

# BRIEFING TO THE PROVINCIAL LEGISLATURE ON THE NATIONAL GAMBLING AMENDMENT BILL, 2018

NOVEMBER 2019



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Trade and Industry  
REPUBLIC OF SOUTH AFRICA



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# Purpose of the Presentation

To brief the Provincial Legislature on the National Gambling Amendment Bill.



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# BACKGROUND

Wiehahn Commission recommended strict regulation of gambling, 1995

Gambling Review Commission Report, 2010 recommending policy reforms.

The National Gambling Amendment Bill, 2018 was adopted by the National Assembly after extensive consultation with the public and immediate stakeholders. The NGAB underwent the Select Committee process. The NCOP referred the NGAB back to the Committee.

National Gambling Act, 1996 is passed introducing the National Gambling Board

National Gambling Amendment Act, 2008 passed to regulate interactive gambling. Act is not promulgated.

2004 National Gambling Act amends 1996 Act introducing the National Gambling Policy Council to ensure policy alignment at national and provincial government.



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# BACKGROUND cont...

The Wiehahn Commission set principles, which became the yardstick for the national gambling policy as enshrined in the Act. The principles, as set out below, remain relevant in guiding gambling policy development.

- Protection of society from over-stimulation of latent gambling through the ***limitation of gambling opportunities***.
- Protection of players and integrity and fairness of the industry through ***strict control and supervision*** of the industry.
- ***Uniformity and harmonisation*** of policy and legislation at all levels of government across provinces through minimum norms and standards, cooperation and coordination.
- Generation ***of revenue and taxes*** for provincial governments and for good causes.
- Economic empowerment of the ***historically disadvantaged***.
- Promotion of ***economic growth, development and employment***.



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## BACKGROUND cont...

- Cabinet approved the National Gambling Policy in 2016, that gave direction for the gambling industry.
- As the Policy is not law, the policy positions set out therein can only be given force and effect by being written into law.
- Further, it must be emphasised that the NG Policy was subjected to a public consultation process, so policy positions were subjected to comments from stakeholders.
- The NGAB seeks to legislate the thinking of government in terms of “why” gambling should be regulated and “why” a National Gambling Regulator should be established.
- The underlying objective of gambling regulation in SA is punter protection, regulation of gambling and revenue collection.



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# BACKGROUND cont...

- The Gambling industry is a regulated industry where the National government has complete, **oversight over the PLAs**, their **licenceses** and the **consumers**. Monitoring of compliance by licensees is a necessary national competence and the NGAB is being amended to give effect to this to ensure effective regulation of gambling and **enhance punter protection**.
- The NGAB seeks to extend monitoring of compliance to include licensees, which currently does not take place as currently the NGB has no direct link to licensees, and is unable to intervene or assist punters when approached directly to resolve gambling related disputes.
- The NGAB seeks to enable the NGR to investigate matters that are not resolved by PLAs to ensure the NGR is empowered to effectively work towards **eradication of illegal gambling activities** proactively and/or in collaboration with PLAs and/ or other law enforcement agencies.



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# LEGISLATIVE DEVELOPMENT TIMELINES: NATIONAL ASSEMBLY

- 15 May 2015 **the dti** published the National Gambling Policy for broader public consultation.
- Written submissions were received, direct engagements were conducted with stakeholders and consultative workshops were conducted until September 2015.
- The National Gambling Policy was approved by Cabinet on 17 February 2016 which included provisions relating to the extension of NCEMS to other modes of gambling.
- The National Gambling Amendment Bill (NGAB) was drafted pursuant to the approved National Gambling Policy, 2016 and followed progressive development through various amendments effected in the National Assembly.
- 30 September 2016 the NGAB was published for broader public consultation for 45 days and direct engagements with stakeholders and the public were conducted until early 2017.
- The amendments to the NGAB were subject matter of an additional consultative process as part of the National Assembly and National Council of Provinces legislative process which included amongst others the provisions relating to the extension of NCEMS to other modes of gambling.
- The final NGAB was submitted to the Office of the Chief State Law Advisor and certified as per their letter dated 18 May 2018 and later to Cabinet which approved on 4 July 2018.
- **the dti** published the Notice of Intention to Introduce the NGAB in the Government Gazette on 20 July 2018.
- The NGAB was introduced to Parliament and referred to the Portfolio Committee on 21 August 2018. The NGAB was shortened and various provisions in the prior version were reprioritised in the Portfolio Committee.
- The draft NGAB focuses on key priorities that will ensure efficiencies and strengthened coordination of gambling regulation in South Africa. It was resolved that Industry-specific and substantive provisions will be tabled to the 6<sup>th</sup> Parliament and thus the National Assembly adopted the shortened versions of the NGAB on 5 December 2018.

