

The Remote Gambling Bill

Presentation to the Portfolio Committee on Trade and Industry

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Structure of Presentation

- Arguments in favour of regulation - Why prohibition cannot work
- Overview of the proposed Bill

For regulation...

- GRC Report makes the point that —the current distinction in SA between interactive gambling and other forms of online gambling (such as bookmaking, tote bets, and the lottery) which offer their services online as well, is artificial and does not provide punters with uniform protection” - pg 24 and 183
- How is online gaming as envisaged in the DTI’s policy, different from other gambling which is already licensed and available online?
- The one form is no less or more difficult to regulate than the other. In fact, I argue that online gambling is significantly easier to regulate than other forms (because of the possibilities of cutting-edge software). Far more difficult to prohibit, than to regulate.
- Regulated operators act as policeman, because they do not want unlicensed competition invading their space.
- I argue that this distinction is arbitrary, and leads to confusion among the public



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Windsor Race 6 25/05/2015 04:30	Cartmel Race 3 25/05/2015 04:35	
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Leicester Race 4 25/05/2015 04:50	Redcar Race 4 25/05/2015 04:55	
Windsor Race 7 25/05/2015 05:05	Cartmel Race 4 25/05/2015 05:10	
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- SOCCER** **RUGBY** **CRICKET**
- Norway - 2Nd Division, Avd 4 - Forde Vs Elverum
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3-Way Odds (1,X,2)
25/05/2015 04:45
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3-Way Odds (1,X,2)
25/05/2015 05:00
- Czech Republic - U21 - Fk Teplice Vs 1. Fk Pribram
3-Way Odds (1,X,2)
25/05/2015 05:00
- International - Cosafa Cup, Knockout Stage - Ghana Vs Madagascar
3-Way Odds (1,X,2)
25/05/2015 05:00
- Greece - Football League, Playoffs - Aek Vs Iraklis 1908
3-Way Odds (1,X,2)
25/05/2015 05:00
- Greece - Football League, Playoffs - Larissa Vs Panachaiki 2005
3-Way Odds (1,X,2)
25/05/2015 05:00
- Greece - Football League, Playoffs - Olympiakos Vs Es Apollon Smyrnis
3-Way Odds (1,X,2)
25/05/2015 05:00
- Latvia - Virsliga - Spartaks Vs Fb Gulbene
3-Way Odds (1,X,2)

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For regulation...

- Question, then, is WHY? Why does the Department adopt a policy which on the face of it seems contradictory and not based on discernible evidence
- What is the DTI's matrix for deciding on new policy? What objective basis is new policy decided on? (GRC pages 143 - 144 suggests a logical matrix) - Demand, proliferation, player protection, geographic location, economic viability, socio-economic impact, competition, enforcement, revenue.
- Lobbies - it is always the case that entrenched interests will lobby against increased competition. The main objection of other parties in the industry is jobs and investment - will deal with this shortly

- Increasingly paternalistic policy positions: Potential for harm is not an adequate reason for the prohibition. The same is true of sugar, high fat foods, alcohol, pornography etc.
- What is role of the state: to protect the vulnerable, to educate, to regulate, and to enforce this regulation
- I argue South Africans would far prefer to gamble on a legal, South African-licensed site, backed by a known company, regulated by the SA government, than an unknown foreign entity

Response to DTI's policy

- The Department advances 6 arguments for prohibition:
- 1) Problem Gambling - DTI maintain that problem gambling is on the increase
- 2) Job creation - few jobs compared to casinos
- 3) Tax - not possible to levy higher taxes because Constitutional challenges
- 4) Too little is known about the potential harm or benefit to the country
- 5) No adequate capacity to enforce the regulation of online gambling
- 6) Diversion from —destitution gambling” model

1. Problem gambling...

- There is no empirical evidence, to the best of my knowledge, that problem gambling in the online gambling environment is any worse than land based gambling
- In fact, there are several studies that show problem gambling can be *better* managed in the online environment, because of the sophistication of the software available that can spot problem gamblers, spot problematic bets and play characteristics, freeze their accounts, direct counselling and intervention directly to problem players, etc
- NRGP - “The NGRP favours the legalisation and regulation of remote gambling... precisely because it will make possible the imposition and enforcement of provisions for the avoidance of problem gambling” - NRGP Submission to Parliament, 2007 public hearings
- They still hold this view, in a document published in January 2015 - National Responsible Gambling Digest
- Research suggests that problem gambling in South Africa is actually not any higher than international norms - at roughly 4%

