

GENERAL NOTICE

NOTICE 1840 OF 2003

DEPARTMENT OF TRADE AND INDUSTRY

PUBLICATION OF THE NATIONAL GAMBLING BILL, 2003 FOR PUBLIC COMMENT

The National Gambling Bill, 2003, is hereby published for general comment. All interested parties are invited to submit, prior to or on 18 July 2003, any written presentations to:

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BILL

To provide for the co-ordination of concurrent national and provincial competence over matters relating to casinos, racing, gambling and wagering, and to provide for the continued regulation of those matters; for that purpose to establish certain uniform norms and standards applicable to national and provincial regulation and licensing of certain gambling activities, and to provide for the creation of additional uniform norms and standards applying generally throughout the Republic; to continue the National Gambling Board; to establish the National Gambling Policy Council, and to provide for related incidental matters.

Table of Contents

	Preamble	7
	Chapter 1 — Interpretation and Application	
1	Definitions	7
2	Application of this Act	10
	Chapter 2- National Gambling Policy	
	<i>Part A — Gambling Activities</i>	
3	Gambling activities generally	10
4	Bets and wagers	10
5	Gambling games	10
6	Pay-off and opportunity to play further game	11
	<i>Part B — Prohibited gambling, restricted activities and status of gambling debt</i>	
7	Gambling in relation to illegal activities unlawful	11
8	Unlicensed gambling activities unlawful	12
9	Unlicensed machines and devices unlawful	12
10	Unlicensed use of premises unlawful	12
11	Unauthorised Interactive gaming unlawful	12
12	Protection of minors	12
13	Restrictions on granting credit to gamblers	13
14	Restrictions on advertising gambling activities	13
15	Enforceability of gambling debts	13
	<i>Part C- Gambling Premises</i>	
16	Standards for gambling premises	13
17	Sites	14
	<i>Part D — Registration, Licensing and certification of machines and devices</i>	
18	Prescribed gambling devices	14
19	Regulation of gambling machines and devices	14
20	Registration of prescribed gambling devices	15
21	Gambling machines and devices to be registered	15
22	Transfer of registered ownership or possession	15
23	Contraventions	16
24	Criteria for issuing testing agent licence	16
25	Calibration and certification of prescribed gambling devices	16

26	Limited payout machines	17
27	National Electronic Monitoring System	18

Part E — Licensing of persons employed in gambling industry

28	Gambling industry workers to be licensed	18
29	Conditions of employment licensing	18
30	Regulation may exempt categories of work	18

Chapter 3—Jurisdiction and licensing

Part A - Jurisdiction

31	Jurisdiction of provincial licensing authorities	19
32	Responsibilities of provincial licensing authorities	19
33	Jurisdiction of Board	20
34	Responsibilities of Board	20
35	Oversight function of Board	20
36	Information sharing	21
37	Conflicting exercise of concurrent jurisdiction	21
38	Minister's power to make regulations	22

Part B - National licenses

39	Authority of national licence	22
40	Applicants for national licence	23
41	Authority to issue national licence	23
42	National licence procedures	23
43	Review of refusal to issue national licence	23
44	Review of proposal to issue national licence	23
45	Suspension and revocation of national licence	24

Part C-Provincial licenses

46	Licensing by provinces to satisfy national norms and standards	25
47	Maximum numbers of casino licenses	25
48	Limitation of rights to a licence	25
49	Amusement games and machines	25

Part D — Licensing Norms and Standards

50	Licence criteria, categories and conditions	26
51	Competition issues to be considered	26
52	Licence requirements, acquisitions and transfers	27
53	Prohibited and restricted interests in a licence	28
54	State interests	29

Part E — License Investigations, decisions and surrender

55	External probity reports	29
56	Decisions	30
57	Surrender of licence	30

Chapter 4 — National Structures

Part A — National Gambling Policy Council

58	Establishment of National Gambling Policy Council	30
59	Functions of National Gambling Policy Council	30
60	Council Meetings	31

Part B — National Gambling Board

61	Continuation of National Gambling Board	31
62	Objects and functions of the Board	31
63	Relations with provincial licensing authorities	32
64	Composition of Board	33
65	Conflicting interests	34
66	Resignation, removal from office, and vacancies	34
67	Meetings of the Board	35
68	Committees of Board	35

69	Remuneration and allowances of members of Board and committees	35
70	Staff of Board and remuneration	36
71	Finances	36
72	Accountability, audit and annual report	37

Chapter 5- Enforcement and Offences

73	National inspectorate	37
74	Functions and powers of inspector	37
75	Breach of confidence	38
76	Hindering administration of Act	38
77	Failure to answer fully or truthfully	38
78	Failure to comply with Act	39
79	Offences and breach of license condition	39
80	Penalties	39
81	Magistrate's Court jurisdiction to impose penalties	39
82	Serving documents	39
83	Proof of facts	40

Chapter 6- General Provisions

84	Regulations	40
85	Repeal of laws and transitional arrangements	40
86	Short title and commencement	40

Schedule 1-Transitional provisions		41
1	Definition	41
2	General preservation of regulations, rights, duties, notices and other instruments	41
3	State interests	41
4	National Gambling Board	42
5	National licences	42

Preamble

Considering that -

The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), establishes that casinos, racing, gambling and wagering are matters of concurrent national and provincial legislative competence;

It is desirable to co-ordinate activities relating to the exercise of that concurrent competence within the national and provincial spheres of government;

It is desirable to establish certain uniform norms and standards applying generally throughout the Republic with regard to casinos, racing, gambling and wagering, so that:

Gambling activities are effectively regulated, licensed, controlled and policed;

Members of the public who participate in any licensed gambling activity are protected;

Society and the economy is protected against over-stimulation of the latent demand for gambling; and

The licensing of gambling activities is transparent, fair and equitable.

It is expedient to establish certain national institutions, and to recognise the establishment of provincial institutions, which together will determine and administer national gambling policy in a co-operative, coherent and efficient manner;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

Chapter 1 - Interpretation and Application

Definitions

1 (1) In this Act, the following definitions apply:

"amusement game" means a game that has a restricted prize, and that may be regulated and licensed in terms of provincial legislation, as contemplated in section 49;

"amusement machine" means a machine or device on which an amusement game may be played;

"bingo" means a game, including a game played in whole or in part by electronic means, -

- (i) that is played for consideration, using cards or other devices -
 - (aa) that are divided into spaces, each of which bears a different number, picture or symbol; and
 - (bb) with the numbers, pictures or symbols arranged randomly, such that each card or similar device contains a unique set of numbers, pictures or symbols;
- (ii) in which an operator or announcer calls or displays a series of numbers, pictures or symbols in random order, and the players match each such number, picture or symbol on the card or device as it is called or displayed; and
- (iii) in which the player who is first to match all the spaces on the card or device, or who matches a specified set of numbers, pictures or symbols on the card or device, wins a prize;

"Board" means the National Gambling Board as constituted by section 61;

"bookmaker" means a person who directly or indirectly lays fixed odds bets or open bets with members of the public or other bookmakers, or takes such bets with other bookmakers;

"Cabinet" means the body of the National Executive referred to in section 91 of the Constitution;

"casino" means premises where gambling games are played, or are available to be played, but does not include premises in which -

- (1) only bingo, and no other gambling game, is played or available to be played;
- (ii) only limited pay out gambling machines are available to be played; or
- (iii) limited pay out gambling machines are available to be played and bingo, but no other gambling game, is played or available to be played;

"chief executive officer" means the person appointed by the Board in terms of section 70(1)(a)-

"consideration" means-

- (i) money, property, a cheque, a token, a ticket, electronic credit, credit, debit or electronic chip, or similar object; or
- (ii) any other thing, undertaking, promise, agreement or assurance, regardless of its apparent or intrinsic value, or whether it is transferred directly or indirectly;

"Constitution" means The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"contingency" means an event or occurrence of which the outcome is uncertain or unknown to any person until it happens;

"Council" means the National Gambling Policy Council established by section 58;

"designated area"

- (i) when used in relation to a site, means an area at that site in which any limited payout machine is authorized to be placed; and
- (ii) when used in any other case, means an area within licensed premises where any gambling game is available to be played;

"electronic agent" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 (Act 8 of 2002);

"employment licence" means a licence permitting a person to work in the gambling industry within the Republic;

"family member" means-

- (i) a person's-
 - (aa) spouse,
 - (bb) partner in a customary union according to indigenous law; or
 - (cc) partner in a relationship in which the parties live together in a manner resembling a marital partnership or customary union; or
- (ii) a person's child, parent, brother or sister, whether such a relationship results from birth, marriage or adoption;

"financial interest" means —

- (i) a right or entitlement to share in profits or revenue;
- (ii) a real right in respect of property of a company, corporation or business;
- (iii) a real or personal right in property used by a company, corporation, or business; or
- (iv) a direct or indirect interest in the voting shares, or voting rights attached to shares, of a company, or an interest in a close corporation;

"Financial Intelligence Centre Act" means the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), and the regulations made under that Act;

"fixed odds bet" means a bet, other than a totalisator bet, taken by a bookmaker on one or more contingencies, in which odds are agreed at the time the bet is placed;

"gambling activity" means any activity described as such in Part A of Chapter 2;

"gambling device" means equipment, or any other thing, that is used, or designed to be used, in connection with a gambling activity;

"gambling game" means any activity described as such in Part A of Chapter 2;

"gambling industry" includes any matter regulated in terms of this Act, but does not include a regulatory authority;

"gambling machine" means any mechanical, electrical, video, electronic, electro-mechanical or other device, contrivance, machine or software, other than an amusement machine, that —

- (i) is available to be played or operated upon payment of consideration; and
- (ii) may, as a result of playing or operating it, entitle the player or operator to a pay-off, or deliver a pay-off to the player or operator;

"informal bet" means a bet, wager, undertaking, promise or agreement contemplated in section 4, between or among two or more persons, if —

- (i) none of the parties involved is a bookmaker or derives a significant portion of their livelihood from gambling; and
- (ii) no person is paid a fee or derives any gain, other than winning the bet itself, from the activity;

"interactive game" means a gambling game played or available to be played through the mechanism of an electronic agent accessed over the internet;

"interactive provider" means a person licensed to make an interactive game available to be played;

"internet" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002 (Act 8 of 2002);

"inspector" means a person appointed under section 73;

"license" when used as a verb, includes to register, approve, or certify, as provided for in applicable provincial legislation;

"licensed" when used in relation to —

- (i) a person, means to be in lawful possession of a valid licence, registration card or certificate issued to that person in terms of this Act or provincial legislation;
- (ii) a gambling activity, means that a valid licence has been issued, in terms of this Act or provincial legislation, to a licensee permitting the licensee to engage in or conduct that activity, or make that activity available for other persons to engage in it; or
- (iii) a gambling machine or gambling device, means that a valid licence has been issued, in terms of this Act or provincial legislation, to a licensee permitting the operation of that machine or device;

"licensed premises" means specific premises that are named or described in a licence issued in terms of this Act or comparable provincial legislation;

"limited payout machine" means a gambling machine with a restricted prize, as described in section 26;

"manufacturer, supplier or maintenance provider" means a person whose business is to import, manufacture, sell, lease, make available, distribute, maintain or repair a gambling device;

"national licence" means a licence issued in terms of this Act;

"open bet" means a bet, other than a totalisator bet, taken by a bookmaker on one or more contingencies, in which no fixed odds are agreed at the time the bet is placed;

"organ of state" has the meaning set out in section 239 of the Constitution;

"person" includes a partnership, association or a trust;

"political office-bearer" means —

- (a) a member of the National Assembly, the National Council of Provinces or the Cabinet;
- (b) a member of a provincial legislature;
- (b) a member of a municipal council or local authority;
- (c) a diplomatic representative of the Republic who is not a member of the public service;
- (d) a member of a House or Council of Traditional Leaders; or
- (e) a national or provincial office bearer of a political party.

