

REPUBLIC OF SOUTH AFRICA

NATIONAL GAMBLING AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B —2018]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Gambling Act, 2004, so as to amend and delete certain definitions; to provide for the procedure for the forfeiture of unlawful winnings to the National Gambling Regulator; to provide for the **dissolution of the National Gambling Board**; to provide for the establishment of National Gambling Regulator; to provide for the appointment of Chief Executive Officer and **Deputy Chief Executive Officer** in the National Gambling Regulator; to provide for the powers of the national inspectorate to curb payments emanating from illegal gambling activities; to enhance the powers and duties of the gambling inspector; to provide for transitional arrangements; and to provide for matters connected therewith.

Commented [CK1]: Proposed as this is what is stipulated in the Act. The NGB will no longer exist. Repositioning means we are transforming or converting the NGB into another state however it remains NGB

Commented [CK2]: Insertion proposed because the Minister will appoint the DCEO and this was not provided for in the 2004 act

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 7 of 2004, as amended by section 1 of Act 10 of 2008

- Section 1 of the National Gambling Act, 2004 (hereinafter referred to as the "principal Act") is hereby amended —

- (a) by the deletion of the definition of "**board**";
- (b) by the substitution for the definition of "**Chief Executive Officer**" of the following definition:

" '**Chief Executive Officer**' means the person appointed by the **[board]** Minister in terms of section **[73(1)(a)] 65A(1)**;"

- (c) by the insertion after the definition of "**money laundering**" of the following definition:

" '**National Gambling Regulator**' means the National Gambling Regulator established in terms of section 64 of this Act;"

- (d) by the substitution for the definition of "**regulatory authority**" of the following definition:

"**'regulatory authority'** means the **[board]** National Gambling Regulator or a provincial licensing authority;" and

- (e) by the insertion after the definition of "**route operator**" of the following definition:

"**'significant event'** means a condition which makes a game unplayable or affects the outcome of a gambling activity and is recorded in a gambling device;"

Commented [GV3]: The Department indicates this definition is as a result of the public hearings. Therefore in our view it is not necessary to republish on account of this definition only.

Amendment of section 10 of Act 7 of 2004

- 2. Section 10 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"A person must notify a provincial licensing authority and the **[board]** National Gambling Regulator, if the person—".

Amendment of section 14 of Act 7 of 2004, as amended by section 14 of Act 10 of 2008

3. Section 14 of the principal Act is hereby amended—

- (a) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:

"The **[board]** National Gambling Regulator must —";

- (b) by the substitution for subsection (8) of the following subsection:

"(8) The **[board]** National Gambling Regulator may not charge a fee for registering a person as an excluded person."; and

- (c) by the addition of the following subsection:

"(13) All operators must remove excluded persons from their marketing mail list after being informed of the exclusion.".

Amendment of section 16 of Act 7 of 2004

4. Section 16 of the principal Act is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively:

- "(3) Any person who is prevented from paying winnings referred to in subsection (2) must remit those winnings to the **[board]** National Gambling Regulator in the prescribed manner and form, to be held by the **[board]** National Gambling Regulator in trust, pending a decision in terms of subsection (4).

- (4) Upon receiving any winnings under subsection (3), the **[board]** National Gambling Regulator must investigate the circumstances of the relevant gambling activity, and either—
- (a) deliver the winnings to the person who won **[them]**, if the **[board]** National Gambling Regulator is satisfied that—
- (i) the gambling activity was lawful **[, and]**;
 - (ii) the winner **[was]** is not a minor **at the time of the relevant gambling activity** **[or]**; and
 - (iii) the winner is not an excluded person at the time of the activity;
- or
- (b) **[apply to the High Court for an order declaring the winnings forfeit to the State]** Subject to the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), declare the winnings to be forfeited to the National Gambling Regulator."

Amendment of section 18 of Act 7 of 2004

5. Section 18 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The operation of limited pay-out machines 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)] 26(2)."

Amendment of section 21 of Act 7 of 2004

6. Section 21 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The **[board]** National Gambling Regulator must–".

Insertion of section 21A in Act 7 of 2004

7. The following section is hereby inserted in the principal Act after section 21:

"Register of unlawful gambling operators"

21A. (1) The National Gambling Regulator must keep a register of unlawful gambling operators.

(2) Any gambling operator listed in the register of unlawful gambling operators will be disqualified from obtaining a licence for a period of five years, from the day of being listed in the register.

(3) Any gambling operator listed wrongfully in the register may motivate to the National Gambling Regulator for the removal from the register.

(4) Any decision listing a gambling operator in the register by the National Gambling Regulator, is subject to review by the courts."

Amendment of section 22 of Act 7 of 2004

8. Section 22 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

- "(1) A person who imports a gambling machine or gambling device into the Republic, or who manufactures such a machine or device within the Republic, must register that machine or device by providing the information required in terms of section 20(2) in the prescribed manner and form to the **[board] National Gambling Regulator**.
- (2) The **[board] National Gambling Regulator** must not register a gambling machine or gambling device unless that type of machine or device has been certified in accordance with the requirements of this Act as complying with the relevant standards for such a machine or device, as determined in terms of the **[Standards Act, 1993 (Act No. 29 of 1993)]** ~~applicable legislation~~."