# LEGISLATIVE DEVELOPMENT TIMELINES: NCOP

- The NGAB was presented at the Select Committee on 30 January 2019.
- The provincial briefings took place during February to March 2019.
- Negotiating mandates were received from provinces. The Department together with the NGB responded to the negotiating mandates.
- The final mandates were received from provinces. North West, Free State, Mpumalanga, Limpopo, North West voted in favour of the NGAB. Eastern Cape abstained. Western Cape, Gauteng and KwaZulu - Natal voted against the NGAB.
- The NGAB was referred to the National Council of Provinces for adoption in that two provincial votes were received after the last seating of the Select Committee meeting. The NGAB was referred back to the Committee BY NCOP on technical legal grounds for consideration by the 6<sup>th</sup> Parliament.
- The Department notes that the process of the Select Committee is commencing from the beginning.
- The initial briefing of the Select Committee was in July 2019.

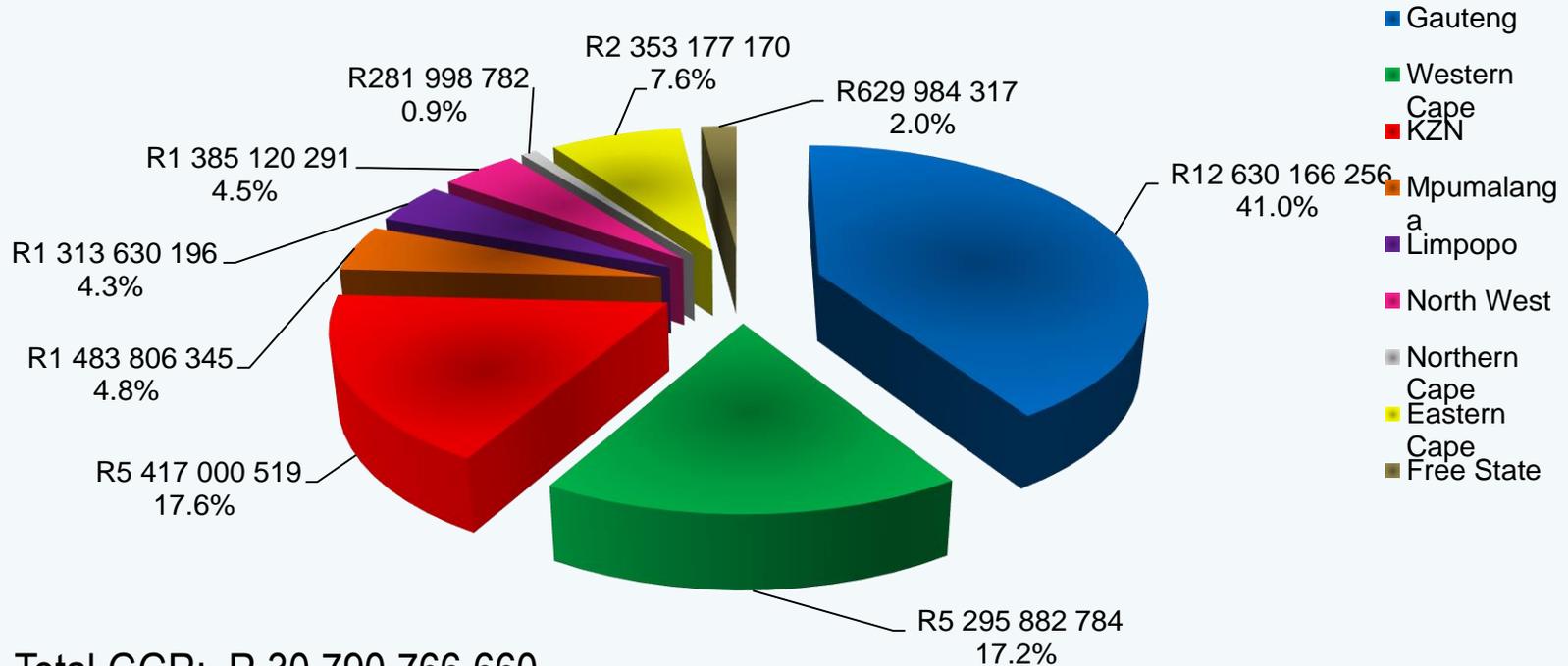


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# OUTLOOK OF THE GAMBLING INDUSTRY

GGR per province - FY2018/19



Total GGR: R 30 790 766 660

This amount is the gross profit generated by the industry.

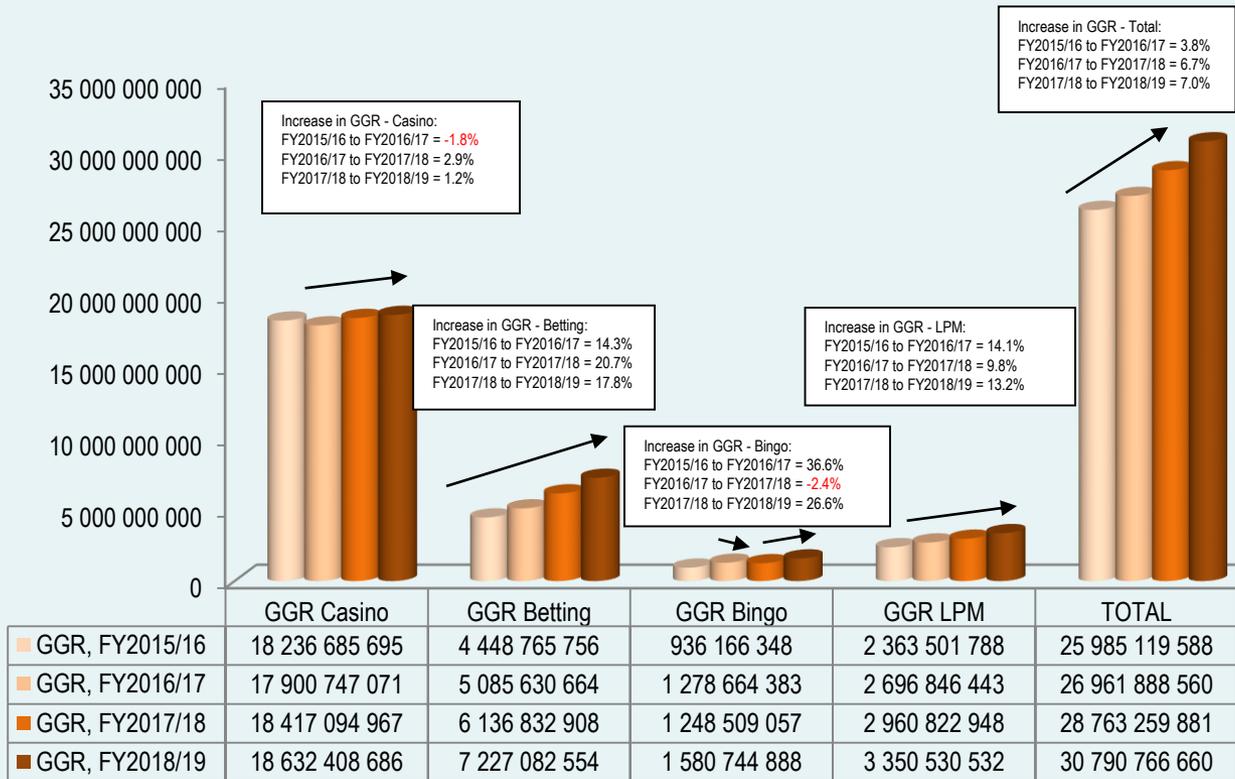


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# OUTLOOK OF THE GAMBLING INDUSTRY Cont..

