

Presentation: Responses to Remote Gambling Bill and Stakeholder Submissions

Presentation to the Portfolio Committee on
Trade and Industry
Parliament, Cape Town
24 June 2015



the dti

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REPUBLIC OF SOUTH AFRICA



Delegation

- Ms Zodwa Ntuli - Deputy Director-General: Consumer and Corporate Regulation Division (CCRD)
- Mr MacDonald Netshitenzhe - Chief Director: Policy and Legislation
- Dr Maria Nonyane-Mokabane - Chief Director: Legislative Drafting
- Ms Caroline Kongwa - Administrator: National Gambling Board
- Mr Nkoatse Mashamaite - Director: Gambling Policy and Law



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Purpose

To provide the Portfolio Committee on Trade and Industry with Responses on points raised by the Honorable Member Hill-Lewis and Submissions made by Stakeholders on Remote Gambling Bill (Bill) on 24 June 2015



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General observation

- the dti** recently published a policy document that is informed by research. Further research that relates to Socio-Economic Impact Assessment System (SEIAS), that is, the improved Regulatory Impact Assessment (RIA) application which commenced early June 2015 is currently under way.
- the dti** awaits submissions from the public to improve on the draft policy.
- The preliminary view from the policy is to entrench existing modes of gambling without adding new forms.
- Research and the SEIAS are intended to ensure that all unintended policy consequences are minimised.
- The Remote Gambling Bill presented in this committee is not subjected to SEIAS process. The fact that it was presented as a Private Member's Bill does not mean the SEIAS process is dispensable.
- Even if SEIAS was conducted on the Remote Gambling Bill it would not have changed the factors considered in support of banning online gambling, like the poverty levels, over indebtedness, unemployment, inequalities, alcohol abuse.
- The factors above are inter-related as one may lead to dependency on another.
- The harm and readiness of the regulators to enforce the Bill if it were to pass has not been assessed.
- As a result it is recommended that the Bill be rejected.



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Point from the presentation

In fact, I argue that it is significantly easier to regulate remote gambling than other forms (because of the possibilities of cutting-edge software). It is far more difficult to prohibit remote gambling than to regulate.

What is the DTI's matrix for deciding on new policy

GRC pages 143 - 144 suggests a logical matrix) - Demand, proliferation, player protection, geographic location, economic viability, socio-economic impact, competition, enforcement, revenue

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There is no guarantee that age restrictions will be observed as minors may fraudulently gain access.

Offshore operators will continue despite licences being issued – no measure in the Bill on how that will be dealt with.

Principles from the Wiehahn Commissions continue to guide policy considerations. Gambling Review Commission (GRC) matrix is drawn from the Wiehahn principles as listed below:

- Punter protection against the overstimulation of gambling.
- Monitor to ensure the integrity and fairness of the industry.
- Uniformity and harmonisation** of policy.
- Generation **of revenue and taxes.**
- Economic empowerment of the **historically disadvantaged**
- Promotion of **economic growth, development and employment.**



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Point from the presentation: GRC Matrix	the dti Response
Demand	There is demand for remote gambling, but it will result in harm, thus, resulting in proliferation [See research: <i>The Social Impact of Legalised Gambling in South Africa, NGB, 2013</i> Qualitative perspective page 51]
Proliferation	[See above research] The NGB research above Land-based casinos and betting operations will need to integrate with and develop new cyber-platforms, if they are to survive.
Geographic location	Online gambling is borderless. This is problematic for the detection of illegal online gambling and poses a huge change with respect to enforcement and oversight outside of the South African jurisdictions. This presents the opportunity for operators to house the servers outside of the Republic.

