

SELECT COMMITTEE ON TRADE AND INTERNATIONAL RELATIONS

THE DTI RESPONSE TO STAKEHOLDER SUBMISSIONS ON THE NATIONAL GAMBLING AMENDMENT BILL

26 FEBRUARY 2019



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REPUBLIC OF SOUTH AFRICA



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PURPOSE

To respond to the stakeholder comments submitted before the Select Committee on Trade and International Relations on the National Gambling Amendment Bill, 2018.



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OVERVIEW

- A number of submissions were received by the Select Committee on Trade and International Relations on the legislative proposals in the National Gambling Amendment Bill, 2018.
- The Portfolio Committee on Trade and Industry exercised their prerogative in terms of the Constitution to amend the National Gambling Amendment Bill (NGAB). The NGAB as referred to the NCOP has 3 focus areas: re-positioning of the NGB to NGR, extension of NCEMS to all modes of gambling, and the effectiveness of the National Gambling Policy Council.
- Stakeholders inputs comprise comments to the version of the NGAB prior to its introduction to the National Assembly and the version of the NGAB as referred to the NCOP.
- **the dti** will focus only on comments pertinent to the provisions that remain in the NGAB in this presentation.
- Where inputs are similar, to avoid duplication a single response will be provided.
- Comments were received from the Banking Association of South Africa (BASA), Ithuba Holdings; Casino Association of South Africa (CASA); South African Bookmakers' Association (SABA); Cliffe Dekker Hofmeyr INC (on behalf of Goldrush Group (Pty) Ltd); Bingo Association South Africa (BASA); BOSS Gaming Group ("BOSS"); Gold Circle; Dh Van Eeden and Payments Association of South Africa.

SPLITTING OF THE BILL BY PORTFOLIO COMMITTEE

Stakeholder comment

- Leaving out critical amendments out of the current bill is not in the best interest of the industry stakeholders. All sections of the Bill should be dealt with simultaneously to prevent further delays and bring certainty to the relevant sectors of the industry.
- It is far from clear why the process of amendment of the Act should be split in this way and why all attention must be focussed on matters that principally are of concern only to the national authorities.

the dti response

- The draft Bill focuses on key priorities that will ensure efficiencies and strengthened coordination of gambling regulation in South Africa. The impact of these amendments will ensure a coordinated gambling regulatory framework, enhanced enforcement and improved punter protection.
- The proposed amendments are the first in series in repositioning the NGB to NGR and pose no prejudice to the industry.
- In the next Parliament, industry-specific and substantive provisions will be tabled. **the dti** will ensure that a gambling amendment bill is included in the parliamentary programme.

REGISTER OF UNLAWFUL GAMBLING OPERATORS-SECTION 10A

Stakeholder comment

- As is implicitly recognised in the proposed subsections (3) and (4), a listing may cause unwarranted reputational damage (especially if it is performed without satisfactory levels of proof), and may have to be undone through litigation.
- No indication how the listing will be conducted and even whether this will follow prosecution as it will be an anomaly to register a person without following due process. Regard must also be had to the Protection of Personal Information Act, 2013. If listing will happen after conviction then the affected person will be automatically barred from acquiring a licence in any event. The provision will serve no purpose at all as a result.

the dti response

- When a court has convicted an individual of contravening either national or provincial legislation, then such unlawful gambling operator will be listed in the register of unlawful gambling operators. The insertion of 10A refers to both licensed and unlicensed gambling operators. Subsections 2, 3 and 4 are applicable to licensed gambling operators.
- Due to the growing number of illegal operators, and the devastating impact that unregulated gambling can have on the lives of citizens as well as to the economy of the country, it is necessary that the State takes every available step to combat illegal gambling operations. The provision is thus necessary, to close loopholes that may be exploited.
- Administrative matters set out in the regulations to follow the bill will outline the process to list and delist.