## Growth in GGR (all modes): FY2016/17 – FY2018/19



Gambling investment stimulates the local economy and contributes to government revenues (taxes/levies), Gross Domestic Product (GDP), investment and employment. Gross Gambling Revenue (GGR) increased by 3.8% from R26,0 billion (FY2015/16) to R27,0 billion (FY2016/17), by 6,7% from R27,0 billion (FY2016/17) to R28,8 billion (FY2017/18) and by 7.0% to R30,8 billion in FY2018/19. A total amount of R30,8 billion in GGR was generated during FY2018/19. Casinos accounted for the highest proportion of total GGR generated, being 60,5% as compared to other regulated gambling modes. Compared to all other provinces, Gauteng at a 41% share, accounted for the highest amount of GGR generated. The gambling sector's contribution to the economy stood at approximately 0.81% in 2016. The total tax/levies collected from the legal modes of gambling amounted to R3,1 billion in FY2018/19.

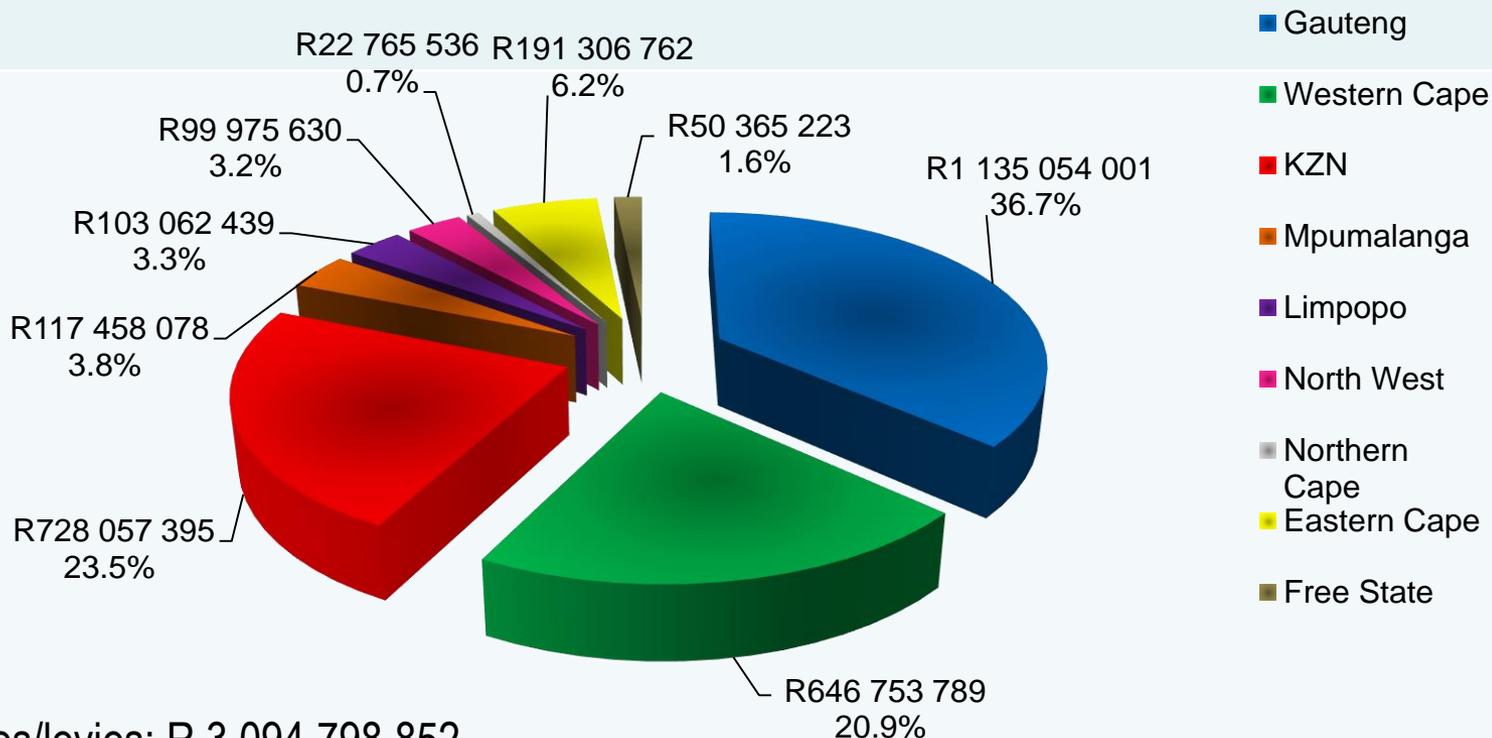


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# OUTLOOK OF THE GAMBLING INDUSTRY Cont..