Point from the presentation: GRC Matrix	the dti Response
Protection	<p>Activities introduced in the RGB do not fit into the current legalised modes of gambling.</p> <ul style="list-style-type: none"> <li data-bbox="533 486 1692 572">❑ Definition of bet introduces other forms of gambling e.g. betting on lottery, sports betting, fafhi, dice, dog racing etc. <li data-bbox="533 619 1731 705">❑ Punter is not protected - will be open to manipulation and be lured to enter into illegal transactions. <li data-bbox="533 752 1760 881">❑ Introduces punters to non-monetary cash prizes, increase exposure to counterfeit goods. Section 8 of the RGB provides no certainty regarding the source and quality of the goods. <li data-bbox="533 928 1682 1013">❑ Seek to tout people to gambling, thus, can be argued as a form of inducement to gamble.

Point from the presentation: GRC Matrix	the dti Response
Economic viability	Land-based casinos and betting operations will need to integrate with and develop new cyber-platforms, if they are to survive.
Economic impact	<p>No information on how remote gambling will directly impact on the economy, but for the assumption that it will contribute to GDP.</p> <p>Matters of preferential procurement especially manufacturing sector and Black Economic Empowerment have not been included into the proposed Bill.</p>
Entrenched interests will lobby against increased competition	<p>Bill creates unfair competition – it seeks to provide for the regulation and licensing of remote gambling, introduces new modes of gambling and presents itself as a possible second regulatory framework for gambling.</p> <p>The Bill has not taken consideration of the principles of a regulated industry, and assumes market forces should drive demand and supply, irrespective of the harm.</p> <p>The Bill has the effect of repealing the National Gambling Act, 2004.</p>

Point from the presentation: Problem gambling	the dti Response
<p>Potential for harm is not an adequate reason for the prohibition. The same is true of sugar, high fat foods, alcohol, pornography etc.</p>	<p>Gambling regulation requires stricter controls and limitations to prevent the overstimulation of the demand to gamble. It is not business as usual.</p> <p>Relevant government bodies work tirelessly to prevent effects of sugar, high fats and alcohol, they are not treated as acceptable behaviour.</p> <p>Gambling equally receives that attention.</p>
<p>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.</p> <p>Research suggests that problem gambling in South Africa is actually not any higher than international norms - at roughly 4%.</p>	<p>A study by the NGB [See <i>The Economic Impact of Legalised Gambling in South Africa, NGB, 2013</i> Page 24], found that problem gambling was 2.9% in November 2012, an increase from 0.6% in April 2011. The trend was the highest in the world although below the threshold of 4%; at that rate problem gambling is growing uncontrollably fast.</p> <p>Online gambling will overstimulate gambling as people will gamble anywhere anytime – problem gambling will rise if the Bill is accepted.</p>



Point from the presentation: Problem gambling	the dti Response
<p>There are several studies that show problem gambling can be <i>better</i> managed in the online environment</p>	<p>Problem gambling in the online gambling environment maybe worse than land based gambling [See <i>National Responsible Gambling Digest</i>, March 2015 “Technology alone cannot diagnose someone as a problematic gambler” by Playscan 22 February, 2015]</p> <p>It is difficult to spot a problem gambler or assist with direct counselling and intervention. Online environment remains a risk [See <i>Report - Measuring the extent and nature of internet Gambling in Gauteng</i> by Scott and Barr, 2014]</p>



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Point from the presentation	the dti Response
<p>Online gambling operations have very significant back-office support requirements — call-centre, IT, player account management, legal and compliance, accounting, player monitoring.</p>	<p>Employment will not be as significant as it is in the land based gambling space which is why impact on the industry as a whole needs to be determined. [See Casino Survey 2012] - direct employment at over 34 000, online gambling will not try to match that.</p>
<p>No tax on illegal online gambling and the tax will be used to fund enforcement .</p>	<p>Online gambling will impact current revenue for existing modes of gambling, and this will cause job losses. Only tax benefit while jobs will be lost. Regulation must improve enforcement and curb proliferation of gambling.</p>
<p>the dti has embarked on a number of research in relation to online gambling but still say too little is known about online gambling.</p>	<p>Research done does not help on what will be the impact of online gambling on employment created in existing forms of gambling. The National Development Plan is premised on employment creation, gambling policy must not threaten employment creation.</p>
<p>It is bad legislative practice to draft law which is unenforceable. It erodes the rule of law, and then adherence to other laws begins to wain.</p>	<p>Current legislation is enforceable and draft policy is proposing implementable provisions. Regulators tirelessly embark on measures to enforce against illegal gambling.</p>