"premises" includes land, and any building, structure, vehicle, ship, boat, vessel, aircraft, or container;

"prescribed" means established by regulation in terms of this Act;

"prescribed gambling device" means —

- (i) a gambling machine; or
- (ii) a gambling device that the Minister, by regulation, has identified in terms of section 18;

"prohibited practice" has the meaning assigned to that expression in the Competition Act, 1998 (Act No. 89 of 1998);

"provincial licence" means a licence issued by a provincial licensing authority in terms of applicable provincial legislation;

"provincial licensing authority" means a body established by provincial legislation to regulate casinos, racing, gambling and wagering;

"provincial legislation" means an Act of a provincial legislature concerning the regulation of casinos, gambling, racing or wagering;

"public servant" means a person employed within an organ of state or within a court, or a judicial officer;

"regulatory authority" means the Board, or a provincial licensing authority;

"restricted gambling activity" means a gambling activity other than social gambling or an informal bet;

"route operator" means a person who is licensed as such in terms of applicable provincial legislation, as contemplated in section 17;

"site" means premises licensed in terms of applicable provincial legislation, for the placement of one or more limited payout gambling machines, as contemplated in section 17;

"site operator" means a person who is licensed as such in terms of applicable provincial legislation, as contemplated in section 17;

"social gambling" has the meaning, if any, set out in applicable provincial legislation;

"South African Bureau of Standards" means the entity of that name established in terms of section 2(1) of the Standards Act, 1993 (Act No. 29 of 1993);

"testing agent" means a person licensed in terms of this Act to test, calibrate and certify prescribed gambling devices;

"the Minister" means the member of Cabinet responsible for the administration of this Act; and

"this Act" includes the Schedules and regulations.

(2) The following expressions used in this Act are intended, and must be construed, as follows:

- (a) "may" is empowering and permissive, indicating a discretion on the part of the subject, whether or not to engage in the applicable action.
- (b) "must" is mandatory, indicating that the subject has no discretion whether or not to engage in the applicable action.
- (c) "may not" is limiting, indicating a restriction or restraint on the scope of a power, function or authority, beyond which the subject has no authority to act.
- (d) "must not" is prohibiting, indicating that it is unlawful for the subject to engage in the applicable action.

Application of this Act

2 This Act does not apply to an activity that is regulated in terms of the Lotteries Act, 1997 (Act No. 57 of 1997).

Chapter 2— National Gambling Policy

Part A — Gambling Activities

Gambling activities generally

- 3 An activity is a gambling activity if it involves -
- (a) placing or accepting a bet or wager, as described in section 4 (1);
 - (b) placing or accepting a totalisator bet, as described in section 4 (2); or
 - (c) making available for play, or playing -
 - (i) bingo or another gambling game as described in section 5; or
 - (ii) an amusement game, to the extent that applicable provincial legislation requires such games to be licensed.

Bets and wagers

- 4 (1) A person places or accepts a bet or wager when that person -
- (a) stakes, or accepts a stake of, money or anything of value on a fixed odd bet, or an open bet, with a bookmaker on any contingency; or
 - (b) stakes, or accepts a stake of, money or anything of value with one or more other persons on any contingency; or
 - (c) expressly or impliedly undertakes, promises or agrees to do anything contemplated in paragraph (a) or (b).
- (2) A person places or accepts a totalisator bet when that person stakes, or accepts a stake, of money or anything of value on the outcome of an event or combination of events, by means of -
- (a) a system in which the total amount staked, after deductions provided for by law or by agreement, is divided among the persons who made winning bets in proportion to the amount staked by each of them in respect of a winning bet; or
 - (b) any scheme, form or system of betting, whether mechanically operated or not, that is operated on similar principles.

Gambling games

- 5 (1) An activity is a gambling game if -
- (a) it is played upon payment of any consideration, with the chance that the person playing the game might become entitled to, or receive, a pay-off, and

- (b) the result may be determined by the skill of the player or operator, the element of chance, or both.
- (2) Despite subsection (1), for all purposes of this Act, none of the following activities is a gambling game:
 - (a) A bet or wager, as described in section 4(1).
 - (b) A totalisator bet, as described in section 4(2).
 - (c) An amusement game.

Pay-off and opportunity to play further game

- 6** (1) Subject to subsection (2), a "pay-off" is any money, merchandise, property, a cheque, credit, electronic credit, a debit, a token, a ticket or anything else of value won by a player,
- (a) whether as a result of the skill of the player or operator, the application of the element of chance, or both; and
 - (b) regardless how the pay-off is made.
- (2) Neither of the following is a pay-off:
- (a) An opportunity to play a further game.
 - (b) prize given to a participating athlete, or team of athlete's, in a sporting event, in respect of the participant's performance in that event.
- (3) The result of a gambling game—
- (a) is an opportunity to play a further game if the player is afforded the opportunity to continue without interruption playing the type of game
 - (i) in respect of which the opportunity was won; and
 - (ii) on the machine on which the opportunity was won; but
 - (b) is not an opportunity to play a further game if the opportunity can in any manner, whether directly or indirectly, be
 - (i) distributed or transferred to the person who has won such an opportunity or to any other person, or
 - (ii) converted into money, property, a cheque, credit or any other thing of value; or
 - (iii) converted in terms of any scheme, arrangement, system, plan or device prescribed in terms of subsection (4).
- (4) The Minister, by regulation made in accordance with section 84, may declare that any scheme, arrangement, system or plan is not an opportunity to play a further game.

Part B — Prohibited gambling, restricted activities and status of gambling debt

Gambling in relation to illegal activities unlawful

- 7** (1) Notwithstanding any provision to the contrary contained in any other law, a person must not—
- (a) engage in, conduct or make available a gambling activity if the outcome of that activity depends directly, indirectly, partly or entirely on a contingency related to an event or activity that is itself unlawful in terms of any law;
 - (b) permit any gambling machine or device under the person's control to be used for the purposes of a gambling activity contemplated in paragraph (a);
 - (c) maintain or operate any premises, whether or not they are licensed premises, for the purposes of a gambling activity contemplated in paragraph (a); or
 - (d) permit any premises under the person's control, whether or not they are licensed premises, to be used for the purposes of a gambling activity contemplated in paragraph (a).
- (2) A person must notify the applicable provincial licensing authority, or the board, if the person —
- (a) owns, maintains, operates or has control over any licensed premises, or any gambling machine or device; and
 - (b) believes, or has reason to believe, that those premises, or that gambling machine or device, is being, or has been, used without that person's permission for the purposes of a gambling activity contemplated in paragraph (a).
- (3) A contravention of this section is an offence.

Unlicensed gambling activities unlawful

8 (1) Notwithstanding any provision to the contrary contained in any other law, a person must not engage in, conduct or make available a gambling activity, except

- (a) a licensed gambling activity;
- (b) social gambling that is licensed or otherwise permitted in terms of the applicable provincial legislation;
- (c) an informal bet, unless, in the circumstances, there are reasonable grounds to conclude that any of the parties to the bet intended to establish an enforceable contractual relationship when they staked, or accepted the stake of, money on that contingency.

(2) A contravention of this section is an offence.

Unlicensed machines and devices unlawful

9 (1) Notwithstanding any provision to the contrary contained in any other law, a person must not—

- (a) import, manufacture, supply, sell, lease, make available, possess, maintain or alter a gambling device; or
- (b) make available a prescribed gambling device for use in a gambling activity unless that person is authorised to do so in terms of this Act or applicable provincial legislation.

(2) A contravention of this section is an offence.

Unlicensed use of premises unlawful

10 (1) Notwithstanding any provision to the contrary contained in any other law, a person must not —

- (a) maintain or operate any premises for the purposes of a restricted gambling activity unless that gambling activity in, on or from those premises has been authorized in terms of a licence under this Act or applicable provincial legislation;
- (b) permit any premises under that person's control to be used for the purposes of a restricted gambling activity unless that gambling activity in, on or from those premises has been authorized in terms of a licence under this Act or applicable provincial legislation; or
- (c) permit an individual in or on any premises under that person's control to engage in a restricted gambling activity, unless that gambling activity in, on or from those premises has been authorized in terms of a licence under this Act or applicable provincial legislation.

(2) A contravention of this section is an offence.

Unauthorised Interactive gaming unlawful

11 (1) A person must not engage in or make available an interactive game except as authorised in terms of this Act or any other legislation.

(2) A contravention of this section is an offence.

Protection of minors

12 (1) For the purposes of this section, 'minor' means a person who has not attained the age of 18 years.

(2) A minor must not—

- (a) enter a designated area within any licensed premises;
- (b) operate a prescribed gambling device;
- (c) conduct or make available a restricted gambling activity;
- (d) engage in a restricted gambling activity other than an amusement game; or
- (e) falsely claim to be age 18 or over in order to —
 - (i) gain access to a designated area within licensed premises, or to a prescribed gambling device; or
 - (ii) engage in, conduct or make available a restricted gambling activity.

(3) A person must not falsely claim that a minor is age 18 or over, in order for that minor to -

- (a) gain access to a designated area within licensed premises, or to a prescribed gambling device; or
- (b) engage in, conduct or make available a restricted gambling activity.

(4) A licensee, licensed employee, or person in control of licensed premises or a prescribed gambling device, must not permit a minor to -

- (a) enter or remain in a designated area within those premises;
- (b) operate that prescribed gambling device; or
- (c) conduct or make available a restricted gambling activity within those premises; or
- (d) engage in a restricted gambling activity, other than an amusement game, within those premises.

(5) A contravention of this section is an offence.

Restrictions on granting credit to gamblers

13 (1) A route operator, site operator, independent site operator or bingo operator must not extend credit, in the name of the licensee or a third party, to any person for the purpose of gambling.

(2) A contravention of this section is a breach of a licence condition, subject to administrative sanctions in terms of this Act or the applicable provincial legislation.

Restrictions on advertising gambling activities

14 (1) A person must not advertise —

- (a) any gambling activity-
 - (i) in a false or misleading manner; or
 - (ii) that is unlawful in terms of this Act or applicable provincial legislation;
- or
- (b) a gambling activity, other than an amusement game, in a manner intended to target or attract minors.

(2) A contravention of this section is an offence.

Enforceability of gambling debts

15 Despite any provision of the common law, or any other law other than this Act —

- (a) a debt incurred by a person in the course of a gambling activity that is licensed in terms of this Act or provincial legislation, is enforceable in law;
- (b) a debt incurred by a person in the course of a gambling activity that is lawful, but not required to be licensed, in terms of this Act or provincial legislation, is enforceable in law only to the extent that it is enforceable in terms of the common law or another law; and
- (c) a debt incurred by a person in the course of any gambling activity that is unlawful in terms of this Act or applicable provincial legislation is not enforceable in law.

Part C - Gambling Premises

Standards for gambling premises

16 (1) The Minister, by regulation made in accordance with section 84, may prescribe minimum standards for the design, use, and maintenance of premises that are, or are intended to be, licensed premises.

(2) A person licensed to engage in, conduct, or make available licensed activities in on or from particular licensed premises must comply with prescribed standards for the design, use and maintenance of those premises.

Sites

- 17** (1) A provincial licensing authority may —
- (a) license a person as a site operator, to operate limited payout machines in or on specific named premises; and
 - (b) determine the hours of operation for that site, which may be the same as, different from, or outside the normal hours of operation of the primary business conducted at that site.
- (2) The operation of limited payout machines must be incidental to, and not be, the primary business conducted in any premises licensed as a site, if that site falls within an 'incidental use' category determined by the Minister, in terms of section 26 (1)(b).
- (3) A site operator may be linked to a particular route operator, or may be independent , if provided for in terms of applicable provincial legislation .
- (4) A site operator who is linked to a route operator may —
- (a) keep limited payout machines owned by the route operator on the site; and
 - (b) make those machines available to be played by members of the public.
- (5) An independent site operator has the same rights, powers and duties as -
- (a) a route operator in terms of section 26; and
 - (b) a site operator in terms of subsection (4).
- (6) Only a juristic person may be licensed to own and operate more than five limited payout machines as an independent site operator.
- (7) A licensed site operator or independent site operator must -
- (a) prominently display at the entrance to the designated area —
 - (1) the licence issued to that operator; and
 - (ii) a copy of the licence issued to the relevant route operator, if applicable; and
 - (iii) maintain adequate control and supervision of all limited payout machines at the site, during the licensed hours of operation.

Part D — Registration, Licensing and certification of machines and devices**Prescribed gambling devices**

18 (1) Every gambling machine is a prescribed gambling device, which must be registered, and certified in accordance with this Act.

(2) The Minister, by regulation made in accordance with section 84, may prescribe the categories of other gambling devices that must be registered in accordance with this Act.

Regulation of gambling machines and devices

19 (1) A manufacturer must keep a record, in the manner and form required by or in terms of provincial legislation, of every prescribed gambling device that the manufacturer acquires, manufactures, sells or otherwise distributes.

(2) A manufacturer of a gambling machine manufactured in, or imported into, the Republic must permanently affix an identification badge to the exterior of that machine.

(3) An identification badge affixed in terms of subsection (2) must —

- (a) include the name of the manufacturer or importer, a unique serial number, and the date of manufacture or importation; and
- (b) be affixed in a location on the machine that allows it to be easily read after installation.