Commented [WU4]: The suggestion is to retain the Standards Act because applicable legislation may subject this to abuse. Retain what is in the principal Act.

Amendment of section 23 of Act 7 of 2004

9. Section 23 of the principal Act is hereby amended by the substitution in subsection (7) (c) for the words preceding subparagraph (i) of the following words:
- "must advise the **[board] National Gambling Regulator** in the prescribed manner and form when it has—".

Amendment of section 25 of Act 7 of 2004

10. Section 25 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1)(c) for subparagraphs (iii) and (iv) of the following subparagraphs, respectively:

- "(iii) the **[board]** National Gambling Regulator; and
- (iv) the **[South African Bureau of Standards]** National Regulator for Compulsory Specifications."; and
- (b) by the substitution for subsection (2) of the following subsection:
- "(2) Upon receiving a test report in terms of this section, the **[South African Bureau of Standards]** National Regulator for Compulsory Specifications must analyse the test results relative to the standards referred to in section 24 (c), and applicable standards for the machine or device concerned, and if the machine or device complies with the applicable standards, issue a letter of certification in respect of the machine or device to–
- (a) the person requesting the certification;
 - (b) the applicable provincial licencing authority; and
 - (c) the **[board]** National Gambling Regulator."

Amendment of section 26 of Act 7 of 2004

11. Section 26 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (e) of the following paragraph:

- "(e) after consulting the **[Board]** National Gambling Regulator, determine the circumstances in which a site may be licensed, and for that purpose, may establish different categories of sites and different requirements with respect to each such category; and".

Amendment of section 27 of Act 7 of 2004

12. Section 27 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The **[board]** National Gambling Regulator must establish and maintain a national central electronic monitoring system capable of—

(a) detecting and monitoring significant events associated with any limited pay-out machine, casino, bingo or betting activity that is made available for play in the Republic; **[and]**

(b) analysing and reporting that data in accordance with the prescribed requirements; and;

(c) collecting and retaining the monitoring fees.";

(b) by the substitution for subsection (2) of the following subsection:

"(2) The **[board]** National Gambling Regulator may contract with any person who must acquire a national licence to supply any or all of the products or services required to fulfil its obligations in terms of subsection (1), but any such contractor must not be a person who, or firm that, is disqualified as a licensee in terms of section 50.";

(c) by the substitution in subsection (3) for paragraphs (b) and (c) of the following paragraphs, respectively:

"(b) the frequency and nature of reports to be produced by the **[board]** National Gambling Regulator in respect of the operation of the system;

[and]

(c) other matters related to the functioning of the national electronic monitoring system [.] and ";

(d) by the addition in subsection (3) of the following paragraph:

"(d) the implementation date for the national central electronic monitoring system for casino ~~and~~ bingo and betting activities.";

(e) by the substitution for subsection (4) of the following subsection:

"(4) (a) Every limited pay-out machine that is made available for play must be electronically linked to the national central electronic monitoring system, and the licensee of that machine must pay the prescribed monitoring fees in relation to that machine.

(b) The Minister may for purposes of subsection (1) and after consultation with the Council, determine any extent of the operation of the national central electronic monitoring system."; and

(f) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

"(a) the provincial licensing authority of each province shall have access to all data on the system that originated in that province, without charge by the **[board]** National Gambling Regulator; and".

Amendment of section 31 of Act 7 of 2004, as amended by section 20 of Act 10 of 2008

13. Section 31 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Subject to any requirements set out in applicable provincial law, a provincial licensing authority may, by agreement with the **[board]** National Gambling Regulator or with another provincial licensing authority, delegate to the **[board]** National Gambling Regulator or to that other provincial licensing

authority any power or duty that is to be exercised or performed by the provincial licensing authority in terms of this Act or applicable provincial law, in the manner contemplated in section 238 of the Constitution."

Amendment of section 32 of Act 7 of 2004, as amended by section 21 of Act 10 of 2008

14. Section 32 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"Jurisdiction of [board] National Gambling Regulator";

(b) by the substitution in subsection (1) for the words preceding paragraph

(a) of the following words:

"The **[board]** National Gambling Regulator has exclusive jurisdiction to—";

and

(c) by the substitution for subsection (1) of the following subsection:

"(2) In accordance with this Act and subject to the direction of the Council provided for in Chapter 4, the **[board]** National Gambling Regulator may exercise the powers and perform the duties assigned to it in terms of this Act."

Substitution of section 33 of Act 7 of 2004, as amended by section 21 of Act 10 of 2008

15. The following section is hereby substituted for section 33 of the principal Act:

"Responsibilities of National Gambling Regulator

Commented [GV5]: We have redrafted this clause to properly reflect a substitution. This would also substitute any amendment effected in the 2008 Act. The substance of this clause is substantially different than the Bill introduced in Parliament, which may require approval of the House for redraft. Frankie to confirm?

