

CONSIDERATION OF THE FINAL MANDATES ON THE NATIONAL GAMBLING AMENDMENT BILL ([B 27B-2018] (s76), 2018

BY THE SELECT COMMITTEE ON TRADE AND INDUSTRY,
ECONOMIC DEVELOPMENT, SMALL BUSINESS DEVELOPMENT,
TOURISM, EMPLOYMENT AND LABOUR

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the dtic

Department
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

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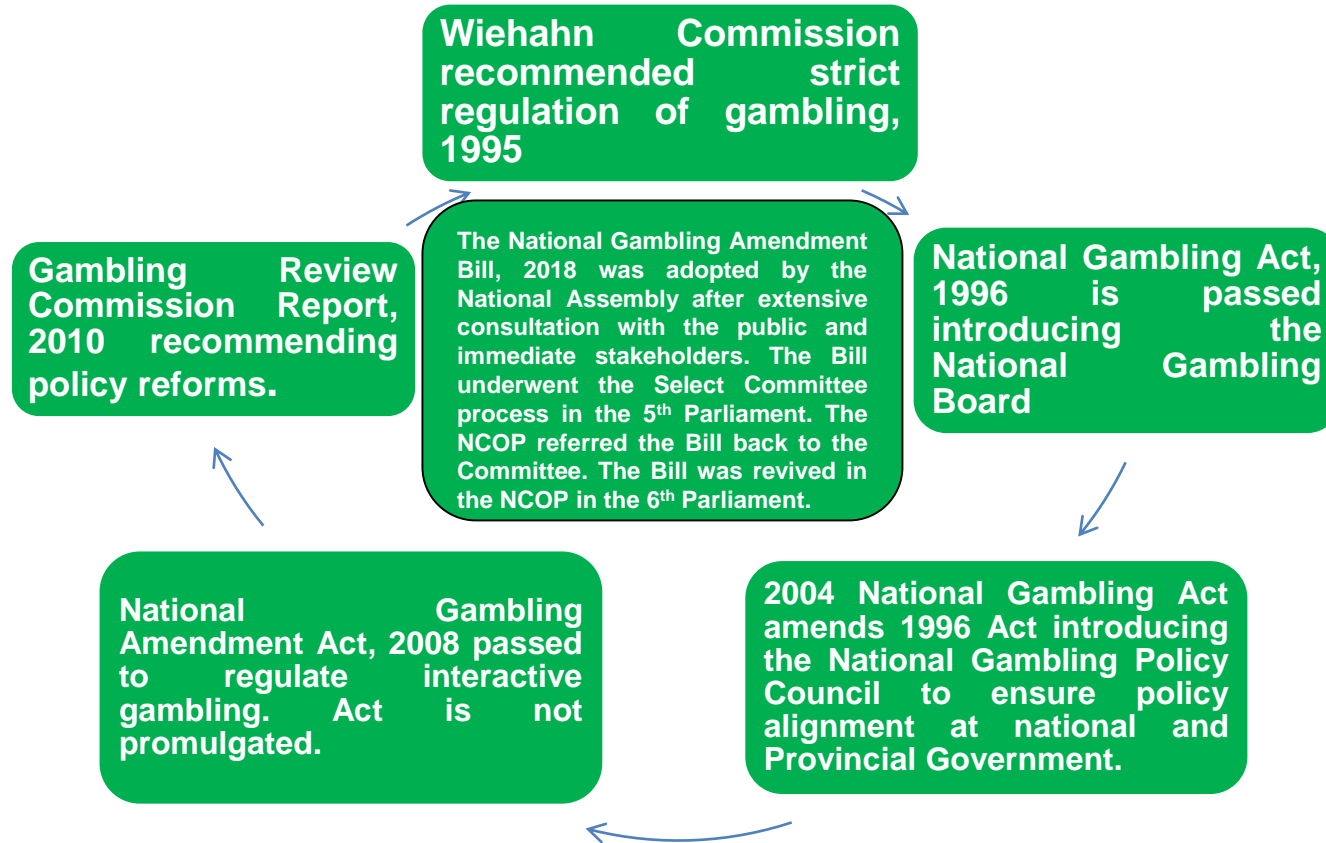


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Purpose

The purpose of the presentation is to brief the Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour.

