

## Select Committee on Trade and International Relations

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**Attention:** Hlupheka Mtileni  
**By Email:** [hmtileni@parliament.gov.za](mailto:hmtileni@parliament.gov.za)

Dear Sir / Madam,

## WRITTEN SUBMISSIONS ON THE NATIONAL GAMBLING AMENDMENT BILL [B27B-2018]

- 1 We act on behalf of Goldrush Group (Pty) Ltd ("**Goldrush**").
- 2 We refer to the invitation calling on members of the public to submit written submissions to the Select Committee on Trade and International Relations ("**the Committee**") on the National Gambling Amendment Bill, B27 of 2018. In response to this invitation, we set out below Goldrush's written submission.
- 3 Goldrush has been operating in the Southern African regulated & licenced gambling market for over 20 years. Over that time the Group has built itself into a diversified gaming group with interests in Sports Betting, Limited Payout Machines ("**LPMS**"), Route operations and Bingo. The group currently operates throughout South Africa and Africa. The Goldrush Group has been awarded bingo licences in all six provinces where the Provincial Licencing Authorities ("**PLAs**") have rolled out this sector of the industry. The Group currently employs in excess of 2000 people.
- 4 The proposed amendments to the National Gambling Act will have a direct impact on Goldrush's business. It has consequently followed the process of development of the new Gambling policy and the Bill with close attention.
- 5 Goldrush made representations on the Draft National Gambling Policy published in 2015 ("**the Draft Policy**") and on the Draft National Gambling Bill published by the Department of Trade and Industry ("**DTI**") in September 2016 ("**the draft Bill**"). Goldrush also made written and oral representations to the National Assembly Portfolio Committee on the National Gambling Amendment Bill 27 of 2018 during October 2018.

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- 6 At the outset, Goldrush is concerned about the decision of the National Assembly Committee to split the process of consideration of the Bill. This has resulted in the publication of a second version of the Bill (Bill 27B) which deals only with the three focus areas identified by the Committee, namely the establishment of the National Gambling Regulator ("NGR") and its powers, the extension of the national central electronic monitoring system ("NCEMS") and the quorum requirement of the National Gambling Policy Council.
- 7 The other amendments to the Act contained in the draft Bill and the original Bill 27 are no longer part of the Bill and have disappeared from view. The amendments that have been placed on the back burner are matters of extreme importance to the gaming industry as a whole and to the provincial licencing authorities. 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. This process commenced way back in 2010 with the Gambling Review commission, so to leave critical provisions out of the Bill now which are essential for the industry is not in the best interest of the industry as a whole, all section should be dealt with to prevent further delays.
- 8 Bill 27B has been adopted by the National Assembly and has now been referred to the National Council of Provinces. Goldrush welcomes the opportunity to make representations to the NCOP and the Provincial Legislatures on the Bill.
- 9 We have concerns about the following aspects of the Bill:
  - 9.1 Amendment of section 27
    - 9.1.1 The proposed extension of the National Central Electronic Monitoring System ("NCEMS"), which currently only monitors limited payout machines. The Bill proposes to extend this system for encompassing all casino, bingo and betting activities. The NCEMS appears to be principally intended to provide a source of funding for the NGR.
  - 9.2 Amendment of section 64
    - 9.2.1 The establishment of the National Gambling Regulator as a public entity lead by the CEO.
  - 9.3 Insertion of Section 76A
    - 9.3.1 The additional powers of the National Gambling Inspectors to act with or without provincial inspectors to investigate illegal gambling activities.
  - 9.4 Insertion of 63A
    - 9.4.1 The proposal to amend the quorum requirement for meetings of the National Gambling Policy Council.

## THE PROPOSED NCEMS

### There has been inadequate consultation with the industry on the NCEMS

- 10 The executive summary of the draft National Gambling Policy published for public consultation on 15 May 2015 states -
 

*"The draft National Gambling Policy Review Document (policy) outlines the policy proposals that intend to review the gambling landscape in South Africa. The policy proposals are premised partly on the Gambling Review Commission (GRC) Report, reports from Parliament on the GRC Report, stakeholder engagements, benchmarks and excursion conducted."*
- 11 The Gambling Review Commission is an independent body appointed by the Minister of the Department of Trade and Industry to report on the gambling industry in its entirety and provide recommendations in this respect.
- 12 The report published by the Gambling Review Commission did not make any recommendations that the NCEMS should be extended to the bingo industry.



