

**PRESENTATION TO THE  
PARLIAMENTARY  
PORTFOLIO COMMITTEE ON  
TRADE AND INDUSTRY**

***NATIONAL GAMBLING  
AMENDMENT BILL, 2018***

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Chief Executive Officer

Good Hope Chambers, Parliament

*24 October 2018*

**casa**

Casino Association  
of South Africa

# ABOUT CASA

- CASA is a voluntary association which represents the interests of licensed casino operators in SA. 35 of the 38 operational casinos in SA.
- As at March 2017, our members had invested in excess of R50 billion in infrastructure leading to the development of world class entertainment destinations in RSA e.g. Sun City Resort, Sandton ICC & Cape Town ICC.
- Support in excess of 38 000 direct jobs, many of which give employment to people with no previous work experience. Excludes indirect jobs.
- In the FY 2016/17 alone, members contributed R155m in CSI. Last five years – R712m.
- In the FY 2016/17 alone, members contributed R5.9 billion to the *fiscus* in tax revenue. Provincial Gambling Taxes/Levies (R1.8 billion), VAT (R1.9 billion), Corporate Tax (R1.1 billion) & Other Taxes (rates etc.)(R1.1 billion).
- SA Government had an effective 36% share (almost 40%) of the ‘value-added’ to the economy by the casino sector of R16.5 billion in the FY2016/17 and as such it is the largest *de facto* beneficiary stakeholder in the casino industry.
- Members established the internationally acclaimed responsible gambling programme (“**NRGP**”). Funds approximately 66% of its budget.
- Further information – [www.casasa.org.za](http://www.casasa.org.za)

# 1. THE STATUS OF THE NATIONAL GAMBLING AMENDMENT ACT, ACT 10 OF 2008

- This was enacted to legalise and regulate interactive/online gambling – assented in July 2008 but was never commenced.
- Highlighted for two reasons:
  - It is at odds with the National Gambling Policy 2016 which concluded that interactive/online gambling should remain illegal; and
  - It is already causing confusion in the legislative drafting process. See Sections 33 and 40(3) below as examples.
- This requires clarity in the Bill - at least a provision which repeals the provisions that contemplate interactive/online gambling in the above named Act.

## 2. REPLACEMENT OF THE NATIONAL GAMBLING BOARD (“NGB”) WITH THE NATIONAL GAMBLING REGULATOR (“NGR”)

- The NGR will be institutionally compromised in exercising its statutory evaluation and oversight functions in respect of provincial licensing authorities (“PLAs”) if it is governed by a single individual in that it will be required to interrogate the actions of those authorities which are based on collective decision-making.
- A governance structure which vests the governance of the NGR in the hands of a few individuals, rather than in a composite board, will leave the NGR vulnerable to changes in personnel.
- The difficulties with regard to the effective operation of the NGB should rather be addressed by ensuring that persons with the appropriate expertise are appointed to the board of the NGB and that it is adequately staffed and resourced.

### 3. FORFEITURE OF UNLAWFUL WINNINGS

- The Bill proposes to amend Section 16(4)(a) to permit payment if the winner “*is not a minor*” or “*is not an excluded person at the time of the activity*”.
  - The proposed amendment to Section 16(4)(a)(ii) suggests that the relevant time for determining whether the player was a minor or not is at the time of the investigation as opposed to the time of the gambling activity.
  - Winnings should not be payable to a person who was a minor at the time of the relevant gambling activity even if that person may have attained the age of majority in the intervening period (i.e. during the course of the investigation). If this is not the case, the prohibition on gambling by minors contained in Section 12 would be undermined.
  - Given that the reference to a person being an excluded person “*at the time of the activity*” in Section 16(4)(a)(iii) is in the past tense, the word “*was*” (rather than “*is*”) should be retained.
- In short, Section 16(4)(a) should not be amended.

## 4. NATIONAL CENTRAL ELECTRONIC MONITORING SYSTEM (1 of 4)

- The NCEMS was established to provide a monitoring system for limited payout machines (“**LPMs**”) in circumstances in which LPM operators do not have the resources to establish their own electronic monitoring systems. The primary purpose of the NCEMS is for PLAs to monitor the payment of gambling levies and taxes.
- Casinos, in contrast, have their own electronic monitoring systems as required by provincial legislation. Casinos’ monitoring systems are linked to the PLAs, which have full access to the content of those systems.
- We thus submit that there is no need to develop a new electronic monitoring system for casinos which will no doubt involve considerable time and expense. As things currently stand, PLAs – which, unlike the NGB, are responsible for monitoring the payment of gambling levies and taxes – have ready access to all the relevant information of casinos.

## NATIONAL CENTRAL ELECTRONIC MONITORING SYSTEM (2 of 4)

- CASA submits that the NCEMS should not be extended to casinos.
- Nevertheless, to the extent that it is concluded, contrary to our submissions, that the NGB or NGR should have access to casinos' electronic monitoring systems, we point out that this could be achieved by the NGB or NGR simply linking-up to the monitoring systems of the various PLAs.
- We also comment on the rest of Section 27 as follows:
  - The wording of Section 27(1)(c), with respect, does not make sense as it suggests that the NCEMS must itself be capable of "*collecting and retaining*" monitoring fees.