Background



Background

- 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 co-ordination.
- Generation **of revenue and taxes** for Provincial Government and for good causes.
- Economic empowerment of the **historically disadvantaged.**
- Promotion of **economic growth, development and employment.**

Background

- Cabinet approved the National Gambling (NG) 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 National Gambling Amendment Bill 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.

Legislative Development Process

- On 15 May 2015 **the dtic** published the National Gambling Policy for broader public consultation.
- Written submissions were received, direct engagement with immediate stakeholders and consultative workshops were conducted until September 2015.
- The National Gambling Policy was approved by Cabinet on 17 February 2016 and the National Gambling Amendment Bill was drafted pursuant to the approved National Gambling Policy, 2016.
- On 30 September 2016 the National Gambling Amendment Bill was published for broader public consultation for 45 days and direct engagements with stakeholders and the public were conducted until early 2017.
- The final Bill 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 dtic** published the Notice of Intention to Introduce the National Gambling Amendment Bill in the Government Gazette on 20 July 2018.
- The Bill was introduced to Parliament and referred to the Committee on 21 August 2018.
- The National Assembly (NA) adopted the Bill on 5 December 2018.

Legislative Development Process

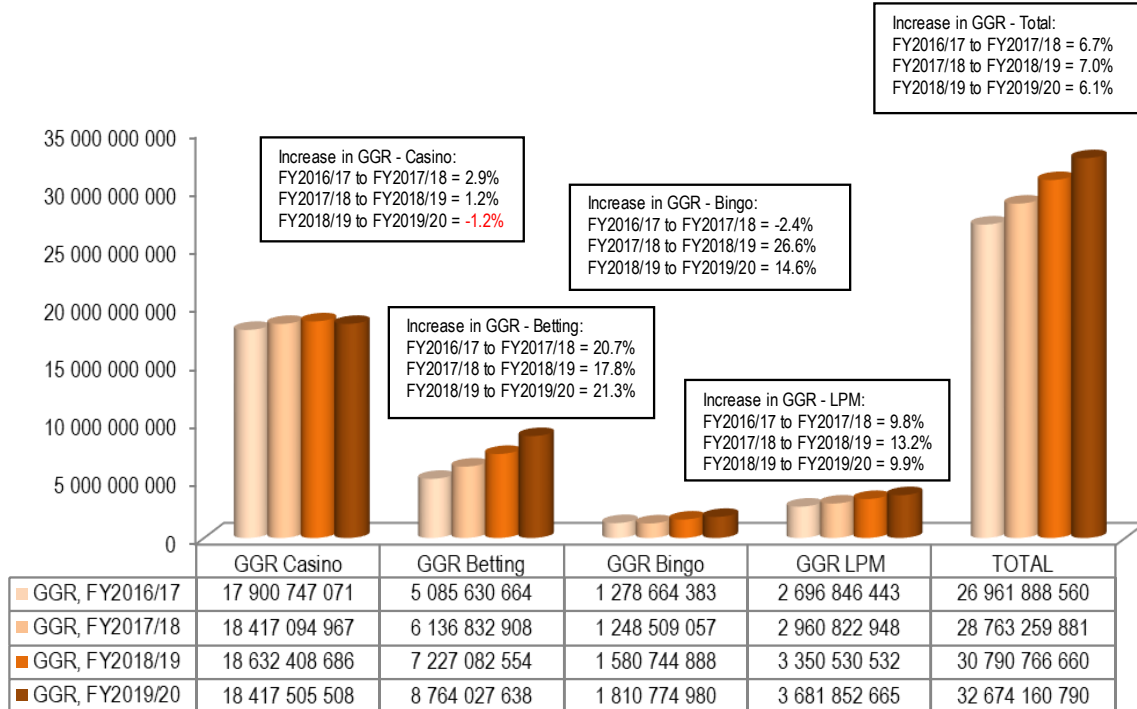
- The Bill was presented at the Select Committee on 30 January 2019.
- The Provincial briefings took place during February to March 2019.
- The Bill was published for public comment. The submissions were received and the Department responded on 26 February 2019.
- The public hearings were undertaken in provinces from February to early March 2019.
- Negotiating mandates were received from provinces. The Department together with the National Gambling Board (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 Bill. Eastern Cape abstained. Western Cape, Gauteng and KwaZulu-Natal voted against the Bill.
- There were mandates that were received only after the last Select Committee meeting before the last National Council of Provinces (NCOP) sitting.
- The Bill was referred to the NCOP for adoption.
- The Select Committee commenced from the beginning in the 6th Parliament.
- Briefings in Provincial Legislatures took place in November 2019.
- Provinces have submitted final mandates on the Bill.