(4) A person must not remove, alter, disfigure, obscure or destroy an identification badge affixed to a gambling machine in terms of this section.

(5) A provincial licensing authority must not approve or register a prescribed gambling device unless —

- (a) that type of device has been certified in accordance with the requirements of this Act as complying with the relevant standards for such a device, as determined in terms of the Standards Act, 1993 (Act No 29 of 1993); and
- (b) the device is registered to the holder of an appropriate licence.

(6) A contravention of subsection (1), (2), (3) or (4) is an offence.

Registration of prescribed gambling devices

- 20** (1) Each provincial licensing authority must -
- (a) establish and maintain, in the prescribed manner and form, a registry of every prescribed gambling device manufactured within its province or imported into the Republic at a point of entry in that province;
 - (b) must assign a permanent and unique registration number for each such device;
 - (c) for each such device, must record the name, licence number and other prescribed particulars of-
 - (i) the registered owner; and
 - (ii) any other person who has leased that device, or to whom registered possession of the device has been transferred; and
 - (d) must provide the information in its registry under this section to the board in the prescribed manner and form.

(2) If a gambling machine is networked with other machines or systems of machines, each machine in that network is deemed to be a separate gambling machine for the purpose of this Act.

(3) The Board must establish and maintain, in the prescribed manner and form, a registry of all data collected by the several provincial licensing authorities, and communicated to it in terms of this section.

Gambling machines and devices to be registered

21 (1) A person who imports a prescribed gambling device into the Republic, or who manufactures such a device within the Republic, must -

- (a) attach to that device a label in the prescribed form, bearing the unique registration number for that device, as assigned by a provincial licensing authority; and
- (b) notify the provincial licensing authority in the prescribed manner and form, identifying the device that bears that registration number.

(2) A person must not remove, alter, disfigure, obscure or destroy a registration number attached to a prescribed gambling device.

(3) The person who attaches, or causes to be attached, a registration number in accordance with subsection (1), is deemed to be the registered owner of that device, subject to any transfer of registered ownership in terms of this Part.

(4) The registered owner of a prescribed gambling device must ensure that the possession, use, maintenance and certification of that device complies with this Act, subject to any registered transfer of possession in terms of this Part.

Transfer of registered ownership or possession

22 (1) A person who proposes to transfer registered ownership of a prescribed gambling device to another person must apply to a provincial licensing authority in the prescribed manner and form for a certificate of authorization to transfer registered ownership of that device.

(2) Subject to subsection (3) and (4), a person who proposes to lease, or transfer possession of, a prescribed gambling device to another person must apply to a provincial licensing authority in the prescribed manner and form for a certificate of authorization to lease or transfer possession of that device.

(3) A registered owner of a prescribed gambling device who repossesses that device from a lessee or other person to whom possession had been transferred in terms of this section-

- (a) is not required to apply for a certificate of authorization in terms of this section, but
- (b) must notify the licensing authority who approved the lease or transfer of possession that the device has been re-possessed.

(4) A person is not required to apply for a certificate of authorization in terms of this section before transferring possession of a prescribed gambling device to another person solely for purpose of -

- (a) transporting it from one place to another; or
 - (b) performing essential maintenance work on, or repairing, the device.
- (5) An application in terms of subsection (1) or (2) —

- (a) for a transfer or lease to a person who has a provincial licence, must be made to the provincial licensing authority that issued that licence; or-
 - (b) for a transfer to a person who has a national licence, must be made to the provincial licensing authority of the province in which the proposed transferee intends to locate or use that device.
- (6) A provincial licensing authority may approve a transfer of ownership, or a lease or transfer of possession of a prescribed gambling device only if -
- (a) the device bears a registration number issued by the Board, and the proposed transferor is the registered owner of that device;
 - (b) the device has been certified in terms of this Act, and the certification has not expired; and
 - (c) the proposed transferee -
 - (i) holds a valid manufacturer, supplier or maintenance provider's licence permitting that person to possess that category of prescribed gambling device, or has concurrently applied for such a licence;
 - (ii) holds a valid licence, issued by the applicable licensing authority in terms of provincial legislation, to engage in, conduct gambling or make available gambling activities that include the operation of that category of prescribed gambling device, or has concurrently applied for such a licence; or
 - (iii) is otherwise authorised to possess that category of device, in terms of a provincial licence, or applicable provincial legislation.
- (7) A provincial licensing authority -
- (a) may approve a lease, or transfer of ownership or possession, of a prescribed gambling device concurrently with the issuance of a licence to the transferee;
 - (b) must not refuse a lease or transfer of ownership or possession of a prescribed gambling device on any grounds other than those set out in subsection (6); and
 - (c) must advise the Board in the prescribed manner and form when it has -
 - (i) approved a lease or a transfer of registered ownership, or possession, of a prescribed gambling device; or
 - (ii) been notified of the repossession of a device by a registered owner.

Contraventions

23 (1) A contravention or failure to comply with section 21(1), (2), (4), or section 22 (1), (2), or (3)(b) is an offence.

Criteria for issuing testing agent licence

24 (1) A person may be licensed as a testing agent only if the provincial licensing authority considering the application has determined that the applicant -

- (a) is currently accredited for technical competency by the South African National Accreditation System, in terms of ISO/IEC 17025 and ISO 9000;
- (b) is able to conduct tests and perform calibrations in accordance with standards established by the South African Bureau of Standards in terms of the Standards Act;
- (c) is independent of any other licensee in the gambling industry;
- (d) is able to conduct tests and analysis in an objective and impartial manner; and
- (e) satisfies any other requirement set out in this Act.

Calibration and certification of prescribed gambling devices

25 (1) When called upon to test a prescribed gambling device in terms of this Part, a licensed testing agent must -

- (a) test the device for compliance with the applicable standard;
- (b) record all test results;
- (c) issue a report of the test results to -
 - (i) the person requesting the certification;
 - (ii) the applicable provincial licensing authority; and
 - (iii) the Board; and
- (d) if the device complies with the applicable standard, issue a letter of certification in respect of the device.

(2) A contravention of this section is a breach of licence, subject to administrative sanctions in terms of this Act, or applicable provincial legislation.

Limited payout machines

- 26 (1) The Minister, by regulation made in accordance with section 84, may -
- (a) establish a limit on the number of limited payout machines that may be licensed to be used -
 - (i) within the Republic;
 - (ii) within any particular province; and
 - (iii) at any one site, and may prescribe different site maximums applicable in different circumstances;
 - (b) determine the circumstances in which a site may be licensed as an incidental use, or primary use, site;
 - (c) establish a limit on the maximum -
 - (i) aggregate stake permitted to commence and complete a limited payout gambling game;
 - (ii) single payout allowed from a limited payout machine; and
 - (iii) the aggregate payout in respect of each game played; and
 - (d) prescribe -
 - (i) minimum standards concerning applications for licences with regard to limited payout gambling machines, including -
 - (aa) standard information to be required from applicants;
 - (bb) minimum evaluation criteria to be applied by licensing authorities; and
 - (cc) evaluation procedures to be followed by licensing authorities;
 - (ii) compliance standards for limited payout machines;
 - (iii) the methods by which a prize won on a limited payout machine may be paid;
 - (iv) any essential or defining elements of a limited payout gambling game;
 - (v) the procedures that constitute the start and end of a single game on a limited payout machine;
 - (vi) the accounting standards that must be met, and accounting records that must be kept, by route operators, site operators and independent site operators; and
 - (vii) minimum information to be provided by licensees concerning the sourcing, distribution, movements, conversions and disposal of limited payout machines.
- (2) Provincial licensing authorities, when establishing evaluation criteria for granting licences with respect to the use of limited payout machines, must endeavour to promote wide geographic spread of site operators and independent site operators, if applicable, to ensure that this form of entertainment is accessible to a wide range of the population.
- (3) A person must not -
- (a) distribute a limited payout machine to a site operator or independent site operator, or allow such a machine to be made available for play, unless that machine has been registered in accordance with this Part; or
 - (b) move a limited payout machine from one site to another without the prior approval of, and subject to monitoring and control by, the provincial licensing authority that registered that machine.
- (4) A route operator -
- (a) must not make available for play -
 - (i) more limited payout machines than the maximum number for which the operator is licensed; or
 - (ii) more limited payout machines than the relevant site is licensed to accommodate.
 - (b) must maintain the limited payout machines owned and operated by that route operator; and
 - (c) must collect money from those machines and pay any applicable provincial taxes or levies in respect of those machines.
- (5) A contravention of subsection (3) or (4) is an offence.

National Electronic Monitoring System

27 (1) The Board must establish and maintain a national central electronic monitoring system capable of —

- (a) detecting and monitoring significant events associated with any limited payout gambling machine that is made available for play in the Republic; and
- (b) analysing and reporting that data in accordance with the prescribed requirements.

(2) The Minister, in consultation with the Council, and by regulation made in accordance with section 84, may prescribe —

- (a) standards for —
 - (i) the operation of the national electronic monitoring system;
 - (ii) the collection and analysis of data through that system;
- (b) the frequency and nature of reports to be produced by the Board in respect of the operation of the system; and
- (c) other matters related to the functioning of the central national electronic monitoring system.

(3) Every limited payout gambling machine that is exposed for play must be electronically linked to the central national electronic monitoring system, and the licensee of that machine must pay the prescribed monitoring fees in relation to that machine.

(4) The central national electronic monitoring system must allow the provincial licensing authority of each province unhindered access to all data on the system that originated in that province.

(5) A contravention of subsection (4) is a breach of licence, subject to administrative sanctions in terms of this Act or the applicable provincial legislation.

Part E — Licensing of persons employed in gambling industry**Gambling industry workers to be licensed**

28 (1) A person must not engage in any work within the gambling industry that is required to be licensed in terms of this Act or applicable provincial legislation, unless that person has a valid —

- (a) national employment licence; or
- (b) provincial employment licence issued by the provincial licensing authority in the province in which the person proposes to work.

(2) A licensee must not employ a person, or permit an existing employee, to engage in any work within the gambling industry, unless that employee has satisfied the requirements of subsection (1).

(3) An employer of a person who is licensed as required by this section must disclose to the applicable licensing authority within the prescribed time, any prescribed information that concerns a licensed employee or agent of the employer.

(4) A contravention of this section is an offence.

Conditions of employment licensing

29 (1) A licensing authority may not license a person in terms of this Part if that person falls within any of the enumerated disqualifications set out in section 53 (1).

(2) A licence granted, and the licence certificate issued, to a person in terms of this section is not transferable to another person.

Regulation may exempt categories of work

30 The Minister, by regulation made in accordance with section 84, may determine any specific category of work to be subject to the requirements of section 28.

Chapter 3 — Jurisdiction and licensing**Part A — Jurisdiction****Jurisdiction of provincial licensing authorities**

31 (1) Each provincial licensing authority has exclusive jurisdiction, within its province, to -

- (a) investigate and consider applications for, and issue, -
 - (i) provincial licences in respect of casinos, racing, gambling or wagering, other than for an activity or purpose for which a national licence is required in terms of this Act; and
 - (ii) subject to Part B of this Chapter, national licences for any activity or purpose for which a national licence is required or optional in terms of this Act;
 - (b) conduct inspections to ensure compliance with -
 - (i) this Act,
 - (ii) applicable provincial legislation, and
 - (iii) the conditions of -
 - (aa) national licences, subject to sections 34 and 35; or
 - (bb) provincial licences issued by it;
 - (c) impose on licensees administrative sanctions in accordance with this Act or applicable provincial legislation; and
 - (d) issue offence notices in respect of offences in terms of this Act or applicable provincial legislation.
- (2) Each provincial licensing authority has jurisdiction, within its province, to -
- (a) monitor the functions of each gambling machine that is required to be connected to a central electronic monitoring system in terms of section 27; and
 - (b) ensure compliance with, conduct investigations, and issue offence notices under the Financial Intelligence Centre Act in so far as it applies to the gambling industry.