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Point from the presentation	the dti Response
<p>Diversion from destination approach already happens with telephone and other online services including bingo and LPMs already available</p>	<p>LPMs and Bingo were originally the negotiated exception to the rule on destination, hence they are limited in nature.</p> <p>Loopholes on Bingo are addressed in the draft policy to add further limitations.</p> <p>Destination and location of devices is still policy and gambling regulation is premised on strict limitations. The ban on online gambling is one such limitation – no free trade. [See the current NGB NCEMS service provider]</p>
<p>Proposed Bill contains world-leading proposals in player protection - FICA's player accounts, software provisions, voluntary monthly/daily limits, etc.</p> <p>More effective than land based gambling.</p>	<p>There is no human element to ensure that a person gambling is who they claim to be which is the case in land based form of gambling.</p> <p>Technology is not effective to diagnose a problem gambler, [See NRGP March 2015 Digest].</p>
<p>Blocking of websites hasn't historically worked internationally - works to a limited degree, and usually only with bigger punters</p>	<p>Singapore and France have introduced the device and are blocking websites.</p> <p>The technology to detect and stop internet operations is accessible, [See submission by Netsweeper].</p> <p>Enforcement ability improves perpetually to respond to changes and difficulties.</p>



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Point from the presentation	the dti Response
Purpose of the Bill	<p>Responsible regulators limit forms of gambling to minimise the harmful effects, like France, only online betting is permitted. No large scale casino online gambling.</p> <p>The Bill will permit irresponsible gambling and does not embrace the Wiehahn principles mentioned above.</p>
The Bill empowers both the NGB and PLAs to deal with licensing processes.	<p>The Bill is bad law, as one must deal with the oversight function and it will perpetuate tensions.</p> <p>The Bill may be found unconstitutional during the certification.</p>
Offences – R2 million or 10 years imprisonment	<p>This is too lenient as the 2004 Act prescribes R10 million or 10 years imprisonment.</p> <p>The 2004 Act penalties needs to be reviewed upwards to align with proposals in the draft policy.</p>

Point from the presentation	the dti Response
<p>Why opt to ban online gambling when you can permit and guide how online gambling should be implemented.</p>	<p>The decision to ban was taken a long time back.</p> <p>The following are the considerations supporting the ban:</p> <ul style="list-style-type: none"> ❑ Rising problem gambling figures at 2.9% in November 2012. ❑ Poverty levels in the country – 32.9% living in poverty. ❑ Level of indebtedness. (The NCR Study 2014 - consumers with impaired records (struggling to pay) increased by 343 000 to 9.95 million from 9.60 million in the previous quarter.) ❑ Unemployment rate in the country at 26% (Stats SA 2014). ❑ Young people more at risk if being enticed to gamble in the online space. ❑ Inequality in the country – a growing gap between the rich and poor <p>The temptation to create a gambling haven at the expense of the factors referred above weigh heavily against lifting the prohibition of online gambling.</p>



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Response to Stakeholder' Submissions

This section provides a response to the Portfolio Committee on Trade and Industry on submissions (comments and concerns) raised by stakeholders on the Remote Gambling Bill



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Definition of Regulation

Definition of the word “regulation” has been sourced to explain that regulation is not only about permitting, it includes prohibiting.

[See **Thesaurus** definition]

Regulation is a legal norm (it could be a written or unwritten policy, Act, Regulations (secondary legislation), Codes, Guidelines, Norms and Standards) intended to shape a thing or conduct by way of: directing, prohibiting, declaring, mandating, interdicting, stipulating procedure, pronouncing, control, managing or setting.

