

**ANNEXURE A**

**NEGOTIATING MANDATES OF THE NATIONAL GAMBLING AMENDMENT BILL, 2018**

Provincial Legislature	Voting in respect of the National Gambling Amendment Bill	Departmental comments
<p><b>Gauteng</b></p>	<p>Votes in favour of the Bill subject to the proposed below:</p> <p><b>Clause 3 – Section 10A</b></p> <p>The section should clarify that it only applies to persons who engage in restricted gambling activities without an appropriate license. This will prevent the confusion of making the provision to apply to licensed operators if they contravene the Act as that would be grossly disproportionate.</p>	<p>There is a necessity for the consequences of illegal gambling to bear reference to both a licensed or unlicensed gambling operator therefore the insertion of 10A refers to both licensed and unlicensed gambling operators. Subsections 2, 3 and 4 are applicable to licensed gambling operators.</p> <p>The offences and penalties clause in the National Gambling Act (NGA),2004 specifically makes reference to the fact that the commission of an offence under the NGA by a licensee is a breach of a condition of licence and the penalties clause further subjects both any person (which includes an unlicensed, licenced or juristic person) if convicted of an offence in terms of the NGA is liable to a fine not exceeding R10 Million or imprisonment for a period not exceeding 10 years or to both a fine or such imprisonment. It will thus be necessary for a licensed operator who is convicted to be listed in the register of unlawful gambling operators in terms of the proposed section 10A insertion. This closes the regulatory gap in the NGA 2004 due to the growing number of illegal operators, and the devastating impact that unregulated gambling can have on the lives of citizens as well as to the economy of the country, it is necessary that the government takes</p>

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		<p>every available step to combat illegal gambling operations. The provision is thus necessary, to close regulatory gap that may be exploited.</p> <p>Assurance is provided that an operator, whether licensed or unlicensed, can only be listed if subjected to a fair legal process, and is convicted in Court.</p>
	<p><b>Clause 12: Section 27(1)(a)</b> The proposed extension of the NCEMS is rejected.</p>	<p>The establishment and maintenance of a National Central Electronic Monitoring System (NCEMS) is an exclusive competency of National Government and such power is vested only in the National Gambling Board (NGB) and to be vested in the envisaged National Gambling Regulator (NGR). No similar public power or public function has been conferred on any province regarding the establishment and maintenance and regulation of NCEMS and its related matters.</p> <p>The proposed insertion in the Bill is an extension of a regulatory power for the envisaged NGR to oversee all legal modes of Gambling. The NCEMS is a National register as set out in the NGA, 2004. The NCEMS is a regulatory tool for NGB and Provincial Gambling Boards (PGBs) to provide independent oversight of the gambling activities, taxes and levies due to Government. Currently, outside of the LPM industry, the PGBs rely on the electronic monitoring systems (EMS) belonging to Licensees which PGBs only have read access. This is not ideal from a regulatory perspective</p>

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		<p>considering information accessed from the licensees' EMS is the sole source of information for PGBs to impose provincial tax or levies.</p> <p>The envisaged NGR will be directly accountable for the information collected as opposed to the status quo where the NGB and PGBs has to rely on operators to provide that information. This will not interfere with the functions of the PGBs, but will rather strengthen their ability to regulate independently and not be conflicted.</p> <p>The implementation of the proposed insertion for NCEMS to extend to all modes of gambling will not render the current internal electronic monitoring systems (EMS) of the Licensees redundant. Ideally the NCEMS should connect directly to the information source ie. the gambling machine or device.</p> <p>Credible and readily available Information is central in the gambling industry therefore there is a need to have oversight over the information to avoid risks regarding integrity of data, fair play for punters, credible gambling statistics that are developed to inform the Gambling industry trends from a market share and market conduct perspective.</p> <p>The envisaged NGR will have to monitor compliance of PGBs and</p>

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		<p>simultaneously have to ensure that the operators licensed by PGBs are compliant therefore an independent regulatory tool will resolve the current regulatory gaps and improve efficiencies. The NGR will not be able to place reliance on or connect to the licensees' EMS as this will result in a conflict of interest.</p> <p>There is a need to have an independent national regulator coordinating this information whilst PGBs source information or data from operators for the imposition of provincial taxes. Data on the NCEMS will serve as a 3<sup>rd</sup> party source to verify the information or data received from the PGBs and Licensees. This will not only contribute to adherence with uniformity and consistency of norms and standards but also detection and reporting of illegal financial transactions.</p> <p>The system has already been developed at the cost of the NGB. NCEMS being an IT system will improve efficiencies, financial reporting, Industry performance reporting and provide reliable information for auditing purposes. This national regulatory tool is not for financial gain however attracts a monitoring fee which is the norm in the LPM industry. There is no cost that any province will incur in the extension of NCEMS to other modes of Gambling.</p>

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		<p>The output of NCEMS will supply PGBs, Manufacturers, and Operators with valuable intelligence in terms of the gambling sector performance both at provincial and national levels. With the exception of the LPM industry, the NGB has not been able to exercise sufficient oversight over the other modes of gambling in the gambling industry and the wagering and betting industry is no exception in this regard.</p> <p>In addition to licensing each mode of gambling there is a reciprocal responsibility for both the national and provincial regulators that compliance and enforcement measures are employed through the most efficient and effective means considering the geographic spread of gambling machines and devices across the Republic. The use of regulatory tools such as NCEMS will encourage a culture of adherence with National and Provincial legislation.</p>
	<p><b>Clause 15(c): Section 33</b></p> <p>This provides for insertion of paragraph (l) in section 33 of the principal Act which section only has up to paragraphs (a) to (c). Rectify accordingly.</p>	<p>This clause provides for the insertion of paragraph (l) in section 33 of the principal Act. However, section 33 contains only paragraphs (a) to (c). It has thus been argued that the reference to paragraph (l) is incorrect. With respect, that is not so. The reason being that the National Gambling Amendment Act, No. 10 of 2008 embodies a substitution of section 33 of the principal Act. This substitution contains paragraphs (a) to (k). The 2008 Amendment Act was assented to and signed by the President and thus enacted. However,</p>

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		it requires a Presidential Proclamation for commencement and such Proclamation has not yet been Gazetted. The Act therefore remains inoperative. Irrespective of the fact that the Act is inoperative, it has the status of law and all amendments contained in the above mentioned Bill must be made consistent with both the principal Act and the 2008 Amendment Act. This clarifies the reference to paragraph (l).
	<p><b>Clause 17 and 22: Section 35 and 57 respectively</b></p> <p>Consider including a provision in section 35 obliging PLAs to access and to have recourse to the shared information when conducting probity investigations of this nature -. "in order to ensure that this section does not remain a dead letter for all practical purposes".</p>	These suggested amendments do not form part of the amendment Bill However the original text in section 35(3) of the NGA, 2004 already incorporates the changes being proposed in that there is an existing obligation for NGB to provide shared information upon request. We may need to proclaim the implementation date by way of Regulations so everyone will know how the NGR will preserve such probity information for ease of access by PLAs.
	<p><b>Clause 26: Section 63A</b></p> <p>Principles of corporate governance must be maintained in terms of meetings of the National Gambling Policy Council. Challenges of lack of quorum can be resolved by passing resolutions by way of round robin with a least two thirds of eligible voting members</p>	The original text of the NGA, 2004 in section 63 (4), (5) and (6) have not been deleted and principles of corporate governance have been maintained to ensure that the council first attempts to reach decisions by consensus failing which a matter is resolve by formal vote on a motion which is passed by the minister and 5 members. Efforts were taken to ensure the NGPC takes place however the measures employed to reach did not succeed or yield any results. Round robin is currently a standard practice of the NGPC and NGPC members are familiar with it. Round robin ordinarily is utilised to cast a vote on

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		<p>matters, which have already been deliberated upon. Passing of motions have been attempted through round robin previously and has proven not to be a viable option. In any event, round robin is administrative in nature and does not require to be legislated to provide agility for the rules of procedure of the NGPC .</p> <p>Section 63 (7) of the NGA stipulates that the NGPC may establish its own rules of procedure, and the decision to insert section 63A was made by the NGPC in its meeting of 12 March 2018 which was quorate.</p> <p>This proposed amendment is thus simply giving effect to an executive decision that was already made, and any contrary proposal would be tantamount to a disregard for the separation of powers doctrine entrenched in the Constitution. Members will be informed in advance repeatedly that in the second meeting key decisions will be made after the first inquorate meeting and reminded to attend so that should they not attend, they were aware of the implications. This is also in line with current practices of good corporate governance.</p>
	<p><b>Clause 28, 29 and 30: Section 64(4), 65, 65A and 65B Respectively</b>            Clause must be deleted.</p>	<p>The implication of deleting section 28 and 29 will result in the non-establishment of envisaged NGR in turn the proposed provisions seek to ensure that the NGR is established and will be a public entity in terms of the PFMA, and will comply with all the PFMA legal</p>

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		<p>prescripts and is accountable to the Auditor-General and Parliament.</p> <p>The CEO of the NGR will be the accounting authority and is required to account at the highest level pertaining to its fiduciary duties. All governance checks and balances are in place in terms of legislation to prevent abuse of power.</p> <p>The implication of deleting section 30 will amount to the envisaged NGR being without an administrative head or accounting authority. The CEO is restricted to exercise power within the confinements of the PFMA read with the NGA as amended. The NGR will be listed as a schedule 3A, a public entity in terms of the PFMA, and will comply with all the PFMA legal prescripts and is accountable to the Auditor-General and Parliament.</p>
	<p><b>Clause 31: Section 66(6)</b></p> <p>Clause 31(e) amends section 66(6) whereas the Act has no sequence of the subsection. This error may be attributed to the National Gambling Amendment Act 2008 which has not been brought into operation, which has the sequence.</p>	<p>This clause proposes the substitution of section 66(6)(b) of the principal Act. Reference to section 66 of the principal Act makes it clear that this section only embodies 5 subsections. However, section 39 of the National Gambling Amendment Act, 2008, provides for the addition of subsection (6) to section 66 of the principal Act. The reason why subsection (6) is not currently reflected in the principal Act is because the Amendment Act, 2008, has not yet commenced. However, by virtue of the fact that the Amendment Act, 2008, was enacted, we are obliged to give legal consequence thereto and to</p>



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		<p>reflect its existence as inoperative law in drafting the Bill. Hence the reference to subsection (6) in clause 31(e) of the Bill. It thus follows that the Bill must be reflected upon against the backdrop of the principal Act and the Amendment Act to perceive the whole picture in law.</p> <p>The 2008 Amendment Act was assented to and signed by the President and thus enacted. However, it requires a Presidential Proclamation for commencement and such Proclamation has not yet been Gazetted. The Act therefore remains inoperative. Irrespective of the fact that the Act is inoperative, it has the status of law and all amendments contained in the above mentioned Bill must be made consistent with both the principal Act and the 2008 Amendment Act.</p>
	<p><b>Clause 32: Section 66A(a)</b></p> <p>(a) May enter into agreement with any other organ of state as contemplated in the Constitution, <b>[to provide for the joint exercise or performance of their respective powers and functions contemplated in this Act]</b> to co-ordinate and harmonise the exercise or performance of their respective powers and functions with regard to gambling activities”.</p>	<p>Clause 32’s intention is about coordination and harmonisation between the NGR, PLAs and other applicable institutions. To give effect to this, Memoranda of Understanding (MoUs) will be entered into, which will inform joint efforts and functions for the performance of the agreements. The entire section is about coordination on performance of some functions, and the suggested alternate choice of wording will arrive at the same conclusion. The context and principle is the same. It is suggested the current section be retained as is.</p>
	<p><b>Clause 40: Section 76A</b></p>	<p>Section 76A ensures that the NGR will be empowered to combat</p>

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	<p>Clause must be deleted.</p>	<p>illegal gambling autonomously in addition to the already existing enforcement powers set out in section 77.</p> <p>The provision will complement rather than undermine the role of PLAs. The key word in the provision is the addition of the words “or without” to prevent the national inspectors from being restricted from performing on the basis of PLA inspectors not being available. For example the NGR national inspectors will be able to assist the PLA to address investigations pertaining to either the issuance or monitoring of national licences in another province due to jurisdictional limitations. The power to investigate and monitor national licences is in the original text in sections 33 and 42 of the NGA, 2004. The insertion of 76A seeks to close an oversight and regulatory gap with regards to enforcement.</p>
<p><b>Eastern Cape</b></p>	<p>Votes in favour of the Bill subject to the proposed below:</p> <p><b>Clause 1 – Definitions</b></p> <p>Definition of “cash dispensing machine” should be replaced with the term “automated teller machine” which should then be defined as follows:</p> <p>“an electromechanical device that permits an authorised user to withdraw cash from an account held with a bank as defined in the Banks Act 94 of 1990, Mutual Banks Act 124 1993 and Co-Operatives Banks Act 40 of 2007.</p>	<p>The definition does not form part of the amendment Bill. The use of the word cash dispensing machine should be retained. The implications of the suggested proposed amendment of “an electromechanical device” will promote irresponsible gambling in that the speed points will be placed on the gambling floor which will in turn exacerbate compulsive and addictive gambling. Further implications will be that punters will no longer have to go to a cashier or atm to draw money and in turn utilise the bank cards on the slot machine or at the gambling table using a speed point. The suggest amendment will conflict with section 17(1) of the NGA, 2004.</p>