Rationale of the Bill

- 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.

Outlook of the Gambling Industry

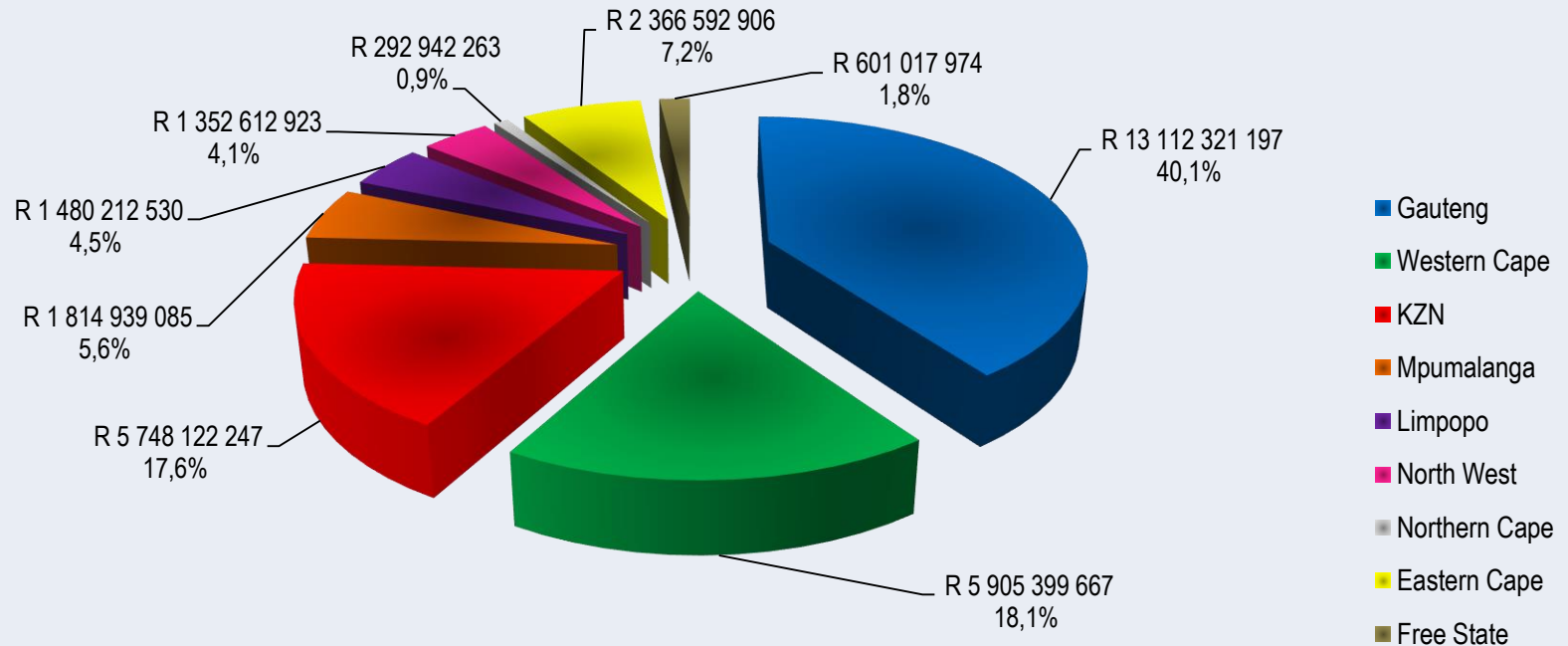
Growth in GGR (all modes): FY2016/17 - FY2019/20



