



**Western Cape  
Government**

# **Western Cape Gambling and Racing Board**

Wes-Kaapse Raad op  
Dobbelary en Wedrenne

Ibhodi Yelentshona Kapa  
Yokungcakaza Ngemali Neyemidyarho

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

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

**26 OCTOBER 2018**

**WCGRB MANAGER LEGAL SERVICES: MS. YVONNE SKEPU**

# TABLE OF CONTENTS

---

1. Introduction
2. Background
3. Comments on Specific Amendment Provisions
4. Recommendations
5. Closure

# Introduction

---

- The scope of the 2018 Draft National Gambling Amendment Bill, 2015 has been narrowed to only deal with two subject-matters:
  - The reconfiguration of the National Gambling Board; and
  - Governance issues affecting the National Policy Council
- This presentation is limited to submissions on these two matters only.

# Background

---

- The WCGRB submitted comments on the Draft Bill at the following intervals:
  - The unpublished draft of the 2016 Bill was first circulated to the MEC for Finance and the ten gambling Regulators during June 2016.
  - The Western Cape Gambling and Racing Board ("WCGRB") submitted comments, on the unpublished 2016 Bill, to the Dti dated 20 June 2016.
  - The 2016 Bill was published in the Government Gazette, No: 40320, on 30 September 2016 requesting comments from all interested persons.
  - The WCGRB again submitted comments on the published 2016 Bill, to the Dti on 11 November 2016.
  - On 9 June 2017, the Dti sent correspondence to the WCGRB requesting inputs on the unpublished 2017 Bill.
  - The WCGRB submitted comments on the unpublished 2017 Bill, to the Dti on 21 June 2017.

# Background cont.

---

- During the different versions of the Bill, amendments were effected which was not necessarily included in the version published for public comment on 30 September 2016. The provisions that were amended or included after the 2016 Bill was published for comment includes:
  - Section 27 (d);
  - Newly inserted Section 65A, 65B and 65C which deals with the power and duties of the CEO of the NGB;
    - Submission were made to this Committee on 24 October 2018 regarding the far reaching powers of the CEO of the NGB and why it is desirable to retain the governance structure of a Board.

# Comment on Specific Amendment Provisions

---

It is noteworthy that this was not in the version published for public comment –

- Proposed substitution of Section 33 of the Principal Act - Insertion of subsection (l), which reads as follows:

***“(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,”***

- Further, the proposed insertion of subsection (fA) in Section 87 of the Principal Act, which reads as follows:

***“(fA) criteria to be observed by the National Gambling Regulator to approve payout machines in excess of five;”***.

# Comment on Specific Amendment Provisions cont.

---

## ■ Considerations to be taken into account:

- The law currently accords distinct competencies to the national and provincial regulators in relation to the regulation of gambling, i.e. Provincial Regulators issue national and provincial licences and enforces compliance by licensed persons, whereas the National Regulator exercises oversight and must maintain certain national regulatory registers.
- Section 33(l) confers the power on the NGB to consider *“applications and motivations from Provincial Licensing Authorities for acquisition of additional limited payout machines, for purposes of compliance with the approved criteria”*;
- What is the ambit of the powers conferred on the NGB in relation to Type B and C LPMs?
- Who at the NGB will consider these applications? The CEO or Exco?;
- Will the NGB test or evaluate compliance with the approved criteria or must it approve applications for LPMs in excess of five, as currently provided for in Regulation 3(2) of the Regulations on Limited Payout Machines, 2000?;

# Comment on Specific Amendment Provisions cont.

---

## ■ Considerations to be taken into account:

- Taking into account specifically that the NGB will not be governed by a Board, and will also not be an independent institution but a trading entity of the DTI, which is in direct contrast with the governance and mandate of PLAs, which is governed by independent Boards;
- Not only that, all applications for LPM Sites go through a public participation process;
- The National Gambling Policy includes a number of additional regulatory functions to be performed by the NGB. During the DTI deliberation with gambling regulators on 23 September 2015, it was agreed that norms and standards will be set to outline the considerations that PLA's must take into account in considering Type B and C LPM site applications. This will address the concerns highlighted in the National Gambling Policy around harm minimization and ensure national harmony. This will further negate the rationale for the NGB approving these licences going forward, and we maintain that PLAs are better placed to observe socio-economic and over-stimulation issues within their Regions and Provinces;

# Comment on Specific Amendment Provisions cont.

---

## ■ Considerations to be taken into account:

- Historically and fundamentally, the NGB was not charged with licensing powers and this was schematically and intentionally so. The deconstruct in terms of both the Constitution, 1996 and the National Gambling Act, 2004 is that Provincial Licensing Authorities (“PLAs”) is charged with probing investigating of applications in each Province. This was an anomaly originating from Regulation 3(2) of the Regulations on LPMs and Parliament is requested to enact this power into the National Gambling Act;
- We concur with the insertion of subsection (1)(fA) to section 87, which clothes the Minister with the competence to outline criteria to be observed in the consideration of applications for LPM sites with machines in excess of five;
- However, we request that the criteria so promulgated be applied / observed by PLAs in considering applications of this nature. The reason being that PLAs are better placed to consider the geographical, economic and socio-economic impact of the award of a licence, and also take into account the public participation processes presided over by PLAs;
- The NGB is in the main an oversight body. Secondly, the NGB will, post the adoption of the proposed amendments, be a trading entity within the DTI, managed by a CEO; and