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	<p><b>Clause 3: Section 10A –</b>  The section should clarify that the requirements only apply to persons who engage in restricted gambling activities without holding an appropriate licence.</p>	<p>There is a necessity for the consequences of illegal gambling to bear reference to both a licensed or unlicensed gambling operator therefore the insertion of 10A refers to both licensed and unlicensed gambling operators. Subsections 2, 3 and 4 are applicable to licensed gambling operators.</p> <p>The offences and penalties clause in the National Gambling Act (NGA),2004 specifically makes reference to the fact that the commission of an offence under the NGA by a licensee is a breach of a condition of licence and the penalties clause further subjects both any person (which includes an unlicensed, licenced or juristic person) if convicted of an offence in terms of the NGA is liable to a fine not exceeding R10 Million or imprisonment for a period not exceeding 10 years or to both a fine or such imprisonment. It will thus be necessary for a licensed operator who is convicted to be listed in the register of unlawful gambling operators in terms of the proposed section 10A insertion. This closes the regulatory gap in the NGA 2004 Due to the growing number of illegal operators, and the devastating impact that unregulated gambling can have on the lives of citizens as well as to the economy of the country, it is necessary that the government takes every available step to combat illegal gambling operations. The provision is thus necessary, to close regulatory gap that may be exploited.</p>

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		Assurance is provided that an operator, whether licensed or unlicensed, can only be listed if subjected to a fair legal process, and is convicted in Court.
	<p><b>Clause 12 –</b></p> <p>There was no sufficient consultation of the extension of NCEMS to other modes of gambling. Must be noted that casinos have their own systems as required by PLAs which is why there is no need to have a new system when its feasibility and costs have not been established.</p> <p>NCEMS will usurp the competency of the PLAs and decentralising the would create economic development for the Province.</p>	<p>There was consultation on NCEMS. There is further allowance for consultation in section 27(4)(b) of the Bill. Stakeholders will participate in the implementation of the NCEMS. The NCEMS is a national competency and no province has the authority to have their own centralised monitoring system. Provinces rely on operators' systems for information, and as a regulator over operators, this deprives the PLA of having independent verification of information. The extended NCEMS will thus not usurp competency of the PLAs, but rather would enable PLAs to regulate more effectively.</p> <p>The establishment and maintenance of a National Central Electronic Monitoring System (NCEMS) is an exclusive competency of National Government and such power is vested in only of the National Gambling Board (NGB) and to be vested in the envisaged National Gambling Regulator (NGR). No similar public power or public function has been conferred on any province regarding the establishment and maintenance and regulation of NCEMS and its related matters.</p> <p>The proposed insertion in the Bill is an extension of a regulatory power for the envisaged NGR to oversee all legal modes of</p>

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		<p>Gambling. The NCEMS is a National register as set out in the NGA, 2004. The NCEMS is a regulatory tool for NGB and Provincial Gambling Boards (PGBs) to provide independent oversight of the gambling activities, taxes and levies due to Government. Currently, outside of the LPM industry, the PGBs rely on the electronic monitoring systems (EMS) belonging to Licensees which PGBs only have read access. This is not ideal from a regulatory perspective considering information accessed from the licensees' EMS is the sole source of information for PGBs to impose provincial tax or levies.</p> <p>The envisaged NGR will be directly accountable for the information collected as opposed to the status quo where the NGB and PGBs has to rely on operators to provide that information. This will not interfere with the functions of the PGBs, but will rather strengthen their ability to regulate independently and not be conflicted.</p> <p>The implementation of the proposed insertion for NCEMS to extend to all modes of gambling will not render the current internal electronic monitoring systems (EMS) of the Licensees redundant. Ideally the NCEMS should connect directly to the information source ie the gambling machine or device.</p> <p>Credible and readily available Information is central in the gambling</p>

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		<p>industry therefore there is a need to have oversight over the information to avoid risks regarding integrity of data, fair play for punters, credible gambling statistics that are developed to inform the Gambling industry trends from a market share and market conduct perspective.</p> <p>The envisaged NGR will have to monitor compliance of PGBs and simultaneously have to ensure that the operators licensed by PGBs are compliant therefore an independent regulatory tool will resolve the current regulatory gaps and improve efficiencies. The NGR will not be able to place reliance on or connect to the licensees' EMS as this will result in a conflict of interest.</p> <p>There is a need to have an independent national regulator coordinating this information whilst PGBs source information or data from operators for the imposition of provincial taxes. Data on the NCEMS will serve as a 3<sup>rd</sup> party source to verify the information or data received from the PGBs and Licensees. This will not only contribute to adherence with uniformity and consistency of norms and standards but also detection and reporting of illegal financial transactions.</p> <p>The system has already been developed at the cost of the NGB.</p>

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		<p>NCEMS being an IT system will improve efficiencies, financial reporting, Industry performance reporting and provide reliable information for auditing purposes. This national regulatory tool is not for financial gain however attracts a monitoring fee, which is the norm in the LPM industry. There is no cost that any province will incur in the extension of NCEMS to other modes of Gambling.</p> <p>The output of NCEMS will supply PGBs, Manufacturers, and Operators with valuable intelligence in terms of the gambling sector performance both at provincial and national levels. With the exception of the LPM industry, the NGB has not been able to exercise sufficient oversight over the other modes of gambling in the gambling industry and the wagering and betting industry is no exception in this regard.</p> <p>In addition to licensing each mode of gambling there is a reciprocal responsibility for both the national and provincial regulators that compliance and enforcement measures are employed through the most efficient and effective means considering the geographic spread of gambling machines and devices across the Republic. The use of regulatory tools such as NCEMS will encourage a culture of adherence with National and Provincial legislation.</p>
	<b>Clause 26 – Section 63A</b>	The original text of the NGA, 2004 in section 63 (4), (5) and (6) have

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	<p>It is undesirable to legitimise the taking of decisions by the NGPC without a quorum given the significance of gambling policy and its importance to provinces.</p> <p>Decisions must be taken by way of round robin and be ratified in the next meeting of the NGPC. The provision will undermine the principle of majority rule established by the same section as decisions can be adopted without the support of at least 5 voting members.</p>	<p>not been deleted and principles of corporate governance have been maintained to ensure that the council first attempts to reach decisions by consensus failing which a matter is resolve by formal vote on a motion which is passed by the minister and 5 members. Efforts were taken to ensure the NGPC takes place however the measures employed to reach did not succeed or yield any results. Round robin is currently a standard practice of the NGPC and NGPC members are familiar with it. Round robin ordinarily is utilised to cast a vote on matters, which have already been deliberated upon. Passing of motions have been attempted through round robin previously and has proven not to be a viable option. In any event, round robin is administrative in nature and does not require to be legislated to provide agility for the rules of procedure of the NGPC .</p> <p>Section 63 (7) of the NGA stipulates that the NGPC may establish its own rules of procedure, and the decision to insert section 63A was made by the NGPC in its meeting of 12 March 2018 which was quorate.</p> <p>This proposed amendment is thus simply giving effect to an executive decision that was already made, and any contrary proposal would be tantamount to a disregard for the separation of powers doctrine entrenched in the Constitution. Members will be informed in advance</p>



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		<p>repeatedly that in the second meeting key decisions will be made after the first inquorate meeting and reminded to attend so that should they not attend, they were aware of the implications. This is also in line with current practices of good corporate governance.</p>
	<p><b>Clause 28 – Section 64</b></p> <p>There are no legally justifiable reasons for establishing the NGR under leadership of one individual instead of a board as that will leave the NGR under vulnerable personnel changes.</p> <p>The NGR will cause further delays in the implementation of the Act and problems encountered with the board should be addressed by appointing persons with appropriate expertise with adequate staff and resources.</p> <p>The NGR will be institutionally compromised in their exercise of oversight and evaluation of PLAs as they will be required to interrogate actions of those authorities which are based on collective decision making .</p>	<p>The NGR will be a public entity in terms of the PFMA, and will comply with all the PFMA legal prescripts and is accountable to the Auditor-General and Parliament. The CEO of the NGR will become the accounting authority and is required to account at the highest level pertaining to its fiduciary duties.</p> <p>It must be noted that the mandate and powers vest in the NGR as an entity, not in an individual.</p> <p>All governance checks and balances are in place in terms of legislation to prevent abuse of power.</p> <p>The CEO is restricted to exercise power within the confinements of the PFMA read with the NGA as amended. The NGR will be a public entity in terms of the PFMA, and will comply with all the PFMA legal prescripts and is accountable to the Auditor-General and Parliament. The CEO of the NGR will become the accounting authority and is required to account at the highest level pertaining to its fiduciary duties. All governance checks and balances are in place in terms of legislation to prevent abuse of power.</p> <p>The CEO is restricted to exercise power within the confinements of the PFMA read with the NGA as amended.</p>

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		<p>There are no decisions of the Provincial Gambling Boards which either the NGB has or the NGR will be required to review. In terms of the NGA the NGB is empowered to refer matters of disagreement with a particular Provincial Gambling Board to the NGPC to provide guidance in keeping with the requirements set out in the Inter-Governmental Relations Framework Act. The NGR will not be required to approve any licensing as has been the position with regards to the NGB.</p> <p>The concern regarding whether a CEO or Deputy CEO can make a determination over the decision that was made by a collective has been misunderstood. Specifically, with reference to clause 42, the power of the PLA or the board members of the PLA remains unfettered. PLA's will continue to approve LPM site applications to operate up to 40 machines however wherein approval is sought for a LPM site to operate 5 machines and up to 40 machines then the PLA must after consultation with the NGB either approve or decline such LPM licence application. The NGB's role will be to ensure the PLAs motivation to approve such applications meets the criteria, which the Minister will set. The NGB is not involved in the subsequent decision that the PLA or its board members should make regarding the LPM application.</p>

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	<p><b>Clause 31</b></p> <p>Clause 31(e) amends section 66(6) whereas the Act has no sequence of the subsection. This error may be attributed to the National Gambling Amendment Act 2008 which has not been brought into operation, which has the sequence.</p>	<p>This clause proposes the substitution of section 66(6)(b) of the principal Act. Reference to section 66 of the principal Act makes it clear that this section only embodies 5 subsections. However, section 39 of the National Gambling Amendment Act, 2008, provides for the addition of subsection (6) to section 66 of the principal Act. The reason why subsection (6) is not currently reflected in the principal Act is because the Amendment Act, 2008, has not yet commenced. However, by virtue of the fact that the Amendment Act, 2008, was enacted, we are obliged to give legal consequence thereto and to reflect its existence as inoperative law in drafting the Bill. Hence the reference to subsection (6) in clause 31(e) of the Bill. It thus follows that the Bill must be reflected upon against the backdrop of the principal Act and the Amendment Act to perceive the whole picture in law.</p> <p>The 2008 Amendment Act was assented to and signed by the President and thus enacted. However, it requires a Presidential Proclamation for commencement and such Proclamation has not yet been Gazetted. The Act therefore remains inoperative. Irrespective of the fact that the Act is inoperative, it has the status of law and all amendments contained in the above mentioned Bill must be made consistent with both the principal Act and the 2008 Amendment Act.</p>
	<p><b>Clause 35</b></p>	<p>The resignation or grounds for removal of the CEO or DCEO are</p>

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	<p>The repealed section 69 must be reinstated to provide for the resignation of the CEO and Deputy CEO.</p>	<p>subject to ordinary labour relations prescripts in terms of employment law and resignation or ground for removal is already contained in the standard employment contracts. The repealed section 69 refers to the Board members, their resignation, removal from office and vacancies and board members are not deemed to be employees as they were non-executive members of the board the CEO of the NGB is an executive and for all intents and purposes deemed to be an employee. Clause 35 should remain repealed. The resignation and removal of CEO will be provided for in the contract of their appointment. There is no need to legislate.</p>
	<p><b>Clause 40</b> The provision will subject operators to two regulatory structures which is unnecessary duplication and costs.</p>	<p>Clause 40, section 76A ensures that the NGR will be empowered to combat illegal gambling autonomously in addition to the already existing enforcement powers set out in section 77. The provision will complement rather than undermine the role of PLAs. The key word in the provision is the addition of the words “or without” to prevent the national inspectors from being restricted from performing on the basis of PLA inspectors are not available. The NGR can be able to assist the PLA to address an investigation in another province because of the national mandate in a manner the PLA is not able to.</p> <p>Due to concurrent legislative competence PLAs and their Licensees have been subjected to ensuring that they comply with the NGA. The National Inspectorate has been in existence prior to the Bill. In terms</p>