- 13 In addition, the draft National Gambling Policy 2015 that was circulated for comment does not contain a proposal to extend the existing NCEMS to bingo, casinos and sports betting. The draft Policy envisaged that the NCEMS would remain confined to LPMs but that the service provider would require a national licence. This is the proposal that the gambling industry was asked to comment on and consultations between stakeholders and the DTI was based on the draft policy only the proposal was uncontroversial and Goldrush had no comment on it.
- 14 The final National Gambling Policy as gazetted in 2016 then introduces two new proposals that were not contained in the draft. This first elaborates on the idea that the NGR will develop the capacity to run the NCEMS itself. The NGR will thus earn the revenue from the operation fees that are currently earned by the external service provider that runs the NCEMS.
- 15 The second new proposal, which took the industry by surprise, was that the NCEMS should be extended to all gambling modes. This is in paragraph 4.27 of the final Policy:  
  
*"The operation of the CEMS should not be limited to LPMs as PLAs struggle to collect information from other gambling modes which operate their own CEMS. The existing CEMS operated in other gambling modes must be linked to the CEMS established and maintained by the NGR. The licensees affected must pay the prescribed monitoring fee in respect of such machine tested to the NGR. The Minister will, after consulting Council and the industry, determine when the operation of the CEMS should be extended to all other gambling modes."*
- 16 This proposal did not however find its way into the draft Bill published for comment by the DTI or in the final version of the Draft published following the comment process.
- 17 The draft Bill circulated for comment provided for a National Central Electronic Monitoring System under the jurisdiction of the NGR but it did not propose its extension beyond LPMs to other modes of gambling. The draft Bill provided only that "The Minister may, after consultation with the Council and the industry, determine the operation of the national central electronic monitoring system".
- 18 The extension of the scope of the NCEMS to other gambling modes is proposed for the first time in Bill 27 of 2018 placed before Parliament. It is now the central feature of the "re-focused" version of the Bill, ie of Bill 27B which is now before the NCOP.
- 19 The burden of implementing and paying for the extended NCEMS (and through it, paying also for the operations of the NGR) is placed on the gambling industry. However, unlike the other aspects of the Bill which were dealt with the Policy consultation process, the industry has not been consulted on this proposal.

#### **There is no justifiable rationale for the NCEMS beyond funding the NGR**

- 20 As we noted above, according to the final National Policy the existing NCEMS must be extended and operated by the NGR (rather than by provincial licensing authorities (PLAs)) for the following reason:  
  
*"PLAs struggle to collect information from other gambling modes which operate their own CEMS. The existing CEMS operated in other gambling modes must be linked to the CEMS established and maintained by the NGR".*
- 21 An additional rationale stated in the Policy is that the NGR, once it has developed the capacity to operate the NCEMS, will derive revenue from the NCEMS to fund its operations. Extending the scope of the NCEMS to all gambling modes will greatly increase this source of revenue.
- 22 Goldrush is a licensed operator in the majority of provinces and has no experience of the "struggle to collect information" that is referred to in the Policy. Licensees are obliged to provide information to PLAs in order to declare and confirm provincial gaming taxes and they do so. Licensees that did not provide this information to PLAs would have their licenses revoked. The information can be independently verified by way of audit or inspection. There is nothing to suggest that the licensed gambling industry does not provide accurate and comprehensive information to PLAs.
- 23 Goldrush has installed a state-of-the-art electronic monitoring and management system for all its electronic gaming operations, as have its competitors and the casinos.