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EXTENSION OF NCEMS TO ALL MODES-SECTION 27

Stakeholder comment

- There was no consultation on the extension of NCEMS to other modes of gambling on the Policy Document that was published in 2015 and the Bill that was published in 2016. The extension of the scope of the NCEMS to other gambling modes is proposed for the first time in Bill 27B of 2018 placed before Parliament.

the dti response

- The National Gambling Policy (NGP) included NCEMS in the approved version of February 2016. The NGAB has followed progressive development, and some provisions were added while others were removed in the process. This provision was consulted upon during 2017, and is still subject matter of consultation as part of the National Assembly and National Council of Provinces legislative process prior to the Bill being signed into law.
- The establishment and maintenance of a National Central Electronic Monitoring System (NCEMS) is an exclusive power of the NGB conferred upon it by the Minister of Trade and Industry through the NGA. The NCEMS is a National register as set out in the NGA.
- No similar public power or public function has been conferred on any province regarding the regulation of NCEMS and its related matters. The NCEMS currently applies to the LPM industry.



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EXTENSION OF NCEMS TO ALL MODES-SECTION 27

Stakeholder comment

- There is no rationale why NCEMS is to be extended to other modes of gambling except for making money for the NGR.
- The development of a single CEMS in respect of all gambling modes will therefore serve no regulatory purpose and provide no additional benefits, as all the information required by the regulator in respect of each industry sector is currently available.
- The CEMS is regulated properly by PLAs and the Bill now will permit interference with PLAs competence.

the dti response

- The NCEMS is a regulatory tool for NGB and PLAs to provide independent oversight of the gambling activities, taxes and levies due. Currently, outside of the LPM industry, the regulators rely on the monitoring systems belonging to operators. Each operator has their own monitoring system, which the regulator has no control over.
- The NGR will be directly accountable for the information collected as opposed to the status quo where a PLAs has to rely on operators to provide that information.
- This will not interfere with the functions of the PLAs, but will rather strengthen their ability to regulate.



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EXTENSION OF NCEMS TO ALL MODES-SECTION 27

Stakeholder comment

- Operators spent a fortune to acquire the systems and there is no complaint that PLAs have not been able to access the information.
- There is doubt that the PLA's struggle to collect information and the DTI are questioning the integrity of the PLA's who have significant powers to enforce any non-compliance by licensees in this regard. It is all about revenue generation for the NGB.

the dti response

- This provision will not make the operators system redundant. Credible and readily available Information is central in the gambling industry. There is a need to have oversight over the information to avoid risks regarding integrity of data, fair play for punters, credible gambling statistics that are developed to inform the Gambling industry trends from a market share and market conduct perspective.
- Information from PLAs is not easily accessible and received based on contacts available but not as a requirement. It is imperative that a monitoring system is relied upon to save institutional memory as opposed to relying on individuals. Whilst PLAs share the information it sources from the operators from a regulatory perspective, this is not ideal and causes a conflict for the NGB.

EXTENSION OF NCEMS TO ALL MODES-SECTION 27

Stakeholder comment

- As stated earlier, the licensees have already gone to great expense installing state of the art monitoring and management systems which are far more advanced than the current NCEMS used for LPMs. There is no rationale for running dual monitoring systems which will come at great expense to the licensee.

the dti response

- The NGB monitors compliance of PLAs and simultaneously has to ensure that the operators licensed by PLAs are compliant therefore an independent regulatory tool will resolve regulatory gaps and improve efficiencies.
- There is a need to have an independent entity coordinating this information. This is in line with international auditing standards that whilst PLAs source information or data from operators for the imposition of taxes they should also have a 3rd party source which will be the NGB to verify the information or data received from the operators. This will not only contribute to adherence with uniformity and consistency of norms and standards but also reporting of illegal financial transactions.