Responsibilities of provincial licensing authorities

32 (1) Within its jurisdiction, each provincial licensing authority is responsible -

- (a) to ensure -
 - (i) that unlawful activities related to casinos, racing, gambling, and wagering, and unlicensed gambling activities, are prevented, or detected and prosecuted;
 - (ii) that undertakings, made by licensees holding a provincial licence issued by it, are carried out;
 - (iii) that undertakings made by national licensees are carried out, to the extent that those licensees are operating within that province;
 - (iv) that employees within the gambling industry are licensed, to the extent required by this Act or applicable provincial legislation;
 - (v) that each prescribed gambling device being used, or made available for use, by a licensee is registered and certified in terms of this Act; and
 - (vi) complete and timely collection and remittance of taxes, levies and fees.
- (b) to inspect premises within the applicable province -
 - (i) that are operated in terms of a provincial licence issued by that licensing authority;
 - (ii) that are operated in terms of a national licence; or
 - (iii) in or on which any activity takes place that is permitted in terms of -
 - (aa) a provincial licence issued by that licensing authority;
 - (bb) applicable provincial law, without being licensed; or
 - (cc) a national licence.
- (c) to inspect prescribed gambling devices used for any activity that is permitted in terms of -
 - (i) a provincial licence issued by that licensing authority; or
 - (ii) a national licence, to the extent that the licensee is operating within that province.
- (d) to enforce this Act and applicable provincial legislation with respect to-

- (i) premises, activities or prescribed devices -
 - (aa) licensed by that licensing authority or;
 - (bb) within the jurisdiction of that licensing authority; and
- (ii) offences in terms of this Act or applicable provincial legislation; and
- (e) to supervise and enforce compliance by licensees with the obligations of accountable institutions in terms of the Financial Intelligence Centre Act in so far as it applies to the gambling industry;
- (f) to review licences, and the activities of licensees, in accordance with this Act and applicable provincial legislation;
- (g) suspend or revoke any -
 - (i) provincial licence issued by that licensing authority: or
 - (ii) national licence, -
 - (aa) for a cause arising within that province; or
 - (bb) otherwise, as set out in section 45(1)(a) and (b).

(2) Subject to any requirements set out in applicable provincial legislation, a provincial licensing authority, by agreement with the Board, or with another provincial licensing authority, may delegate to the Board or to that other provincial licensing authority any power or function that is to be exercised by the provincial licensing authority in terms of this Act, or applicable provincial legislation, in the manner contemplated in section 238 of the Constitution.

Jurisdiction of Board

33 In accordance with this Act, and subject to the direction of the Council as provided for in Chapter 4, the Board may exercise the powers and perform the functions assigned to it in this Act.

Responsibilities of Board

34 The Board is responsible to -

- (a) evaluate, as provided for in Part B of this Chapter, -
 - (i) the issuance of national licences by provincial licensing authorities, and
 - (ii) the compliance monitoring of licences by provincial licensing authorities;
- (b) conduct oversight evaluations of the performance of provincial licensing authorities, in the manner provided for in section 35, to the extent required to ensure that the national norms and standards established by this Act are applied uniformly and consistently within the Republic; and
- (c) assist provincial licensing authorities to ensure that unlicensed gambling activities are detected, in the manner provided for in section 63 (2) and (3).

Oversight function of Board

35 (1) The Board must ensure that its functions, and those of the Chief Executive Officer, set out in this section are, in so far as possible, exercised in a manner consistent with the requirements of section 41(1)(e), (g) and (h) of the Constitution.

(2) The Board may direct the Chief Executive Officer to carry out an oversight evaluation of the exercise by a provincial licensing authority of its responsibilities and function in terms of this Act.

(3) Before beginning to conduct an evaluation in terms of subsection (2), the Chief Executive Officer must notify the relevant provincial licensing authority in writing of -

- (a) a direction given by the Board; and
- (b) generally, the scope and methodology of the proposed evaluation.

(4) The Chief Executive Officer must -

- (a) provide a copy of an evaluation report to the relevant provincial licensing authority, and
- (b) invite the provincial licensing authority to submit a written response to the evaluation within the prescribed time.

(5) If, as a result of an evaluation conducted in terms of subsection (2), the Chief Executive Officer has reason to believe that a provincial licensing authority has failed to comply with any provision of this Act applicable to its functions, the Chief Executive Officer -

- (a) may issue a deficiency report to the provincial licensing authority setting out any matters in respect of which the authority has failed to comply with any provision of this Act; and
- (b) must at the same time invite the provincial licensing authority to propose a basis for an agreement in terms of which it would bring the exercise of its functions into compliance with all applicable provisions of this Act.

(6) If an agreement is reached between the provincial licensing authority and the Board, as contemplated in subsection (5)(b), the Chief Executive Officer must monitor progress achieved in terms of the agreement, and —

- (a) report to the Board at prescribed intervals on that progress; and
- (b) issue a further deficiency report, and invitation, as contemplated in subsection (5), if the provincial licensing authority significantly fails to meet any of its commitments in terms of the agreement.

(7) A provincial licensing authority may request the Board to set aside all or part of a deficiency report issued by the Chief Executive Officer in terms of subsection (5) or (6).

(8) If a provincial licensing authority does not respond to a deficiency report issued by the Chief Executive Officer in terms of subsection (5) or (6), or if the provincial licensing authority and the Board fail to reach an agreement contemplated in either subsection, or if the provincial licensing authority is persistently in default in terms of such an agreement, the Board may refer the matter to the Council for consideration in terms of section 66(2)(c).

Information sharing

36 (1) A provincial licensing authority must keep the following registers:

- (a) A register of each person to whom it grants a national licence, or a provincial licence, and the activities permitted under each such licence;
- (b) A register of all premises in, on or from which licensed activities may be engaged in, conducted or made available under licences issued by it [and the ownership of those premises];
- (c) A register of each person who is known to hold more than 5% of the total financial interest, in a licence, licensee, or the business to which a licence relates; and
- (d) A register of each prescribed gambling device registered by it.

(2) Each provincial licensing authority must report to the Board, at the prescribed intervals, the information kept by that licensing authority in terms of subsection (1).

(3) The Board must make available to a provincial licensing authority, upon request, any information reported to the Board in terms of subsection (2).

(4) A regulatory authority must, on request from another regulatory authority, provide a copy of all prescribed information in its possession concerning a licensee, registrant or applicant for a license.

(5) The Minister, by regulation in accordance with section 84, may prescribe the timing, manner and form, and content of information to be provided in terms of this section.

Conflicting exercise of concurrent jurisdiction

37 (1) As contemplated in section 41(2) of the Constitution, the Council may facilitate the settlement of any dispute between the Board, and one or more provincial licensing authorities, concerning the functions to be performed by them relating to casinos, racing, gambling and wagering.

(2) If this Act requires the several provincial licensing authorities to perform a particular function within their respective provinces, and

- (a) within a particular province, no provincial licensing authority has been established; or
- (b) the Council concludes that the provincial licensing authority within a particular province is unable to perform that function effectively; the Council may make a recommendation to the Minister advising that steps be taken pursuant to section 100 of the Constitution to ensure the fulfilment of that statutory obligation.

Minister's power to make regulations

38 (1) After consulting the Council, and following the other procedures set out in section 84, the Minister may make regulations concerning -

- (a) measures relating to the advancement, upliftment and economic empowerment, through the gambling industry, of persons or groups or categories of persons disadvantaged by unfair discrimination;
- (b) norms and standards for the manner and nature of the regulation and control of —
 - (i) casinos, racing, gambling and wagering activities in general; or
 - (ii) any specific such activity;
- (c) the regulation of betting across provincial boundaries;
- (d) the types of games that may not be played in a casino; and
- (e) the control and restriction of bingo or any similar game.

(2) After consulting the Council, and following the other procedures set out in section 84, the Minister may make regulations concerning minimum standards in respect of licensing procedures by provincial licensing authorities, including -

- (a) the granting, issuing, suspension, withdrawal, reviewing and amendment of gambling licences;
- (b) procedures for the consideration of applications, including the investigations that must be conducted and the circumstances under which hearings in respect of licence applications must be conducted;
- (c) the criteria to be complied with before any licence is granted in terms of this Act or applicable provincial legislation;
- (d) the nature and manner of the auditing of the businesses of licensees and the documents and records which they must keep and submit to the relevant licensing authority; and
- (e) the types, minimum standards and qualities of gambling equipment that may be used by any licensee.

(3) The Minister, in accordance with section 84, may make regulations determining, in respect of applications for national licences under this Act -

- (a) the manner and form in which applications for licences are to be submitted;
- (b) the fees payable, and the manner of payment, in respect of various types of licences, including fees in respect of -
 - (i) applications,
 - (ii) probity investigations; or
 - (iii) licences;
- (c) procedures for the consideration of applications, including the investigations that must be conducted and the circumstances under which hearings in respect of licence applications must be conducted;
- (d) the period of duration of a licence and the procedures and fees for the renewal of licences;
- (e) conditions that may be attached to a licence, in terms of section 50(3); and
- (f) conditions and requirements for the transfer of a licence, or an interest in a licence.

(4) The Minister, in accordance with section 84, may make regulations in respect of the exercise by the Board of its monitoring, investigative and evaluation functions in terms of sections 34 and 35.

Part B-National licenses**Authority of national licence**

39 (1) A national licence issued in terms of this Act is valid throughout the Republic and authorizes the licensee to conduct, engage in, or make available the licensed activities at any place within the Republic.

(2) It is a condition of every national licence that the licensee must comply with every applicable provision of -

- (a) this Act; and
- (b) the Financial Intelligence Centre Act; and
- (c) applicable provincial legislation within any province in which the licensee conducts, engages in, or makes available the licensed activities.

Applicants for national licence

40 (1) An applicant must apply to a provincial licensing authority for a national licence if the applicant seeks a licence -

- (a) as a testing agent, to test, calibrate and certify prescribed gambling devices;
- (b) to operate as a Horse Racing Authority; or
- (c) to develop, operate and maintain, on behalf of the Board, a national electronic monitoring system as contemplated in section 27.

(2) An applicant may apply to a provincial licensing authority for either a provincial licence in terms of applicable provincial legislation, or a national licence, if the applicant seeks-

- (a) a licence as a manufacturer, supplier or maintenance provider; or
- (b) to work within the gambling industry.

(3) An applicant for a national licence must apply in the prescribed manner and form to the provincial licensing authority within the province in which

- (a) The applicant ordinarily resides, or in which the applicant intends to take up employment under the licence, if the applicant is an individual; or
- (b) The applicant's principle place of business is or will be located, in any other case -

Authority to issue national licence

41 A provincial licensing authority may issue a national licence to an applicant who meets the requirements of this Act.

National licence procedures

42 (1) Upon receiving an application for a national licence, a provincial licensing authority must -

- (a) notify each other regulatory authority of the application;
- (b) conduct the investigations prescribed by this Act with respect to probity, technical competence, industry competitiveness, or any other prescribed matters; and
- (c) conduct any prescribed hearings or other proceedings with respect to the application.

(2) After completing the prescribed investigations, hearings or other proceedings required in terms of subsection (1), a provincial licensing authority may either -

- (a) notify the applicant in writing that it refuses to grant the licence applied for; or
- (b) notify the applicant and each other regulatory authority in the prescribed manner that it proposes to issue the licence as applied for, and specifying any conditions of the proposed licence.

(3) A provincial licensing authority that has received a notice in terms of subsection (2)(h) may request the Chief Executive Officer to conduct an oversight evaluation, as contemplated in section 44.

Review of refusal to issue national licence

43 An applicant who has been refused a licence in terms of section 42(2)(a) may request a review of that decision by the High Court.

Review of proposal to issue national licence

44 (1) After receiving a notice from a provincial licensing authority that it proposes to issue a national licence, the Chief Executive Officer -

- (a) must direct an inspector to conduct an oversight evaluation of the application, investigative report, and recommendations of the provincial licensing authority, if two or more provincial licensing authorities have so requested in terms of section 42(3); or
- (b) in any other case, may direct an inspector to conduct such an oversight evaluation, if there are a reasonable grounds to believe that the requirements of this Act have not been satisfied.

(2) If direction is given for an oversight evaluation, the Chief Executive Officer must issue a notice of intent to evaluate the proposed licence, in the prescribed form, to —

- (i) the applicant; and
 - (ii) the provincial licensing authority.
- (3) After conducting an oversight evaluation in terms of subsection (1), the Chief Executive Officer may —
- (a) without referring the application to the Board, advise the provincial licensing authority in the prescribed form that there are no objections to the issuance of the national licence as proposed;
 - (b) request that the provincial licensing authority consider altering any proposed conditions before issuing the licence; or
 - (c) issue a deficiency report to the provincial licensing authority -
 - (i) requesting the provincial licensing authority to consider the application afresh; and
 - (ii) setting out any matters in respect of which the authority failed to comply with national norms and standards for consideration of the application.
- (4) A provincial licensing authority may issue the licence as proposed by it, if the Chief Executive Officer —
- (a) has not issued a notice of intent to evaluate, or a notice in terms of subsection (2), within 20 business days after receiving notice of the proposed licence; or
 - (b) issues a notice in terms of subsection (2)(a).
- (5) If the Chief Executive Officer issues a request in terms of subsection (2)(b), the provincial licensing authority may—
- (a) issue the licence with the altered conditions as requested by the Chief Executive Officer; or
 - (b) request the Board to set aside the request of the Chief Executive Officer, and permit the issuance of the licence as initially proposed.
- (6) If the Chief Executive Officer issues a deficiency report in terms of subsection (2)(c), the provincial licensing authority must either -
- (a) consider the application afresh; or
 - (b) request the Board to set aside the deficiency report, and permit the issuance of the licence as initially proposed.
- (7) If a matter is referred to the Board in terms of subsection (4) or (5), the Board, may—
- (a) confirm the request of the Chief Executive Officer, or deficiency report;
 - (b) set aside all or part of the request, or the deficiency report; or
 - (c) permit the issuance of the licence, with or without conditions.

