfeited money will be used to fight the negative effects of gambling under the NRGP.

4.9 Economic and Employment Benefits within Gambling Sector

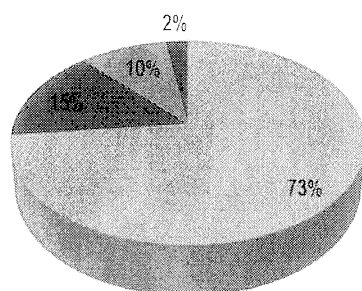
- 4.9.1 The gambling industry makes a significant contribution towards the country's economy in terms of taxes paid. The NGB compiled statistical data in the amount of taxes and levies collected in 2013 and a total of R2 097 993 970 was collected. Casinos continue to dominate in terms of the taxes collected 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



Source: National Gambling Board 2013/2014 Statistics

Source: National Gambling Board Statistics for 2013/2014

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 the GRC indicated that in 2009 employed around 34 477 people and other non-casino operations within casinos

employed around 16 840 people⁷. Phumelela claims in their website that the horseracing industry accounts for over 100 000 jobs. In 2009 the GRC indicated that Phumelela directly account for 1500 permanent jobs, Gold Circle was at 2560 and the Bookmakers at around 300.

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 totalising 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 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

⁷Gambling Review Commission Report, 2010 page 50

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** It is proposed that the recommendations as outlined in the discussion be accepted and used as a basis for consultation with the stakeholders and broader comments. It is submitted that if the policy recommendations are followed, most challenges that currently face the regulation of gambling will be addressed. A draft bill incorporating the initial proposals will be prepared.