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 6,7% from R27,0 billion (FY2016/17) to R28,8 billion (FY2017/18), by 7,0% to R30,8 billion in FY2018/19 and by 6,1% to R32,7 billion in FY2019/20. A total amount of R32,7 billion in GGR was generated during FY2019/20. Casinos accounted for the highest proportion of total GGR generated, being 56,4% as compared to other regulated gambling modes. Compared to all other provinces, Gauteng at a 40% 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 R3,2 billion in FY2019/20.

Outlook of the Gambling Industry

GGR per province, all modes, FY2019/20



Final Mandates from the Provinces

- The two provinces submitted their final mandates, Limpopo and Mpumalanga.
- The summary of the voting status from the Provinces is below:

Province	Status/ Position on mandates
Gauteng	Voted not in favour of the Bill.
Mpumalanga	Voted in favour of the Bill.
Free State	Final mandate not yet received.
Northern Cape	Final mandate not yet received.
Eastern Cape	Abstained from voting.
KwaZulu-Natal	Final mandate not yet received.
Limpopo	Voted in favour of the Bill.
North West	Final mandate not yet received.
Western Cape	Voted not in favour of the Bill.

Concerns Raised by the Provinces (in the 5th Parliament)

Establishment of the National Gambling Regulator (NGR)

- Provinces raised concerns regarding the proposed establishment of the NGR without a board structure regarding issues of corporate governance. With the above in mind, it is however proposed that the NGR is established in line with other entities of **the dtic** after considering **the dtic** research on agency rationalisation.
- **the dtic** 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, the Companies and Intellectual Property Commission (CIPC), the National Consumer Tribunal (NCT), the National Regulator for Compulsory Specification (NRCS), the National Consumer Commission (NCC), the 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 National Credit Regulator's (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 NGB has for the past six 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 5 consecutive years.

Concerns Raised by the Provinces

National Central Electronic Monitoring System (NCEMS)

- Provinces were concerned that the NCEMS which is currently monitoring Limited Payout Machines (LPMs) will be extended to all modes of gambling. Issues were raised that Casinos and Bingos already have their own monitoring systems and Provincial Licensing Authorities have access to this information when it is needed.
- The intention to extend the NCEMS to other modes of gambling is to consolidate information throughout the country for all legal modes of gambling.
- The NGB currently has an exclusive mandate over the NCEMS for the LPMs mode of gambling. The system exists and has already been developed at the cost of the NGB.
- The NCEMS is a National register as set out in the National Gambling Act (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.
- Existing monitoring systems at various gambling venues will continue to function as normal.

Concerns Raised by the Provinces

- The output of NCEMS will supply the Provincial Licensing Authorities (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. 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 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.
- NCEMS being an IT system will improve efficiencies, financial reporting, Industry performance reporting and provide reliable information for auditing purposes.

Concerns Raised by the Provinces

National Gambling Policy Council (NGPC)

- The amendment empowers the majority of the members present in the second meeting of the NGPC to make a decision if in the first meeting there was no quorum. Most of the provinces opposed this provision.
- 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.
- 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 (NA).
- 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 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.

Concerns Raised by the 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.

Concerns Raised by the Provinces

The National Inspectorate

- Issues of autonomy and independence of the Provincial Inspectorate were raised, where National Inspectors are allowed to investigate without prior approval of the province and without being accompanied by the Provincial Inspectors.
- Section 76A 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.
- The drafted wording of '**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.

Conclusion

- It is recommended that the Select Committee note the final mandates from the Provinces.

Thank you