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EXTENSION OF NCEMS TO ALL MODES-SECTION 27

Stakeholder comment

- Development of such a system would be extremely cumbersome, time consuming and cost-intensive, while delivering no identifiable benefit to any of its end-users.
- The NCEMS will impose a potentially crippling administrative and financial burden on the industry but will not achieve any tangible benefits
- The NGB/DTI primarily see this amendment bill as an opportunity to raise revenue for self funding at the expense of the operators, by trying to introduce a duplicate system for which there is no rational justification.

the dti response

- The system has already been developed at the cost of the NGB.
- NCEMS being an IT system will improve efficiencies, financial reporting, Industry performance reporting and provide reliable information for auditing purposes.
- The extension of NCEMS is not for financial gain. This is a mandate of the NGB set out in section 27 of the NGA, 2004 and is a regulatory function for National Government to exercise oversight.
- Existing monitoring systems at various gambling venues will continue to function as normal. This function will ensure that the NGR continues to work as a central repository of gambling information in terms of the national registers.
- The output of NCEMS will supply PLAs, Manufacturers, and Operators with valuable intelligence in terms of the gambling sector performance both at provincial and national levels. The information can also be used for reporting of national statistics, as well as for determination of taxes and levies.



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EXTENSION OF NCEMS TO ALL MODES-SECTION 27

Stakeholder comment

- The proposed definition of the term “significant events” is broad and vague (“a condition which . . . affects the outcome of a gambling activity . . .”) and accordingly it is not clear from the definition precisely what evil the section seeks to address. The NCEMS is envisaged to monitor significant events in all gambling modes in the same way as LPMs are currently monitored. This information is to be reported to the NGR. There is no obvious reason why the NGR requires this information.
- While there are similarities between limited pay-out machines, electronic bingo terminals and casino slot machines, betting systems operate very differently and so it is not understood how a national central electronic monitoring system could be developed to monitor all of these forms of gambling in a single system.
- For these reasons, we submit that the references to “betting activity” in subsections (1)(a) and (3)(d) ought to be deleted.

the dti response

- Significant event means a condition that makes a game unplayable or affects the outcome of the gambling activity. The definition is clear.
- The NGB is the only national regulator to exercise oversight over the Gambling Industry.
- With the exception of the LPM industry, the NGB has not been able to exercise sufficient oversight over the other modes of gambling in the gambling industry and the wagering and betting industry is no exception in this regard.
- In addition to licensing each mode of gambling, there is a reciprocal responsibility for both the national regulators that compliance and enforcement measures are employed. This includes the use of regulatory tools to effectively and efficiently instill a culture of adherence with National and Provincial legislation.
- This emanates from the NGB’s power set out in section 65 of the ACT to investigate, monitor and evaluate compliance of the gambling industry with the NGA.
- Betting activity is a mode of gambling and must be included in the Bill.



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EXTENSION OF NCEMS TO ALL MODES-SECTION 27

Stakeholder comment

- How will a NCEMS provide for protection of the player?
- The PLAs already have access to content of casinos monitoring systems and dual regulation of same issues at national band provincial should be avoided on sharing of information.
- The NGR does not collect taxes and it does not police or regulate the day-to-day activities of the gambling industry. That is the role of the PLAs. The desire of the NGR to monitor all electronic gambling does not justify the expense of constructing an industry-wide NCEMS to allow it do so.

the dti response

- An efficiently and effectively regulated gambling industry has positive and beneficial outcomes for a punter in that the NGB is or NGR will be able to balance the economic gain from gambling versus the negative impact and the risks associated with making gambling available for play to the punter. NCEMS will specifically detect problems with machines. Players will be protected in that they will not be able to access any illegal machine which may present unfair play and non-payout of winnings.
- The NGB is the only national regulator to exercise oversight over the Gambling Industry therefore this does not amount to dual regulation. The NGB monitors compliance of PLAs and simultaneously has to ensure that the operators licensed by PLAs are compliant therefore an independent regulatory tool will resolve regulatory gaps and improve efficiencies.



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EXTENSION OF NCEMS TO ALL MODES-SECTION 27

Stakeholder comment

- The monitoring of taxation is the function of SARS and not the NGR.
- In what manner NCEMS would be used to identify trends with regards to early warning signs of addictive compulsive gambling.
- The word condition in 27(1)(a) is too broad may lead to confusion.
- The word ‘that’ in section 27(1)(b) problematic contemplates NCEMS capable of analyzing and reporting wide range of data.

the dti response

- NCEMS is not envisaged to collect tax but to accurately record financial transactions amongst others stipulated above. The NGR will have/ NGB has as a regulator the power to investigate, monitor and evaluate compliance of the gambling industry with the NGA.
- NCEMS does not identify trends with regards to early warning signs of addictive compulsive gambling. The information and the trends obtained from the NCEMS will however equip the NGR in its analysis of the trends in turnover, gross gambling revenue, financial transactions which could be utilized to advise on punter activity with regards to e.g preference in modes of gambling, seasonal gambling trends which will inform NGR when to target its public awareness and education campaigns.
- The provision is clear pertaining to extension of NCEMS to all other modes of gambling.
- The word “ that” has been deleted and the reason why it appears in brackets and in bold.

