

**Comments on Gambling Amendment Bill,
January 2008
(Based upon comments received from Provinces)**

Detailed list of issues				
Clause/ Provisio n	Comment	Received from	Response	Recommendation
	The cost of the implementation of the Bill as opposed to the cost of illegalizing interactive gambling must be quantified before the Bill is finalized.	Eastern Cape	<p>The cost of implementing the Bill will include human resource (to monitor and control) and infrastructure costs, including systems.</p> <p>However, human resource costs will to a greater extent be paid directly by operators, to investigate and licence, and is not a burden on the Regulator. This will result in a well regulated regime and further to that ensure a fair and controlled gambling environment.</p> <p>There are no direct costs to illegalizing interactive gambling except extending the current enforcement resources of government. There is no protection of players for illegalized interactive gambling (IG).</p>	

	The definition of gambling device is limited with respect to the determination of results and should be extended to include various elements, such as input.		The contention about the definition of the gambling device has been an on-going discussion that is not directly linked to IG but to gambling in general and is addressed at a different forum. The issue is being considered by the Regulators.	
Section 9 (1)(a) of the National Gambling Act Clause 28 in the Bill	The definition of an interactive gambling license should be redrafted to distinguish between various types of licenses namely separate licenses in respect of an operator, manufacturer or supplier of software and separate licenses in respect of employment or employees.		The current licensing regime in both the National and Provincial Gambling Legislation, with respect to suppliers and manufacturers, will be applicable to IG. The licensing of employees is addressed in the Bill. The Bill caters for the licensing of operators, manufacturers or suppliers and employment; reference to clause 28 of the Bill is applicable.	
	The definition of interactive provider must be expanded specifically to include suppliers of interactive equipment and software.		The Act clearly separates operators and suppliers and licensing of each thereto. Each category of suppliers are addressed in Section 9 of the principal Act.	
			The highlighted omissions will be	

	<p>The Bill has omitted a number of critical provisions. These include application and license fees, the number of licenses to be issued, application procedures, provision for public hearings, penalties for late payment of fees, provisions relating to taxation and processes with regards to applications for a financial interest in the holder of a national licence.</p>		<p>catered for in the regulations. The number of licenses will also be prescribed in the regulations in line with the current frame of legislation (National Gambling Legislation).</p> <p>The issue of taxation and other related issues will be addressed through a separate money Bill which falls under the auspices of National Treasury. The Money Bill will have its own consultation process.</p>	
	<p>The Bill in its current form confers unacceptably wide powers on a single political functionality (the Minister of Trade and Industry) to issue regulations.</p>		<p>The dti and the State Law Advisors considered all these issues and have found that the Minister has not been given unfettered discretion since he makes such regulations through a comprehensive consultative process, through the National Gambling Policy Council which is comprised of all provinces.</p>	
Section 11	<p><u>Socio-economic impact</u></p> <p>Exposing minors to gambling: IG is likely to incite, expose and encourage minors to gambling given the fact that they are technologically advanced and exposed to internet facilities.</p>	Limpopo	<p>The registration and verification process will address this concern. Section 11 (a) provides for the registration and verification of players. The Minister will further issue regulations detailing requirements for the registration and verification process for all players. Further to the above, IG providers are also accountable institutions in</p>	

			terms of the Financial Intelligence Centre Act (FICA), and are required to do verification processes in terms of that Act in respect of age verification etc. This is a two pronged verification process which is administered in terms of the Gambling Act and FICA.	
	The Committee is concerned that it would be difficult to verify a player's age and other personal information especially where credit cards are involved.		The response is same as above. Further to that, credit cards are not issued to minors which will make it difficult for minors to access credit. To have a credit facility one must have legal capacity to contract and financial capacity.	
Section 11(4), Section 12	<u>Money laundering</u> Given the fact that interactive gambling is borderless, money laundering would increase. The security of the country would be exposed and would exacerbate organized crime.		There were extensive consultations with the Financial Intelligence Centre, who are satisfied with the tight provisions in the Bill on money laundering, terrorist funding and organized crime. The operators will be required to adhere to FICA on money laundering.	
	Credit card theft would be unavoidable.		This is a general problem in society and is applicable everywhere a	