Suspension and revocation of national licence

45 (1) A provincial licensing authority, with the prior concurrence of the Board, may suspend or revoke a national licence, as if that licence were a provincial licence issued by that licensing authority, if —

- (a) the license was obtained by a materially false or misleading representation;
- (b) the licensee is no longer qualified to hold a license in terms of section 52 or 53; or
- (c) within that province—
 - (i) the licensee has violated this Act, or applicable provincial legislation;
 - (ii) the licensee has contravened or failed to comply with an obligation of accountable institutions in terms of the Financial Intelligence Centre Act in so far as it applies to the gambling industry;
 - (iii) the licensee, or any person managing or directing the licensee, has contravened or failed to comply with a provision of Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998);
 - (iv) the licensee has contravened a condition of the license; or
 - (v) the licensee has failed to discharge financial commitments for the licensee's operations.

(2) A provincial licensing authority must immediately advise each other provincial licensing authority of a suspension or revocation of a national licence.

Part C - Provincial licenses**Licensing by provinces to satisfy national norms and standards**

46 (1) When considering an application for a provincial licence, or a national licence, a provincial licensing authority must comply with the licensing standards set out in this Act.

(2) It is a condition of every provincial licence that the licensee must comply with every applicable provision of this Act.

Maximum numbers of casino licenses

47 (1) A maximum of 40 casino licences may be granted in the Republic, divided among the provinces as follows:

(a) Eastern Cape	5
(b) Free State	4
(c) Gauteng	6
(d) KwaZulu-Natal	5
(e) Mpumalanga	4
(f) Limpopo	3
(g) Northern Cape	3
(h) North West	5
(i) Western Cape	5

Limitation of rights to a licence

48 (1) Subject to subsection (2), only a company registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), or a Close Corporation registered in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984), may be licensed -

- (a) to operate a casino
- (b) as a route operator;
- (c) as a manufacturer;
- (d) as a testing agent;
- (e) as a totalisator operator; or
- (f) under any other category of license, to the extent that applicable provincial legislation so requires.

(2) Applicable provincial legislation may require a licensee contemplated in subsection (1) to be a company registered in terms of the Companies Act, 1973 (Act No. 61 of 1973).

Amusement games and machines

49 (1) Provincial legislation may permit the provincial licensing authority to license and regulate -

- (a) amusement machines, subject to the requirements of subsection (2); and
- (b) amusement games, subject to the requirements of subsection (3) and any regulations promulgated in terms of subsection (4).

(2) An amusement machine must not be derived from, or converted from a gambling machine of the type ordinarily found in a casino.

(3) An amusement game must not -

- (a) be similar to, or derived from, a gambling game other than bingo;
- (b) offer a cash prize, or a combination of a cash prize with any other prize; or
- (c) offer a prize that exceeds the prescribed maximum value for such games.

(4) The Minister, by regulation made in accordance with section 76, may prescribe the maximum value of the prize, and the type of prizes, that may be offered for an amusement game.

Part D — Licensing Norms and Standards**Licence criteria, categories and conditions**

50 (1) A national licence or a provincial licence must specify —

- (a) the identity of the licensee;
- (b) the activities that the licence permits the licensee to engage in, conduct or make available to the public; and
- (c) other than an employment licence, the premises at, in or from which, the licensee is permitted to operate.

(2) A provincial licensing authority issuing a national licence or a provincial licence may issue it only as -

- (a) a permanent licence, for a fixed term not exceeding any prescribed maximum for that category of licence;
- (b) a temporary licence, subject to the fulfilment of certain conditions within a specified period, with the intention that, upon fulfilment of those conditions, a permanent licence will be issued in substitution of the temporary licence;
- (c) a provisional or other interim licence provided for in applicable provincial legislation; or
- (d) subject to subsection (3), a special event licence, which permits the licensed activity on specified dates only, in a particular location, as set out in the licence.

(3) A special event licence may not be issued in respect of the operation of a casino or a gambling machine.

(4) A provincial licensing authority issuing a national licence must issue a licence certificate in the prescribed form to the licensee.

(5) A provincial licensing authority issuing a national licence or a provincial licence-

- (a) may issue it with or without conditions; and
- (b) must set out in the licence certificate -
 - (i) the duration of the licence;
 - (ii) the specific activities permitted in terms of the licence, or a reference to the applicable legislation that describes those activities; and
 - (iii) the name or description of the specific premises in, on or from which the licensed activity may take place, unless it is an employment licence.

(6) The Minister, by regulation made in accordance with section 84, may prescribe a maximum duration of no more than 20 years for a permanent licence, and for that purpose may prescribe different maximum durations for different categories of licence.

Competition issues to be considered

51 (1) When considering an application for a licence, other than an employment licence, or when considering an application for the transfer of an interest in such a licence, licensee, or the business to which a licence relates, a provincial licensing authority -

- (a) must consider whether approving the application is likely to substantially affect competition in the gambling industry generally, or in respect of the proposed activity, -
 - (i) within that province, in the case of a provincial licence; or
 - (ii) within the Republic, in the case of a national licence.

(2) After considering the matters contemplated in subsection (1), the provincial licensing authority must refuse the application, unless there are overriding public interest reasons for approving it, if it appears that approving the application would result in the applicant, alone or in conjunction with a related person, achieving market power.

- (3) For the purpose of subsection (1) -
- (a) "Market power" has the meaning set out in section 1 of the Competition Act, 1998 (Act No. 89 of 1998);
 - (b) "public interest reasons" include the reasons set out in section 12A (3) of the Competition Act, 1998 (Act No. 89 of 1998); and
 - (c) "a related person" means a person -
 - (i) who has direct or indirect control over the applicant,
 - (ii) over whom the applicant has direct or indirect control; or
 - (iii) who is directly or indirectly controlled by a person referred to in sub-paragraphs (i) or (ii).

Licence requirements, acquisitions and transfers

52 (1) A person who, in terms of this Act or provincial legislation, applies for a licence, other than an employment licence, in respect of an activity to be conducted within premises that the applicant does not wholly own, must provide to the provincial licensing authority the prescribed information concerning-

- (a) the ownership of the premises proposed to be used for the licensed activities, and
- (b) the relationship between the applicant and the owner of those premises.

(2) A licensing authority-

- (a) must refuse to issue a licence if the licensing authority considers that-
 - (i) the proposed activity would be inconsistent with this Act or applicable provincial legislation; or
 - (ii) the use of the proposed premises for the proposed activity would be contrary to existing zoning laws or rights; and
- (b) may refuse to issue a licence if the provincial licensing authority considers that the proposed site is an unsuitable location for the proposed activity, having regard to this Act, and applicable provincial legislation.

(3) A provincial licensing authority must refuse to issue a licence to a person who -

- (a) is disqualified from holding an interest in a licence, licensee, licensed premises, or the business to which a licence relates, in terms of section 53(1), or applicable provincial legislation; or
- (b) may hold only a restricted interest in a licence, licensee, licensed premises, or the business to which a licence relates, in terms of section 53(2), or applicable provincial legislation.

(4) A provincial licensing authority must refuse to issue a licence, other than an employment licence, to an applicant if, after conducting the prescribed investigations, the licensing authority has reason to believe that the applicant, any person who has a controlling interest in the applicant, any person who holds more than 5% of the total financial interest in the applicant, or any manager of the business concerned is -

- (a) a family member of a person who is a member of that licensing authority; or
- (b) disqualified from holding an interest in a licence, licensee, or the business to which a licence relates, in terms of section 53(1).

(5) If a person mentioned in subsection (4) becomes disqualified in terms of section 52(1), or relevant provincial legislation, after the licence was issued,

- (a) that person must advise the licensee and the licensing authority in the prescribed manner and form; and
- (b) if that person-
 - (i) holds an interest in the licence, licensee, licensed premises, or the business to which a licence relates, that person must dispose of that interest within a reasonable period of not more than 3 years, determined by the licensing authority after considering the circumstances; or
 - (ii) is the actual or beneficial owner of the premises used for the licensed activity, or a manager of the business concerned, the licensing authority may impose reasonable conditions on the continuation of the licence with the object of ensuring continuing compliance with the principles of this section.

(6) A person who acquires, [or proposes to acquire or transfer,] more than 5% of the total financial interest in a licence, licensee, or the business to which a licence relates must apply to the relevant provincial licensing authority for consent to that acquisition or transfer.

(7) A provincial licensing authority must not consent to the transfer of an interest in a licence, licensee, or the business to which a licence relates if, after conducting the prescribed investigations, the licensing authority has reason to believe that, as a result of that transfer —

- (a) a person who is disqualified, in terms of section 53(1) or relevant provincial legislation, would directly or indirectly hold more than 5% of the total financial interest in the licensee or the business to which the licence relates; or
- (b) a person would hold a greater interest in that licence, licensee, or the business to which a licence relates than permitted in terms of section 53(2) or relevant provincial legislation.

Prohibited and restricted interests in a licence

53 (1) A person must not hold a licence, or more than 5% of the total financial interest in a licence issued in terms of this Act, or comparable provincial legislation, or more than 5% of the total financial interest in a licensee or the business to which a licence relates, if that person -

- (a) is an unrehabilitated insolvent;
- (b) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
- (c) has been convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No 94. of 1992), or an offence in terms of this Act or applicable provincial legislation, or an offence involving dishonesty in terms of any legislation, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding R1000, unless the person has received a grant of amnesty or free pardon for the offence;
- (d) has ever been removed from an office of trust on account of misconduct;
- (e) is not a fit and proper person to be involved in the business concerned; or
- (f) is a political office bearer.

(2) A person must not hold an employment licence, or more than 5% of the total financial interest in any other national or provincial licence, or more than 5% of the total financial interest in a licensee or the business to which a licence relates, if that person is -

- (a) a family member of a person who is a member or employee of a regulatory authority exercising oversight over that licensee;
- (b) a public servant; or
- (c) under the age of 18 years.

(3) If a person mentioned in section 52(4), or a person who holds an interest in a licence, licensee or the business to which a licence relates, becomes disqualified in terms of subsection (1) after the licence was issued, that person must dispose of that interest within a reasonable period of not more than 3 years, determined by the licensing authority after considering the circumstances.

(4) If a person contemplated in subsection (2) -

- (a) acquires more than 5% of the total financial interest in a licence, other than an employment licence, or more than 5% of the total financial interest in a licensee or the business to which a licence relates, or
- (b) if the financial interest held by that person comes to represent more than 5% of the total financial interest in that licence, licensee or the business to which a licence relates, that person must, within a reasonable period of not more than 5 years, determined by the licensing authority after considering the circumstances, dispose of all their financial interest that exceeds 5% of the total financial interest.

State interests

- 54 (1) In this section –
- (a) **"financial interest"** does not include the right to assess or collect a tax, levy or fee; and
 - (b) **"public body"** means the state, an organ of state, or any organisation in which the state has a financial interest.
- (2) Subject to Item 3 of Schedule 1, and subsection (3), a public body must not hold any financial interest in any –
- (a) gambling licence, gambling activity or premises used for a gambling activity; or
 - (b) person who directly or indirectly, holds a gambling licence, operates a gambling activity, or owns or occupies premises used for a gambling activity.
- (3) A public body may –
- (a) directly or indirectly hold a financial interest in premises used for a gambling activity if it holds that interest in terms of an acceptable arrangement as described in subsection (4); or
 - (b) be a party to an acceptable arrangement as described in subsection (5) between the public body and any other person in terms of which the public body undertakes to develop or maintain facilities or supply anything to the other person –
 - (i) in the proximity of premises used for a gambling activity; or
 - (ii) intended to provide socio-economic, infrastructure, or other support necessary for, or ancillary to, such premises or gambling activities; or
 - (c) directly or indirectly hold an interest created or acquired in the course of giving effect to an acceptable arrangement contemplated in paragraph (b).
- (4) An arrangement referred to in subsection (3)(a) is acceptable if –
- (a) it is an arms-length commercial transaction; and
 - (b) any payment in terms of the arrangement to the public body is not directly or indirectly determined by reference to the turnover of, or profit from, the gambling activity.
- (5) An arrangement referred to in subsection (3)(b) or (c) is acceptable if any payment in terms of the arrangement to the public body is not directly or indirectly determined by reference to the turnover of, or profit from, the gambling activity.