Therefore, regulation can be prohibiting and permitting as demonstrated above.



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Questions and Statements made:	the dti's Response and Comments
Banking Association of South Africa (BASA)	
Transactions can be block if the regulator (South African Reserve Bank) detect and identify the illegal transactions.	This supports the view that payments can be blocked. Currently banks are proactively blocking payments of unlawful winnings and pay them over to the NGB in terms of section 17.
Banks can on their own block transactions in cases where the amounts involved exceed the stipulated threshold.	Concur
Policy misalignment at national and provincial government.	the dti's recently published National Gambling Policy proposes that both national and provincial government consult the National Gambling Policy Council for debate on policies to ensure harmony in legislative prescripts in the same area of work.

Questions and Statements made	the dti's Response and Comments
<p>National Responsible Gambling Program (NRGP)</p>	
<p>Prohibition of online gambling is not a solution, however permitting online gambling will not stop offshore operation.</p>	<p>Inability to stop offshore operators justifies the need to keep the industry illegal and work on improving the enforcement against it as a deterrence.</p> <p>This government must build healthy societies, and not flood them with harmful activities like this in their homes.</p>
<p>Prohibition may be found to infringe freedom of choice.</p>	<p>Regulatory framework of gambling is premised on limitations, which is supported in terms of section 36 of the Constitution, given the inherent harm attached to gambling.</p> <p>Freedom of choice should be limited considering:</p> <ul style="list-style-type: none"> ▪ The harm and costs of dealing with problem gambling. ▪ The need to protect citizens against the harmful effects, which outweigh the desire to permit online gambling.

Questions and Statements made	the dti's Response and Comments
NRGP	
<p>Potential risk and problem gambling will be stimulated with:</p> <ul style="list-style-type: none"> ▪ Increased opportunities ▪ Continuous rapid active play; and ▪ High stakes are increased. 	<p>Online gambling will enhance accessibility which will give rise to undue proliferation.</p>
<p>Internet gamblers compared to land based gamblers are most likely to be problem gamblers most of whom are younger males (below 18) with lower psychological make-up and can indulge easily in gambling.</p>	<p>This supports reasons to keep online gambling illegal.</p>
<p>International jurisdictions are moving to permit online gambling.</p>	<p>South Africa must protect the interests of its citizens from the over stimulation and negative effects of gambling.</p> <p>Capacity to block online gambling should be built, like all jurisdictions that are allowing or not allowing online gambling (US, Singapore and European Union countries like France)</p>

Questions and Statements made	the dti's Response and Comments
<p>Casino Association of SA (CASA)</p>	
<p>CASA is neither for nor against the regulation, however if allowed, there need to be stricter control and this Bill is not the vehicle to impose such control.</p>	<p>According to the dti online gambling is not permissible.</p>
<p>CASA proposed two options for government: status quo and permitting.</p> <p>Dealing with it comprehensively:</p> <p>If regulation is considered, the registration of punters is not effective and the registration must be aligned to the Financial Intelligence Centre Act (FICA).</p>	<p>The <i>status quo</i> should be maintained as the harm by over-stimulation to gamble outweighs the benefits.</p>

Questions and Statements made	the dti's Response and Comments
Phumelela	
<p>There is no value in the employment while it threatens the existing employment.</p>	<p>the dti agrees because employment will be minimal and it will not be worthwhile to jeopardise the significant employment created by land based forms of gambling.</p> <p>This may result with land based operators migrating into the online gambling space, with no real contribution to the economy and jobs.</p>
<p>Problem gambling will extremely rise if online gambling is permitted given the wider reach to players compared to land based forms of gambling.</p>	<p>The view is supported and the country is not ready to cope with the harm that may result.</p> <p>Access to gambling activities will be easy and the Bill does not provide any solution, e.g. to Minors.</p> <p>No responsible government will bring gambling into the living room of citizens that are already poor, overindebted and unemployed.</p>
<p>There is not capital and infrastructure investment from online gambling.</p>	<p>the dti concur</p>