- 24 PLAs include in their gambling rules a requirement that they must be given dial-in access to these CEMS for purposes of monitoring significant events, player protection, number of gaming devices operational and verifying and collecting revenue information provided by licensees. Ensuring that PLAs and the NGR are able to access the data in licensees' CEMS provides the solution to any "struggle to obtain information", if this indeed exists. It does not require the cost and administrative burden of establishing a NCEMS for all modes of gambling, when these systems have already been installed at great expense to the licencees.
- 25 The proposed scope of the NCEMS in Bill 27B moreover goes much further than simply requiring data to be shared with PLAs or with the NGR. It envisages that the NCEMS will monitor significant events in all gambling modes in the same way as LPMs are currently monitored. In other words, the NCEMS will be a fully-fledged monitoring and enforcement mechanism rather than simply an information-gathering mechanism.
- 26 This is not catered for in the Policy and the "struggle to obtain information" is not a rationale for this dramatic extension of the NCEMS or justification for the considerable costs that this will entail for the gambling industry.
- 27 Because of the way in which LPMs work, there is a rationale for having a NCEMS. This rationale does not apply to other modes of gambling. To elaborate:
- 28 LPMs have a limited pay-out of R 500.00. These machines provide gambling as a social or recreational activity in communities /rural areas. Gamers with an interest in seeking larger winnings are catered for by casinos, betting on horseracing or sporting events, and bingo.
- 29 LPMs are operated by route operators (who are licensed to place a number of their machines in premises by agreement with the owner) or site operators (who may have a licence for one or more machines on their premises).
- 30 As a result, LPMS are scattered in locations throughout the country in venues like bars and taverns (non-gambling establishments). There are no on-site personnel to monitor significant events or breakdowns occurring on LPMs, no surveillance systems etc. Many LPM sites may have only two machines on their premises.
- 31 The current NCEMS thus provides a useful service for the Provincial and national authorities in centrally monitoring that LPMs are functioning correctly and in accordance with the regulations. It is also worth noting the NCEMS for LPMs was introduced before the industry went operational.
- 32 The current NCEMS also benefits the licenced Route operators who install their LPMs (which are expensive assets) on sites scattered all over the provinces. The NCEMS allows them to monitor any problems/breakdowns with the LPMs so technical support can be deployed to the site. This helps to justify the high costs of the NCEMS monitoring fees.
- 33 None of this is necessary for primary gambling establishments like bingo centres and casinos and sports betting venues which all have on-site CEMS, sophisticated surveillance systems and technical backup. Their in-house systems can provide all data that the PLAs require and the NGR might require. That data is highly dependable and capable of external verification. All CEMS installed by Bingo and Casino operators must have been approved by the authorities and tested against the relevant national gambling technical standards (SANS 1718) in exactly the same way as the NCEMS for LPMs. Its integrity and reliability cannot be questioned.

**The NCEMS will impose a further administrative and financial burden on the industry but will not achieve any benefits**

- 34 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.
- 35 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.
- 36 Even if there was a clear case as to why the NGR needed to have this information, there is no possible justification for the enormous expense entailed that will be borne by the licencees in extending the NCEMS to



all gambling modes rather than simply requiring licensees to give the NGR dial-in access to their existing monitoring systems as is the practice with the PLAs.