Part F — License Investigations, decisions and surrender**External probity reports**

- 55 (1) When considering an application for a licence, an application for an employment licence, or a request to transfer an interest in a licence, licensee, licensed premises, or the business to which a licence relates, a provincial licensing authority may request –
- (a) additional information from the applicant; or
 - (b) a report from-
 - (i) any other regulatory authority;
 - (ii) the Financial Intelligence Centre;
 - (iii) the National Director of Public Prosecutions; or
 - (iv) the South African Police Service.
- (2) A report requested in terms of subsection (1), may include particulars of any convictions recorded against a person, to the extent that those particulars are relevant for the purpose of determining whether that person is disqualified from holding an interest in a licence, licensee, licensed premises, or the business to which a licence relates, in terms of this Act or applicable provincial legislation.

Decisions

56 After considering an application for a licence, an application to transfer ownership or possession of a gambling machine or prescribed gambling device, or a request to transfer an interest in a licence, licensee, licensed premises, or the business to which a licence relates, a provincial licensing authority must either -

- (a) grant the licence, or approve the transfer, as the case may be; or
- (b) issue a written refusal to any person affected by the decision, with reasons for the decision.

Surrender of license

57 (1) A licensee may surrender a license by written notice given to the provincial licensing authority that issued the license.

(2) The surrender takes effect —

- (a) 3 months after the notice is given, or
- (b) on a date stated in the notice.

Chapter 4 - National Structures**Part A — National Gambling Policy Council****Establishment of National Gambling Policy Council**

58 (1) The National Gambling Policy Council is hereby established.

(2) The National Gambling Policy Council consists of-

- (a) The following regular members:
 - (i) the Minister; and
 - (ii) from each province, the Member of the Executive Council responsible for casinos, racing, gambling and wagering in that province; and
- (b) The following supplementary, non-voting members:
 - (i) the Chairperson of the National Gambling Board; and
 - (ii) from each province, the Chairperson of the provincial licensing authority.

(3) The Minister is the Chairperson of the Council.

Functions of National Gambling Policy Council

59 (1) The Council is a body in which the national government and the provincial governments consult on -

- (a) the determination and establishment of national gambling policy;
- (b) gambling legislation or regulations, including the promotion of uniform national and provincial legislation in respect of gambling norms and standards;
- (c) any matter concerning gambling within the national or provincial sphere of government;
- (d) any matter concerning the management or monitoring of gambling in the Republic, or in any specific province or provinces; and
- (e) the resolution of any dispute that may arise among provincial licensing authorities, or between a provincial licensing authority and the Board, regarding the regulation and control of gambling activities; and
- (f) other matters that may be referred to it by a member of the Council.

(2) The Council —

- (a) may provide oversight and direction to the Board in the performance of its functions and the exercise of its powers;
- (b) may refer any matter within its authority to the Board or any provincial licensing authority, with a request for a report or recommendation; and

- (c) may make a finding that a provincial licensing authority has failed to comply with this Act, and if it does so, may direct that provincial licensing authority to enter into an agreement with the Board respecting the steps to be taken by the provincial licensing authority to bring its procedures into compliance with this Act.

Council Meetings

60 (1) The Minister may convene a meeting of the Council at any time, but must convene at least two meetings in each financial year.

(2) The Minister may designate any meeting of the Council to be a meeting of all members, or only of regular members, but must designate at least one meeting in each financial year to be a meeting of all members.

(3) At a meeting of the Council to which supplementary members are called a supplementary member may be represented by an alternate, chosen by that supplementary member from among the other board members of the applicable regulatory authority.

(4) As a body through which the national and provincial spheres of government seek to co-operate with one another in mutual trust and in good faith, the Council must attempt to reach its decisions by consensus.

(5) If the Council is unable to reach a consensual decision in any matter before it, the Council may resolve the matter by formal vote on a motion.

(6) A motion in terms of subsection (5) passes only if it is supported by -

- (a) the Minister; and
- (b) at least 5 of the other regular members of the Council.

(7) Subject to subsection (2) through (6), the Council may establish Rules of Procedure for its own proceedings.

Part B — National Gambling Board

Continuation of National Gambling Board

61 (1) The National Gambling Board, as established by the National Gambling Act, 1996 (Act No. 33 of 1996) is continued under this Act, subject to Item 4 of Schedule 1.

(2) The Board is a juristic person.

Objects and functions of the Board

62 (1) The Board has the following powers and functions, to be exercised in accordance with this Act:

- (a) Monitoring, and investigating when necessary, the issuing of national licences by provincial licensing authorities, for compliance with this Act, in accordance with sections 42 - 45.
- (b) Investigating, monitoring and evaluating compliance with this Act by provincial licensing authorities, entering into agreements with those authorities respecting steps to be taken to correct any deficiencies, and making recommendations to the Council in relation to such matters, in accordance with sections 34 and 35.
- (c) Establishing and maintaining the central national electronic monitoring system, in accordance with section 27.
- (d) Establishing and maintaining a central registry of information contemplated in section 36, and making information from that registry available to -
 - (i) each provincial licensing authority; and
 - (ii) other persons in the prescribed manner and form.
- (e) Carrying out the responsibilities set out in section 34.
- (f) Carrying out any other functions assigned to it in terms of this Act.

- (2) The Board may -
- (a) advise the Council on the maximum number of any kind of licences relating to casinos, racing, gambling and wagering, that should be awarded in the Republic or in any one province;
 - (b) advise the Council on matters of national policy relating to casinos, racing, gambling and wagering, and on the determination of national norms and standards regarding any matter in terms of this Act that should apply generally throughout the Republic;
 - (c) recommend to the Council changes to bring about uniformity in the legislation in the various provinces in relation to casinos, gambling, racing and wagering;
 - (d) monitor socio-economic patterns of gambling activity within the Republic, and in particular identify factors relating to, and patterns, causes, and consequences of, habitual or obsessive gambling;
 - (e) advise the Council, through the Minister, in respect of any matter referred to it by the Council; and
 - (f) monitor market share and market conduct in the gambling industry and refer any concerns regarding market share or possible prohibited practices to the Competition Commission, in terms of the Competition Act, 1998 (Act 89 of 1998).
- (3) The Board may liaise with any foreign or international authorities having any objects similar to the objects of the Board.
- (4) In carrying out its functions as set out in this Act, the Board —
- (a) must comply with directions issued to it by the Council relating to casinos, racing, gambling and wagering;
 - (b) may have regard to international developments in the field of casinos, racing, gambling and wagering; and
 - (c) may consult any person, organisation or institution with regard to any matter deemed necessary by the Board.

Relations with provincial licensing authorities

63 (1) At the request of the applicable provincial legislature, Executive Council, Member of the Executive Council, or provincial licensing authority, the Board -

- (a) may engage with that authority in co-operative activities of research, publication, education, staff development and training; and
- (b) in consultation with the Minister, may -
 - (i) engage with that authority in staff exchanges or secondments; or
 - (ii) provide technical assistance or expertise to that authority.

(2) At the request of the applicable provincial legislature, Executive Council member of the executive Council or provincial licensing authority, the Board may engage with that authority in co-operative activities to detect and suppress illegal gambling activities if there are reasonable grounds to believe those activities may be occurring across provincial boundaries.

(3) At the direction of the Council, the Board must engage with any relevant provincial licensing authority in co-operative activities to detect and suppress illegal gambling activities occurring -

- (a) across provincial boundaries; or
- (b) entirely within a particular province, if, in the opinion of the Council, the provincial licensing authority is unable to suppress that activity on its own.

(4) The Board may liaise with provincial licensing authorities on matters of common interest.

(5) The Board may request any provincial licensing authority to submit any report or information related to the activities of that licensing authority to the Board.

Composition of Board

- 64** (1) The Board consists of
- (a) the following members, each appointed by the Minister for a term of no more than five years, as determined by the Minister at the time of appointment:
 - (i) a Chairperson and a Deputy Chairperson; and
 - (ii) not more than three other members, each of whom, in the opinion of the Minister, have applicable knowledge or experience in matters connected with the objects of the Board; and
 - (b) four other members, one each designated respectively by the —
 - (i) Minister of Trade and Industry;
 - (ii) Minister of Finance;
 - (iii) Minister of Safety and Security; and
 - (iv) Minister of Social Development
 to serve until substituted by the minister who designated the member.
- (2) To be eligible for appointment or designation as a member of the Board, and to continue to hold that office, a person must —
- (a) be a fit and proper person;
 - (b) not be subject to any disqualification set out in subsection (3); and
 - (c) have submitted to the Minister a written declaration stating that -
 - (i) the person is not disqualified in terms of subsection (3); and
 - (ii) the person does not have any interests referred to in subsection (3)(b).
- (3) A person may not be a member of the Board if that person —
- (a) is a political office-bearer;
 - (b) personally or through a spouse, partner or associate —
 - (i) has or acquires a direct or indirect financial interest in a licence issued in terms of this Act, or in premises used for an activity that must be licensed in terms of this Act; or
 - (ii) has or acquires an interest in a business or enterprise that may conflict or interfere with the proper performance of the duties of a member of the Board;
 - (c) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of their estate;
 - (d) has ever been, or is, removed from an office of trust on account of misconduct;
 - (e) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
 - (f) has ever been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998), an offence under the Financial Intelligence Centre Act, or an offence involving dishonesty; or
 - (g) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.
- (4) The Chief Executive Officer is an ex officio member of the Board, but may not vote at meetings of the Board.
- (5) For the purpose of subsection (3)(b), a financial interest does not include an indirect interest held in the form of units of a unit trust if the person contemplated in that subsection has no control over the investment decisions of that unit trust.

Conflicting interests

65 (1) A member of the Board must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in section 64(4)(b).

(2) A member of the Board must not -

- (a) engage in any activity that may undermine the integrity of the Board;
- (b) attend, participate in or influence the proceedings during a meeting of the Board, if, in relation to the matter before the Board, that member has an interest —
 - (i) contemplated in section 64(4)(b); or
 - (ii) that precludes the member from performing the functions of a member of the Board in a fair, unbiased and proper manner;
- (c) vote at any meeting of the Board in connection with a matter contemplated in paragraph (b);
- (d) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Board; or
- (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Board.

(3) If, at any time, it appears to a member of the Board that a matter before the Board concerns an interest of that member referred to in subsection (2)(b), the member must --

- (a) immediately and fully disclose the nature of that interest to the meeting; and
- (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.

(4) A disclosure by a member in terms of subsection (3)(a), and the decision by the Board in terms of subsection (3)(b), must be expressly recorded in the minutes of the meeting at which the disclosure is made.

(5) Proceedings of the Board, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are valid despite the fact that —

- (a) a member failed to disclose an interest as required by subsection (3); or
- (b) a member who had such an interest attended those proceedings, participated in them in any way, or directly or indirectly influenced those proceedings.

Resignation, removal from office, and vacancies

66 (1) A member may resign from the Board by giving to the Minister -

- (a) one month written notice; or
- (b) less than one month written notice, with the concurrence of the Minister.

(2) The Minister, after taking the steps required by subsection (3), may remove a member of the Board, if that member has -

- (a) become disqualified in terms of section 64(3) or (4);
- (b) acted contrary to section 65(2); or
- (c) failed to disclose an interest or withdraw from a meeting as required by section 65(3); or
- (d) neglected to properly perform the functions of their office.

(3) Before removing a person from office in terms of subsection (2), the Minister must afford the person an opportunity to state a case in defence of their position.

(4) Upon the expiry of an appointed member's first term of office, the member may be re-appointed to a further term, subject to section 64.

(5) A person may not be appointed to serve for more than two terms as a member of the Board.

Meetings of the Board

67(1) The chairperson may determine the date, time and place for the first meeting of the Board, and the chairperson in consultation with the Board may determine the date, time and place for each subsequent meeting.

(2) The chairperson in consultation with the Board may determine procedure at meetings of the Board, after due consideration of the principles of openness and transparency.