## NATIONAL CENTRAL ELECTRONIC MONITORING SYSTEM (3 of 4)

- The insertion of the phrase “*who must acquire a national licence*” after the phrase “any person” in Section 27(2) may lead to confusion and does not adequately provide a regime for the licensing of the NCEMS operator. We submit that:
  - (i) the quoted phrase should be inserted as a proviso at the end of section 27(2); and
  - (ii) the Act should be amended to specify the process and requirements for the licensing of such an operator.
- The meaning of Section 27(4)(b) is unclear. This is particularly problematic in circumstances in which a contravention of Section 27(4)(b) constitutes a breach of one’s licence and is subject to administrative sanctions. This must be clarified in the Bill.

# NATIONAL CENTRAL ELECTRONIC MONITORING SYSTEM (4 of 4)

- If, contrary to our submissions, the NCEMS is extended to casinos (and other forms of gambling operators), Section 27(5)(b) should be amended to allow casino (and other) licensees access to the prescribed data on the NCEMS that relates to each such licensee's machines or games.

## 5. RESPONSIBILITIES OF BOARD/NGR

- The Bill proposes to amend Section 33 by the insertion of paragraph (l). This is inconsistent with the fact that Section 33 currently contains only paragraphs (a) to (c).
- This confusion arises from the fact that the 2008 Amendment Act contemplated the insertion of paragraphs (d) to (k) in Section 33 but as indicated above, it was never operationalised.

## 6. NATIONAL LICENCE PROCEDURES

- The Bill proposes to amend Section 40(3) by the insertion of the phrase “*except in respect of a licence contemplated in section 38(2A)(a)*”.
- Again, Section 38(2A)(a) is not contained in the current version of the Act. It was rather a section to be inserted by the 2008 Amendment Act.

## 7. COUNCIL MEETINGS

- The phrase “*other board members*” in Section 63(3) of the Act refers to the members of the board of the NGB and members of the boards of the PLAs (i.e. the Chairpersons of which are, collectively, the supplementary members of the National Gambling Policy Council (“**the Council**”).
- In the circumstances, this phrase cannot simply be amended to refer to “*other [NGR] members*” as this would not include the boards of the various PLAs.

## 8. MEETING QUORUM

- CASA is respectfully of the view that it is undesirable, from a policy point of view, to legitimise the taking of decisions by the Council in circumstances where it fails to achieve a quorum.
- Without a proper quorum, it is simply not possible for the Council to meaningfully act as a forum for consultation between national and provincial government on issues.
- Given its highly dysfunctional nature, CASA respectfully submits that the Council should be disbanded and the provisions in the Act relating to the Council should be repealed. If, however, the Council is to continue functioning, we submit that, given its consultative and participative nature, it should be mandatory for a quorum to be achieved on every occasion on which decisions affecting the industry are to be made (which would seem to be the case in relation to all of the Council's decisions).

## 9. POWERS OF NATIONAL INSPECTORATE (1 of 3)

- Section 76A(1)(e) envisages empowering inspectors appointed by the NGR to “*ensure compliance of gambling institutions with gambling laws*”. CASA has the following objections in respect of this provision:
  - No clarity is given as to the manner in which the NGR is to go about ensuring compliance with gambling laws. This is contrary to the principle of the rule of law as the NGR’s powers are not sufficiently circumscribed.
  - Section 76A(1)(e) would conflict with Section 30(1) of the Act, which provides that each PLA “*has exclusive jurisdiction within its province*” to, amongst others conduct inspections to ensure compliance with the National Gambling Act as well as applicable provincial law.

## POWERS OF NATIONAL INSPECTORATE (2 of 3)

- Section 76A(1)(e) would have the undesirable impact of subjecting licence holders to the jurisdiction of two different compliance enforcement authorities. This would not only expose licence holders to more than one disciplinary procedure in respect of the same conduct (as well as potentially different outcomes of the same enquiries based on differing interpretations and approaches by the respective authorities) but would also entail undue duplication of regulatory effort and cost.
- CASA submits that this dual regulation would be harmful to the objective of streamlining the manner in which gambling-related activities are regulated as well as the objective of promoting regulatory uniformity.
- Accordingly, we submit that section 76A(1)(e) should be deleted.

## POWERS OF NATIONAL INSPECTORATE (3 of 3)

- The phrase “*an operator that has been operating in contravention of this Act*” at the end of Section 76A(2) should rather refer to “a person conducting or making available a gambling activity that is not licensed in terms of this Act or a provincial law”. This wording would make it clear that Section 76A(2) applies to unlicensed operators and not to other operators that may be found from time to time to have contravened the Act in one or other respect.

# NATIONAL GAMBLING AMENDMENT BILL, 2018

## COMMENTS / CLARITY / QUESTIONS