## Taxes/levies contribution per province– FY2018/19

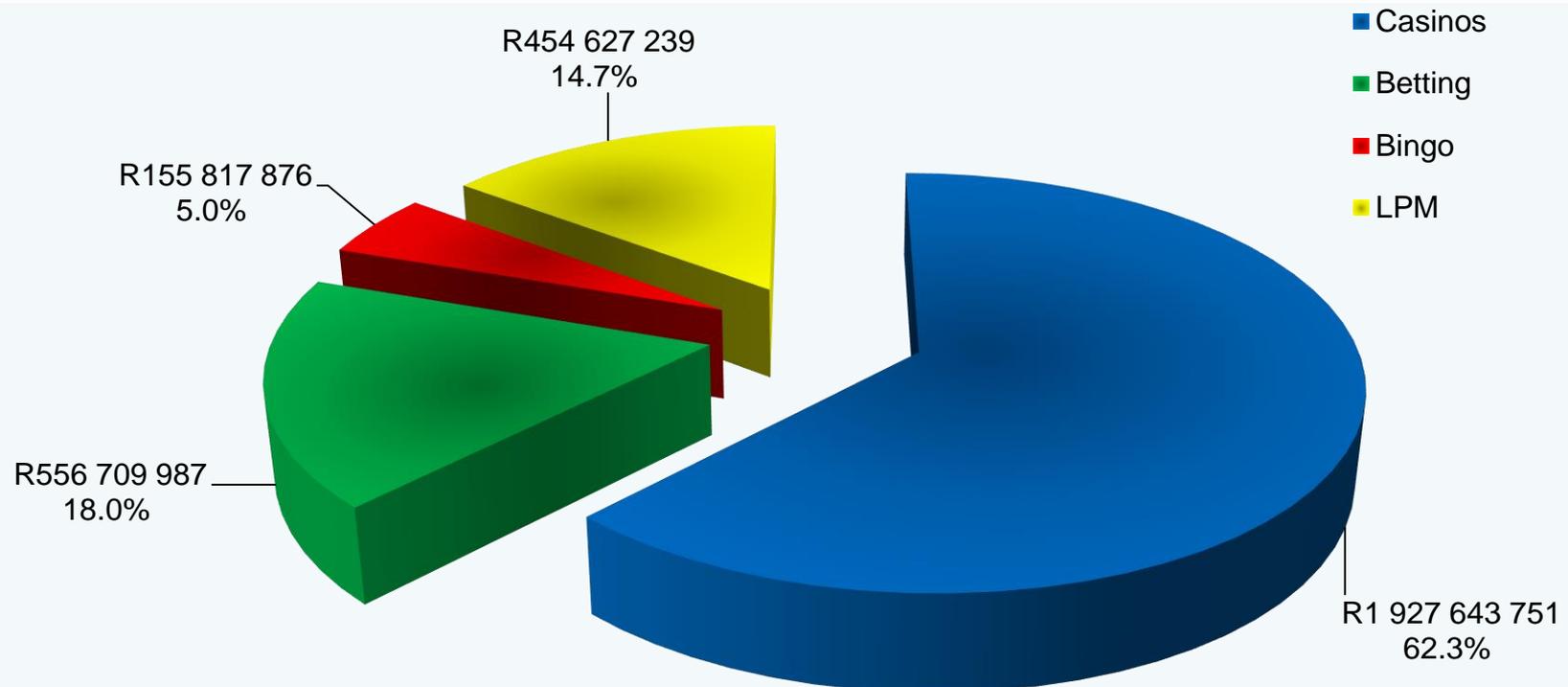


Total taxes/levies: R 3 094 798 852

Taxes/levies collected by Government from the industry make up 10% of GGR. However, the imposition of tax varies by province and mode.