(3) A majority of the members of the Board is a quorum for a meeting of the Board.

(4) The Board must attempt to reach its decisions by consensus.

(5) If the Board is unable to reach a consensual decision in any matter before it, the Board may resolve the matter by simple majority vote on a motion.

(6) Subject to subsection (4) and (5), the Board may establish rules for its own proceedings.

(7) A decision taken at a meeting of the Board, or an act performed under the authority of such a decision, is valid despite -

- (a) a vacancy on the Board at the time the decision was taken, or
- (b) the fact that a person who was not a member sat as a member at the time when the decision was taken.

Committees of Board

68 (1) The Board may from time to time appoint one or more committees to perform any functions and exercise any powers delegated to it by the Board.

(2) A committee may comprise only persons who are members of the Board, except to the extent required to comply with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) The Board -

- (a) may designate any number of its members to sit on a committee;
- (b) must designate which member will chair the committee; and
- (c) may issue directives to the committee, but any such directives must be consistent with this Act.

(4) A committee must perform its functions and exercise its powers subject to the provisions of this Act and any directives issued by the Board in terms of subsection (3)(c).

(5) A decision of a committee taken in the performance or exercise of a function or power delegated to it, is a decision of the Board, subject to ratification by the Board.

Remuneration and allowances of members of Board and committees

69 (1) The Minister, with the concurrence of the Minister of Finance, may determine the remuneration and allowances of any member of the Board, or of a committee, who is not in the full-time service of the State.

(2) The remuneration and allowances of the persons referred to in subsection (1) may differ according to the different offices held by them or the different functions performed by them.

Staff of Board and remuneration**70 (1) The Board—**

- (a) in consultation with the Minister, must appoint a suitably qualified and experienced person as chief executive officer, who, —
 - (i) subject to the direction and control of the Board, will be responsible for all financial, administrative and clerical responsibilities pertaining to the functions of the Board; and
 - (ii) is accountable to the Board; and
- (b) may appoint any other staff as may be necessary to enable the Board to perform its functions.

(2) Section 64(3) and (4), and section 65, read with the changes required by the context, apply to the Chief Executive Officer and each staff member to be appointed in terms of this Act

(3) The Board, in consultation with the Minister, may determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of a person appointed in terms of subsection (1).

(4) Subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Board may delegate to any member of the staff any function or power that the Board may perform or exercise in terms of this Act, either generally or specially.

Finances**71 (1) The Board is financed from—**

- (a) money appropriated by Parliament for the Board;
- (b) any fees payable to the Board in terms of this Act
- (c) income derived by the Board from its investment and deposit of surplus money in terms of subsection (6); and
- (d) other money accruing to the Board from any source.

(2) The financial year of the Board is the period from 1 April in any year to 31 March in the following year.

(3) Each year, at a time determined by the Minister, the Board must submit to the Minister a statement of the Board's estimated income and expenditure, and requested appropriation from Parliament, in respect of the next ensuing financial year.

(4) The Board must open and maintain an account in the name of the Board with a registered bank, or other registered financial institution, in the Republic, and -

- (a) any money received by the Board must be deposited to that account; and
- (b) every payment on behalf of the Board must be made from that account.

(5) Cheques drawn on the account of the Board must be signed on its behalf by two persons authorised for that purpose by resolution of the Board.

(6) The Board may invest or deposit money of the Board that is not immediately required for contingencies or to meet current expenditures -

- (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
- (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

Accountability, audits and reports

- 72 (1) The Board is responsible to –
- (a) account for State and other money received or paid for or on account of the Board; and
 - (b) cause the necessary accounting and related records to be kept, in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (2) The records referred to in subsection (1) (b) must be audited by the Auditor-General.
- (3) The Board must report to the Minister at least once every year on its activities.
- (4) As soon as practicable after receiving a report referred to in subsection (3), the Minister must –
- (a) transmit a copy of the report to the Premier of each Province; and
 - (b) table it in Parliament.

Chapter 5- Enforcement and Offences**National inspectorate**

- 73 (1) The Board
- (a) may appoint any suitably qualified person as an inspector and assign the inspector to monitor, investigate or evaluate any matter on behalf of the Board, subject to the control and direction of the Board; and
 - (b) must provide each inspector with a certificate signed on behalf of the Board and stating -
 - (i) that the inspector has been appointed under this Act; and
 - (ii) any limitation on the authority of that inspector.
- (2) An inspector performing a function under this Act must show their certificate of appointment to any affected person who demands to see it.
- (3) For the purposes this Act or any other national or provincial legislation or any regulations promulgated under such legislation in respect of gambling and associated activities, an inspector is deemed to have been appointed a peace officer for purposes of sections 40, 41, 44, 45, 46, 47, 48, 49 and 50 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

Functions and powers of inspector

- 74 (1) An inspector may attend at the offices of any provincial licensing authority for the purpose of carrying out any activity contemplated in section 34 or 35.
- (2) Without prior notice, an inspector, alone or in the company of an inspector appointed in terms of provincial legislation, may -
- (a) enter any licensed premises, or other premises in which licensed activities are engaged in, conducted or made available, or in which records of any of those activities are prepared or maintained;
 - (b) enter any unlicensed premises in, on or from which it is suspected-
 - (i) that any gambling activity is being engaged in, conducted or made available; or
 - (ii) that any gambling machine or any equipment, device, object, book, record, note, recording or other document used, or capable of being used in connection with the conducting of a casino or any other gambling activity may be found;
 - (c) in any premises referred to in paragraph (a) or (b) -
 - (i) conduct any enquiry that the inspector believes to be necessary, after having informed the person who appears to be in charge of the premises of the purpose of the inspector's visit;
 - (ii) require the person in control of such premises to produce any licence or written permission or authorisation required under this Act or any provincial legislation;

- (iii) question any person who is on or in those premises;
- (iv) examine any prescribed gambling equipment, device, object, book, record, note, recording or other document in, about, upon or around premises referred to in paragraph (b) or (c); and
- (v) seize and remove from those premises, and impound,
 - (aa) any such equipment or supplies for the purposes of examination and inspection; or
 - (bb) any book, record, ledger, game device, cash box and its contents, counting room or its equipment, or gambling operations;
- (d) require any person who appears to be in charge of any premises referred to in paragraph (a) or (b) -
 - (i) to point out any equipment, device or object referred to in those paragraphs that the person has possession or custody of, or control over;
 - (ii) to produce for the purpose of examination or of making copies or extracts, any book, record, note or other document referred to in paragraph (a) or (b) that the person has possession or custody of, or control over; and
 - (iii) to provide any information in connection with anything that has been pointed out or produced in terms of subparagraph (i) or (ii).

(3) When performing a function in terms of subsection (2), an inspector may be accompanied and assisted by an assistant, interpreter or a police officer.

(4) An inspector may request and receive information, materials and any other data from any licensee, or applicant for a licence or registration under this Act, subject to the provisions of the Promotion of Access to Information Act. (Citation required)

Breach of confidence

75 (1) It is an offence to disclose any confidential information concerning the affairs of any person or firm obtained -

- (a) in carrying out any function in terms of this Act; or
- (b) as a result of making an application, or participating in any proceedings in terms of this Act.

(2) Subsection (1) does not apply to information disclosed -

- (a) for the purpose of the proper administration or enforcement of this Act;
- (b) for the purpose of the administration of justice; or
- (c) at the request of an inspector or other person entitled to receive the information.

Hindering administration of Act

76 It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by this Act.

Failure to answer fully or truthfully

77 (1) A person commits an offence who, having been sworn in or having made an affirmation -

- (a) subject to subsection (2), fails to answer any question fully and to the best of that person's ability; or
- (b) gives false evidence, knowing or believing it to be false.

(2) A person questioned by an inspector in terms of this Act is not obliged to answer any question if the answer is self-incriminating.

(3) No self-incriminating answer given or statement made to a person exercising any power in terms of this Act is admissible, as evidence against the person who gave the answer or made the statement, in any criminal proceedings, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in this section, and then only to the extent that the answer or statement is relevant to prove the offence charged.

Failure to comply with Act

78 In addition to any other offence provision in this Act, a person commits an offence who-

- (a) does anything calculated to improperly influence the Board concerning any matter connected with an investigation;
- (b) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
- (c) knowingly provides false information to the Board;
- (d) wilfully interrupts any proceedings or misbehaves in the place where a hearing is being conducted;
- (e) falsely claim to be an inspector;
- (f) refuses or fails to comply to the best of their ability with any request of an inspector under section 74.

Offences and breach of license condition

79 (1) If a person appears to have committed an offence under this Act in circumstances that are also a substantially similar offence under applicable provincial legislation, the relevant provincial licensing authority may prosecute that person for the offence under this Act, or the substantially similar offence under the applicable provincial legislation, but not both.

(2) The commission of an offence under this Act by a licensee is a breach of a condition of the licence.

(3) A provincial licensing authority may choose whether to -

- (a) prosecute a licensee for committing an offence; or
- (b) apply administrative sanctions for breach of the licence conditions, but may not do both in respect of the same circumstances, unless the offence is under applicable provincial legislation, and that legislation specifically permits proceeding both under paragraph (a) and (b).

Penalties

80 (1) Any person convicted of an offence in terms of this Act, is liable to a fine not exceeding R 500 000, or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment.

(2) An administrative penalty for breach of condition of a national licence may not exceed.

Magistrate's Court jurisdiction to impose penalties

81 Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty for an offence in terms of this Act.

Serving documents

82 Unless otherwise provided in this Act, a notice, order or other document that, in terms of this Act, must be served on or given to a person, will have been properly served or given when it has been either -

- (a) delivered to that person;
- (b) sent to that person by fax;
- (c) sent by registered post to that person's last known address; or
- (d) published in the *Gazette*.

Proof of facts

83 (1) In any criminal proceedings in terms of this Act, if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, in the absence of evidence to the contrary, the person who kept that item may be presumed to have made the statement, entry, record or information.

(2) A statement, entry or record, or information, in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it unless there is evidence to the contrary that the person did not make, enter, record or store it.

Chapter 6- General Provisions**Regulations**

84 (1) In addition to any authority set out in this Act, the Minister may -

- (a) make regulations regarding -
 - (i) any forms required to be used for the purposes of this Act; and
 - (ii) in general, any incidental matter that may be considered necessary or expedient to prescribe in order to achieve the objects of this Act; and
- (b) in accordance with subsections (2) — (4), make regulations regarding —
 - (i) the maximum number of any kind of licence, other than casino licence, relating to gambling to be granted in the Republic or in each province; and
 - (ii) the determination of norms and standards that will apply generally throughout the Republic relating to any matter in terms of this Act.

(2) Before making any regulations in terms of this Act other than regulations contemplated in subsection (1)(a), the Minister -

- (a) must -
 - (i) consult the Council, and
 - (ii) publish the proposed regulations for comment; and
- (b) may consult the Board and provincial licensing authorities.

(3) A regulation in terms of this Act must be made by notice in the *Gazette*.

Repeal of laws and transitional arrangements

85 (1) Subject to subsection (2) and the provisions of Schedule 1, the following Acts are hereby repealed:

- (a) the National Gambling Act, 1996 (Act No. 33 of 1996);
- (b) the Gambling Matters Amendment Act, 1999 (Act No. 36 of 1999); and
- (c) the National Gambling Amendment Act, 1999 (Act No. 39 of 1999).

(2) Despite the repeal of the Acts named in subsection (1), the effect of-

- (a) section 19 of the National Gambling Act, 1996 (Act No. 33 of 1996), survives as if that section were a provision of this Act; and
- (b) section 2 of the Gambling Matters Amendment Act, 1999 (Act No. 36 of 1999) survives as if that section were a provision of this Act.

(3) The repeal of the laws specified in this section does not affect the transitional arrangements, which are set out in Schedule 1.

Short title and commencement

86 (1) This Act is called the National Gambling Act, 2003, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) The President may set different dates for different provisions of this Act to come into operation.

(3) Unless the context otherwise indicates, a reference in a section of this Act to a time when this Act came into operation must be construed as a reference to the time when that section came into operation.

Schedule 1 -Transitional provisions**Definition**

1 (1) In this Schedule —

"**effective date**" means the date on which this Act, or any relevant provision of it, came into operation in terms of section 36.

"**previous Act**" means the National Gambling Act, 1996 (Act No. 33 of 1996).