The National Gambling Regulator is responsible to—

- (a) take reasonable steps to ensure—
 - (i) that unlawful activities relating to interactive gambling and unlicensed interactive gambling activities are prevented, detected and prosecuted;
 - (ii) that undertakings made by licensees, holding a licence to make interactive games available, are carried out to the extent required by the licence;
 - (iii) that employees within the interactive gambling industry are licensed to the extent required by this Act;
 - (iv) that each item of interactive gambling equipment or interactive gambling software, being used or made available for use by a licensee, is registered and certified in terms of this Act;
 - (v) that a person providing goods or services to an interactive provider which are integral to the provision of interactive games, holds a certificate of suitability issued by a relevant provincial licensing authority,
 - (vi) the complete and timely collection and remittance of taxes, levies and fees relating to interactive gambling activities;
- (b) approve internal control systems for licensees, which must include—
 - (i) accounting systems; and
 - (ii) administrative procedures for the conduct of interactive games;
- (c) inspect websites at which interactive gambling is conducted and premises where interactive gambling equipment and software are located;

- (d) inspect interactive gambling equipment and interactive gambling software used for any activity that is permitted in terms of a national licence;
- (e) enforce this Act in respect of—

 - (i) premises, activities or prescribed devices licensed by the board;

and
 - (ii) offences;
- (f) supervise and enforce compliance by licensees with the obligations of accountable institutions in terms of the Financial Intelligence Centre Act, to the extent required by that Act, in so far as it applies to the gambling industry;
- (g) review licences and the activities of licensees in the prescribed manner; and
- (h) suspend or revoke any national licence issued by the board in accordance with section 43(3);
- (i) evaluate—

 - (i) the issuing of national licences by provincial licensing authorities; and
 - (ii) the compliance monitoring of licensees by provincial licensing authorities;
- (j) conduct oversight evaluations of the performance of provincial licensing authorities in the manner envisaged in section 34, so as to ensure that the national norms and standards established by this Act are applied uniformly and consistently throughout the Republic;

- (k) assist provincial licensing authorities to ensure that unlicensed gambling activities are detected in the manner envisaged in section 66(2) and (3); and
- (l) consider applications and motivations from the provincial licensing authorities for acquisition of additional limited pay out machines, for purposes of compliance with the approved criteria, as provided for in Part B of this Chapter."

Amendment of section 34 of Act 7 of 2004

16. Section 34 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

"[Oversight functions of board] Functions of National Gambling Regulator";

- (b) by the substitution of subsections (1) and (2) of the following subsections respectively:

"(1) The **[board]** National Gambling Regulator must ensure that its functions and those of the Chief Executive Officer set out in this section are exercised in a manner consistent with the requirements of section 41(1)(e), (g), and (h) of the Constitution.

(2) The **[board may direct the Chief Executive Officer to]** National Gambling Regulator may carry out an oversight evaluation of the exercise by a provincial licensing authority of its responsibilities and functions in terms of this Act.";

- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"Before conducting an evaluation in terms of subsection (2), the **[Chief Executive Officer]** National Gambling Regulator must notify the relevant provincial licensing authority, in writing, of—";

- (d) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) **[a direction given by the board]** its intention to carry out the oversight evaluation; and";

- (e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

"The **[Chief Executive Officer]** National Gambling Regulator must—";

- (f) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

"If, as a result of an evaluation conducted in terms of subsection (2), the **[Chief Executive Officer]** National Gambling Regulator has reason to believe that a provincial licensing authority has failed to comply with any provision of this Act, **[the Chief Executive Officer]** it—";

- (g) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

"If an agreement contemplated in subsection (5)(b) is reached between the provincial licensing authority and the **[board]** National Gambling Regulator, the Chief Executive Officer must monitor progress achieved in terms of that agreement, and—";

(h) by the substitution in subsection (6) for subparagraph (i) of the following subparagraph:

"(i) report to the **[board]** Minister at intervals determined by **[it]** the Minister; and—"; and

(i) by the substitution of subsections (7) and (8) of the following subsections respectively:

"(7) A provincial licensing authority may request the **[board]** National Gambling Regulator to set aside all or part of a deficiency report issued **[by the Chief Executive Officer]** in terms of subsection (5) or (6).

(8) The **[board]** National Gambling Regulator may refer the matter to the Council for consideration in terms of section 62(2)(c), if—

(a) a provincial licensing authority does not respond to a deficiency report issued by the **[Chief Executive Officer]** National Gambling Regulator in terms of subsection (5) or (6);

(b) the provincial licensing authority and the **[board]** National Gambling Regulator fail to reach an agreement contemplated in either subsection; or

(c) the provincial licensing authority is persistently in default in terms of that agreement."

Amendment of section 35 of Act 7 of 2004

17. Section 35 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

- "(2) Each provincial licensing authority must report to the **[board]** National Gambling Regulator, at the prescribed intervals, on the prescribed information kept by that licensing authority in terms of subsection (1).
- (3) The **[board]** National Gambling Regulator must submit upon request to a provincial licensing authority any prescribed information reported to it in terms of subsection (2)."