RE-STRUCTURING THE NATIONAL GAMBLING BOARD TO THE NATIONAL GAMBLING REGULATOR

Stakeholder comment

- The National Gambling Board deals with a lot of issues that impact on the industry some emanating from provinces with board structures.
- Removing the board and replacing it with the NGR led by a CEO and Deputy CEO will lead to abuse of power but also remove the collective expertise.

the dti response

- The NGR will be listed as a schedule 3A, a public entity in terms of the PFMA, and will comply with all the PFMA legal prescripts and is accountable to the Auditor-General and Parliament. The CEO of the NGR will become the accounting authority and is required to account at the highest level pertaining to its fiduciary duties. All governance checks and balances are in place in terms of legislation to prevent abuse of power.
- The CEO is restricted to exercise power within the confinements of the PFMA read with the NGA as amended. Whilst a collective of individuals may present collective expertise however it should be noted that for an organisation such as the NGB and the NGR, institutional memory is built from within the organisation and recorded over time.
- The NGB whilst under administration has been able to maintain stakeholder relations with institutions from whom the collective expertise had been sought through the appointment of former board members. In terms of the PFMA, the accounting authority can at any time appoint consultants if specific expertise is required for a particular instance.

RE-STRUCTURING THE NATIONAL GAMBLING BOARD TO THE NATIONAL GAMBLING REGULATOR

Stakeholder comment

- The proposed reconfiguration does not meet any justification to do away with the National Gambling Board and it is undesirable that such power vest in one person without the benefit of accountability that arises from decisions taken by a lawfully appointed Provincial Gambling Board.

the dti response

- There are regulators whose mandates extend even beyond the South African borders and cover a wide range of target groups even though the industries they regulate are not subject to concurrent jurisdiction however these mandates apply, impact the specific industry nationally and have succeeded in performing efficiently with a CEO and Deputy CEO. The NCR's market regulates financial institutions and its consumers and has a debt book of over 1 trillion rand, which is much bigger than the market size of the gambling industry.
- The Bill provides for concurrent consideration on additional LPM machines determined with the approved criteria, and there are no other decisions of the Provincial Gambling Boards which either the NGB has or the NGR will be required to review. In terms of the NGA the NGB is empowered to refer matters of disagreement with a particular Provincial Gambling Board to the NGPC to provide guidance in keeping with the requirements set out in the Inter Governmental Relations Framework Act. The NGR will not be required to approve any licensing as has been the position with regards to the NGB.



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RE-STRUCTURING THE NATIONAL GAMBLING BOARD TO THE NATIONAL GAMBLING REGULATOR

Stakeholder comment

- Focus must be on identifying the root causes for the failure by the NGB to deliver on its statutory mandate, and that measures should be put in place to address and effectively to eliminate these.

the dti response

- Whilst the Board experienced governance failures in the past, the Minister of Trade and Industry promptly provided an intervention into the affairs of the NGB and appointed an Administrator to address the root causes of the governance failures. Measures have been put in place to ensure that the NGB affairs are managed effectively and efficiently.
- The NGB has for the past four years been led by an Administrator, and it has successfully achieved 100% of its performance targets year on year, and has received a clean audit for the past 3 consecutive years.
- The creation of the NGR with the proposed governance structure will improve internal and external efficiency.
- It is proposed that the NGR is established in line with other entities of **the dti** after considering **the dti** research on Agency Rationalization which found that maintaining the board system was costly and did not contribute towards internal efficiencies of the NGB (Page 105 of the Agency Rationalisation report).
- **the dti** regulators which had adopted the governance model of the Board structures presented governance challenges and have since adopted a model similar to that proposed for the NGR.