- 37 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. These systems have moreover been developed over a number of years to suit the particular needs of the bingo or casino sectors. The systems are dependable and accurate and this can be independently verified.
- 38 There is no rationale for running dual monitoring systems which will come at great expense to the licensee. This will have to be added to the existing systems and also installed on individual gaming machines and bingo terminals which will need major re-developments and reengineering to cater for two systems running in parallel.
- 39 All gaming machines and bingo terminals will have to go through full re-testing by the approved test laboratories and the NRCS as well as further approvals of LOCs by the PLAs. These extra and unnecessary costs have the potential to cripple the industry.
- 40 It must be borne in mind that each gaming sector operates and functions within different parameters. The current state of NCEMS will be required to be amended/changed to cater to these different gaming sectors and to take into consideration a spectrum of distinct "significant events". Again, all these unnecessary costs will fall on the licensees.
- 41 The development of a NCEMS system that can compute and analyse the different gaming sectors will naturally be extremely cumbersome, time-consuming and cost-intensive, while delivering no identifiable benefit to any of its end-users. None of this has been considered and discussed with the industry in the development of the Policy. Besides no consultation with the licensees, manufacturers of gaming devices, sport betting software system providers, approved testing labs, current CEMS providers, no independent feasibility study has taken place with all role players to determine what negative impact this may have on the industry as a whole, is it really necessary etc.
- 42 Currently, the fee for LPMs is 6 percent of Gross Gaming Revenue allocated to NCEMS. The proposed amendment to extend CEMS to all gaming modes will likely result in a cost to the industry of R 1.8 billion in fees, which calculation is based on the current Gross Gaming Revenue of R 30 billion. This is a huge additional cost that may force the closure of some marginal gambling / Bingo sites with losses of jobs and investment. It would also reduce the licensees' contributions to social investment programmes in each province.
- 43 The regulation of information which NCEMS seeks to achieve is better placed with the PLAs as PLAs are the primary regulators within the provinces and are responsible for the compliance of licence holders. Such information must therefore be within the reach of the PLAs to ensure that monitoring and enforcement of the legislative imperatives are done timeously and within the control of the PLAs. Having regard to the aforesaid, the Goldrush Group submit that the Provinces should manage the CEMS as PLAs and not the NGR as the regulators of the gaming industry.
- 44 Lastly, it must be pointed out that one of the principles of the Wiehahn Commission is the "*Generation of revenue and taxes for provincial governments and for good causes*". There is no recommendation for national structures to benefit from gaming revenues, and the introduction of NCEMS to other gambling modes will in fact reduce any revenues to good causes. This extension therefore outweighs any benefits suggested.

#### **Concluding remarks**

- 45 The responsibility of monitoring the payment of gambling levies and taxes and player protection currently falls into the domain of the PLAs, the information necessary to procure in support of establishing gambling levies and taxes has and is readily accessible by PLAs.
- 46 The implementation of a single NCEMS that will regulate all gambling modes will serve no regulatory purpose as this information is already within the confines of the PLAs. Furthermore, no additional benefits or information will be procured by the NCEMS system that is not already available by the PLAs.
- 47 The proposed amendments to establish the NCEMS will therefore duplicate the roles and responsibilities that already rest with the PLA resulting only in unnecessarily burdening licence holders with additional costs that can cripple the gambling industry. It must be borne in mind that the gaming industry significantly contributes



to providing job opportunities. This crippling cost naturally will result in job losses and a drop of profits of each entity engaged in offering the different gambling modes. This has the potential to stifle the growth of the industry by hindering the development of gambling businesses as a portion of profits must now be allocated to the NCEMS.

- 48 The incumbent cost associated with introducing a single NCEMS that will regulate all gambling modes are not justified taking into consideration that such information is already procured by the PLAs. If the NGB / NGR require access to this information directly the licencees can simply provide them access to dial in to the existing systems which provide all the necessary information as required by the various provincial Gambling Acts and rules.

#### **The establishment of the National Gambling Regulator as a public entity lead by the CEO**

- 49 The Bill provides for the reconfiguration of the National Gambling Board to the National Gambling Regulator.
- 50 The effect of this proposed amendment means that the concept of a Board will be removed and replaced with the governance led by a CEO, with the assistance of a Deputy CEO.
- 51 The proposed National Gambling Regulator comprises only of the CEO, with no governing board. This means that there is no decision-making body consisting of various persons with different backgrounds, possessing different skills and knowledge.
- 52 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 additional powers of the National Gambling Inspectors to act with or without provincial inspectors to investigate illegal gambling activities**

- 53 Schedule 4, Part A of the Constitution of the Republic of South Africa, no 108 of 1996 ("the Constitution") lists the functional areas of concurrent national and provincial legislative competence. This list includes gambling.
- 54 Section 85(2)(a) of the Constitution states that -  
*"The President exercises the executive authority, together with the other members of the Cabinet, by -  
 a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise".*
- 55 Section 125(2)(a) and (b) provides that -  
*"The Premier exercises the executive authority together with the other members of the Executive Council by -  
 Implement provincial legislation in the province;  
 Implementing all national legislation within the functional areas listed in Schedule 4 or 5 except where the Constitution or an Act of Parliament provides otherwise".*
- 56 These two sections require all provincial and national legislation within functional areas of concurrent legislative competence to be implemented and administrated by the Provincial executive.
- 57 The proposed inclusion of section 76A if effected will undermine the provincial governments powers to regulate gambling as required to do so in terms of Schedule 4 of the Constitution.
- 58 Furthermore, The National Gambling Act, 7 of 2004 provides in section 30 that "Each provincial licensing authority has exclusive jurisdiction within its province".
- 59 This proposed amendment, which provides for additional powers of the national gambling inspectors that they may act with or without provincial inspectors to investigate illegal gambling is in direct conflict with section 30 of the National Gambling Act as it is the PLAs that are required to conduct inspections to ensure compliance with the National Gambling Act as well as applicable provincial law.