Amendment of section 36 of Act 7 of 2004

18. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Council may, as contemplated in section 41(2) of the Constitution, facilitate the settlement of any dispute between the **[board]** National Gambling Regulator and one or more provincial licensing authorities concerning the powers and duties to be exercised and performed by them relating to casinos, racing, gambling and wagering."

Amendment of section 40 of Act 7 of 2004, as amended by section 29 of Act 10 of 2008

19. Section 40 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) A provincial licensing authority that has received a notice in terms of subsection (2)(b) may request the **[Chief Executive Officer]** National

Gambling Regulator, except in respect of a licence contemplated in section 38(2A)(a), to conduct an oversight evaluation contemplated in section 42."

Amendment of section 42 of Act 7 of 2004

20. Section 42 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) After receiving a notice from a provincial licensing authority that it proposes to issue a national licence, the **[Chief Executive Officer]** National Gambling Regulator— "

(b) by the substitution in subsection (2) for the words preceding subparagraph (i) of the following words:

"(2) If a direction is given for an oversight evaluation, the **[Chief Executive Officer]** National Gambling Regulator must issue a notice of intent to evaluate the proposed licence in the prescribed form to — "

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"(3) After conducting an oversight evaluation in terms of subsection (1), the **[Chief Executive Officer]** National Gambling Regulator may—";

(d) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) **[without referring the application to the board,]** advise the provincial licensing authority in the prescribed manner that there are no objections to the issuing of the national licence as proposed;"

- (e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

"(4) A provincial licensing authority may issue the licence as proposed by it, if the **[Chief Executive Officer]** National Gambling Regulator—";
and

- (f) by the substitution for subsections (5), (6) and (7) of the following subsections, respectively:

"(5) If the **[Chief Executive Officer]** National Gambling Regulator issues a request in terms of subsection (3)(b), the provincial licensing authority may—

(a) issue the licence with the altered conditions as requested **[by the Chief Executive Officer]**; or

(b) request the **[board]** Minister to set aside the request of the **[Chief Executive Officer]** National Gambling Regulator and permit the issuing of the licence as initially proposed.

(6) If the **[Chief Executive Officer]** National Gambling Regulator issues a deficiency report in terms of subsection (3)(c), the provincial licensing authority must either —

(a) consider the application afresh; or

(b) request the **[board]** Minister to set aside the deficiency report and permit the issuing of the licence as initially proposed.

(7) If a matter is referred to the **[board]** Minister in terms of subsection (5) or (6), the **[board]** Minister may—

(a) confirm the request or deficiency report of the **[Chief Executive Officer]** National Gambling Regulator;

- (b) set aside all or part of the request or the deficiency report; or
- (c) permit the issuing of the licence with or without conditions."

Amendment of section 43 of Act 7 of 2004, as amended by section 30 of Act 10 of 2008

21. Section 43 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"A provincial licensing authority may, with the prior concurrence of the **[board] National Gambling Regulator**, suspend or revoke a national licence as if that licence were a provincial licence issued by that licensing authority, if —"; and

- (b) by the substitution for subsection (2) of the following subsection:

"(2) A provincial licensing authority must immediately advise **[each]** other provincial authorities and the National Gambling Regulator if that provincial licensing authority **[of a suspension or revocation of]** suspends or revokes a national licence."

Amendment of section 57 of Act 7 of 2004, as amended by section 37 of Act 10 of 2008

22. Section 57 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Each provincial licensing authority must submit to the **[board]** National Gambling Regulator a copy of every probity report it prepares in terms of this Act or provincial law, and the **[board]** National Gambling Regulator must compile all such reports into a national probity register in the prescribed manner and form."

Amendment of section 61 of Act 7 of 2004

23. Section 61 of the principal Act is hereby amended by the substitution in subsection (2)(b) for subparagraph (i) of the following subparagraph:

"(i) the **[chairperson of the National Gambling Board]** Chief Executive Officer; and"

Amendment of section 62 of Act 7 of 2004

24. Section 62 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs respectively:

"(e) the resolution of any dispute that may arise among provincial licensing authorities, or between a provincial licensing authority and the **[board]** National Gambling Regulator, regarding the regulation and control of gambling activities; **[and]**

(f) other matters that may be referred to it by a member of the Council; and";

(b) by the addition in subsection (1) of the following paragraph:

"(g) policy and legislative amendments before the Council to ensure alignment.";

(c) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) may provide oversight and direction to the **[board]** National Gambling Regulator in the exercise of its powers and the performance of its duties;" and

(d) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) may make a finding that a provincial licensing authority has failed to comply with this Act and, if it does so, may direct that provincial licensing authority to enter into an agreement with the **[board]** National Gambling Regulator in respect of the steps to be taken by the provincial licensing authority to ensure compliance with this Act."

Amendment of section 63 of Act 7 of 2004

25. Section 63 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) At a meeting of the Council to which supplementary members are called, a supplementary member may be represented by an alternate, chosen by ~~that supplementary member from among~~ the **[other board members of the applicable regulatory authority]** National Gambling Regulator and members of provincial gambling boards."