			credit card is or may be used.	
	<p><u>Overspending and addiction</u></p> <p>Since IG does not require much effort, majority of players would be addicted.</p>		<p>There will be a self test measure on the website to assess addiction. There are institutions and processes that address problem gambling. Players will be expected to set limits on player accounts. The target group for IG consists of affluent people, mainly middle class, who have access to computers and internet and understand computers and internet.</p>	
	<p>Majority of players would use money on gambling and not paying important bills and accounts.</p>		<p>It is a general gambling problem. There are education and awareness programmes to assist in this regard.</p>	
	<p>Although the Bill provides for assistance to addicts, the Committee was concerned that it is difficult for addicts to admit and seek assistance.</p> <p>Family life will be affected and addicted players would spend much of their time on interactive gambling.</p> <p>IG will impoverish people especially the poor; money for food will compete with gambling expenditure.</p> <p>Money given by government as social grants and the old age pension may also be used for gambling thus defeating</p>		<p>It is a general gambling problem. The National Responsible Gambling Programme provides education and awareness programmes to assist in this regard.</p>	

	<p>government's initiative for alleviating poverty.</p> <p>It is important to determine how much of social grants and old age pension may be used for gambling.</p> <p>According to research, those who earn less and the poor in general are likely to gamble the little money that they have with the false hope that gambling may change their fortune.</p>			
	<p>Accessibility of internet cafés would make the poor travel to the cafés to gamble hard earned cash.</p>		<p>Although there are internet cafés, the requirement to possess a credit card and the registration and verification process will inhibit accessibility even though internet cafés are accessible.</p>	
	<p><u>Monitoring</u></p> <p>The monitoring of interactive gambling will be difficult given the fact that individuals will be gambling through the internet which is difficult to monitor.</p>		<p>Player accounts will be monitored by both the operator and Regulator. IG providers will be required to keep records of IG transactions.</p> <p>The Bill also requires operators to report unusual and suspicious transactions. Regulators will have access to servers and the entire system which will enable them access to all records.</p>	

			The server will be required to be located in South Africa and easily accessible to monitor and audit activities.
	The country lacks capacity to monitor different illegal gambling which currently exists and which is less complicated.		There is capacity to monitor illegal gambling activities. Various initiatives are underway to block illegal gambling activities. These initiatives will also be implemented and applicable even when IG is legalized.
	The introduction of high technological gambling will worsen the situation.		<p>Player accounts will be monitored by both the operator and Regulator. IG providers will be required to keep records of IG transactions.</p> <p>The Bill also requires operators to report suspicious transactions. Regulators will have access to servers and the entire system which will give them access to all records.</p> <p>The server will be required to be located in South Africa and easily accessible to monitor activities.</p>
	The country lacks capacity and skills in terms of enforcing compliance.		Inspection and enforcement capacity will be built. At a strategic level capacity exists. From an operational capacity point of view, training will be conducted inclusive of other relevant enforcement agencies.

	Whether the Department took into consideration the effects that the bill might cause on tax rates since the country will be competing with some advanced countries.		The issue of taxation and other related issues will be addressed through a separate money Bill which falls under the auspices of National Treasury.	
	The Bill did not stipulate as to how many licenses to be issued to a particular province and how such licenses would be sustained.		The issue of the number of licenses will be addressed in the Regulations.	
	The gambling Board in Limpopo may not have the capacity to monitor IG given that it is still struggling to control basic forms gambling such as fafi. Monitoring IG will require high technology and advanced computers skills which the Province may not have.		Prior to delegation of activities, capacity of the Province will be considered and appropriate engagement entered into based on existing capacity and capability.	
	The Province may have to increase the budget of the gambling Board in order for it to monitor this form of gambling.		The monitoring of IG will be an extension of current activities and therefore not over-burden the budget of the Provincial Gambling Boards. The issue of agreements on delegation will assist.	
	<u>Inadequate consultation</u> The Department of Trade and Industry has not done wide, adequate and proper consultations.		Extensive consultations took place during the research and policy development process. Provinces were afforded an opportunity to comment on the policy before it was submitted to National Gambling Policy Council. The draft Bill was	