2. Job Creation

- Argument is correct in the sense that online gambling is not as capital intensive (in the —construction” or —setup” phase) as land based casinos...BUT, this is not the whole picture
- Online gambling operations have very significant back-office support requirements — call-centre, IT, player account management, legal and compliance, accounting, player monitoring.
- DTI already has a back-office incentive programme, recognises job creation of back office support
- License could require this investment - Bill proposes.
- Allows for more empowerment. Land based casinos are VERY capital intensive.
- These jobs are transferable - being a player monitor in a casino is not an easily transferrable job

3. Tax

- DTI's point is a matter of legal interpretation
- My focus is on lost revenue - currently, online gambling takes place en masse, and revenue is lost to other jurisdictions. SA derives no benefit from this. This is a loss to the fiscus, which could be used to fund enforcement
- Consider overall revenue position: prohibition requires massive new resources to be devoted to enforcement, with no cost recovery. Regulation is inherently self-funding. It is funded by the license fees of the operators, and the tax they pay to the SA fiscus, not foreign governments
- Proposed Bill makes no suggestion on tax - would need to be a money Bill which I cannot introduce. It merely proposes a formula for the division of the tax revenue between national and provincial.

4. Too little is known

- This assertion is disingenuous
- 2002/3 - DTI started engagement with industry and provinces on online gambling
- 2004 - DTI National Gambling Act (7 of 2004) passed, with a transitional provision (Section 5.5) which stipulated that —within two years, the Minister...must introduce legislation in Parliament to regulate interactive gambling within the republic”.
- 2005 - DTI study committee established to advise the Minister on interactive gambling, which reports to the Minister in Sept. This committee consisted of regulators, DTI, provincial boards, and industry experts
- This committee studied the matter in depth, and recommended regulating interactive gambling
- 2006 - DTI publishes National Gambling Amendment Act to regulate interactive gambling
- 2008 - This Amendment Act is passed and assented to, but commencement date never gazetted
- 2009 - draft regulations under the Amendment Act introduced. Parliamentary Portfolio Committee conducts public hearings on these regs. Regs never finalised

- 2010 - Gambling Review Commission - extensive research, public hearings, international studies and assessments. Reports to Minister.
- 2011 - GRC report tabled in Parliament. Portfolio Committee conducts its own hearings on the GRC report.
- 2012 - Portfolio Committee tables its report, which in the case of interactive gambling, endorses the GRC
- 2013 - NCOP Standing Committee also considers the GRC report
- 2014 - NCOP Standing Committee issues its report with recommendations, which also endorsed the GRC with respect to interactive
- Various - Throughout this time, the NGB conducted several of its own studies and investigations. The NRGP did the same.
- Internationally, a number of other studies have been published on the subject — Harvard Study, University of Buffalo Study, UK CAP Study, to name a few

5. Enforcement capacity

- It is bad legislative practice to draft law which is unenforceable. It erodes the rule of law, and when citizens' confidence or expectation in the enforceability of certain laws is eroded, then adherence to other laws begins to wain.
- Encourages people to see the law as whimsical and unimportant - think e-tolls
- Prohibition creates opportunity for organised crime, which is far more difficult to police
- Prohibition makes treatment of problems more difficult. Far harder to admit you have a problem, when such admission could incriminate you
- Prohibition is phenomenally expensive
- Point already made around the cost-recovery possibilities of regulation
- NGB has one inspector for whole country - compare with NCEMS
- Argument is wrong way around. Country does not have adequate capacity to prohibit - far easier and more feasible to regulate. False choice.

On regulation...

- Big Jurisdictions: Great Britain, Spain, Italy, Germany, France, Denmark, Belgium, Ireland, Nevada, New Jersey, Norway, Sweden, Philippines
- Smaller jurisdictions: Malta, Alderney, Jersey, Isle of Man, Gibraltar, Antigua, Tasmania
- Africa: Several considering regulation - Nigeria, Kenya, Tanzania for example. Opportunity for SA.
- Busy licensing: Netherlands, Hungary, Romania, Czech Republic, Portugal, Greece

6. Diversion from —destination gambling”

- Telephone and other online services already available
- Bingo and LPMs already available

Player protection

- Globally accepted that it is far, far easier to protect players using cutting-edge software available in online space
- Far more rigorous than land based gambling
- Full audit trail and required regular reporting to the licensing
- Easier to exclude players and report names to regulators
- Proposed Bill contains world-leading proposals in player protection - FICA's player accounts, software provisions, voluntary monthly/daily limits, etc

Why payment blocking can't work...