Questions and Statements made	the dti's response and Comments
Lurrie Inc	
Prohibition is not effective and enforcement is not possible. USA failed to enforce the prohibition.	Enforcement needs a collective effort in order to achieve optimal eradication of online gambling. Singapore, France, United States, Israel and others are prohibiting or partially permitting online gambling. Blocking of websites and payments are tools used to enforce. With a zero tolerance approach, this can be done.
SARB cannot succeed in stopping the payments.	Presentation from the Banking Association of South Africa and studies of France gambling regime do indicate that payments can be blocked.
There is no device to block websites.	Singapore and France have introduced the device and are blocking websites. The technology to detect and stop internet operations is accessible, [See submission by Netsweeper].
There are higher 'barriers to entry' for remote gambling than any other gambling activity e.g. walk straight onto a casino slots floor	The software will not detect if it's a minor gaining access through someone else's identity details and such errors cannot be remedied easily.

Questions and Statements made	the dti's Response and Comments
<p>Whitesman</p>	
<p>Where there is prohibition there is no regulation, therefore the country will not get away with prohibition: the online operators are already complying where they are regulated therefore they will comply when regulatory framework are in place in SA</p>	<p>Regulation is only a control measure and you either prohibit or permit under certain conditions.</p> <p>The socio-economic issues in the country are not the same compared to other countries with regards to e.g. unemployment, substance abuse, over-indebtedness, gambling addiction, poverty levels.</p>
<p>Whitemans are of the view that the Minister failed to comply with the principal Act which required that the Minister introduce the regulation of interactive gambling within two years after the Act is passed.</p>	<p>the dti did comply as the process to introduce the 2008 Amendment Act started way before that (Item 5 of the 2004 Transitional Provisions). 2009 - Parliament expressed reservations and the Gambling Review Commission process unfolded, Cabinet, Portfolio Committee and Select Committee interrogated the GRC Report. 2015 - The draft National Gambling Policy proposes that online gambling should be illegal and this will culminate with the repeal of the Transitional Provision referred above.</p>

Questions and Statements made	the dti' s Response and Comments
Whitesman - continued	
<ul style="list-style-type: none"> •South Africa may not be complying with the tenets of the World Trade Organisation (WTO) on the basis of banning online gambling 	<p>the dti does not agree due to the fact that WTO gives discretion to countries to legislate for the good of its nationals.</p> <p>Prohibiting against harmful activities such as, online gambling is within the country' s policy space, thus, this is not a technical barrier to trade.</p> <p>Other member States to the WTO like U.S.A, China, Singapore, France, European Union member states and Russia have acted accordingly.</p> <p>SA would have been in violation since 1996, if this were true.</p>

Questions and Statements made	the dti' s Response and Comments
<p>Vardakos Attorneys</p>	
<p>The Bill is not preceded by a thorough research by provinces or national government on how online gambling will impact on the socio-economic effects online gambling may have on society.</p>	<p>This view is supported and the likelihood is indeed that it will bring problem gambling to the newest high.</p>
<p>Netsweepers</p> <p>Technological tools now exist to detect & stop in real-time, unauthorized access to their Internet gambling markets and safeguard their sovereignty.</p> <p>Legislative framework needs to be amended to permit use of the technological tool.</p>	<p>the dti is currently amending the National Gambling Act to introduce an empowering provision for such a technology to be used in the country, in this case to block all illegal online operators.</p>