			<p>published in the government gazette for public comments.</p> <p>The Portfolio Committee on Trade and Industry invited organs of civil society, unions, and representatives from the faith communities to make submissions.</p>	
	<p>The Department reports only talk about few stakeholders however broader public was not consulted before the Bill was introduced to NA..</p> <p>Further consultations be made to involve as many stakeholders as possible, public hearings should be held on the issue to ensure that inputs from members of the public are taken into consideration before any amendments to the Bill are made.</p>		<p>The Public was widely consulted during the public comments stage. Public hearings were held and most provinces held their public hearings.</p>	
	<p>There is a need for more background information on the issue of IG.</p> <p>Further research should also be conducted to determine the number of gamblers for this type of gambling and internet accessibility in the Province, the Department should carry out the research or the Province can carry its own research.</p> <p>Issue should be delayed to allow further</p>		<p>The 2005 Interactive Gambling Report that was conducted to look into IG and which forms the basis of the Bill, clearly analyses the legislation of IG in other jurisdictions. There is no reliable data on IG as it is an illegal activity. There are estimates available on the number of people who may be engaging in this activity. Complaints received by the NGB</p>	

	research to be conducted.		and the Department from players currently engaged in IG and various reports by the media indicate that IG is taking place in South Africa.	
	<p><u>Rationale</u></p> <p>The rationale for legalizing IG is a problem; what is the consideration for legalizing IG, is it:</p> <ul style="list-style-type: none"> • That it is a problem • Economic (to maximize revenue) • That it exists? or • We are failing to control it? 		<p>The protection of the citizens (players) partaking in IG even if illegal (ensures fair play).</p> <p>Demand has clearly been demonstrated through illegal participation in IG activities.</p> <p>Protection of minors and other vulnerable persons.</p> <p>Provide local players with the demand already demonstrated through illegal participation.</p> <p>Provision of the local players with an opportunity to engage in IG in a safe, fair and legal environment.</p> <p>Limitation of harm (addictions) that may be caused by illegal IG.</p> <p>Prevention of crime and money laundering (long title of the Bill).</p>	
	The money spent on policing IG will be		The cost of implementation of the	

	more than investment made.		<p>Bill will include human resource (to monitor and control) and infrastructure costs, including systems.</p> <p>However, human resource costs will to a greater extent be paid directly by operators, to investigate and licence, and is not a burden on the Regulator. This will result in a well regulated regime and further to that ensure a fair and controlled gambling environment.</p> <p>There are no direct costs to illegalizing interactive gambling except extending the current enforcement resources of government. There will not be protection of players for illegalized interactive gambling (IG).</p>	
	There is no need to rush legalizing IG; we should wait until South Africa is ready. Focus should be on poverty, underdevelopment etc.		The Committee that developed a policy on IG holds a different view. South Africa, as a responsible global citizen, has to keep abreast of global developments.	
	The Bill makes no provision for the requirements of interactive gambling.	Free State	The Bill specifically provides in its entirety for IG requirements and regime.	

Clause 24 and clause 26	It is not clear if interactive gambling will be issued by National Board or Provincial Licensing Authorities.		The Bill provides for and specifies the role of the NGB and the PLAs and clearly stipulates areas that would be addressed by the NGB and the PLAs.
	It is not indicated in the Bill how services rendered in and outside the country will be monitored.		Operators will not be allowed to operate outside the jurisdiction that outlaws IG. Application of Bill is limited to South Africa.
	The Committee is concerned that most of the powers are given to national structures not provincial structures.		The Borderless nature of IG requires a national entity to licence IG.
	The registration fee for interactive gambling is not indicated. No provision is made as to how people will register for interactive gambling.		This will be provided for in the regulations.
	It is not indicated if it will be permissible to give a password to another person.		Players will be required to act responsibly with regards to security.
	No provision is made for registration without a bank account.		It is a requirement that a player should nominate a bank account for movement of funds.
	No provision is made of a number of licenses to be issued.		This will be provided in the regulations.
	No measures are in place to prevent crime when issuing out the interactive gambling license.		Probity checks will be conducted to check if people are fit and proper as it is currently the case with other

			forms of gambling.	
	The Bill does not provide for the benefits available to unemployed people.		IG will not create vast employment but will create some employment. Contribution to creation of employment and social investment initiatives will be addressed by licence conditions of operators.	
	Provincial gambling board should also have powers for the approval of gambling licenses.		The Borderless nature of IG requires a national entity to licence IG. Provinces are inconsistent with licensing requirements and standards. Cross border services which are interlinked will present challenges (between IG provider and service providers to one service provider). Most provinces do not have necessary infrastructure (back-up and hosting services) to conduct IG because of the nature of the provincial economies. IG will be mainly in big cities.	
	Definition of gambling software conflict with definition of gambling machine.		Part of legal issues to be considered.	
	Definition of registered player (meaning of provisionally registered is unclear and is not referred to elsewhere in the Bill).		Part of legal issues to be considered.	
	Definition of gambling device-failure to attend to previously by the NGB, lack of alignment between national and provincial legislation.		The contention about the definition of the gambling device has been an on-going discussion that is not directly linked to IG but to gambling in general and is addressed in a	