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RE-STRUCTURING THE NATIONAL GAMBLING BOARD TO THE NATIONAL GAMBLING REGULATOR

Stakeholder comment

- The position taken in the Report in respect of the optimal structuring of the NGB/NGR differs fundamentally from the intended structure for the NGR for which the Bill makes provision. It is not suggested, or even implied, in the Report that the powers and functions of the NGR should be vested in its Chief Executive Officer.

the dti response

- Most often research provides an in-depth analysis of a given situation and draws conclusion based on the particular empirical or scientific information reviewed.
- Policy development in Government most often guides the promulgation of legislation in subscription to the precepts of the Constitution, 1996 or it seeks to set out the practical implementation of legislation. It can therefore be argued that policy is not law when policy development precedes the promulgation of legislation which give effect to the said policy. Same can not be said for the converse in that contravenes of policy would most often lead to contravenes of the law.
- One of the key recommendations of the study was that Commission style structures work better than board structure and this contributed to the policy position.



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RE-STRUCTURING THE NATIONAL GAMBLING BOARD TO THE NATIONAL GAMBLING REGULATOR

Stakeholder comment

the dti response

- The research commissioned by **the dti** did not provide support for the intended structure incorporated in the Bill .
- *The CCRD has an oversight function in respect of the operation of the various entities though not including the NCRS. Some operate through a commission structure while others have a board structure. It is recommended that the dti consider simplifying its oversight function by opting for the same structure for all the regulatory entities. This would mean that commissions should replace boards so as to simplify not only the management of said entities but to also assist the dti in its oversight function-Page 5 of the Agency Rationalisation Report.*
- *The other option, if amalgamation with the NLB is not feasible, would be to subsume the function of NGB into the dti (Page 116 of the Agency Rationalisation Report).*
- The research commissioned has provided for the intended structure in that the NGR remain subsumed in to **the dti** as it will remain a vote within the budget structure of **the dti** , will be a juristic person and will be listed as a schedule 3A public entity in terms of the PFMA. This was the other option set out in the research.



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QUORUM-SECTION 63A

Stakeholder comment

- The problems of quorum do not need legislative amendment. The provision on quorum will mean few people can make a decision for the whole country. This will undermine the concurrence competence of regulating gambling.
- The provision will undermine the majority rule principle.
- The Council has failed to achieve any of its mandates and should just be disbanded but it is to continue the issue of quorum is not negotiable.
- Another option is to round robin documents to make a decision or try other alternatives.

the dti response

- Gambling is a functional area of both National and Provincial government as set out in Schedule 4 of the Constitution. Whilst the NGB and Provincial Gambling Boards have the power to legislate and regulate Gambling, they have similar and distinct roles.
- Matters of concurrent legislative competence are to be managed within the confinement of the Inter Governmental Relations Framework Act therefore the NGPC is a statutory body which gives effect to the principle of cooperative government for policy making and regulation of gambling in the Republic.
- Disbanding the Council will result in not giving effect to the Constitution and the risk of conflict with regards to policy and legislative development may arise and this will pose challenges as opposed to solutions.
- Round robin ordinarily is utilised to cast a vote on matters which have been deliberated. Passing of motions have been attempted through round robin and has proven not to be a viable option.



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QUORUM-SECTION 63A

Stakeholder comment

- SABA respectfully submits that Sections 61, 62 and 63 of the Act should be deleted in their entirety.
- SABA respectfully submits that **the dti** disclose and confirm the number of meetings successfully held by the Council during the past eight years.
- It is further submitted that this information should properly be placed in the public domain.

the dti response

- It should be noted that Section 63 (6) of the NGA is not subject matter of the amendment in the Bill therefore the requirement for a motion requiring the majority members remains in effect therefore principles of corporate governance as entrenched in the NGA will remain applicable when the Bill is passed into law and is mandatory.
- The proposed insertion of section 63A serves to empower the NGPC to be progressive in its decision making in that they would be able to deliberate on matters before NGPC and in the second meeting the motion may be passed.