Questions and Statements made	the dti' s Response and Comments
<p>Other Comments Only provide guidelines on how the Remote Gambling Bill should be improved to ensure provinces do not fight over licences as the Bill does not provide for allocation per province.</p>	<p>the dti is still of the view that online gambling must remain illegal and enforcement must be improved.</p>
<p>The discrepancy on the role of the National Gambling Board to licence while probity is done by provinces.</p>	<p>the dti agrees with the view.</p>
<p>There is no transitional provisions to deal with issues like licences already issued by provinces on bookmakers as the Bill require licences to be issued by the NGB.</p>	<p>the dti agrees with the view.</p>
<p>Others submissions merely advertise their products that may be used if remote gambling is authorised.</p>	<p>Noted</p>

Policy misalignment

Policy issue	Province/s
<p>The Portfolio Committee requested information on how many provinces exploit policy loopholes leading to policy misalignment at national and provincial government and what those areas of misalignment are.</p>	
<p>The introduction of Electronic Betting Terminals despite persistent calls at the National Gambling Policy Council to wait until there is a national policy framework.</p>	<p>Gauteng KwaZulu-Natal Eastern Cape</p>
<p>Licensing of lottery activities in provinces when lotto is regulated under the Lotteries Act (a national competence)</p>	<p>All provinces license this and the dti raised concerns with the Western Cape and Mpumalanga in relation to infringing licences.</p>
<p>Regulation 3(2) requiring the NGB to approve the type two Limited Pay-Out machines is disregarded by a number of provinces. Extra machines are authorised without engaging the NGB as required.</p>	<p>To date the NGB only approved application from Gauteng Gambling Board.</p>



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NGB Feedback	Response
Definition of Gross Gambling Revenue (GGR)	The rand value of the gross revenue of an operator i.e. turnover less winnings paid to players. GGR is not returned to the Gambler but to the operator.
Definition of Turn over	The rand is value of money wagered including “recycling” which refers to amounts that are staked on more than one occasion.
Return to Player (RTP)	Is capital of the player (not a form of revenue) which is returned to the player (15% of the winnings are tax deductible if the winnings are above R25000). RTP is calculated as a percentage of total winnings divided by turnover.



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Bookmakers vs Totalisators based on audited 2014 and raw 2015 data respectively

Bookmakers	Totalisator
A ‘ ‘ bookmaker ’ ’ means a person who directly or indirectly lays fixed-odds bets or open bets with members of the public or other bookmakers, or takes such bets with other bookmakers;	A “ Totalisator ” generates dividends in respect of a bet in which the payout is determined after the outcome of the contingency on which such a bet is struck became known, with reference to dividends generated;
GGR generated by bookmakers, financial year 2014: R1 613 486 713 GGR generated by bookmakers, financial year 2015: R2 223 956 236	GGR generated by totalisators, financial year 2014: R1 220 616 682 GGR generated by totalisators, financial year 2015: R1 239 038 483
During financial year 2014 & financial year 2015, the highest amount of GGR was generated by bookmakers (betting on horse racing and sport).	
Taxes/levies collected from bookmakers, financial year 2014: R241 862 521 Taxes/levies collected from bookmakers, financial year 2015: R252 004 102	Taxes/levies collected from totalisators, financial year 2014: R 88 168 856 Taxes/levies collected from totalisators, financial year 2015: R 90 911 719
During financial year 2014 & financial year 2015, the highest amount of taxes/levies was collected from bookmakers (betting on horse racing and sport)	

Conclusion

- **the dti** still stands by the prohibition of remote gambling as no real and substantive reasons have been provided to lift the ban.
- Given all the information, **the dti** believes Parliament, Cabinet and government has enough information to take policy decision for or against remote gambling.
- Remote Gambling Bill seeks to introduce online platforms to all forms of gambling including illegal ones, contrary to GRC and Parliamentary Reports.
- Remote Gambling Bill has significant negative socio economic effects, which if allowed will demonstrate a complete disregard to the wellbeing of the citizens of the country.
- Remote Gambling Bill is not backed by any policy, and is contrary to the current policy in South Africa.



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