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		of section 76 and 77 of the NGA has at all times recognised two enforcement regulatory structures. The insertion of section 76A is simply closing a regulatory gap.
<b>Limpopo</b>	<p>Votes in favour of the Bill subject to the proposed below:</p> <p><b>Clause 26: Section 63A</b></p> <p>Strict measures should be taken to ensure quorum is achieved as the National Gambling Policy Council cannot be an effective consultative forum if decisions can be taken without the majority of stakeholders involved.</p>	The insertion of section 63A is intended to serve as a strict measure and a deterrent against the dysfunctionality of the NGPC. It seeks to encourage that a quorum is indeed achieved. This is also in line with current practices of good corporate governance.
	<p><b>Clause 28: Section 64</b></p> <p>The National Gambling Board should not be abolished as it plays a critical oversight role as a governance structure over the institution.</p>	<p>There is an underlying assumption that organisations governed by Boards are efficient and effective. However, <b>the dti</b> has experienced numerous challenges by entities governed by Boards. When NGB under a Board experienced governance failures in the past, the Minister of Trade and Industry placed the NGB under administration to address the root causes of the governance failures. Measures have been put in place to ensure that the NGB affairs are managed effectively and efficiently.</p> <p>The NGB has for the past four years been led by an Administrator, and it has successfully achieved 100% of its performance targets year on year, and has received a clean audit for the past 3 consecutive years.</p> <p>The creation of the NGR with the proposed governance structure will improve internal and external efficiency.</p>

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		<p>The NGR is established in line with other entities of <b>the dti</b> after considering <b>the dti</b> research on Agency Rationalization which found that maintaining the board system was costly and did not contribute towards internal efficiencies of the NGB (Page 105 of the Agency Rationalisation report).</p> <p><b>the dti</b> regulators which had adopted the governance model of the Board structures presented governance challenges and have since adopted a model similar to that proposed for the NGR.</p>
	<p><b>Clause 40: Section 76A1</b></p> <p>There must be a provision that will strengthen the capacity of PLA inspectors to investigate illegal gambling activities as it is opined that the national inspectors will result with duplication of roles and costs.</p> <p>The national inspectors must always be accompanied by PLA inspectors when doing work in the relevant province.</p>	<p>Clause 40, section 76A ensures that the NGR will be empowered to combat illegal gambling autonomously in addition to the already existing enforcement powers set out in section 77.</p> <p>The provision will complement rather than undermine the role of PLAs. The key word in the provision is the addition of the words “or without” to prevent the national inspectors from being restricted from performing on the basis of PLA inspectors are not available. The NGR can be able to assist the PLA to address an investigation in another province because of the national mandate in a manner the PLA is not able to. Where there is collaboration the intended result will be cost sharing and effectiveness due to sharing of resources as the National inspectorate compliments the provincial inspectorate.</p>
<b>Western Cape</b>	<p>Did not vote in favour of the Bill because of following reasons:</p> <p><b>Financial Implications:</b></p>	<p>The system has already been developed at the cost of the NGB focusing on Limited Payout Machines (LPMs). The cost will not be to PLAs or provinces. This is a mandate of the NGB set out in section</p>

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	<p>Comprehensive cost analysis was not done on the Bill regarding the NCEMS to afford the Committee an opportunity to determine the costs to the province.</p> <p>The Committee further requested the full costs of establishing the NGR including the costs of the CEO and support staff.</p>	<p>27 of the NGA, 2004 and is a regulatory function for National Government to exercise oversight.</p> <p>There will not be additional costs to the establishment of the NGR because the budgeting programme structure of the NGB or NGR will not change because the Bill has not introduced a new mandate for the NGR which will require funding. The staff and systems of the NGB will be transferred to the NGR. The infrastructure and capacity is existing.</p> <p>Operational details are not required for purpose of drafting legislation.</p>
	<p><b>Public consultation</b></p> <p>The Department admitted that there was no proper consultation done with stakeholders and the public during meeting with Committee on 5 and 22 February 2019.</p>	<p>The Department disputes the allegation that it admitted to no proper consultation having been done. What the Department said was that the extension of NCEMS was not part of the 2016 draft National Gambling Policy. This inclusion arose as a result of stakeholder inputs received through consultation. There was consultation overall of the Bill through various processes from the policy to the gazetted Bills. Stakeholders have raised a concern about the consultations on the NCEMS. The NCEMS were published in the final policy and there were consultations through the Parliamentary processes. There will be further consultations on the implementation.</p>
	<p><b>Replacing the NGB with the NGR</b></p> <p>Bill is done on piece-meal basis and serious matters of online gambling are ignored but only focus on appointment of staff. There is no clear distinction between national and provincial government. The Bill</p>	<p>The Portfolio Committee on Trade and Industry exercised their prerogative in terms of the Constitution to amend the National Gambling Amendment Bill (NGAB) to include 3 focus areas: re-positioning of the NGB to NGR, extension of NCEMS to all modes of</p>

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	<p>provides national Department with extra-ordinary powers in deciding on fines thus taking away revenue streams away from provinces. The board or Regulator must focus on setting norms and standards and give PLAs authority to implement.</p>	<p>gambling, and the effectiveness of the National Gambling Policy Council.</p> <p>The draft Bill focuses on key priorities that will ensure efficiencies and strengthened coordination of gambling regulation in South Africa. The impact of these amendments will ensure a coordinated gambling regulatory framework, enhanced enforcement and improved punter protection.</p> <p>The proposed amendments are the first in series in repositioning the NGB to NGR and pose no prejudice to the industry.</p> <p>In the next Parliament, industry-specific and substantive provisions will be tabled. <b>the dti</b> will ensure that a gambling amendment Bill is included in the parliamentary programme.</p> <p>Online gambling does not form part of this amendment. It is a subject of future policy debate. The NGR will play an oversight role that includes setting norms and standards, ensuring compliance, monitoring trends of industry performance, managing national registers and advising the NGPC.</p> <p>The NGR has no licensing function and therefore will not impact the mandate of the provincial licence authorities. It is envisaged that the NGR will become a regulator with strengthened regulatory and enforcement capability.</p>



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		The creation of the NGR with the proposed governance structure will improve efficiency.
	<p><b>Agency rationalization report</b></p> <p>The Department did not provide the Committee with the Agency Rationalisation Report denying the Committee the opportunity to fully apply its mind to the different models of governance for a regulator. In addition hereto the Department gave no reasons as to why it rejected the report of the consultants.</p>	<p>The agency rationalization report was submitted to the Provincial Legislature. It was made available by the province to the Committee and the stakeholders.</p> <p>It must be understood that the determination of the governance model of the NGR was not required to be based solely on the Agency Rationalisation Report.</p> <p>In any event, the study made various recommendations such as the merge between the NGB and the NLC; Commission style structures work better than board structure and this contributed to the policy position. The Department did not reject the recommendations of the consultants. The national lottery is an exclusive mandate provided by its own legislation. The regulatory framework and focus is different. The merge of the two entity could be subject to future policy debate.</p>
	<p><b>Quorum Rule</b></p> <p>The quorum rule will be undemocratic and is rejected by the Committee. The purpose of the NGPC was to involve others in decision making process which makes it a concurrent function. Policy formulation is complex and multifaceted on gambling matters; rather amend the Act to allow delegation to attend these meetings as decided by various MECs.</p>	<p>The original text of the NGA, 2004 in section 63 (4), (5) and (6) have not been deleted and principles of corporate governance have been maintained to ensure that the council first attempts to reach decisions by consensus failing which a matter is resolve by formal vote on a motion which is passed by the minister and 5 members. Efforts were taken to ensure the NGPC takes place however the measures employed to reach did not succeed or yield any results. Round robin is currently a standard practice of the NGPC and NGPC members</p>

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		<p>are familiar with it. Round robin ordinarily is utilised to cast a vote on matters which have already been deliberated upon. Passing of motions have been attempted through round robin previously and has proven not to be a viable option. In any event, round robin is administrative in nature and does not require to be legislated to provide agility for the rules of procedure of the NGPC .</p> <p>Section 63 (7) of the NGA stipulates that the NGPC may establish its own rules of procedure, and the decision to insert section 63A was made by the NGPC in its meeting of 12 March 2018 which was quorate.</p> <p>This proposed amendment is thus simply giving effect to an executive decision that was already made, and any contrary proposal would be tantamount to a disregard for the separation of powers doctrine entrenched in the Constitution. Members will be informed in advance repeatedly that in the second meeting key decisions will be made after the first inquorate meeting and reminded to attend so that should they not attend, they were aware of the implications. This is also in line with current practices of good corporate governance.</p>
	<p><b>Unlawful winnings</b> Unlawful winnings must be allocated to respective provinces. The proposed provision will lead to legal challenges should it be retained in</p>	<p>The forfeiture of unlawful winnings is provided for in section 16 of the NGA, 2004 and is required to be forfeited to the State and deposited in the national revenue fund. The NGR will be allocated the unlawful</p>

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	<p>current form. The Western Cape Law Enforcement Agencies already defers function immediately and no duplication from national is needed.</p>	<p>winnings to combat illegal gambling activities. The amounts are not significant. This is not taking any powers from provinces. The public entities are allowed to identify other sources of funding. It was established that the provisions of the Western Cape Gambling and Racing Act, 1996 conflicts with the NGA, 2004. It is trusted that the Western Cape Gambling Board will ensure that the NGA is complied with in this regard.</p>
<p><b>Kwa Zulu Natal</b></p>	<p>Abstained from voting on the Bill pending clarity on the two concerns raised:</p> <p><b>Reference to the Gambling Amendment Act of 2008</b></p> <p>Concern about confusion created by the reference to the National Gambling Amendment Act 10 of 2008 in the B version of the Bill whereas the long title of the Bill reflects the Bill amending the National Gambling Act No 7 of 2004.</p>	<p>This is a legal technical matter the fact that the Amendment Act, 2008, was enacted, we are obliged to give legal consequence thereto and to reflect its existence as inoperative law in drafting the Bill. It thus follows that the Bill must be reflected upon against the backdrop of the principal Act and the Amendment Act to perceive the whole picture in law.</p> <p>The 2008 Amendment Act was assented to and signed by the President and thus enacted. However, it requires a Presidential Proclamation for commencement and such Proclamation has not yet been Gazetted. The Act therefore remains inoperative. Irrespective of the fact that the Act is inoperative, it has the status of law and all amendments contained in the above mentioned Bill must be made consistent with both the principal Act and the 2008 Amendment Act.</p>
	<p>During the public hearings, the oral submissions were mainly against</p>	<p>The National Gambling Amendment Act 10 of 2008 is an Act of</p>

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	<p>supporting the Bill in its current form. The main concerns that arose were around the non-promulgation of the National Gambling Amendment Act 10 of 2008 which they believe is urgent and should have been dealt with as a priority. Further, there were concerns about the application of National Central Electronic Monitoring System to all other forms of gambling other than the limited payout machines. They submitted that consultation was not done with the industry in this respect and raised the cost factor involved in having a new system whereas the province has a monitoring system for their operations which can be accessed by the National Gambling Board. Some were in support of the dissolution of the Board and the appointment of the Chief Executive Officer as it does not have powers to licence the operators which are vested with the provincial licensing authorities, whereas, some felt that an individual would not have a better judgment and a myriad of competences held by the Board. Also, there is a feeling that the duration of the contract limited to a five year term, subject to renewal may affect the effectiveness of the Regulator. The stakeholder participants urged the KwaZulu-Natal Legislature not to rush and pass this Amendment Bill as there are many other substantive matters that have not been dealt with which were contained in the National Gambling Amendment Act, 2008. The participating stakeholders made further written submissions that are dealt with below.</p>	<p>Parliament and <b>the dti</b> has not resolved to repeal it. Whether to bring Act 10 of 2008 into operation has not been subject matter of the amendments contained in the NGAB, 2018 under consideration. The NGAB as referred to the NCOP has 3 focus areas: re-positioning of the NGB to NGR, extension of NCEMS to all modes of gambling, and the effectiveness of the National Gambling Policy Council.</p> <p>The draft Bill focuses on key priorities that will ensure efficiencies and strengthened coordination of gambling regulation in South Africa. The impact of these amendments will ensure a coordinated gambling regulatory framework, enhanced enforcement and improved punter protection. The proposed amendments are the first in series in repositioning the NGB to NGR and pose no prejudice to the industry and in relation to the inoperativeness of Act 10 of 2008. In the next Parliament, industry-specific and substantive provisions will be tabled. <b>the dti</b> will ensure that a gambling amendment bill is included in the parliamentary programme.</p> <p>The development of the NGAB,2018 has been a continuous consultative process which has attracted various comments and suggested input regarding its provisions. It is refuted that it is reasonably accepted that a specific provision in the NGAB,2018 can be raised as a ground for non-consultation whilst the NGAB,2018 in</p>