Commented [WU6]: The member of the National Gambling Regulator may not read well without the Board members.

Commented [GV7]: This is a technical improvement

Insertion of section 63A in Act 7 of 2004

26. The following section is hereby inserted in the principal Act after section 63:

"Meeting quorum"

63A. Despite section (63)(6), if a motion has been tabled at a meeting of the Council at which ~~fewer~~ ~~less~~ than five voting members contemplated in section 61 are present, the motion may be passed at the next meeting of the Council, if it is supported by—

(a) the Minister; and

(b) the majority of the other voting members of the Council present at that meeting.

Commented [WU8]: Less is used with uncountable nouns.

Substitution of heading of Part B of Chapter 4 of Act 7 of 2004

27. The heading to Part B of Chapter 4 of the principal Act is hereby substituted for the following heading:

"Part B

National Gambling Regulator"

Substitution of section 64 of Act 7 of 2004

28. The following section is hereby substituted for section 64 of the principal Act:

"Establishment of National Gambling Regulator

- 64.** (1) The National Gambling Regulator is hereby established as a public entity.
- (2) The National Gambling Regulator is a juristic person and has jurisdiction throughout the Republic.
- (3) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the National Gambling Regulator.
- (4) The National Gambling Regulator is governed by the Chief Executive Officer."

Amendment of section 65 of Act 7 of 2004, as amended by section 38 of Act 10 of 2008

- 29.** Section 65 of the principal Act is hereby amended by—
- (a) by the substitution for the heading of the following heading:
"Objects and functions of **[board]** National Gambling Regulator";
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
"The **[board]** National Gambling Regulator has the following powers and duties to be exercised and performed in accordance with this Act.";
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
"The **[board]** National Gambling Regulator may—";
- (d) by the substitution for subsection (3) of the following subsection:

Commented [WU9]: The proposal was presented to the Committee. It was in the 2016 Bill.

- (5) is independent and subject only to the Constitution and the law;
 (6) must exercise its functions in accordance with this Act;
 (7) must be impartial; and
 (8) must perform its functions –
 (i) in a transparent manner as is appropriate having regard to the nature of the specific function; and
 (ii) without fear, favour or prejudice.

- "(3) The **[board]** National Gambling Regulator may liaise with any foreign or international authorities having any objects similar to the objects of the **[board]** National Gambling Regulator.";
- (e) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
- (4) "In exercising its powers and performing its duties set out in this Act, the **[board]** National Gambling Regulator—";
- (f) by the substitution in subsection (4) for paragraph (c) of the following paragraph:
- "may consult any person, organisation or institution with regard to any matter deemed necessary by the **[board]** National Gambling Regulator; ";
- and
- (g) by the addition in subsection (4) of the following paragraphs:
- "(e) monitor the socio-economic patterns of gambling activity within the Republic and in particular, conduct research and identify factors relating to gambling, patterns, causes and consequences of—
- (i) the socio-economic impact of gambling; and
- (ii) addictive or compulsive gambling.
- (f) carry out the responsibilities set out in section 33;
- (g) exercise any other powers and performing any other duties assigned to it in terms of this Act;
- (h) advise the Council, in consultation with the Minister, on the maximum number of any kind of licenses relating to casinos, racing, gambling and wagering that may be awarded in the Republic or in any particular province;

- (j) advise the Council, in consultation with the Minister, on matters of national policy relating to casinos, racing, gambling and wagering and on the determination of national norms and standards regarding any matter in terms of this Act that should apply generally throughout the Republic;
- (j) recommend to the Council, in consultation with the Minister, changes to bring about uniformity in the laws of the various provinces in relation to casinos, racing, gambling and wagering;
- (k) advise the Council, in consultation with the Minister, in respect of any matter referred to it by the Council;
- (l) monitor market share and market conduct in the gambling industry and refer any concerns regarding market share or possible prohibited practices to the Competition Commission in terms of the Competition Act, 1998 (Act No. 89 of 1998);
- (m) provide a broad-based public education programme about the risks and socio-economic impacts of gambling;
- (n) comply with directions issued to it by the Council relating to casinos, racing, gambling, wagering or any other related matter, in exercising its powers and performing its duties set out in this Act; and
- (o) conduct education and awareness relating to gambling activities."

Insertion of section 65A, 65B and 65C in Act 7 of 2004

30. The following sections are hereby inserted in the principal Act after section 65:

"Chief Executive Officer and Deputy Chief Executive Officer

- 65A.** (1) The Minister **must** appoint a suitably qualified and experienced person as the Chief Executive Officer of the National Gambling Regulator, who —
- (a) holds office for an agreed term not exceeding five years;
 - (b) may be re-appointed for a second term of office at the expiry of the term of office contemplated in paragraph (a).
- (2) To be eligible for **appointment** as a Chief Executive Officer, and to continue to hold that office, a person must—
- (a) be a fit and proper person;
 - (b) not be subject to any disqualification set out in subsection (3);
and
 - (c) have submitted to the Minister a written declaration stating that—
 - (i) the person is not disqualified in terms of subsection (3); and
 - (ii) the person does not have any interests referred to in subsection (3)(c).
- (3) A person may not be a Chief Executive Officer if that person—
- (a) is a political office bearer;
 - (b) is listed in the register of excluded persons by order of a court;
 - (c) personally or through a spouse, partner or associate—
 - (i) has or acquires a direct or indirect financial interest in license issued in terms of this Act, or in premises used for an activity that must be licensed in terms of this Act; or

Commented [WU10]: Designation was removed as per the public submission.