- Hasn't historically worked internationally - works to a limited degree, and usually only with bigger punters
- Not sufficient on its own to sustain prohibition
- Requires investment of resources by banks and the Reserve Bank - significant costs
- There are multiple reasonably easy ways around it
- In all these years, how many payments have been blocked? Less than a handful
- Foreign accounts, web-wallets, e-money (PayPal, uKash), online credit cards
- It has been tried in many jurisdictions, and its success has been negligible

The Remote Gambling Bill (RGB)

- The Remote Gambling Bill, as name suggests, encompasses much more than just online gambling - dealing with all forms of technology that allows punters to place bets remotely. It specifically includes person-to-person, poker, sports betting, and more besides.
- As you know, Constitution gives provincial governments significant functional responsibility over gambling regulation and enforcement. But the Constitution was written in the earliest days of the internet, before online gambling even existed. It could not envisage the complexities created by having national and international gaming offerings operating in 9 separate licensing jurisdictions
- A great deal of our time in drafting the Bill was spent in finding a solution that would preserve the importance of the provincial regulators, but which would also provide for a sensible and easy to navigate licensing regime

The RGB

Responsibilities and functions of the Provincial Licensing Authorities and the National Gambling Board:

PLA Responsibilities

- Accept and review all applications from within the province
- Conduct probity and due diligence
- Make a recommendation to NGB on issuance
- Determine any special conditions
- Make decisions regarding premises and re/location thereof
- Enforcement of the Act: fines/penalties/hearings, etc
- Monitor all operators and remote gambling activities within the Province

The RGB

National Board Responsibilities

- Maintain oversight of PLA performance to ensure norms and standards are properly applied and maintained
- Assist PLA's in detection and enforcement of unlicensed activities
- Receive applications put forward by PLA's
- Determine whether application should be granted
- Determine whether any further restrictions should be applied to the licence – over and above any recommended by PLA's
- Monitor remote gambling activities throughout the Republic
- Investigate any alleged contraventions

The RGB

Categories of Licences and Jurisdiction

3 categories of licences are introduced by the RGB:

- remote gambling operator licence
- remote gambling manufacturer, supplier or maintenance provider licence
- remote gambling employment licence
- Bookmakers that predominantly conduct their activities online will be required to convert their existing bookmaking licences to remote gambling licences.
- Introduces a model whereby ALL applications will be made at provincial level by applicants within the respective provinces with the prescription that the National Board has ultimate power to issue the licences, following the investigation and recommendations of the respective provincial authority

The RGB - player protection

Restrictions and Restricted Activities

- Requires operators to institute robust measures to avoid allowing access to minors, with oversight by NGB
- Granting credit to gamblers is prohibited
- Gambling must not be advertised free of charge or at a discounted rate. All advertisements must contain a health warning'.
- The Minister is empowered to introduce regulations regarding the control, and restriction, of advertising.
- Also, the National Gambling Board must within 6 months after the Act has come into effect publish 'norms and standards' for security, access and maintenance of the websites.

The RGB...player protection cont...

- Requirements for measures to deter, detect and prevent collusion and cheating
- Requirements regarding enticements to gamble
- Requirement of full disclosure of risk and information - to be displayed to player
- Strict standards for RG websites, equipment

The RGB - player protection cont..

- Players are required to have a verified and FICA-compliant, as well as an account at an authorised financial institution.
- Players will also be required to set limits on deposits and/or wagering, and/or loss.
- The National Board is directed to create standards in respect of player registration processes.

Enforcement and Offences:

- Offences in terms of the Act range from R2m fines and/or up to 10 years imprisonment

Conclusion

- Govt has the opportunity to set down proactively the outcomes it desires its player protection, licensing and more
- New revenues will fund enforcement of licenses and regulation
- This is an opportunity to grab this thorny nettle and establish SA as a leader in the field, not a laggard