			different Forum. The issue is being considered by the Regulators.	
		Northern Cape: views of the public		
	All regions of the province must be represented in the Northern Cape Gambling Board.		Noted	
	Children under 18 must be strictly prohibited to gamble.		Agree as provided for in the Bill.	
	There should be a limited number of gambling institutions.		The issue of the number of operators or licenses will be addressed through the regulations.	
	Limited licenses must be awarded.		The issue of the number of licenses will be addressed through the regulations.	
	The Bill should state the types of gambling that need licenses.		The Minister will prescribe the types of games for IG.	
		Gauteng		
	The issue of separate legislation to deal with interactive gambling should not be accepted.		Agreed.	
	The proposal for the postponement of the consideration of the Bill to allow for further research should not be allowed.		Agreed.	
	That advertising clause should be reinstated in the Bill.		The dti believes that there is a lot of merit to the proposal to prohibit the	

			<p>advertising of gambling.</p> <p>However the issue is to be considered together with other legal and constitutional considerations by the Department and State Law Advisors.</p>	
	<p>That the status quo in relation to issues of licensing and related matters must be left to Provincial Licensing authorities.</p>		<p>The Borderless nature of IG requires a national entity to licence IG. Provinces are inconsistent with licensing requirements and standards.</p> <p>Cross border services which are interlinked will present challenges (between IG provider and service providers to one service provider).</p> <p>Most provinces do not have necessary infrastructure (back-up and hosting services) to conduct IG because of the nature of the provincial economies. IG will be mainly in big cities.</p>	
	<p>That proposal for automatic registration of existing industry players discriminates against new entrants and should not be accepted.</p>		<p>Agreed.</p>	
	<p>There should be stronger provision for curbing access to interactive gambling by</p>		<p>There are provisions in the National Gambling Act for exclusion of</p>	

	minors and problem gamblers.		problem gamblers. In addition to the legal requirement that those under 18 may not gamble, there will be a player verification process to address the issue of minors accessing IG.	
	That technical amendments should be included in the negotiating mandate.		Noted.	
	If the authority to license is given to the National Gambling Board as proposed in the Bill, the province will lose some of the revenue it would secure if it had the power to licence and collect.		The main objective of the Bill is not to maximize revenue. IG should be regulated at National to ensure uniform control and proper regulation.	
		North West		
	Duration for the consideration of the Bill: more time is needed to do justice to substantiate issues raised in the Bill to be briefed and conduct public hearings.		This matter is beyond the influence of the Department. It should be referred to the Chairperson for consideration.	
	Banning advertising raises issues of constitutionality.		The issue to be considered together with other legal and constitutional considerations by the Department and State Law Advisors.	
	No provision for licensing made for PLAs. Licensing to be issued by both National and Provinces for constitutionality. Gambling itself will take place in provinces; consideration should be given to		The borderless nature of IG requires a national entity to licence IG. Provinces are inconsistent with licensing requirements and standards. Cross border services which are interlinked will have challenges (between IG provider and	

	that.		service providers to one service provider). Most provinces do not have necessary infrastructure (back-up and hosting services) to conduct IG because of the nature of the provincial economies. IG will be mainly in big cities.	
	This is significant for provinces for revenue purposes.		The main objective of the Bill is not to maximize revenue. IG should be regulated at National to ensure uniform control and proper regulation. Provinces will be receiving revenue from licensing of employees and issuing certificates of suitability in respect of IG.	
	The Minister should not determine the number of licenses to be issued as this has been a serious issue of contestation.		This is in line with existing policy. The Minister will determine the number of licenses for the regulation of IG by way of regulations.	
	Dti to consider provinces to benefit from raising of taxes from IG equitably.		The issue of taxation and other related issues will be addressed through a separate money Bill which falls under the auspices of National Treasury.	
	PLAs have experience of regulation which is not the case with NGB.		Capacity will be built within the NGB. PLAs have experience in licensing in general but not licensing	