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		<p>its entirety has been accepted to have met the consultation requirement.</p> <p>Nevertheless the proposed insertion of clause 12 in the Bill is an extension of a regulatory power for the envisaged NGR to oversee all legal modes of Gambling. The NCEMS is a National register as set out in the NGA, 2004. The NCEMS is a regulatory tool for NGB and Provincial Gambling Boards (PGBs) to provide independent oversight of the gambling activities, taxes and levies due to Government. Currently, outside of the LPM industry, the PGBs rely on the electronic monitoring systems (EMS) belonging to Licensees which PGBs only have read access. This is not ideal from a regulatory perspective considering information accessed from the licensees' EMS is the sole source of information for PGBs to impose provincial tax or levies.</p> <p>The envisaged NGR will be directly accountable for the information collected as opposed to the status quo where the NGB and PGBs has to rely on operators to provide that information. This will not interfere with the functions of the PGBs, but will rather strengthen their ability to regulate independently and not be conflicted.</p> <p>The implementation of the proposed insertion for NCEMS to extend</p>

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		<p>to all modes of gambling will not render the current internal electronic monitoring systems (EMS) of the Licensees redundant. Ideally the NCEMS should connect directly to the information source ie the gambling machine or device.</p> <p>The envisaged NGR will have to monitor compliance of PGBs and simultaneously have to ensure that the operators licensed by PGBs are compliant therefore an independent regulatory tool will resolve the current regulatory gaps and improve efficiencies. The NGR will not be able to place reliance on or connect to the licensees' EMS as this will result in a conflict of interest.</p> <p>There is a need to have an independent national regulator coordinating this information whilst PGBs source information or data from operators for the imposition of provincial taxes. Data on the NCEMS will serve as a 3<sup>rd</sup> party source to verify the information or data received from the PGBs and Licensees. This will not only contribute to adherence with uniformity and consistency of norms and standards but also detection and reporting of illegal financial transactions.</p>

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	<p><b>CHIEF DIRECTORATE: GAMING &amp; BETTING – OFFICE OF THE PREMIER</b></p> <p>The heading of the proposed amendment to section reads as follows: “Amendment of section 1 Act 7 of 2004, <i>as amended by section 1 of Act 10 of 2008</i>”. The italicized words are highly problematic, both in the context of this particular clause, <u>but also throughout the Bill, wherever mentioned</u>. <b>This is because the Act 10 of 2008 was never brought into operation. Therefore the amendments therein, must not be “read in” to the National Gambling Act, 2004, since these amendments have not in fact been made to the principle Act.</b> <u>Wherever the State Law Advisers have made the amendments on the template of the purportedly amended provisions of the principal Act, they have erred.</u> This affects <u>clauses 1, 4, 13, 14, 15, 17, 19, 21, 22, 29, 31, 42 and 43</u> of the Bill.</p>	<p>This is a legal technical matter the fact that the Amendment Act, 2008, was enacted, we are obliged to give legal consequence thereto and to reflect its existence as inoperative law in drafting the Bill. It thus follows that the Bill must be reflected upon against the backdrop of the principal Act and the Amendment Act to perceive the whole picture in law.</p> <p>The 2008 Amendment Act was assented to and signed by the President and thus enacted. However, it requires a Presidential Proclamation for commencement and such Proclamation has not yet been Gazetted. The Act therefore remains inoperative. Irrespective of the fact that the Act is inoperative, it has the status of law and all amendments contained in the above mentioned Bill must be made consistent with both the principal Act and the 2008 Amendment Act.</p>
	<p>Whereas the version of the Bill introduced in Parliament by the DTI included a proposed amendment to the definition of “bingo”, the new Bill does not. The amended definition in the previous Bill was apparently designed to more clearly incorporate “electronic bingo terminals” as being a lawful means of offering “bingo” games to the public. There were also other linked amendments, which have also been removed from this Portfolio Committee (“B”) version of the Bill (proposed new</p>	<p>The NGAB as referred to the NCOP has 3 focus areas: re-positioning of the NGB to NGR, extension of NCEMS to all modes of gambling, and the effectiveness of the National Gambling Policy Council.</p> <p>The draft Bill focuses on key priorities that will ensure efficiencies and strengthened coordination of gambling regulation in South Africa. The impact of these amendments will ensure a coordinated gambling regulatory framework, enhanced enforcement and improved punter</p>

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	<p>section 44A).</p> <p>The issue of “electronic bingo terminals” has been a controversial one, since they were first introduced in Gauteng, many years ago. The DTI has always been opposed to “electronic bingo terminals” being deployed outside of casinos, but has consistently failed to produce a firm, logical, workable policy on bingo, in particular, as regards “electronic bingo terminals”. While what was in the previous version of the Bill was not ideal, this Bill now leaves a complete policy vacuum as regards electronic bingo terminals, which is even less acceptable.</p>	<p>protection.</p> <p>The proposed amendments are the first in series in repositioning the NGB to NGR and pose no prejudice to the industry.</p> <p>In the next Parliament, industry-specific and substantive provisions will be tabled. <b>the dti</b> will ensure that a gambling amendment bill is included in the parliamentary programme.</p> <p>It must benotedthat the Minister of Trade and Industry through <b>the dti</b> has always been advocating for a national policy framework since EBTs were a new phenomenon, directives were provided to provinces to desist from rolling out EBT’s however this was disregarded. There is a high court ruling that held that EBTs should not have been allowed outside casinos as they are similar to slot machines. To address issues of the overstimulation for the demand to gamble a policy framework was necessary and still is necessary. The case was <i>Akani Egoli vs Chairperson of the GGB</i>.</p> <p>.</p>
	<p>1.4 Clause 3 – <u>Insertion of section 10A</u></p> <p>In the DTI version of the Bill, this new provision was introduced via the proposed insertion of a new section 21A (which has now been moved). The clause deals with the creation of a register of “<i>unlawful gambling</i></p>	<p>There is a necessity for the consequences of illegal gambling to bear reference to both a licensed or unlicensed gambling operator therefore the insertion of 10A refers to both licensed and unlicensed gambling operators. Subsections 2, 3 and 4 are applicable to licensed gambling operators.</p>



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	<p><i>operators</i>”, which is an undefined term. Firstly, the description of the target group should be far more precise and should, as a minimum, include the fact that the natural person/entity has been convicted of an offence under a national or provincial gambling law. Secondly, it would be more beneficial to develop a register of all natural persons associated with illegal gambling operations and to disqualify any applicant, for a gambling licence or gambling-related certificate of registration, which associates with, or includes such a natural person, as a director, employee, investor, supplier, etc.</p>	<p>The offences and penalties clause in the National Gambling Act (NGA),2004 specifically makes reference to the fact that the commission of an offence under the NGA by a licensee is a breach of a condition of licence and the penalties clause further subjects both any person (which includes an unlicensed, licenced or juristic person) if convicted of an offence in terms of the NGA is liable to a fine not exceeding R10 Million or imprisonment for a period not exceeding 10 years or to both a fine or such imprisonment. It will thus be necessary for a licensed operator who is convicted to be listed in the register of unlawful gambling operators in terms of the proposed section 10A insertion. This closes the regulatory gap in the NGA 2004 due to the growing number of illegal operators, and the devastating impact that unregulated gambling can have on the lives of citizens as well as to the economy of the country, it is necessary that the government takes every available step to combat illegal gambling operations. The provision is thus necessary, to close regulatory gap that may be exploited.</p> <p>Assurance is provided that an operator, whether licensed or unlicensed, can only be listed if subjected to a fair legal process, and is convicted in Court.</p>
	<p>1.5 Clause 12 – <u>Amendment of section 27</u>  (a) The purported justification for this amendment, stems from a statement published in the “National Gambling Policy”, which says that</p>	<p>The establishment and maintenance of a National Central Electronic Monitoring System (NCEMS) is an exclusive competency of National Government and such power is vested only in the National Gambling</p>

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	<p>“..PLAs struggle to collect information from other gambling modes which operate their own CEMS..” However, far from justifying a national central monitoring system for all gambling devices in the country, the fact that some provinces “..struggle to collect information..” from non-LPM gambling operators, only indicates (a) that the legislation of the affected province does not require such operators to provide the PLA with the means to access its CEMS; and/or (b) the PLA’s IT system cannot access the CEMS for technical reasons. Neither problem needs to be solved by a CEMS operated from the national level, by the NGR.</p>	<p>Board (NGB) and to be vested in the envisaged National Gambling Regulator (NGR). No similar public power or public function has been conferred on any province regarding the establishment and maintenance and regulation of NCEMS and its related matters.</p> <p>The proposed insertion in the Bill is an extension of a regulatory power for the envisaged NGR to oversee all legal modes of Gambling. The NCEMS is a National register as set out in the NGA, 2004. The NCEMS is a regulatory tool for NGB and Provincial Gambling Boards (PGBs) to provide independent oversight of the gambling activities, taxes and levies due to Government. Currently, outside of the LPM industry, the PGBs rely on the electronic monitoring systems (EMS) belonging to Licensees which PGBs only have read access. This is not ideal from a regulatory perspective considering information accessed from the licensees’ EMS is the sole source of information for PGBs to impose provincial tax or levies.</p> <p>The envisaged NGR will be directly accountable for the information collected as opposed to the status quo where the NGB and PGBs has to rely on operators to provide that information. This will not interfere with the functions of the PGBs, but will rather strengthen their ability to regulate independently and not be conflicted.</p>

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		<p>The implementation of the proposed insertion for NCEMS to extend to all modes of gambling will not render the current internal electronic monitoring systems (EMS) of the Licensees redundant. Ideally the NCEMS should connect directly to the information source ie. the gambling machine or device.</p> <p>Credible and readily available Information is central in the gambling industry therefore there is a need to have oversight over the information to avoid risks regarding integrity of data, fair play for punters, credible gambling statistics that are developed to inform the Gambling industry trends from a market share and market conduct perspective.</p> <p>The envisaged NGR will have to monitor compliance of PGBs and simultaneously have to ensure that the operators licensed by PGBs are compliant therefore an independent regulatory tool will resolve the current regulatory gaps and improve efficiencies. The NGR will not be able to place reliance on or connect to the licensees' EMS as this will result in a conflict of interest.</p> <p>There is a need to have an independent national regulator coordinating this information whilst PGBs source information or data from operators for the imposition of provincial taxes. Data on the</p>

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		<p>NCEMS will serve as a 3<sup>rd</sup> party source to verify the information or data received from the PGBs and Licensees. This will not only contribute to adherence with uniformity and consistency of norms and standards but also detection and reporting of illegal financial transactions.</p> <p>The system has already been developed at the cost of the NGB. NCEMS being an IT system will improve efficiencies, financial reporting, Industry performance reporting and provide reliable information for auditing purposes. This national regulatory tool is not for financial gain however attracts a monitoring fee which is the norm in the LPM industry. There is no cost that any province will incur in the extension of NCEMS to other modes of Gambling.</p> <p>The output of NCEMS will supply PGBs, Manufacturers, and Operators with valuable intelligence in terms of the gambling sector performance both at provincial and national levels. With the exception of the LPM industry, the NGB has not been able to exercise sufficient oversight over the other modes of gambling in the gambling industry and the wagering and betting industry is no exception in this regard.</p> <p>In addition to licensing each mode of gambling there is a reciprocal responsibility for both the national and provincial regulators that</p>