- (ii) has or acquires an interest in a business or enterprise that may conflict or interfere with the proper performance of the duties of a Chief Executive Officer;
- (d) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of his or her estate;
- (e) has ever been, or is, removed from an office of trust on account of misconduct;
- (f) is subject to an order of a competent court holding that person to be mentally deranged;
- (g) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the [Prevention of Organised Crime Act, 1998 \(Act 121 of 1998\)](#), an offence involving dishonesty and the [Prevention and Combating of Corrupt Activities Act, 2004 \(Act 12 of 2004\)](#) and the [Financial Intelligence Centre Act 2001 \(Act 38 of 2001\)](#); or
- (h) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), took effect and sentenced to imprisonment without the option of a fine.
- (4) The Minister must, in consultation with the Minister of Finance, determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of the Chief Executive Officer.

Commented [WU11]: Removed the Corruption Act, 1992

- (5) The Minister must appoint a suitably qualified person who satisfies requirements in terms of subsections (2) and (3) as Deputy Chief Executive Officer to assist the Chief Executive Officer in carrying out the functions of the National Gambling Regulator.

Commented [WU12]: Addressed the comment about appointing one Deputy CEO.

Functions of Chief Executive Officer

65B. (1) Subject to the provisions of the Public Finance Management Act, the Chief Executive Officer may exercise power or perform functions in terms of this Act.

- (2) The Chief Executive Officer is responsible for—
- (a) all responsibilities pertaining to the functions of the National Gambling Regulator;
 - (b) all income and expenditure of the National Gambling Regulator;
 - (c) all revenue collected by the National Gambling Regulator;
 - (d) all assets and the discharge of all liabilities of the National Gambling Regulator; and
 - (e) the appointment of staff of the National Gambling Regulator in accordance with section 73.
- (3) The Chief Executive Officer must—
- (a) report to the Minister on all matters contemplated in subsection (2);
 - (b) delegate~~assign~~ management of certain functions to employees of the National Gambling Regulator who must have appropriate

Commented [GV13]: This is an assignment which transfers the responsibility to that employee. Not similar to delegation. Notwithstanding these functions must take into consideration the functions to be performed by the NGR Committee in 65C.

skills to assist the Chief Executive Officer with the performance of his or her functions.

Committee of National Gambling Regulator

65C. (1) The Minister may from time to time establish such committee as he or she considers necessary to perform specified functions of the National Gambling Regulator.

(2) A committee consists of—

- (i) not more than five persons who are independent from the National Regulator and who are appointed by the Minister; and
- (ii) the Chief Executive Officer.

(3) A member of a committee established in terms of subsection (1) must have the appropriate skill and expertise in the gambling industry and of the function which that member will perform on the committee.

(4) A member of a committee, other than a person who is in the full-time employment of the National Gambling Regulator or any other organ of state, is appointed on the terms and conditions of service determined by the Minister in consultation with the Minister of Finance.

(5) A committee may—

- (a) be established by the Minister for a period of not more than three years on an ad hoc basis and may upon expiry of the first term be extended for a further term of not more than three years; and
- (b) determine its own procedures provided that the committee is chaired by a member of the committee.

- (6) The Committee must undertake the following functions:
- (a) review LPM Regulation 3(2) applications report and issue recommendations to PLAs;
 - (b) make recommendations to the CEO on determinations on refunds or forfeiture of unlawful winnings;
 - (c) provide advice to the Minister on the status of the gambling industry in terms of section 65 of the Act; and
 - (d) conduct studies on the outlook of the gambling industry regulatory framework to inform policy and legislative developments.
- (7) A member of a committee must be impartial, a fit and proper person and may not—
- (a) expose themselves to any situation in which the risk of a conflict may arise between their responsibilities and any personal or financial interest; or
 - (b) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.
- (8) A member ceases to be a member of a committee if the—
- (a) member resigns from the committee;
 - (b) Minister terminates the person's membership because the member no longer complies with subsection (6); or
 - (c) member's term has expired.
- (9) A member of a committee who has personal or financial interest in any matter on which the committee performs a function must disclose that

interest and withdraw from the proceedings of the committee when that matter is discussed."