# Comment on Specific Amendment Provisions cont.

- The proposed insertion of section 63A, which reads as follows:

## "Meeting quorum

**63A. Despite section (63)(6), if a motion has been tabled at a meeting of the Council at which 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."**

- We reproduce below relevant parts of Section 63 of the National Gambling Act which reads as follows:

***"S63 (4) As a body through which the national and provincial spheres of government seek to co-operate with one another in mutual trust and in good faith, the Council must attempt to reach its decisions by consensus.***

***(5) If the Council is unable to reach a consensual decision in any matter before it, the Council may resolve the matter by formal vote on a motion.***

***(6) A motion in terms of subsection (5) passes only if it is supported by-***

***(a) the Minister; and***

***(b) at least 5 of the other regular members of the Council.***

***(7) Subject to subsections (2) to (6), the Council may establish Rules of Procedure for its own proceedings."***

# Comment on Specific Amendment Provisions cont.

---

- Section 63(4) of the NGA clearly envisages that all Council decisions are reached on the basis of consensus or if not, by putting the matter to vote.
- S63A seeks to create a scenario where matters scheduled for two consecutive meetings at which no quorum was achieved, shall become binding resolutions “by default” upon adoption of the said resolution by members present at the SECOND meeting. There is no legal rationale in support of such approach.
- To deal with the rolling over of decisions due to lack of quorum, it is proposed that provision be made for round-robin decision-making where members of Council vote on matters in writing. Section 60 of the Companies Act, 2008 has a similar provision.

# Comment on Specific Amendment Provisions cont.

## ■ The proposed Repeal of Item 5 of Schedule 1:

- Item 5 of Schedule 1 is reproduced below:

### ***“5 Development of interactive gambling policy and law***

- (1) The board must establish a committee to consider and report on national policy to regulate interactive gambling within the Republic, and may include with its report any draft national law that the committee may consider advisable.***
- (2) Despite section 71 (2), the committee constituted in terms of this item may include-***
  - (a) representatives of provincial licensing authorities; and***
  - (b) other persons, whether or not those persons are members of the board.***
- (3) Section 71 (3) and (4) apply to the committee constituted in terms of this item.***
- (4) The committee constituted in terms of this item must report jointly to the board and the Council within one year after the effective date.***
- (5) Within two years after the effective date, the Minister, after considering the report of the committee and any recommendations of the board or the Council, must introduce legislation in Parliament to regulate interactive gambling within the Republic.”***

# Comment on Specific Amendment Provisions cont.

---

- The National Gambling Amendment Act 10 of 2008 was adopted to regulate online gambling in South Africa. Prior to the Act coming into operation, parliament determined that a commission be appointed to review the state of gambling regulation in South Africa.
- Accordingly, the Gambling Review Commission (“GRC”) was appointed to research the current state of gambling regulation in South Africa and made certain recommendations concerning the expansion of the industry. The GRC’s report to this Portfolio Committee is dated 7 March 2012.
- The WCGRB is of the view that interactive gambling is on the increase and is here to stay. We must be alive to the technology and pace of developments around the globe. For as long as patrons, being the citizens of South Africa, do not have legal alternatives, they will not only be committing a crime by participating in illegal online gambling, but also be left to the mercy of unscrupulous operators that are not regulated in terms of fair play, return to patron percentages, and probity and suitability requirements. Neither are these unlicensed Operators paying any taxes nor giving back to COMMUNITIES through CSI.
- Government must put a clear research plan into action to acquire the knowledge to regulate online gambling. It is important that clear time-lines be set for the research and capacitation of Regulators and law-makers to gain the necessary expertise to license and regulate online gambling.

# Recommendations

---

- That the proposed Section 33(l) be deleted and instead the NGB conduct oversight evaluations to ensure PLAs compliance with the prescribed criteria as per Regulations published by the Minister pursuant to the proposed section 87(fA)
- That the proposed Section 87 (fA) be amended to substitute the words “National Gambling Regulator” with “Provincial licensing authorities”.
- That the proposed insertion of Section 63A be rejected and instead a provision be inserted to permit Council members to communicate their vote in writing through a round robin process, to address the lack of quorum issue.
- That the proposed repeal of Item 5 of Schedule 1 be rejected and instead the time-period for enactment of legislation to regulate interactive gambling be extended. Further that government sets into motion a clear plan of action for the rollout and licensing of interactive gambling South Africa.

# Closure

---

**We thank the Committee for the opportunity to make comments and participate in its deliberations on the proposed amendments to the 2018 Draft National Gambling Amendment Bill.**

# QUESTIONS AND ANSWERS

---

Thank you