# OUTLOOK OF THE GAMBLING INDUSTRY Cont..

## Taxes/levies contribution per gambling mode – FY2018/19



Total taxes/levies: R 3 094 798 852



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# RATIONALE OF THE BILL

## PREAMBLE

- To provide for the establishment of the National Gambling Regulator led by CEO as Accounting Authority.
- To provide for the procedure for forfeiture of unlawful winnings.
- To empower the National Gambling Policy Council to make a final decision at a second sitting with the majority of members present in that meeting.
- To extend the National Central Electronic Monitoring System to other modes of gambling.
- To enhance the powers of the national inspectorate to curb illegal gambling activities.
- To amend and delete certain definitions.
- To provide for the transitional arrangements.



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# MINOR AMENDMENTS: LISTING OF ILLEGAL GAMBLING OPERATORS

- Clause 3 inserts section 10A which empowers the National Gambling Regulator (NGR) to keep a register of unlawful gambling operators and also that the said operators will be disqualified for five years from applying for a licence to operate. This is in addition to the criminal sanctions and fines envisaged under the Act.
- The clause further provides that the operator can approach the NGR to motivate for removal from the register.
- When a court has convicted an individual for contravening either national or provincial legislation, then such unlawful gambling operator will be listed in the register of unlawful gambling operators. Only once the courts had declared someone an illegal gambling operator, is the illegal Gambling operator listed on the register.
- The insertion of section 10A refers to both licensed and unlicensed gambling operators.
- Administrative matters set out in the regulations to follow the NGAB will outline the process to list and delist the unlawful gambling operator.



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## MINOR AMENDMENTS: PROHIBITION ADVERTISING TO SELF EXCLUDED PERSONS

- Clause 4 inserts amendment of section 14 by inserting subsection 13 which requires operators to remove excluded persons from their marketing list.
- Clause 5 amends section 16(4) to provide that unlawful winnings be forfeited to the NGR subject to compliance with the PAJA – the winnings will no longer be forfeited to the State after a High Court order as the provision requires in the current Act. It further strengthens the conditions to verify the unlawful winnings.
- The onerous burden of applying to the High Court is being removed, making the process easier and saving tax payers money.
- The funds forfeited are not large sums. In certain instances the cost of Counsel far outweighs the amount to be forfeited, e.g. Counsel may cost R35 000 per day however the amount forfeited is R500.



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# NATIONAL CENTRAL ELECTRONIC MONITORING SYSTEM (NCEMS)

- Clause 12 amends section 27 to provide that the National Central Electronic Monitoring System (NCEMS) will be extended to apply to casino, bingo and betting activities under the auspices of the NGR.
- Clause 12 further provides for the national license, the implementation date for the NCEMS and gives powers to the Minister to determine the extent of the operation of the NCEMS.
- The intention is to consolidate information throughout the country from all legal modes of gambling.
- The establishment and maintenance of a National Central Electronic Monitoring System (NCEMS) is an exclusive mandate of the NGB, set out in Section 27 of NGA, 2004 conferred upon it by the Minister of Trade and Industry through the NGA.
- The NGB currently has an exclusive mandate over the NCEMS for the Limited Payout Machines mode of gambling. The system exists and has already been developed at the cost of the NGB.
- Existing monitoring systems at various gambling venues will continue to function as normal.
- The NCEMS is a National register as set out in the NGA 2004 and this function will ensure that the NGR continues to work as a central repository of gambling information in addition to that which is already required in terms of the national registers.
- 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.



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# NATIONAL CENTRAL ELECTRONIC MONITORING SYSTEM (NCEMS)

## Cont...

- 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.
- The NGR will be directly accountable for the information collected as opposed to the status quo where PLAs have 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.
- This is a great step towards governments' effort to prepare the regulator for the disruptive nature of the 4th Industrial revolution and enhance regulatory oversight over the PLA's and the Gambling industry.
- 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.
- 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 3<sup>rd</sup> 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.
- NCEMS being an IT system will improve efficiencies, financial reporting, Industry performance reporting and provide reliable information for auditing purposes.