- (10) *The decisions of the Committee may be reviewed by the Minister.*

Amendment of section 66 of Act 7 of 2004, as amended by section 39 of Act 10 of 2008

31. Section 66 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"At the request of the relevant Member of the Executive Council of a province, or the provincial licensing authority, the **[board]** National Gambling Regulator—";

- (b) by the substitution for subsection (2) of the following subsection:

"(2) At the request of the Member of the Executive Council or provincial licensing authority, the **[board]** National Gambling Regulator may engage with that authority in co-operative activities to detect and suppress illegal gambling activities if there are good grounds to believe that those activities may be occurring across provincial boundaries.";

- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"At the direction of the Council, the **[board]** National Gambling Regulator must engage with any relevant provincial licensing authority in co-operative activities to detect and suppress illegal gambling activities occurring—";

(d) by the substitution for subsections (4) and (5) of the following subsections respectively:

"(4) The **[board]** National Gambling Regulator may liaise with provincial licensing authorities on matters of common interest.

(5) The **[board]** National Gambling Regulator may request any provincial licensing authority to submit any report or information related to the activities of that licensing authority **[to the board]**."; and

(e) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

"(b) the **[board]** National Gambling Regulator concludes, on reasonable grounds, that the provincial licensing authority is unable to perform any such function effectively,".

Insertion of section 66A in Act 7 of 2004

32. The following section is hereby inserted in the principal Act after section 66:

"Inter-governmental relations in relation to gambling activities

66A. For purposes of supporting the objects and functions of the National Gambling Regulator and to strengthen collaborative work with other government departments or institutions responsible for matters related to gambling, the National Gambling Regulator —

(a) may enter into agreements with any other organ of state as contemplated in the Constitution, to provide for the joint exercise or

performance of their respective powers and functions contemplated in this Act; and

(b) may establish a forum or similar body for such purposes."

Repeal of section 67 of Act 7 of 2004

33. Section 67 of the principal Act is hereby repealed.

Amendment of section 68 of Act 7 of 2004

34. Section 68 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections respectively:

"(1) **[A member of the board]** The CEO or a staff member of the National Gambling Regulator must **[promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in section 67(3)(c)(ii)]** not acquire an interest in a business or enterprise that may conflict or interfere with the proper performance of his or her duties.

(2) **[A member of the board]** The CEO or a staff member of the National Gambling Regulator must not—

(a) engage in any activity that may undermine the integrity of the **[board]** National Gambling Regulator;

(b) **[attend, participate in or influence the procedures during a meeting of the board, if, in relation to the matter before the**

board, that member has] perform duties on behalf of the National Gambling Regulator while having an interest—

- (i) contemplated in **[section 67(3)(c)(ii)] subsection (1);** or
 - (ii) that precludes the Chief Executive Officer or staff member from performing their duties **[of a member of the board]** in a fair, unbiased and proper manner;
- (c) **[vote at any meeting of the board in connection with a matter contemplated in paragraph (b);]**
- (d) make private use of, or profit from, any confidential information obtained as a result of performing that person's duties **[as a member] on behalf of the [board] National Gambling Regulator;**
or
- (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions **[as a member of the board] on behalf of the National Gambling Regulator.";** and

(b) by the deletion of subsections (3), (4) and (5).

Repeal of section 69, 70, 71 and 72 of Act 7 of 2004

35. Sections **69, 70, 71 and 72** of the principal Act are hereby repealed.

Substitution of section 73 of Act 7 of 2004

36. The following section is hereby substituted for section 73 of the principal Act:

"Staff of **[board and remuneration]** National Gambling Regulator

- (1) The **[board]** Chief Executive Officer—
- (a) **[In consultation with the Minister,]** must appoint **[a]** suitably qualified and experienced **[person as Chief Executive Officer]** persons as staff of the National Gambling Regulator in line with the structure approved in consultation with the Minister who—
- (i) **[subject to direction and control of the board, is responsible for all financial administrative responsibilities pertaining to the functions of the board]** must satisfy the requirements set out in section 65A(2) and (3) to assist in the administration and running of the National Gambling Regulator; and
- (ii) **[is]** are accountable to the **[board]** Chief Executive Officer; and
- (b) **[may appoint any other staff as may be necessary to enable the board to perform its duties]** must comply with section 65A(2) and (3).
- (2) Sections **[67(2) and (3) and section 68]** 65A(2) and (3), read with changes required by the context, apply to **[the Chief Executive Officer and]** each staff member to be appointed in terms of this Act.
- (3) The **[board]** Chief Executive Officer, in consultation with the Minister, may determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of **[a person appointed in terms of subsection (1)]** staff of the National Gambling Regulator.
- (4) Subject to the provisions of the Public Finance Management Act, 1999 the **[board]** Chief Executive Officer may delegate to any member of

Commented [WU14]: Staff is aligned to the principal act, without reference to member. **Noted**

the staff any power or duty that the **[board]** National Gambling Regulator may exercise or perform in terms of the Act."