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		<p>compliance and enforcement measures are employed through the most efficient and effective means considering the geographic spread of gambling machines and devices across the Republic. The use of regulatory tools such as NCEMS will encourage a culture of adherence with National and Provincial legislation.</p>
	<p>The presentation document that was sent to the Chief Directorate: Gaming and Betting states, firstly, that Clause 12 “<i>..gives powers to the Minister to determine the extent of the operation of the NCEMS</i>”. This is extremely vague. The phrase “<i>the extent of the operation</i>” could be interpreted in numerous ways, which is not sound legislative drafting and therefore the provision requires re-drafting.</p>	<p>The Bill provides for the extension of the NCEMS to other modes of gambling. The presentation is not the subject matter of the comment but the Bill.</p>
	<p>Secondly, the presentation document extols the supposed aims, merits and benefits of the NCEMS, even claiming that the implementation of the NCEMS “<i>..is a great step towards governments’ effort to implement the 4th Industrial revolution and enhanced regulatory oversight over the PLA’s and Gambling industry</i>”. This is an empty, unsubstantiated, frankly fanciful claim.</p>	<p>The Department is commenting on the Bill and not the content of the presentation or external opinion on the interpretation of the bill. Implementation of the provisions of the bill are operational and will provided clarity for stakeholders who are apprehensive at this point and seek to argue on the interpretation of the bill.. The NCEMS is a technological infrastructure and regulatory tool. The implications of Industrial revolutions are that they disruptive in their very nature therefore it is imperative that Government equips itself with technological tools to stir regulation in preparation of the 4<sup>th</sup> industrial revolution. NCEMS being an IT system will improve efficiencies,</p>

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		financial reporting, Industry performance reporting and provide reliable information for auditing purposes.
	Thirdly, the presentation document states that “ <i>Existing monitoring systems at various gambling venues will continue to function as normal.</i> ”. It goes on to state that the “ <i>..NCEMS will supply PLAs, Manufacturers, and Operators with valuable intelligence..</i> ”, including information used to determine taxes and to report the required national gambling statistics. If the existing monitoring systems remain in place, then all the NCEMS represents is a massive, expensive, duplication of the functions of these systems.	The Department is commenting on the Bill and not the content of the presentation or external opinion on the interpretation of the bill. Implementation of the provisions of the bill are operational and will provided clarity for stakeholders who are apprehensive at this point and seek to argue on the interpretation of the bill. This comment was informed by the apprehension of other stakeholders who assumed that the proposed insertion of clause 12 in the NGAB,2018 seeks to render existing monitoring systems redundant. The NCEMS will not hamper the existing systems by the Licensees. The operators will continue to function. Existing monitoring systems at various gambling venues will continue to function as normal. This function will ensure that the NGR continues to work as a central repository of gambling information in terms of the national registers.
	A system capable of monitoring all of the various types of gambling equipment in the country does not yet exist, which casts grave doubt upon the achievability of this plan. It is therefore very unlikely that a NCEMS operated from the national level would cope with the substantial task of electronically monitoring all forms of gambling in the country, since the current NCEMS struggles to deal with only the existing types and numbers of LPMs in the country (both of which will still increase). The smaller the number and type of systems/equipment	The Department is commenting on the Bill and not the content of the presentation or external opinion on the interpretation of the bill. Implementation of the provisions of the bill are operational and will provided clarity for stakeholders who are apprehensive at this point and seek to argue on the interpretation of the bill. This arguments seeks to pre-empt the implementation of clause 12 and at this point is surperflous. Research and development is ongoing in various industries therefore it is refuted that the opinion expressed being

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	<p>that must be monitored, the more likely that monitoring a variety of equipment, from bookmaker software to roulette tables in casinos, will be possible. Obviously then, monitoring a variety of equipment would be more feasible if undertaken at the operator level, or at worst, at a provincial (PLA) level.</p>	<p>responded to serves as authority pertaining to the development of IT systems. The NCEMS exists for the LPMs. Extending it to other modes of gambling will not be a challenge. This plan is achievable. With the exception of the LPM industry, the NGB has not been able to exercise sufficient oversight over the other modes of gambling in the gambling industry and the wagering and betting industry is no exception in this regard. In addition to licensing each mode of gambling, there is a reciprocal responsibility for both the national regulators that compliance and enforcement measures are employed. This includes the use of regulatory tools to effectively and efficiently instill a culture of adherence with National and Provincial legislation.</p>
	<p>The National Gambling Board's government <b>grant</b> for 2017-18 was <b>R31,627,000</b>. The National Gambling Board's <b>revenue</b> from the <b>monitoring</b> of LPMs in 2018-18, was <b>R63,694,286</b> (ie more than double the government grant). LPM gross gaming revenue (GGR) is only 9.7% of the total gambling industry GGR. Therefore, the intention appears to be to increase the GGR base for the calculation and collection of the NGB's monitoring fees, <b>tenfold</b>. How could the National Gambling Regulator possibly need so much money to fund its very limited (when compared to the provincial gambling boards) operations? If this clause becomes law, the provinces will have to decide whether or not to pass on the extra fee to the gambling industry, via an increase in the rate of taxation of its licenced gambling operators, or to absorb the increase, by</p>	<p>The extension of NCEMS is not for financial gain. Revenue raised by any Government entity reverts back to the National Fiscus . SARS is a good example. This is a mandate of the NGB set out in section 27 of the NGA, 2004 and is a regulatory function for National Government to exercise oversight. The intention to operate the NCEMS is to ensure efficiency in the oversight over gambling information on levies, taxes, etc. This will ensure strengthened oversight and integrity of information.</p>

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	<p>passing a portion of that province's gambling tax revenue, to the National Gambling Regulator. The proposed amendment should therefore be scrapped.</p>	
	<p>Clause 14 – <u>Amendment of section 32</u>  These are intended to be consequential amendments only, however, they are erroneously based on the 2004 principal Act having been amended by the 2008 Amendment Act (which did not transpire). Consequently, where paragraph (c) of Clause 14 purports to amend subsection (2) of section 32, this cannot stand, because section 32 is not constructed so as to include subsections – it is a single sentence.</p>	<p>The National Gambling Amendment Act 2008 is an Act of Parliament and remains the law of the country even though it is unproclaimed for implementation. The amendment of the 2004 National Gambling Act will be processed having regard to the Act and its passed amendments. The sequencing is thus accurate.</p>
	<p>1.6 Clause 15 – <u>Amendment of section 33</u>  Firstly, then paragraph (c) of Clause 15 incorrectly purports to add a new paragraph (l), since the current provision only has paragraphs (a), (b) and (c), so that the additional paragraph would be numbered (d).</p>	<p>This clause provides for the insertion of paragraph (l) in section 33 of the principal Act. However, section 33 contains only paragraphs (a) to (c). It has thus been argued that the reference to paragraph (l) is incorrect. With respect, that is not so. The reason being that the National Gambling Amendment Act, No. 10 of 2008 embodies a substitution of section 33 of the principal Act. This substitution contains paragraphs (a) to (k).</p> <p>The National Gambling Amendment Act 2008 is an Act of Parliament and remains the law of the country even though it is unproclaimed for implementation. The amendment of the 2004 National Gambling Act</p>



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		will be processed having regard to the Act and its passed amendments. The sequencing is thus accurate.
	<p>The proposed amendment to section 33 of the PLA conflicts with section 30, in that it undermines the <u>exclusive jurisdiction</u> of provincial PLAs, <u>as afforded by section 30</u>, to consider applications for and to issue provincial licences. The purpose of the amendment is obviously to create a proper legal foundation for the current National Gambling Regulations, which currently improperly purport to undermine the powers of provincial governments and legislatures to create and implement gambling legislation.</p> <p>What should rather happen is that regulation 3 of the year 2000 National Gambling "Regulations on Limited Payout Machines", should be amended to remove the NGB's purported role and powers regarding the approval of "Site B" LPM site licenses. PLAs are best placed to decide, in terms of the applicable provincial law, which types of sites should be allowed up to 40 LPMs.</p>	<p>The NGB currently processes the LPMs in terms of regulation 3(2) of the National Gambling Regulations, 2004. The power of the PLA or the board members of the PLA remains unfettered in terms of section 30 of the NGA,2004. PLA's will continue to approve LPM site applications to operate up to 40 machines however wherein approval is sought for a LPM site to operate 5 machines and up to 40 machines then the PLA must after consultation with the NGB either approve or decline such LPM licence application. The NGB's role will be to ensure the PLAs motivation to approve such applications meets the criteria, which the Minister will set. The NGB is not involved in the subsequent decision that the PLA or its board members should make regarding the LPM application</p> <p>This mandate has always been there and within legal prescripts. The role of the NGB and envisaged NGR is to ensure that there is no overstimulation or proliferation of gambling versus the demand to gamble. This is a necessary role for national, which is aligned with the constitutional imperative that casino, betting and wagering falls within the competence of the national and provincial governments. Regulation 3 will remain read with the provision in the Bill. The NGR will not overrule decisions of the provincial gambling boards. A</p>

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		<p>criteria will be used during the consultations with the provinces which will be approved by the NGPC. There is no contradiction between section 30 and section 33.</p>
	<p>Clause 31 – <u>Amendment of section 66</u>            Intended to be consequential amendments only, but because section 66 was never amended by Act 10 of 2008, there is no subsection (6) to amend and therefore paragraph (e) of Clause 31 must be deleted.</p>	<p>This clause proposes the substitution of section 66(6)(b) of the principal Act. Reference to section 66 of the principal Act makes it clear that this section only embodies 5 subsections. However, section 39 of the National Gambling Amendment Act, 2008, provides for the addition of subsection (6) to section 66 of the principal Act. The reason why subsection (6) is not currently reflected in the principal Act is because the Amendment Act, 2008, has not yet commenced. However, by virtue of the fact that the Amendment Act, 2008, was enacted, we are obliged to give legal consequence thereto and to reflect its existence as inoperative law in drafting the Bill. Hence the reference to subsection (6) in clause 31(e) of the Bill. It thus follows that the Bill must be reflected upon against the backdrop of the principal Act and the Amendment Act to perceive the whole picture in law.</p> <p>The National Gambling Amendment Act 2008 is an Act of Parliament and remains the law of the country even though it is unproclaimed for implementation. The amendment of the 2004 National Gambling Act</p>

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		will be processed having regard to the Act and its passed amendments. The sequencing is thus accurate.
	<p>1.7 Clause 42 – <u>Amendment of section 87</u></p> <p>This amendment is <u>not supported</u>. Refer to comments under paragraphs 1. 5(f), (g) and (h) above</p>	<p>The Minister of Trade and Industry remains with the unfettered power to promulgate regulations and this power is not subject matter of the NGAB,2018. The Ministers scope for promulgation of regulations in clause 42 is being extended to included the development of the criteria to be observed by each PLA when the NGR approves limited payout machines in excess of five. The NGB currently process the LPMs in terms of regulation 3(2) of the National Gambling Regulations, 2004.</p>
	<p>1.8 Clause 43 – <u>Repeal of Item 5 of Schedule 1</u></p> <p>Firstly, this repeal of the source of the “interactive gambling” provisions, makes it clear that Act 10 of 2008 was never brought into operation and that there was/is no intention of bringing it into operation. This is because a great percentage of the 2008 amendments were designed to implement an interactive gambling licensing regime in South Africa. Clearly, that is no longer the national policy on gambling.</p>	<p>The National Gambling Amendment Act 2008 has been passed into law already. Interactive gambling remain policy as enshrined in the said Act. The amendment suggested in terms of clause 43 is informed by the fact that the item 5 is redundant in that the Act 10 of 2008 is evidence that the directive in item 5 was achieved.</p>
	<p>(a) The repeal of item 5 of the Schedule to the Act is a mere technicality, however, the DTI’s decision to not properly regulate interactive (Internet) gambling is regretted. There is little evidence that bringing about a licensing regime for online gambling operators will result in much new capital investment, or in significant numbers of new jobs. It seems unlikely that</p>	<p>The country has not legalised online gambling at the moment and any operator who offer the gambling activity must be arrested to deter other would be offenders. The current Bill does not address online gambling and this can only be a debate for the future.</p>

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	<p>online gambling operators will be a good source of gambling revenues (because tax rates would have to be set at internationally competitive levels, in order to entice operators to become licensed, rather than to continue to operate in the “grey” market). It will be difficult to ensure that criminals do not own, control or benefit from licensed online gambling businesses.</p> <p>(b) It seems, therefore, that there is scant incentive for government to set up a licensing regime for online gambling operators. It is easy to appreciate the sentiment that says that South Africa does not need new forms of gambling, particularly this form. South Africans would be better off not gambling with Internet casinos and the like. However, in order that government give itself the means and opportunity to protect the vulnerable in society from the dangers of participating in the unregulated online gambling market, it will have to provide its citizens with a legal alternative.</p> <p>It has been correctly pointed out that whether we choose to ban online gambling, or to licence it, we will be faced with a formidable task to enforce the law. Illegal online gambling is not likely to ever be completely eradicated. Some of the most modern, wealthy and technologically developed economies in the world have tried and failed.</p>	