NATIONAL GAMBLING POLICY COUNCIL

NGPC SCHEDULED MEETINGS 2013 TO 2018

Months & Years	2013	2014	2015	2016	2017	2018
January	x	x	x	x	x	x
February	x	x	x	x	x	x
March	x	x	2 March The meeting took place without a quorum. Round Robin was recommended for decisions to be taken	11 March meeting was rescheduled due to parliamentary programme	x	12 March Meeting took place and had a quorum. 1st Communication for meeting was sent out on 25 January 2018
April	x	x	x	22 April Meeting was cancelled because Minister had to travel abroad	3 April Meeting was cancelled on the day of the meeting due to lack of quorum. Cancellation was done at the venue after lack of quorum was established and resulted in fruitless and wasteful expenditure. 1st Communication for meeting was sent out on 26 January 2017	x
May	x	x	x	x	x	x
June	x	x	x	x	x	x
July	x	x	x	x	6 July Meeting was cancelled on time due to lack of quorum. 1st Communication for meeting was sent out on 22 May 2017. Letters pertaining to the Gambling Bill were subsequently sent to the MEC's for Round Robin	x
August	2 August meeting took place without a quorum. Round robin was recommended for decisions to be taken	x	x	x	x	x
September	x	5 September Meeting took place and had a quorum	x	x	x	x
October	x	x	x	x	x	x
November	x	x	x	x	x	x
December	x	x	x	x	9 and 10 December meetings were initiated but never materialised due to lack of quorum	x

NATIONAL GAMBLING POLICY COUNCIL and QUORUM-SECTION 63A

Stakeholder comments

- NGPC and Quorum, cont...

The dti response

- Section 63 (7) of the NGA stipulates that the NGPC may establish the rules of procedure, the decision to insert section 63A was fulfilled by the NGPC in its meeting of 12 March 2018 which was quorate where the NGPC members agreed that the bill may proceed to cabinet for introduction to the National Assembly.
- This proposed amendment is thus simply giving effect to an executive decision that was already made, and any contrary proposal would be tantamount to a disregard for the separation of powers doctrine entrenched in the Constitution.
- During the certification of the Bill, the vote of the majority of members at the second meeting was seen as a policy decision that is rational as it serves a legitimate government purpose.
- It was found to meet constitutional imperatives from a cooperative government point of view in that this was a collective decision of both National and Provincial.



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NATIONAL INSPECTORATE

Stakeholder comment

- The provision in section 76A will undermine the role of PLA inspectors by allowing national inspectors to enter provinces with or without. This is exacerbated because the inspectors will also deal with issues of compliance by licensed operators and that is the function of provinces also that will amount to dual regulation which will prejudice operators.
- Section would have the undesirable impact of subjecting license holders to the jurisdiction of two different compliance enforcement authorities. Exposure to different procedures. Undue duplication of regulatory effort and cost.

the dti response

- Considering the NGR is a national regulator there are national policy priorities which gambling regulators are under obligation to implement and adhere. E.g compliance with FICA, implementation of BBEE, compliance monitoring of National Licences and curbing illegal Gambling.
- Section 76A complements the already existing section 76 of the NGA. Section 76A ensures that the NGR will be empowered to combat illegal gambling autonomously in addition to the already existing enforcement powers set out in section 77.
- The provision will complement rather than undermine the role of PLAs. The key word in the provision is the addition of the words “or without” to prevent the national inspectors from being restricted from performing on the basis of PLA inspectors are not available.



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NATIONAL INSPECTORATE

Stakeholder comment

- Section 76A(1)(e) conflicts with section 30(1) of the Act which provides that each PLA has exclusive jurisdiction within its province.
- The use of the word requested in section 76(3) should rather be 'request' is clear that the NGR must submit to Minister a statement of the actual amount that it requests for appropriation.
- Not clarity given as to how the manner in which the NGR is to go about ensuring compliance with gambling laws.

the dti response

- This is not a conflict in that 76A(1)(e) makes reference to powers of the NGR in terms of the National legislation with regards to compliance nationally whilst section 30(1) makes reference to powers of PLAs to ensure compliance within their jurisdiction.
- Section 76A will serve to complement the role of PLAs in this regard and not to undermine them. PLAs will continue to licence unhindered but NGR will need to conduct its oversight mandate.
- The provision can be aligned to the comment but it is only semantics as the provision will remain the same.
- The NGB is currently conducting oversight to ensure compliance with the national norms in the National Gambling Act and will continue to ensure that the national legislation is enforced properly.