Substitution of section 74 of Act 7 of 2004

37. The following section is hereby substituted for section 74 of the principal Act:

"Finances

- (1) The **[board]** National Gambling Regulator is financed from—
 - (a) money appropriated by Parliament for the **[board]** National Gambling Regulator;
 - (b) any fees payable to the **[board]** National Gambling Regulator in terms of this Act;
 - (c) income derived by the **[board]** National Gambling Regulator from its investment and deposit of surplus money in terms of subsection (6);
and
 - (d) other money accruing to the **[board]** National Gambling Regulator from any source.
- (2) The financial year of the **[board]** National Gambling Regulator is the period from 1 April **[in any]** each year to 31 March in the following year.
- (3) Each year, at a time determined by the Minister, the **[board]** National Gambling Regulator must submit to the Minister a statement of the **[board's]** National Gambling Regulator's estimated income and expenditure, and **[requested]** request appropriation from Parliament, in respect of the next ensuing financial year.

- (4) The **[board]** National Gambling Regulator must open and maintain an account in the name of the **[board]** National Gambling Regulator with a registered bank or other registered financial institution in the Republic and—
- (a) any money received by the **[board]** National Gambling Regulator must be deposited to that account; and
 - (b) every payment on behalf of the **[board]** National Gambling Regulator must be made from that account.
- (5) Cheques drawn on the account of the **[board]** National Gambling Regulator must be signed on its behalf by two persons authorised by the Chief Executive Officer
- (6) The **[board]** National Gambling Regulator may invest or deposit money of the **[board]** National Gambling Regulator that is not immediately required for contingencies or to meet current expenditures—
- (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
 - (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act 46 of 1984)."

Amendment of section 75 of Act 7 of 2004

38. Section 75 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) for the words preceding paragraph (a) of the following words:

"The **[board]** Chief Executive Officer is responsible to—";

(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) account for State and other money received by, or paid for or on account of, the **[board]** National Gambling Regulator; and"; and

(c) by the substitution for subsection (3) of the following subsection:

"(3) The **[board]** Chief Executive Officer must report to the Minister at least once every year on its activities."

Amendment of section 76 of Act 7 of 2004

39. Section 76 of the principal Act is hereby amended by—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The **[board]** National Gambling Regulator—";

(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) may appoint any suitably qualified person as an inspector and assign the inspector to monitor, investigate or evaluate any matter on behalf of the **[board]** National Gambling Regulator subject to the control and direction of the **[board]** National Gambling Regulator; and"; and

(c) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

"must provide each inspector with a certificate signed on behalf of the **[board]** National Gambling Regulator and stating—";

Insertion of section 76A in Act 7 of 2004

40. The following section is hereby inserted in the principal Act after section 76:

"Powers of national inspectorate

- 76A.** (1) An inspector may with or without an inspector appointed in terms of a provincial law and together with other enforcement agencies—
- (a) investigate illegal gambling activities in South Africa;
 - (b) serve the suspected illegal operators with a notice to stop operating pending an investigation, litigation or prosecution;
 - (c) have powers to interact with related inspectorates to investigate and report cases related to illegal gambling activities;
 - (d) upon proof of an illegal operator, inform the landlord to lawfully evict the illegal operator from the premises;
 - (e) ensure compliance of gambling institutions with the provisions of the Act; and
 - (f) work collaboratively with relevant institutions to monitor and establish measures to curb illegal or unlicensed gambling activities.
- (2) The National Gambling Regulator must notify a financial institution including a bank contemplated in the Banks Act, 1990 (Act No. 94 of 1990), and any internet service provider to cease business with an operator that has been operating in contravention of this Act.

- (3) No financial institution may not process unlawful payment transactions for illegal gambling activities to which this Act applies and which is prohibited under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). "

Amendment of section 77 of Act 7 of 2004

41. Section 77 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

"[Powers and duties of] Inspections by inspector"; and

- (b) by the substitution for subsection (3) of the following subsection:

"(3) Without prior notice, an inspector, with or without an inspector appointed in terms of provincial law, may do **[anything]** anything contemplated in subsection (2) for the purpose of carrying out the responsibilities of the **[board]** National Gambling Regulator in terms of section 65(1)(a) or (b)."

Amendment of section 87 of Act 7 of 2004, as amended by section 42 of Act 10 of 2008

42. Section 87 of the principal Act is hereby amended by the insertion in subsection (1) of the following paragraph after paragraph (f):

- "(fA) criteria to be observed by the National Gambling Regulator to approve pay out machines in excess of five;"

Repeal of item 5 of Schedule 1 to Act 7 of 2004

43. Item 5 of Schedule 1 is hereby repealed.

Transitional arrangements

44. (1)(a) The board established in terms of section 64 of the principal Act as it existed immediately before this Act took effect, is hereby dissolved.

(b) Employees of the board that is in office immediately before the commencement of this Act will be deemed to be the employees of the National Gambling Regulator.

(c) Immovable property of the board used by the board and its employees immediately before the date of commencement of this Act must be transferred to the National Gambling Regulator.

(d) All movable assets of the State which were used by or which were at the disposal of the board and its employees become the property of the National Gambling Regulator.

(e) All contractual rights, obligations and liabilities of the board which relate to the activities of the board, are vested in the National Gambling Regulator.

(g) All financial, administrative and other records of the board which relate to its activities, including all documents in the possession of the board are hereby transferred to the National Gambling Regulator.

Short title and commencement

- 45.** This Act is called the National Gambling Amendment Act, 2019, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.