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	<p>Those countries that claim some success, have relatively draconian laws and authoritarian regimes, which cannot be emulated under our Constitutional democracy.</p> <p>There appears to be no advantage whatsoever for South Africa to attempt to ban online gambling. It appears, however, that there would be a few advantages for South Africa, should it choose to licence a select few online gambling operators. Online gambling should be regulated with one aim in mind – customer protection (not employment, not investment, not technological development and especially not as a new tax base – which is not to say that it should not be taxed – but the rate must be internationally competitive).</p> <p>If government wishes to keep the number of licenced remote gambling operators down, because it fears that it will not have the capacity to regulate more than a few operators (a very valid concern), then it must just set entry levels to licensing very high, particularly with regard to compliance rules aimed at customer protection. If the compliance bar is set high, while taxes and fees are set at internationally competitive (low) levels, this should serve to attract a few "blue-chip" operators to South Africa, leaving the fly-by-night operators to seek jurisdictions which are relatively lax regarding the enforcement of compliance rules.</p> <p>If this is achieved, South Africa will be able to focus its attention on protecting those amongst its citizens who choose to gamble online only with companies licenced in South Africa. SA will be able to require</p>	

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	<p>licenced remote gambling companies to include numerous technology-driven safeguards in their systems, such as the following:</p> <ul style="list-style-type: none"> <li>(a) Compulsory setting of self-imposed limits before being allowed to gamble, including:-</li> <li>(ii) Time limit for all activity on the site – maximum session time.</li> <li>(iii) Maximum spend limit over a period of time.</li> <li>(iv) Maximum loss limit over a period of time.</li> <li>(v) 24-hour notice period before self-imposed limits can be amended.</li> <li>(vi) Option to pre-set automatic email / mobile phone notification to a 3rd party, upon notice being given to amend self-imposed limits.</li> </ul> <p>While it will still be necessary to act against the illegal online operators that will continue to seek to service South African customers, post the implementation of a licensing regime, if government licences certain online operators, their self-interest in protecting their “turf” will greatly assist government. The licensees will form a substantial component of the “eyes” of a law enforcement strategy, in our efforts to identify offenders. It is therefore recommended that the South African government should move quickly to set up a strict licensing regime for online gambling, with customer protection the overriding, if not the sole policy consideration, driving the process.</p>	

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	<p><b>2 SOUTH AFRICAN BOOKMAKERS ASSOCIATION (SABA)</b></p> <p>The National Gambling Amendment Act 2008 has not been proclaimed for implementation with the result that there is a fundamental mismatch between numerous clauses of the Bill in relation to the sections and subsections of the Act which purport to amend and/or to delete and/or to insert therein, and which in SABA's respectful view, requires further consideration from a legal perspective.</p>	
	<p>CLAUSE 3 - <u>Insertion of section 10A:</u></p> <p>The provision does not clarify how the listing will be carried out and how this will be communicated to the affected party. Since this may offend on presumption of innocence, the provision offers no clarity if listing will take place before or after conviction. In the event it will indeed happen after conviction the affected person will be automatically prevented from getting a licence so the provision will not be necessary.</p> <p>As is implicitly recognised in the proposed subsections (3) and (4), a listing may cause unwarranted reputational damage (especially if it is performed without satisfactory levels of proof), and may have to be undone through litigation. SABA submits that care should be taken to prevent any possible conflicts between the Act and the Protection of Personal Information Act, 2013.</p> <p>On the basis of the above considerations, SABA submits that the</p>	

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	<p>proposed register will serve no meaningful purpose, but will ultimately increase regulatory red tape, and potentially result in a challenge from a constitutional perspective, without securing any meaningful regulatory benefit.</p>	
	<p>CLAUSE 12 - Amendment of section 27</p> <p>SABA submits that there is no justification for the above provision, which it assumes is based on incomplete and/or inaccurate information regarding the matter. The purpose of Section 27 was to ensure that all transactions in the (spatially challenging) LPM environment were accounted for, so that the revenues due would be accurately calculated and paid over. As a result, the Act requires all LPM's to be linked to the CEMS. SABA points out that there are no fewer than nine published standards developed by the South African Bureau of Standards, which have been put in place specifically to ensure the integrity of gambling and betting operations and the accuracy, credibility and reliability of the data generated in respect of each and every gambling and/or betting transaction. The national technical standards contain a plethora of detailed requirements which are expressly designed to ensure both the integrity of all gambling and betting operations, as well as the reliability of the transactional records which are used in the calculation of gambling and betting taxes and levies. Therefore gaming regulators can access this information, at any time and for any regulatory purpose.</p>	



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	<p>Similar principles apply in the licensed bingo environment. Accordingly, there is no scope for the conclusion that regulators are unable to access relevant information in relation to betting transactions from a compliance, fair play or tax-generation perspective.</p> <p>No player in the bookmaking environment makes use of any gambling device or machine in order to place a bet. Accordingly, it is not possible, in the bookmaking environment, for conditions to arise, which would either make a game unplayable, or which would affect the outcome of the game, which as previously stated is an independent external event or contingency on which the betting is struck. It is therefore apparent from the definition in the Bill itself, that the fundamental differences between the casino, bingo and LPM environments, on the one hand, and the bookmaking and totalisator sector, on the other are not understood. Against the backdrop of the above, there is manifestly no need to develop a further, single, national system which would effectively supplant all the prevailing technical standards, at great cost to all sectors of the industry, which would deliver no identifiable regulatory benefit and moreover would not prove to be commercially feasible. SABA therefore submits that the proposed provision is not required and should be deleted.</p> <p>Moreover, it is difficult to conceive of what “events” would be regarded as “significant” in the context of licensed bookmaking operations. SABA</p>	

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	<p>notes, in this regard, that the term “significant event” is defined in the Bill as being “a condition which makes a game unplayable or affects the outcome of a gambling activity and is recorded in a gambling machine or gambling device”. The only conceivable environments in which these conditions might arise are in licensed casinos, bingo outlets and on LPM sites, where the “games” referred to in the definition are played, and the outcome thereof is determined, on gambling machines and/or devices. In the licensed bookmaking environment, on the other hand, bookmakers’ use certified wagering systems purely to capture, record and store the details of betting transactions on external events, which exist and occur completely independently of the bookmaker’s wagering system. No player in the bookmaking environment makes use of any gambling device or machine in order to place a bet. Accordingly, it is not possible, in the bookmaking environment, for conditions to arise, which would either make a game unplayable, or which would affect the outcome of the game, which as previously stated is an independent external event or contingency on which the betting is struck. It is therefore apparent from the definition in the Bill itself, that the fundamental differences between the casino, bingo and LPM environments, on the one hand, and the bookmaking and totalisator sector, on the other are not understood.</p>	
	<p>CLAUSE 26 - <u>Insertion of section 63A</u>  The proposed <i>modus operandi</i> will have the effect of entrenching, rather</p>	

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	<p>than reversing, the dysfunctional nature of the Council, in that Council members, who have historically failed to attend on a regular basis even when their attendance was absolutely required for the purposes of establishing a quorum, will now effectively be placed in a position to absent themselves from two consecutive meetings, notwithstanding which decisions will be able to be taken despite the absence of a quorum.</p> <p>Against the backdrop of the above, SABA submits that rather than being retained, the Council should be disbanded.</p>	
	<p>2.3. <u>CLAUSE 30 - Insertion of sections 65A, 65B &amp; 65C:</u></p> <p>Regarding the proposed structure of the NGR, and the functions and powers proposed to be conferred on its Chief Executive Officer pursuant to the proposed Section 65B (which include, without being limited to, all the existing powers and functions of the NGB), SABA submits that the mandate proposed to be conferred on it is too extensive to be effectively carried out by a single functionary, in the person of the CEO.</p> <p>SABA submits that rather than providing for a new, more limited body (in terms of structure) to perform the extremely extensive functions assigned to the NGB, attention should rather be focused on identifying the root causes for the failure by the NGB to deliver on its statutory mandate, and that measures should be put in place to address and effectively to eliminate these. It is further noted that while Clause 30 of</p>	

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	<p>the Bill is headed “Insertion of section 65A, 65B and 65C in Act 7 of 2004”, the Bill itself contains no proposed section 65C. Accordingly, SABA submits that there is nothing in the Bill, which suggests that the proposed structure of the NGR will assist in law enforcement in relation to illegal gambling. SABA respectfully submits that there is no evidence to suggest that the proposed structuring of the NGR, as set forth in the Bill, will be either appropriate or effective. In contrast, the Bill is open to criticism for vesting a disproportionate amount of power in a single individual, whom SABA projects cannot reasonably be expected to fulfil the ambitious statutory mandate to be conferred on him or her.</p>	
	<p>CLAUSE 40 - <u>Insertion of section 76A:</u></p> <p>2.6.1. It is respectfully submitted that the interests of uniformity and legal certainty would not be served by empowering the national inspectorate to “<i>ensure compliance of gambling institutions with the provisions of the Act</i>”.</p> <p>In addition, SABA submits that it is inherently undesirable for the holder of a provincial licence to be subjected to compliance monitoring by two different bodies, in the form of the relevant PLA, on the one hand, and the NGR, on the other. One of the likely unintended consequences of this would be that licensees would be subjected to different sets of standards, based on different interpretations of the nature and scope of their compliance-related obligations.</p> <p>2.6.5. SABA submits that the proposed subsection (3) is superfluous, in</p>	

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	<p>as much as the relevant prohibitions are already contained in the Financial Intelligence Centre Act, No. 38 of 2001. Accordingly, these are not required to be repeated in the Act itself.</p>	
	<p><b>2. CASINO ASSOCIATION OF SOUTH AFRICA (CASA)</b>  <b><i>The status of the 2008 Amendment Act</i></b>  The 2008 Amendment Act has never been brought into operation and is at odds with the National Gambling Policy approved by Cabinet and published by the Department of Trade and Industry in April 2016 (“<b>the National Gambling Policy</b>”),<sup>1</sup> which concludes that “[o]nline gambling ... should remain illegal”.<sup>2</sup> CASA thus assumes that there is no intention to bring the 2008 Amendment Act into operation. In that event, this should be clarified through the insertion of a provision in the Bill which at least repeals the provisions of the 2008 Amendment Act which contemplate interactive gambling.  The dti’s response is that the “<i>legal position is to be retained</i>”, that the 2008 Amendment Act is an “<i>Act of law</i>” and it will not be repealed.<sup>3</sup> This response is, with respect, misguided. There is no point in retaining an Act of Parliament if there is no intention to bring it into operation as it has no legal effect.</p>	

<sup>1</sup> Published under Government Notice 389 in *Government Gazette* 39887 of 1 April 2016.

<sup>2</sup> National Gambling Policy, para 4.5.4.

<sup>3</sup> Page 2 of dti’s response.

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	<p data-bbox="371 328 1227 403"><b><i>Replacement of the National Gambling Board with the National Gambling Regulator</i></b></p> <p data-bbox="371 424 1227 818">The provisions of the Act which regulate the composition of the NGB contemplate diversified membership of the board by requiring the appointment of not only persons with “<i>applicable knowledge or experience in matters connected with the objects of the board</i>”<sup>4</sup> but also members appointed by a range of ministers responsible for portfolios to which the NGB’s functions relate (trade and industry, finance, safety and security, and social development). If properly implemented, the NGB would bring together persons with a range of experience that is relevant to the effective regulation of the gambling sector.</p> <p data-bbox="371 839 1227 1137">It bears emphasis that the regulatory body envisaged in the Act is required to take nuanced decisions having regard not only to the various technical, social and economic issues impacting upon the gambling industry but also to the interplay between the provincial and national spheres of gambling regulation. This function requires not only extensive resources but also advanced levels of diverse expertise – which a collective body is by its nature more likely to possess.</p> <p data-bbox="371 1158 1227 1281">In particular, the NGR’s ability meaningfully to advise on national gambling policy and national norms and standards, as envisaged in the Act,<sup>5</sup> will be compromised in circumstances in which it does not consist</p>	

<sup>4</sup> Section 67(1)(a) of the Act.

<sup>5</sup> Section 65(2) of the Act.