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NATIONAL INSPECTORATE

Stakeholder comment

- There are challenges recognised by banks and other financial institutions to comply with the Bill. It may be impossible for financial institutions to determine lawfulness of the transactions. An efficient reporting system can be set up fairly quickly.
- Banks to be advised of illegal gambling activities and the entity sponsoring such activities as and when they are discovered.
- A central database and or monitoring system (NCEMS as proposed in the Bill) linked to CIPC, FIC, NGR to ensure illegal activities to be reported, registered and investigated to be considered-Payments Association of South Africa (PASA).

the dti response

- The comments from the banks are noted and taken into consideration. NGR will work closely with the banks and other financial institutions to address payments of unlawful gambling activities.
- Consultations with the banks and other financial institutions will take place to ensure the implementation of the Bill.
- The operational mechanisms will be established during implementation and further guidelines provided in the regulations.

General comments

Stakeholder comment

- Policy say online gambling is illegal. At odds with 2008 Act. There should be insertion in the Bill to repeal the Act.
- There is a fundamental mismatch between numerous clauses of the Bill in relation to the sections and subsections of the Act which purport to amend and/or to delete and/or to insert therein, and which in SABA's respectful view, requires further consideration from a legal perspective. Section 15(c) provides for insertion of paragraph (l) in section 33 of the Act, inconsistent with the fact that section 3 currently contains paragraph (a) to (c).

the dti response

- The National Gambling Amendment Act of 2008 is an Act of Parliament and **the dti** has not resolved to repeal it.
- The drafting has to align with the fact that the 2008 Act remains an Act.
- Legislative drafting guidelines prescribe that the amendments effected to the 2004 act should be in accordance with the numbering of the 2008 Act. This means that when having regard to the numbering in the 2018 amendment bill 2004, 2008 and 2018 should be read together.

TECHNICAL LEGAL ISSUES

Stakeholder comment

- The suggestion to change the phrase ‘an operator that has been operating in contravention of this Act, should rather be a person conducting or making available gambling activity that is not licensed in terms of this Act or a provincial law.
- The words “ Which is only prohibited under FICA of 2001” in section 76A(3) is likely to lead to confusion.
- Section 27(2) may lead to confusion as it does not provide a regime for the licensing of the NCEMS.

the dti response

- The phrase is clear. The suggestions are more use of language preference. Contravention of the Act is clear.
- One must read the NGA together with the FICA. FICA prohibits unlawful payments for any illegal activity and the NGA prohibits the processing of financial transactions in respect of illegal gambling activities. There is no confusion in that this provision compels financial institutions to comply with section 16 of the NGA in respect of unlawful gambling winnings.
- There is no confusion. The NGR will appoint a service provider and that service provider will obtain a national licence in line with provincial legislation.



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TECHNICAL LEGAL ISSUES

Stakeholder comment

The following provisions are critical to the establishment of the NGR and must be reinstated as they were included when the Bill was published on 2016 (Section 64(1):

- (c) is independent and subject only to the Constitution and the law;
- (d) must exercise its functions in accordance with this Act;
- (e) must be impartial; and
- (f) 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.

the dti response

- Various pieces of legislation promotes administrative fairness which must be observed. For example the application of the constitution does not need to be negotiated as it applies automatically. Promotion of Administrative Justice Act, (PAJA) is another example included.