### **Clause 26 (Quorum of meetings of the National Gambling Policy Council)**

- 60 The National Gambling Policy Council established by sections 61-63 of the Act plays a crucial role in ensuring co-operation and co-ordination of gambling policy between the provinces and between the provinces and the national government. This is in accordance with and gives effect to the constitutional principle of co-operative governance.
- 61 The voting members of the Council are the Minister and the nine MECs responsible for gambling in each province. An issue put to the vote must be supported by the Minister and five MECs to pass. This is to ensure that a decision that does not have the support of a majority of the provinces will not pass.
- 62 The National Gambling Amendment Bill proposes amendments that will undermine the important principle of a provincial majority established by these sections of the Act. The effect of the proposed amendment is that a binding decision can be taken without at least five provinces being in favour of it.
- 63 According to the Policy this provision is necessary because Council meetings are sometimes inquorate because fewer than five provincial representatives attend. The solution to this problem, Goldrush submits, is to provide that, that decision may be made by a round robin method rather than providing that it can be taken by a majority of members at an inquorate meeting and with the support of fewer than five provinces.
- 64 The principles of co-operation and co-ordination of gambling policy between the provinces and between the provinces and the national government must be placed at the forefront. The proposed amendment to clause 26 must therefore be amended in a manner that does not undermine the Constitutional principles and should be amended for example to allow for decisions to be made by a round robin method or proxy votes.

### **CONCLUSION**

- 65 The costs and benefits of the proposed new NCEMS system have simply not been considered in the Policy development process. The NCEMS appears to be a new idea introduced into the Bill in order to provide the NGR with a source of revenue and a greatly enhanced set of responsibilities. It entails a further tax on the industry that has not been costed and that, Goldrush submits, will produce no discernible regulatory benefit.
- 66 Goldrush therefore requests the NCOP not to proceed with the proposed extension of the NCEMS.
- 67 Consultation between all licensees, role players, PLAs and the NGR needs to take place to discuss this proposal and the contention that "PLAs struggle to collect information". Access to information does not require a full-blown extension of the NCEMS. Information from in-house CEMS can be made accessible to the NGR.
- 68 Goldrush submits that other methods of funding the NGR ought not be considered rather than imposing on the gambling industry the burden of paying for and accommodating an unnecessary extension of the NCEMS.
- 69 These considerations must be part of a process that sees the Bill as a whole (and not just the limited focus areas of Bill 27B) considered thoroughly and with the full and informed participation of industry stakeholders.
- 70 There is no justification to reconfigure the National Gambling Board to the National Gambling Regulator. This proposed amendment goes against robust decision making and ensuring accountability to the gambling industry.
- 71 The additional powers to the national gambling inspector is devoid of schedule 4 of the Constitution. The competence of the provincial bodies to regulate the gambling industry must not be underestimated and is in direct conflict with the provisions of the National Gambling Act.
- 72 The principles of corporate governance must be maintained in terms of the quorum of meetings of the national gambling policy council. The challenge brought about by inquorate National Gambling Policy Council meetings can easily be resolved by passing resolutions by way of round robin with at least two thirds of eligible voting members of the National Gambling Policy Council.
- 73 Goldrush trusts that these submissions will be taken in a serious light. Should any questions emanate from these submissions, Goldrush will gladly answer them or make themselves available should the need arise.



- 74 Given the importance of the matters raised in these submissions for Goldrush's business, we respectfully request an opportunity to make oral submissions to the Committee.

Yours faithfully

*(Transmitted Electronically)*

**RISHABAN MOODLEY**

**CLIFFE DEKKER HOFMEYR INC**