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	<p>of multiple persons who are able to provide input on these issues relying on a diverse range of expertise, experience and perspectives. Moreover, a governance structure which vests the governance of the NGR in the hands of a couple of individuals, rather than in a composite board, will leave the NGR vulnerable to changes in personnel. If, for example, the CEO and the Deputy CEO were to leave in quick succession, the functioning of the NGR would be severely compromised which would have grave implications for the effectiveness of gambling regulation. We respectfully submit that replacing the NGB with a newly established regulatory body will only serve to cause further delays in the implementation of the Act.</p>	
	<p><b>Clause 3: register of unlawful gambling operators</b></p> <p>While CASA welcomes the establishment of a register of unlawful gambling operators as contemplated in section 10A, this section should clarify that it only applies to persons who engage in restricted gambling activities without holding the appropriate licence.</p>	
	<p><b>Clause 12: national central electronic monitoring system</b></p> <p>The national central electronic monitoring system (“<b>the NCEMS</b>”) was <u>specifically</u> established to provide a monitoring system for limited payout machines (“<b>LPMS</b>”) in circumstances in which LPM operators do not have the resources to establish their own electronic monitoring systems.</p>	

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	<p>The primary purpose of the NCEMS is for PLAs to monitor the payment of gambling levies and taxes.</p> <p>Casinos, in contrast, have their own electronic monitoring systems as required by provincial legislation. Casinos' monitoring systems are linked to the PLAs, which have full access to the content of those systems.</p> <p>CASA thus submits that there is no need to develop a new electronic monitoring system for casinos that will no doubt involve considerable time and expense. Accordingly, CASA submits that the NCEMS should not be extended to casinos. Nevertheless, to the extent that it is concluded, contrary to our submissions, that the NGR should have access to casinos' electronic monitoring systems, we point out that this could be achieved by the NGR simply linking-up to the monitoring systems of the various PLAs.</p>	
	<p><b>Clause 15: responsibilities of board</b></p> <p>Clause 15(c) provides for the insertion of paragraph (l) in section 33 of the Act. This is inconsistent with the fact that section 33 currently contains only paragraphs (a) to (c). This confusion may have arisen from the fact that the 2008 Amendment Act – which, as noted above, has never been brought into operation – contemplated the insertion of paragraphs (d) to (k) in section 33. This should be rectified.</p>	
	<p><b>3.8 Clauses 17 and 22: information sharing and external probity</b></p>	



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	<p><b>reports</b></p> <p>While the proposed formal amendment to section 35 of the Act is noted, it is recorded that this section has never served its originally intended purpose, in that it was designed to prevent the duplication of resources, effort and costs in the context of probity investigations into the suitability of persons applying for licences or for the procurement of financial interests in licence holders. licence holders continue to be required to fund the (extensive) costs of multiple probity investigations into the same subject matter, persons or entities by different PLAs. The reason for this is that section 35 does not contain any provision or concrete mechanism which obliges PLAs to access and to have recourse to the "shared" information when conducting probity investigations of this nature. CASA requests that serious consideration be given to including such a provision in section 35, in order to ensure that this section does not remain a dead letter for all practical purposes. It will be noted that the comments set out above also apply in relation to the proposed amendment to section 57 of the Act.</p>	
	<p><b>Clause 26: meeting quorum</b></p> <p>CASA is respectfully of the view that it is undesirable, from a policy point of view, to legitimize the taking of decisions by the National Gambling Policy Council ("<b>the Council</b>") in circumstances where it fails to achieve a quorum. CASA respectfully submits that the Council should be disbanded and the provisions in the Act relating to the Council should</p>	

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	<p>be repealed. If, however, the Council is to continue functioning, we submit that, given its consultative and participative nature, it should be mandatory for a quorum to be achieved on every occasion on which decisions affecting the industry are to be made (which would seem to be the case in relation to all of the Council's decisions).</p>	
	<p><b>Clause 28: establishment of National Gambling Regulator (NGR)</b></p> <p>In addition to the comments at paragraph 3.2 above in relation to this clause, CASA is concerned that the Bill excludes various paragraphs of section 64(1) as reflected in clause 33 of the draft National Gambling Amendment Bill, 2016,<sup>6</sup> which stipulated that the NGR:</p> <p><i>"(c) is independent and subject only to the Constitution and the law;</i>  <i>(d) must exercise its functions in accordance with this Act;</i>  <i>(e) must be impartial; and</i>  <i>(f) must perform its functions -</i>  <i>(i) in a transparent manner as is appropriate having regard to the nature of the specific function; and</i>  <i>(ii) without fear, favour or prejudice."</i></p> <p>These provisions are desirable and should be reintroduced into the Bill. Despite the fact that the dti's response agreed with this submission, these provisions are inexplicably not included in the revised version of</p>	

<sup>6</sup> Published under Government Notice 1207 in *Government Gazette* 40320 dated 30 September 2016.

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	the Bill	
	<p><b>Clause 30: CEO and Deputy CEO</b></p> <p>The following comments are made on sections 65A and 65B:</p> <p>It appears that the phrase “<i>or becomes insolvent and the insolvency results in the sequestration of his or her estate</i>” in section 65A(3)(d) is unnecessary as this scenario is covered by the phrase “<i>unrehabilitated insolvent</i>”.</p> <p>As noted above, section 65B(2) confers too much power on one person (i.e. the CEO).</p> <p>Section 65B(3)(b) contemplates that the CEO may assign management of any functions to NGR employees. While CASA has no difficulty with the assignment of certain administrative functions to the NGR's staff, some decisions are of such fundamental importance that they should be taken by the governing authority (which, in terms of the Bill, is the CEO). These key decisions would include, for example, a decision to list an unlawful gambling operator in section 10A and granting concurrence for the suspension or revocation of a national licence in terms of section 43(1).</p>	
	<p><b>Clause 31: relations with provincial licensing authorities</b></p> <p>Clause 31(e) intends to amend section 66(6) in circumstances in which there is no such subsection in the Act.</p> <p>This confusion appears to have arisen from the fact that the 2008</p>	

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	Amendment Act – which, as noted above, has never been brought into operation – contemplated the insertion of subsection (6) in section 66.	
	<p><b>Clause 32: inter-governmental relations in relation to gambling activities</b></p> <p>It is potentially problematic for administrative decision-makers to exercise their powers or perform their functions <i>jointly</i> given that a functionary to which a power or function has been assigned by legislation must exercise that power or function without undue dictation by a third party (including another administrative functionary). The phrase “<i>to provide for the joint exercise or performance of their respective powers and functions contemplated in this Act</i>” should thus rather be worded along the following lines: <u>“to co-ordinate and harmonise the exercise or performance of their respective powers and functions with regard to gambling activities”</u>.</p> <p>This submission is consistent with the approach in other statutes to agreements or memoranda of understanding aimed at promoting cooperative governance.<sup>7</sup></p>	
	<p><b>Clause 34: responsibilities of board</b></p> <p>The provisions relating to conflicts of interests in section 68 should</p>	

<sup>7</sup> See e.g. section 21 of the International Trade Administration Act, 2002, section 53(1)(b) of the Co-operative Banks Act, 2007, section 17(4)(b)(i) of the National Credit Act, 2005, section 21(1)(h) of the Competition Act, 1998, and section 13 of the National Ports Act, 2005.

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	<p>apply equally to the Deputy CEO. The dti's response indicates agreement with this submission<sup>8</sup> but section 68 has not been amended to refer to the Deputy CEO specifically. It bears emphasis that the Deputy CEO does not necessarily fall within the concept of "staff" as contemplated in this section as the staff of the NGR are to be appointed by the CEO in terms of section 73, while the Deputy CEO is appointed by the Minister in terms of section 65A(5).</p> <p>While the use of the phrase "on behalf of" in sections 68(2)(d) and (e) might be appropriate for the CEO, who would invariably act on behalf of the NGR, we submit that it would be preferable for this phrase to read "<u>in or on behalf of</u>" and "<u>within or on behalf of</u>" in these subsections, respectively. The use of the words "in" and "within" is consistent with the wording of a similar provision in sections 208(c) and (d) of the Companies Act, 2008.</p>	
	<p><b>Clause 35: deletion of sections 69 to 72 of the Act</b></p> <p>CASA submits that section 69 of the Act should not be deleted but should rather be modified so that the provisions relating to resignation and removal apply to the CEO and the Deputy CEO.</p>	
	<p><b>Clause 36: staff of NGR</b></p>	

<sup>8</sup> Page 24 of dti's response.

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	Our comment at paragraph 3.12.4 above applies equally to section 73(4).	
	<p><b>Clause 37: finances</b></p> <p>The use, in section 74(3), of the word “<i>requested</i>” is, in our submission, preferable to the proposed word “<i>request</i>” as the former makes clear that the NGR must submit to the Minister a statement of the actual amount that it requests for appropriation from Parliament for the following financial year.</p>	
	<p><b>Clause 40: powers of national inspectorate</b></p> <p>Section 76A(1)(e) envisages empowering inspectors appointed by the NGR to “<i>enforce compliance of gambling institutions with gambling laws</i>”. CASA has the following objections in respect of this provision:</p> <p>No clarity is given as to the manner in which the NGR is to go about enforcing compliance with gambling laws. This is contrary to the principle of the rule of law as the NGR’s powers are not sufficiently circumscribed.</p> <p>Section 76A(1)(e) would conflict with section 30(1) of the Act, which provides that each PLA “<i>has <u>exclusive jurisdiction</u> within its province</i>” to, amongst others:</p> <p>“(b) <i>conduct inspections to ensure compliance with-</i>  (i) <i>this Act;</i></p>	

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	<p>(ii) <i>applicable provincial law; ...</i></p> <p>(c) <i>impose on licensees administrative sanctions in accordance with this Act or applicable provincial law;</i></p> <p>(d) <i>issue offence notices in respect of offences in terms of this Act or applicable provincial law.”</i></p> <p>Section 76A(1)(e) would have the undesirable impact of subjecting licence holders to the jurisdiction of two different compliance enforcement authorities. This would not only expose licence holders to more than one disciplinary procedure in respect of the same conduct (as well as potentially different outcomes of the same enquiries based on differing interpretations and approaches by the respective authorities) but would also entail undue duplication of regulatory effort and cost. CASA submits that this dual regulation would be inimical to the objective of streamlining the manner in which gambling-related activities are regulated as well as the objective of promoting regulatory uniformity.</p> <p>Accordingly, CASA submits that section 76A(1)(e) should be deleted.</p> <p>Section 76A(1)(b), and arguably section 76A(1)(d), would appear to be at odds with section 30(1)(d) of the Act, which grants exclusive jurisdiction to PLAs to <i>“issue offence notices in respect of offences in terms of this Act or applicable provincial law”</i>.</p> <p>The meaning of the phrase <i>“relevant institutions”</i> in section 76A(1)(f) is</p>	

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	<p>unclear.</p> <p>Section 76A(1) refers, in various paragraphs, to “<i>illegal operators</i>” and “<i>illegal gambling activities</i>”. CASA assumes that these phrases are intended to refer to circumstances in which a person makes available gambling without a licence. This should be clarified, particularly given that the reference in section 76(1)(f) to “<i>illegal or unlicensed gambling activities</i>” might otherwise be read to suggest that an “<i>illegal operator</i>” is someone other than a person who makes available gambling without a licence (as this would be covered by the concept of “<i>unlicensed gambling activities</i>”).</p> <p>Similarly, the phrase “<i>an operator that has been operating in contravention of this Act</i>” at the end of section 76A(2) should rather refer to “<i>a person conducting or making available a gambling activity that is not licensed in terms of this Act or a provincial law</i>”. This wording would make it clear that section 76A(2) applies to unlicensed operators and not to other operators that may be found from time to time to have contravened the Act in one or other respect.</p> <p>The phrase “<i>and which is prohibited under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)</i>” in section 76A(3) is likely to lead to confusion.</p>	
	<p><b>3.20 Minor additional comments</b></p> <p>In this final portion of these submissions, CASA sets out a few minor</p>	



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	<p>additional comments on the wording of the Bill, which are primarily of a typographical nature. These comments are made in an effort to assist in the drafting of the Bill. They are not intended to be exhaustive but rather reflect issues that we noticed during the course of considering the Bill from a substantive perspective.</p> <p>The word “<i>is</i>” should read “<i>was</i>” in section 16(4)(a)(ii) and (iii).</p> <p>The final portion of section 65A(3)(g) should be amended to read as follows: “<i>an offence involving dishonesty, <u>an offence under the Prevention and Combatting of Corrupt Activities Act (Act No. 12 of 2004), or an offence under the Financial Intelligence Centre Act 2001 (Act No. 38 of 2001)</u>”.</i></p> <p>The phrase “<i>approved in consultation with the Minister</i>” in section 73(1)(a) should presumably read “<i>approved by the Minister</i>”.</p>	
	<p><b>GOLDRUSH GROUP PTY (LTD) REPRESENTED BY CLIFFE DEKKER AND HOFMEYR ATTORNEYS</b></p> <p>Goldrush is concerned about the decision of the National Assembly Committee to split the process of consideration of the Bill. This policy and legislative process commenced as long ago as 2010 with the Gambling Review commission, so to further delay consideration on critical provisions of the Bill which are essential for the industry is not in the best interests of the industry as a whole.</p> <p>Goldrush therefore submits that Bill 27B should be withdrawn. A full</p>	