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## NATIONAL GAMBLING POLICY COUNCIL

- Clause 26 inserts section 63A which provides that in cases where there is the National Gambling Policy Council (NGPC) meeting and there is no quorum, the decision on issues tabled will be made in the next meeting provided it is supported by the majority of the voting members present at that meeting.
- The NGPC is established in terms of section 61(1) of the National Gambling Act of 2004 to ensure policy alignment at national and provincial government.
- Schedule 4 of the Constitution of the Republic of South Africa lists casinos, racing, gambling and wagering (excluding lotteries and sports pools) as a functional area of national and provincial concurrent legislative competence, granting both provincial and national government the power to legislate and regulate gambling.
- The NGPC is critical for collaboration and co-operation between national and provincial governments and to ensure there would not be a conflict of policy.
- The quorum is constituted by the Minister and at least 5 members of the executive Council (MEC) responsible for casinos, racing, gambling and wagering in that province.
- The Act provides that at least two meetings be held per annum.
- This amendment is intended to address the delays caused by lack of quorum which affects the policy decisions to be made and other coordination efforts of the National Gambling Policy Council.
- In the previous Administration, between 2013 to 2018, only 2 meetings quorated out of 9 scheduled meetings. Round robins could not work as provinces would not cooperate. MECs would cancel attendance on day of meeting after confirmation.



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# NATIONAL GAMBLING POLICY COUNCIL Cont...

- The provision was regarded by the Office of the Chief State Law Advisors as being 'in order'.
- The approach was supported by the members of the National Gambling Policy Council during their meetings including the meeting of 05 September 2015.
- This was tabled in the National Gambling Policy Council meeting of 12 March 2018 and the matter was noted.
- 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.
- 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.



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# NATIONAL GAMBLING POLICY COUNCIL

- Section 63 (7) of the NGA stipulates that the NGPC may establish the rules of procedure.
- 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 NGAB by the Office of the State Law Advisor, 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 governance point of view in that this was a collective decision of both National and Provinces.
- Given the independence of provinces, the Minister is not empowered to administratively ensure attendance of meetings by MECs.
- Failure by the NGPC to meet, has negative implications for gambling regulation in South Africa due to lack of harmonisation in gambling laws and policy.
- Other options were suggested for addressing the quorum. **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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# NATIONAL GAMBLING POLICY COUNCIL

## NATIONAL GAMBLING POLICY COUNCIL MEETINGS FROM 2013 TO 2018

2013	2014	2015	2016	2017	2018
02 Aug 2013. The meeting took place without a quorum. Round robin was recommended for decisions to be made.		02 March 2015. The meeting took place without a quorum. Round robin was recommended for decisions to be made.	In March 2016. Meeting was rescheduled.		12 March 2018. Meeting took place and had a quorum. 1st communication to MECs was on 25 January 2018.
	05 Sept 2014. Meeting took place and had a quorum.	09 and 10 December 2015. Meetings were initiated but never materialised due to the quorum.	22 April 2016. Meeting was cancelled.	03 April 2017. Meeting was cancelled on a day at the venue due to the quorum. Communication to MECs was on 28 January 2017. Meeting had financial implications.	
				06 July 2017. Meeting was cancelled. 1st communication to MECs was 22 May 2017. Letters for the National Gambling Amendment Bill were subsequently sent to the MECs by round robin.	



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# ESTABLISHMENT OF THE NATIONAL GAMBLING REGULATOR

- Clause 28 amends section 64 to provide for the establishment of the National Gambling Regulator as a public entity which is a juristic person led by the CEO.
- Clause 29 amends section 65(1) by inserting subparagraph 65(1)(eB) to empower the NGR to collect and retain monitoring fee from all modes of gambling for the National Central Electronic Monitoring System.
- Clause 30 inserts section 65A and 65B which provides that the CEO is eligible for appointment for a period of 5 years which can be renewed for another 5 years.
- The provision further provides that the CEO must be a fit and proper person who must not be disqualified and all other requirements for appointment.
- Section 65B provides for the functions of the CEO to perform and outlines responsibilities that include responsibilities pertaining to the functions of the NGR, the appointment of staff, management of the NGR financial resources, delegation of certain functions and to be accountable to the Minister.
- The NGAB seeks to remove the concept of a Board comprising various external members, and replacing this concept with a governance structure led by a Chief Executive Officer, with the assistance of a Deputy CEO.