(2) A reference in this Schedule —

- (a) to a section by number, is a reference to the corresponding section of —
 - (i) the previous Act, if the number is followed by the words "of the previous Act"; or
 - (ii) this Act, in any other case.
- (b) to an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

General preservation of regulations, rights, duties, notices and other instruments

2 (1) Despite the repeal of the previous Act, Regulation No. R 1425 promulgated under section 17 of the previous Act on 21 December 2000, continues in force as if it had been promulgated in terms of section 84, with the following exceptions:

- (a) The definition of "site" in Regulation 1 is repealed; and
- (b) Regulations 4, 8, 10, 11, 12, 16, 28, 29, 39, 40, 41(1), 42, 62, 63 and 64 are repealed.

(2) A licence that had been issued in terms of applicable provincial legislation by a provincial licensing authority for an indefinite term, and in force immediately before the effective date, has a duration, as from the effective date, of the period determined by regulation for that category of licence.

(3) Any other right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of the previous Act, that had not been spent or fulfilled immediately before the effective date must be considered to be a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.

(4) A notice given by any person to another person in terms of any provision of the previous Act must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the previous Act

(5) A document that, before the effective date, had been served in accordance with the previous Act must be regarded as having been satisfactorily served for the purposes of this Act.

(6) An order given by an inspector, in terms of any provision of the previous Act, and in effect immediately before the effective date, continues in effect, subject to the provisions of this Act.

State interests

3 (1) Section 54 applies—

- (a) in the case of the national sphere of government or any organization that holds or administers any asset or right in respect of gambling activities for or on behalf of that sphere of government, only after a date to be determined by the Minister by notice in the *Gazette* ;
- (b) in the case of an entity referred to in sub-item (2)(a), only after a date determined by the Minister by notice in the *Gazette* ; or
- (c) upon the coming into force of this Act, in any other case.

(2) Despite section 54, when considering an application for a casino licence at any time before the relevant date determined in terms of sub-item (1), a licensing authority must disregard—

- (a) any financial interest in any gambling activity held by the State, an organ of state or any organisation with which the state is concerned, including —
 - (i) the North West Development Corporation (Pty) Limited;
 - (ii) the Transkei Development Corporation Limited;
 - (iii) Ciskei Peoples Development Bank Limited;

- (iv) any company or corporation into which any of those entities listed in paragraphs (i) – (iii) may have been converted; or
 - (v) any organ of state or organization with which the state is concerned to which an entity referred to in paragraphs (i) – (iv) has transferred an interest in gambling activity; and
- (b) any legal disability such as provisional judicial management, judicial management or any form of winding-up as provided for in the Companies Act, 1973 (Act No. 61 of 1973), or in any other law, of any entity contemplated in paragraph (a).

National Gambling Board

4 (1) A person who was a member of the Board immediately before the effective date ceases to be a member of the Board upon the coming into operation of this Act, unless that person is entitled to be a member of the Board in terms of section 64 of this Act.

(2) A person who held an appointment as an inspector under the previous Act immediately before the effective date is an inspector in terms of this Act as of the effective date, subject to further direction of the Board.

(3) An inspector's certificate issued in terms of the previous Act and valid immediately before the effective date, continues to be valid as a certificate of appointment as an inspector, as if it had been issued in terms of this Act, until it expires or is cancelled by the Board.

National licences

5 (1) A person who, immediately before the effective date, held a licence of a type that, in terms of this Act, is required to be issued as a national licence, may apply to the provincial licensing authority that issued the licence for conversion of that licence, and the provincial licensing authority must issue a national licence in substitution for the former licence, on substantially similar terms and conditions.

(2) A person who, immediately before the effective date, held a licence of a type that, in terms of this Act, is not required to be issued as a national licence, but may be so issued, may apply within 6 months after the effective date, to the provincial licensing authority that issued the licence for conversion of that licence, and the provincial licensing authority must issue a national licence in substitution for the former licence, on substantially similar terms and conditions.

Explanatory Memorandum

This Bill proposes to repeal the National Gambling Act, 1996, and re-enact many of its provisions in a new form, while adding several new provisions which introduce new policies for the concurrent national and provincial regulation of casinos, racing, gambling and wagering.

The new provisions of the Bill —

- (a) establish a common scheme of prohibited conduct relating to casinos, racing, gambling and wagering,
- (b) introduce a system of registration of gambling machines to complement the existing system of provincial licensing,
- (c) provide for a common national system to electronically monitor limited payout gambling machines,
- (d) establish a new scheme of national licences to avoid the need for certain licensees to seek multiple approvals in more than one province,
- (e) provide for the inter-relationship between provincial regulatory agencies and the existing National Gambling Board,
- (f) introduce uniform licensing norms and standards applicable to provincial licences; and
- (g) establish a new inter-governmental consultative body, the National Gambling Policy Council.

Chapter 1 sets out the definitions and application provisions.

Chapter 2, Part A introduces a number of new provisions, which establish what activities are gambling activities and thus fall within the ambit of the Bill, what activities constitute bets and wagers, and what activities constitute gambling games. Although the formulations in Part A are new, the provisions continue the policy of the National Gambling Act, 1996, which included a complex series of definitions to achieve a similar effect.

Part B of Chapter 2 introduces new provisions, which give effect to a new policy of making unlicensed gambling activities unlawful on a uniform basis nationally. Section 7 goes beyond that, to introduce for the first time a prohibition against gambling on contingencies that are related to unlawful act or events. Section 11 prohibits interactive gaming, i.e. gambling over the internet, except as authorised in terms of this Act or other legislation. No such legislation presently exists in the Republic, and this Bill does not include any such provisions. Department of Trade and Industry anticipates preparing such legislation in consultation with the National Gambling Board and the provincial regulatory bodies, once all regulators have had sufficient time to properly study the policy issues and precedents for regulation. Section 15 advances the policy of the National Gambling Act, 1996 on the matter of enforceability of gambling debts. Under the existing Act, such a debt is legally enforceable if it is incurred in the course of a gambling activity regulated by, and not in conflict with, any law. Section 15 will change that so that any debt incurred in the course of licensed gambling will be legally enforceable, debts incurred in the course of lawful gambling that does not have to be licensed, will be legally enforceable to the extent that common law or other legislation provides, and debt incurred in the course of unlawful gambling will not be enforceable at all.

Part C of Chapter 2 concerns policy respecting the regulation of gambling premises. The provisions of this part re-enact certain existing regulations promulgated under the National Gambling Act, 1996.

Part D of Chapter 2 concerns the registration, licensing and certification of gambling machines. Section 18 establishes a new national requirement for all manufacturers and importers of gambling machines and devices to keep registered records of the devices that they acquire, manufacture, sell or distribute, and to affix a unique registration badge to each device. This system will allow life-time tracking of gambling devices, reinforcing efforts of the National Gambling Board and the provincial regulatory bodies to detect unlawful gambling.

The additional sections of this Part establish national norms and standards for the calibration and certification of gambling devices. Section 26 re-enacts certain existing regulations promulgated under the National Gambling Act, 1996. Section 27 imposes on the National Gambling Board responsibility to establish a national electronic monitoring system to record significant information relating to the use of limited payout gambling machines.

Part E of Chapter 2 establishes national norms and standards relating to the licensing of employees within the gambling industry.

Casinos, racing, gambling and wagering is a matter of concurrent constitutional jurisdiction. Chapter 3 addresses the inter-relationship between the National Gambling Board and the provincial licensing bodies established under provincial legislation. Under the scheme set out in this Part, the National Gambling Board will evaluate the issuance of national licences, as provided for in the Bill, and will perform a general oversight function, to ensure that national norms and standards are being met by the various provincial licensing bodies.

The jurisdiction of provincial licensing bodies under provincial legislation is recognised and affirmed in the Bill, and in addition, those bodies are assigned responsibility under the Bill to investigate applications for national licences, and to monitor compliance with such licences.

Section 37 assigns to the new National Gambling Policy Council a function of facilitating any dispute between the National Gambling Board and one or more provincial licensing bodies.

Part B of Chapter 3 introduces a scheme of national licences to be required for persons seeking to be licensed as a testing agent, a Horse Racing Authority, or to participate in the National Central Electronic Monitoring System, and to be optional for manufacturers, suppliers and maintenance providers or employees. An applicant for a national licence must apply to the Provincial licensing body in their province of residence, or intended province of business, and that body will conduct the required investigation, subject to evaluative oversight by the National Gambling Board.

Part C of Chapter 3 establishes, or re-enacts certain existing, national norms and standards concerning provincial licences.

Part D of Chapter 3 establishes, or re-enacts certain existing, national norms and standards concerning the process of issuing both national and provincial licences. Section 50 introduces a new requirement that all licences be for a fixed term of years. The Minister may prescribe different terms for different categories of licence, but no term can exceed 20 years. Transitional provisions stipulate that the fixed term of existing licences starts to run only when the Bill comes into effect.

Part E of Chapter 3 establishes, or re-enacts certain existing, national norms and standards concerning license investigations, decisions and surrender of licences.

Chapter 4 establishes the new National Gambling Policy Council, and continues the existing National Gambling Board, although with a changed composition.

The National Gambling Policy Council comprises the Minister of Trade and Industry, the several provincial MECs responsible for Casinos, racing, gambling and wagering, and, as supplementary non-voting members, the Chairperson of the National Gambling Board, and the Chairpersons of the several provincial licensing bodies.

The National Gambling Board will no longer include Chairpersons of the several provincial licensing bodies, because the Board no longer has a policy consideration function, and because the Board has an oversight responsibility with respect to provincial licensing bodies. In most other respects, the Board's composition, and corporate requirements are unchanged from the National Gambling Act 1996, although the provisions have been changed to reflect the introduction of over-arching national legislation such as the Public Finance Management Act, 1999.

Chapter 5 establishes, or re-enacts certain existing, national norms and standards concerning enforcement, re-enacts provisions concerning the inspectors to be appointed by the National Gambling Board, and establishes various offences under the Act.

Chapter 6 establishes the Minister's regulation making authority, provides for transition from the regime under the National Gambling Act, 1996, and repeals that Act and 2 subsequent Acts that amended the National Gambling Act, 1996.

Consultation on the Bill

Originally, it was contemplated that the Minister would propose a simple bill to amend the National Gambling Act, 1996. With that intent, several drafts were prepared, leading up to a discussion draft, dated 16 January 2001. It was circulated by DTI for discussion to MINMEC and to the National Gambling Board, among others. As a result of discussions in MINMEC, several additional amendments were proposed and incorporated into a working document, in the form of a draft Bill.

DTI convened a consultative review for technical purposes with legal advisors from the various provincial administrations late in May 2001, to review and comment on the

working document. Following that review, and after receiving directions from the Minister, DTI directed the development of a number of successive working drafts, culminating in a Draft Amendment Bill in late 2001.

The Minister requested -

- introduction to the draft of appropriate measures concerning co-operative governance of this area of concurrent jurisdiction, as modelled in Chapter 3 of the Constitution;
- a clear statement of the responsibilities for licensing various activities as between the national and provincial spheres of government .
- within the framework of concurrent jurisdiction, a consolidated approach to addressing electronic monitoring of gambling machines ;
- proposals for addressing the urgent concern for compulsive and addictive gambling;
- reference to internet gambling, and a foundation on which to establish national regulation of that industry;
- incorporation into the Act of several fundamental requirements currently found in regulations, and a better statutory foundation for remaining regulations; and
- an edited, hopefully clearer language, draft;

Through the process of successive re-drafting, it became apparent that the changes that were required far exceeded the normal scope of an amendment bill, and that it would be difficult to honour the Minister's request for a clearer, more rationally organised, Act without starting out afresh. Following a discussion of the merits of repealing and replacing the existing Act, (and having heard an appeal from members of the relevant parliamentary committee requesting fewer wholesale amendment bills), officials of DTI gave instructions for the preparation of a complete new Bill, incorporating the surviving provisions of the existing Act, together with all new matters on which previous instructions had been given.

Between December 2001 and July, 2002, six drafts of this Bill were prepared and circulated to the National Gambling Board and provincial licensing authorities. Consultations were held with legal advisors from the same bodies in May, 2001, July 2002, and August 2002.

The 7th draft of the Bill, dated 10 August 2002, reflected discussions with provincial gambling board legal advisors held at Boksburg on 22 July 2002, subsequent discussions with officials of the NGB, and directions from officials of DTI, up to 26 July, 2002 as well as written comments received from provincial gambling board legal advisors and discussions held at Cape Town on 7 August, 2002.

Following receipt of comments in response to Draft 7, an 8th draft was circulated in early December, 2002, again inviting PLA and NGB submissions.

The 9th draft reflects the drafter's further refinements, based on responses to Draft 8, and this Draft reflects the final instructions given by DTI in response to comments received after the release of Draft 9.