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TECHNICAL LEGAL ISSUES

Stakeholder comment

- The word “is” should read “was” in section 16(4)(a)(ii) and (iii).
- Section 10A(2) concerns about licensed and illegal operators when it comes to contraventions.
- The final portion of section 65A(3)(g) should be amended to read as follows: “an offence involving dishonesty, an offence under the prevention and Combating of Corruption Activities Act (Act No.12 of 2001) or an offence under the Financial Intelligence Centre Act 2001 (Act No.38 of 2001)”.
- The phrase approved in consultation with the Minister in section 73(1)(a) should presumably read approved by the Minister.
- Section 65B(3)(b) may grant assign the management of any functions to NGR employees. Not all functions can be assigned, e.g listing of illegal operators.
- Clause 31(e) intends to amend section 66(6). There is no such subsection in the Act.

the dti response

- The words at the time of the relevant gambling activity is the key words.
- Unlawful include licensed and unlicensed operators.
- A licensed operator can conduct an unlawful act and so can an unlicensed operator. Unlicensed operators will also be listed however the process of being delisted from the register is not available to them.
- The phrase “an offence under” before the Combating of Corruption Activities Act and the FICA is noted.
- The provision correctly provide that CEO will work in consultation with the Minister to develop structure of the NGR.
- Delegation is an operational function there is no need to prescribe this in the bill.
- Legislative drafting guidelines prescribe that the amendments effected to the 2004 act should be in accordance with the numbering of the 2008 Act. This means that when having regard to the numbering in the 2018 amendment bill 2004, 2008 and 2018 should be read together.



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TECHNICAL LEGAL ISSUES

Stakeholder comment

- Section 76(1)(b) and arguably 76A(1)(d) would appear to be at odds with section 30(1)(d) of the Act, which grants exclusive jurisdiction to PLAs to issue offensive notices in respect of offences in terms of the Act or applicable provincial law.
- The meaning of the phrase “relevant institutions” in section 76A(1)(f) is unclear.
- The meaning of section 27(4)(b) is unclear.
- The phrase ‘or becomes insolvent and the insolvency results in the sequestration of his or her estate in section 65A(3)(d) is unnecessary as is covered by the phrase ‘unrehabilitated insolvent’.

the dti response

- This is not a conflict in that 76A(1)(e) makes reference to powers of the NGR in terms of the National legislation with regards to compliance nationally whilst section 30(1) makes reference to powers of PLAs to ensure compliance within their jurisdiction.
- There are many institutions that the NGR may collaborate with if the nature of their work aligns with the NGR’s mandate to combat unlicensed gambling activities.
- Section 27(4)(b) is clear. It caters for possible future functionality on NCEMS as to the manner in which the system can work.
- The section is clear although with the additional wording noted by the comment. Will consider retaining one phrase.



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TECHNICAL LEGAL ISSUES

Stakeholder comment

- Conflict of interest should apply to the Deputy CEO.
- Section 69 of the Act be modified so that the provision that relates to resignation and removal apply to the CEO and Deputy CEO.
- The phrase 'on behalf of' in section 68(2)(d) and (e) to read as 'in or on behalf of' and 'with or on behalf of' consistent with the companies Act section 208(1).
- Comment regarding the assigning of functions to staff applies to section 73(4).
- It is further noted that while Clause 30 of the Bill is headed "Insertion of section 65A, 65B and 65C in Act 7 of 2004", the Bill itself contains no proposed section 65C. This omission is of great significance.

the dti response

- Conflicts of interest are part of internal governance control of the entity. The contract of employment will also incorporate this aspect.
- Section 69 of the 2004 act has been repealed. Removal and resignation are incorporated in the standard employment contract of an official of the entity.
- The provision will still achieve the same results with or without the changes.
- Delegation is an operational function there is no need to prescribe this in the bill.
- This is a minor error. Reference to section 65C is not applicable in the Bill.

CONCLUSION

- The creation of the NGR with the proposed governance structure will improve efficiency.
- Any additional revenue derived by the NGR will ensure that it is self-sustainable, reducing the burden on the fiscus.
- What has come across as common from comments from various stakeholders, is fear of the unknown (fear of change) and these will be allayed through consultation prior to implementation of any changes.
- We must avoid the risk of allowing self interests to supercede national interests, as the effect on society must always be placed above commercial benefits
- This is at the moral centre of government's existence, and its laws must reflect this commitment.

THANK YOU



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