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# ESTABLISHMENT OF THE NATIONAL GAMBLING REGULATOR

## Cont...

- 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.
- In terms of the PFMA, the accounting authority can at any time appoint consultants if specific expertise is required for a particular instance.
- **the dti** regulators which had adopted the governance model of the Board structures presented governance challenges. Other entities with similar governance structures (single head with no external Board) include the Public Protector, CIPC, NLC,NCT, NRCS, NCC, Competition Commission etc.
- 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, being one of the benchmark entities, 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.



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# ESTABLISHMENT OF THE NATIONAL GAMBLING REGULATOR

Cont...

- The NGR will play an oversight role that includes setting norms and standards, ensuring compliance, monitoring trends of industry performance, managing national registers and advising the NGPC.
- The NGR has no licensing function and therefore will not impact the mandate of the provincial licence authorities. It is envisaged the NGR will become a regulator with strengthened regulatory and enforcement capability.
- The creation of the NGR with the proposed governance structure will improve internal and external efficiency. Efficiencies include quick and efficient decision making in the managing of the entity and efficient implementation of the national gambling Act.
- 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 NGB has for the past five years been led by an Administrator and operated in the same model which is suggested for the NGR. The NGB has successfully achieved 100% of its performance targets year on year and has received a clean audit for the past 4 consecutive years.



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# ESTABLISHMENT OF THE NATIONAL GAMBLING REGULATOR

## Cont...

- The research commissioned has provided for the intended structure in that the NGR remain subsumed in **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.
- It was proposed that the NGR is established in line with other entities of **the dti** after considering **the dti** research on Agency Rationalisation 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).
- 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. Further **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.
- Finally the research stipulated that *“the CCRD has an oversight function in respect of the operation of the various entities [...]. 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.

# INTERGOVERNMENTAL RELATIONS

- Clause 32 inserts section 66A to empower the NGR to work collaboratively with other government departments or institutions responsible for gambling related matters.
- May enter into working agreements with such institutions which includes establishing forums for such purposes.

# POWERS OF THE NATIONAL INSPECTORATE

- Clause 40 inserts section 76A to provide for additional powers of the national gambling inspectors that they may act with or without provincial inspectors to investigate illegal gambling activities. This is for those cases when the provincial inspectors are not available to accompany the national inspectors.
- ‘With or without provincial inspectors’ as an approach, aims to ensure in instances where action has to be taken to combat an illegal activity and upon consultation, the PLA is unable to assist, the NGR can intervene.
- 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.
- Section 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.



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# POWERS OF THE NATIONAL INSPECTORATE

## Cont...

- This will include powers to serve the illegal operator with a notice to stop operating pending investigation, litigation and prosecution.
- Once illegal gambling operations are proven the inspectors will also advise landlords to lawfully evict the illegal operators from the premises.
- Financial institutions will be required to comply with the Financial Intelligence Centre Act, 2001 by not processing payments in relation to proven illegal gambling activities.
- The NGR will work closely with the banks and other financial institutions to address payments of unlawful gambling activities.



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# CONSEQUENTIAL AMENDMENTS

Most of the provisions are merely technical or editorial to clarify provisions in the Act and at the most is to replace either the words “board” or “CEO” with the words “National Gambling Regulator”, this is also the case with the amended definitions (e.g. Clause 8, 9, 10, 11, 14, 17, 18).

## REGULATIONS

- Clause 42 amends section 87(1) by inserting subparagraph (fA) which will empower Minister to make regulations to set out the criteria the NGR will use to observe when considering the applications for additional LPMs from provinces.



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# TRANSITIONAL ARRANGEMENTS

- Clause 44 provides for the transitional arrangements which provide that the employees of the NGB will be deemed to be employees of the NGR.
- The immovable and movable assets, financial, administrative and other records, contractual rights and obligations and liabilities of the board will be those of the NGR.



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# CONCLUSION

The Provincial Legislature to note the briefing presentation by the Department of Trade and Industry.



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# THANK YOU



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