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	<p>and proper process of consultation should take place with all industry stakeholders before the complete Bill 27 is reintroduced so that all sections of the Bill stemming from the National policy and draft Bill process can be dealt with by Parliament.</p>	
	<p><b>THE PROPOSED EXTENDED NCEMS</b></p> <p>There has been no consultation with the industry on the extension of the NCEMS and the feasibility and costs of the system have not been established. There was indeed a consultation process on the draft Policy <u>but this did not include consultation on the proposal to extend the NCEMS</u>. An additional rationale stated in the Policy is that the NGR, once it has developed the capacity to operate the NCEMS, will derive revenue from the NCEMS to fund its operations. Extending the scope of the NCEMS to all gambling modes will greatly increase this source of revenue.</p> <p>The costs associated with introducing a single NCEMS that will regulate all gambling modes are not justified taking into consideration that such information is already procured by the PLAs. <u>If the NGB / NGR require access to this information directly the licencees can simply provide them access to dial in to the existing systems which provide all the necessary information as required by the National Gambling Act, various provincial Gambling Acts and rules.</u></p>	
	<p><b>THE RECONFIGURATION OF THE NATIONAL GAMBLING BOARD</b></p>	

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	<p><b>INTO THE NGR AS AN ENTITY OF THE DTI</b></p> <p>The proposed National Gambling Regulator comprises only of the CEO, with no independent governing board. This means that there is no decision-making body consisting of various persons with different backgrounds, possessing different skills and knowledge.</p> <p>The proposed reconfiguration does not meet any justification to do away with the National Gambling Board and it is undesirable that such power vest in one person without the benefit of accountability that arises from decisions taken by a lawfully appointed Provincial Gambling Board.</p> <p>This proposal if adopted will lead to a situation where a PLA led by a full Board with a wide range of experience in all the fields necessary may approve a LPM site in excess of five LPMs, this then needs to go to the NGB for ratification, where a single person who does not have this wide range of experience could then deny this application. This does not make rational sense.</p>	
	<p><b>PROPOSED POWERS OF NATIONAL GAMBLING INSPECTORS</b></p> <p>Section 76A(1)(e) envisages empowering inspectors appointed by the NGR to “<i>ensure compliance of gambling institutions with gambling laws</i>”.</p> <p>The proposed inclusion of section 76A if effected will undermine the provincial governments’ powers to regulate gambling as they are required to do in terms of Schedule 4 of the Constitution. Section 30(1) of the National Gambling Act is clear and gives effect to the</p>	

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	<p>Constitutional requirement: <i>“Each provincial licencing authority has exclusive jurisdiction within its province.”</i></p> <p>Mover, the proposal poses a risk of duplication between the Provincial inspectorates and the National inspectorate.</p> <p>It is unclear how the proposed section 76A will be implemented without imposing upon or duplicating the functions of the provincial inspectorates.</p>	
	<p><b>QUORUM OF THE NGPC</b></p> <p>The National Gambling Amendment Bill proposes amendments that will undermine the important principle of a provincial majority established by these sections of the Act. The effect of the proposed amendment is that a binding decision can be taken without at least five provinces being in favour of it. The solution to this problem, Goldrush submits, is to provide that, that decision may be made by a round robin method rather than providing that it can be taken by a majority of members at an inquorate meeting and with the support of fewer than five provinces.</p>	
	<p><b>SUN SLOTS PTY. LTD. (“Sun Slots”)</b></p> <p><b>Replacement of the National Gambling Board with the National Gambling Regulator</b></p> <p>Naturally, we are in favour of any proposed change which would bring about more effective and swift decision making within the gambling industry in general, and within the LPM industry in particular. If the aforementioned proposal brings about such positive changes, we are</p>	

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	<p>certainly supportive of such actions. In this light, we believe that the appointment of knowledgeable, competent and responsible members to the NGB may be a better and more cost effective option. Furthermore, if punitive measures were enforced against board members for failing to fulfil their statutory mandates, it may result in more responsive and responsible board members than had previously been the case.</p> <p>Our proposal is therefore that the replacement of the NGB with the NGR is unnecessary in that the efficiency of the NGB can be cured by utilising current corrective measures.</p>	
	<p><b>Clause 12: national central electronic monitoring system</b></p> <p>In our respectful view, having a single NCEMS service provider is not only anti-competitive but prevents variety in a market where better technology and efficiencies are readily available. The limited time period during which the NCEMS provider is licensed also prohibits the amount of investment which can be made in improving the system. It is therefore proposed that the same approach which currently applies to casinos and bingo operators be applied to route operators with regard to the monitoring of LPMs. Route operators should be allowed to use any commercially available monitoring thasystem provided it has been duly certified as contemplated in Chapter 2, Part D, of the NGA. The current system is extremely costly to Route Operators and is quite often unreliable and should be scrapped in our respectful opinion.</p>	
	<p><b>Clause 26: Quorum at Council Meetings</b></p>	

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	<p>In terms of section 61(2)(a) of the NGA the Council consists of 10 regular (voting) members with a quorum being the Minister and at least 5 such members.</p> <p>Having regard to the history of poor attendance at such meetings, often resulting in the inability to form a quorum, Sunslots is of the view that additional measures should be put in place to ensure that any decision is only taken once a quorum is achieved. Perhaps a round robin decision process, such as that contemplated in section 60 of the Companies Act (No. 71 of 2008), may be used to pass resolutions outside of a formal meeting thereby ensuring that material decisions be taken with the requisite number of participants.</p>	
	<p><b>GOLD CIRCLE</b></p> <p><u>CLAUSE 12 – NCEMS</u></p> <p>While there are similarities between limited pay-out machines, electronic bingo terminals and casino slot machines, betting systems operate very differently and so it is not understood how a national central electronic monitoring system could be developed to monitor all of these forms of gambling in a single system.</p> <p>In any event, betting activities are already strictly monitored by the provincial licensing authorities. E.g., in KwaZulu-Natal, Gold Circle's totalisator betting system and Track and Ball's computerised record-</p>	

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	<p>keeping systems are approved and monitored by the KwaZulu-Natal Gaming and Betting Board, as required in terms of the provincial Act and Regulations.</p> <p>For these reasons, we submit that the references to “betting activity” in subsections (1)(a) and (3)(d) ought to be deleted.</p>	
	<p><b>KWAZULU-NATAL GAMING AND BETTING BOARD</b></p> <p>The status of the National Gambling Amendment Act 10 of 2008 that was meant to regulate interactive gambling and which still awaits proclamation of the date of its commencement has not been made clear.</p>	<p>The National Gambling Amendment Act 2008 remains an Act of Parliament. <b>the dti</b> has not formulated a final position on what will befall the Act.</p>
	<p><u>Amendment of Section 28</u></p> <p>There is a concern that the introduction of a National Gambling Regulator (effectively a CEO”) provides for the responsibility of what used to be considered by an entire Board under the National Gambling Act 2004 to be attended to by a single individual and without the associated checks and balances of a Board with various skills and experience.</p>	<p>The function has always been practiced even under the current Act, it not necessarily introduced in terms of the Bill for the first time. It must be noted that the mandate and powers vest in the NGR as an entity, not in an individual.</p> <p>All governance checks and balances are in place in terms of legislation to prevent abuse of power.</p> <p>The CEO is restricted to exercise power within the confinements of the PFMA read with the NGA as amended. The NGR will be a public entity in terms of the PFMA, and will comply with all the PFMA legal prescripts and is accountable to the Auditor-General and Parliament. The CEO of the NGR will become the accounting authority and is</p>

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		<p>required to account at the highest level pertaining to its fiduciary duties. All governance checks and balances are in place in terms of legislation to prevent abuse of power.</p> <p>The CEO is restricted to exercise power within the confinements of the PFMA read with the NGA as amended.</p>
	<p><u>Amendment of Section 27</u></p> <p>KZNGBB does not support the proposal to introduce and impose a National CEMS for the Betting industry for the following reasons:</p> <p>(a) It has never been a requirement previously and the Betting Sector which accounts for 21.3% of the Gross Gaming Revenue generated for the Province.</p> <p>(b) The current CEMS for LPMs monitors “significant events” associated with LPMs. There is a concern that having a compulsory NCEMS in the betting sector may have a negative cost implication for what are traditionally small operators (EME Bookmakers and Tote Agencies). This will affect cost of operations which may impact on employment and sustainability of smaller operations and jobs. The industry currently employs 4576 direct jobs. Currently each betting operator makes use of SANS Certified, registered and approved software which adequately serves the same purpose that a central monitoring system would do.</p>	<p>The envisaged NGR will be directly accountable for the information collected as opposed to the status quo where the NGB and PGBs has to rely on operators to provide that information. This will not interfere with the functions of the PGBs, but will rather strengthen their ability to regulate independently and not be conflicted.</p> <p>The system has already been developed at the cost of the NGB. NCEMS being an IT system will improve efficiencies, financial reporting, Industry performance reporting and provide reliable information for auditing purposes. This national regulatory tool is not for financial gain however attracts a monitoring fee, which is the norm in the LPM industry. There is no cost that any province will incur in the extension of NCEMS to other modes of Gambling.</p>
	<p><u>Amendment of Section 33</u></p> <p>The National Gambling Boards role is to establish uniforms and</p>	<p>The function has always been practiced even under the current Act, it not necessarily introduced in terms of the Bill for the first time. It</p>



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	<p>standards applicable to provincial licensing authorities in respect of certain gambling activities and policy related matters, whereas the role of regulating the industry falls upon the Provincial Gambling Boards which have enacted their own gambling legislation e.g. the KwaZulu-Natal Gaming and Betting Act, 2017 as Amended.</p> <p>It is submitted that the impact of these provisions encroaches on respective PLAs' ability to be self-regulating over matters of gaming and betting regulation. The PLAs ought to be allowed to retain their autonomy in matters of licensing and monitoring their licensees. The basis for this observation is in terms of section 104(1)(b)(i) of the Constitution of the Republic of South Africa, 1996 which provides that provinces have <i>concurrent legislative competence</i> over matters listed in Schedule 4 Part A, which are the "<i>casinos, racing, gambling and wagering, excluding lotteries and sports pools</i>".</p> <p>The consideration of "<i>applications and motivations from provincial licensing authorities for acquisition of additional limited pay-out machines</i>" will be made by an Individual (the National Gambling Regulator) as opposed to a full Board within the Provincial Legislative Competence. Decisions on the number of gaming positions to be rolled out for the Casino and Bingo Industry currently fall under the competence of the Provincial Licensing Authority, there is no reason why LPMs should be treated differently.</p>	<p>must be noted that the mandate and powers vest in the NGR as an entity, not in an individual.</p> <p>All governance checks and balances are in place in terms of legislation to prevent abuse of power.</p> <p>The CEO is restricted to exercise power within the confinements of the PFMA read with the NGA as amended. The NGR will be a public entity in terms of the PFMA, and will comply with all the PFMA legal prescripts and is accountable to the Auditor-General and Parliament. The CEO of the NGR will become the accounting authority and is required to account at the highest level pertaining to its fiduciary duties. All governance checks and balances are in place in terms of legislation to prevent abuse of power.</p> <p>The CEO is restricted to exercise power within the confinements of the PFMA read with the NGA as amended.</p>

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	<p><u>Amendment to Section 62</u></p> <p>The proposed new sub-paragraph (eA) adds to the list of matters to be considered by the Council, being “<i>policy and legislative amendments to ensure alignment</i>”</p> <p>KZNGBB does not support the proposed amendment as its effect amounts to a detraction from the independence of provincial licensing authorities to be self-regulating as mentioned elsewhere in this document.</p> <p><u>Amendment to Section 62</u></p> <p>Section 62 of the principal Act outlines the objects and powers of the National Gambling Policy Council which has to be consulted on policy and legislative amendments to ensure alignment. This means that when the Provincial Legislators consult and amend the Provincial Acts they would need to consult Council which has not properly been convened in a long time. This may delay the ability of the Provinces to propose legislative amendments.</p>	<p>The provision only serves to entrench the concurrency required by the constitution between provinces and national government in regulating casinos, betting and wagering. The current practice has only led to disputes between national and provinces in terms of what should be permitted and not permitted.</p> <p>The provision only require consultation so policy issues can be discussed at the Council to ensure that issues of conflict are discussed. This will not interfere with the legislative processes as the consultations usually needs to happen with stakeholders and the Council is that important stakeholder for that purpose. The legislature function will not be interfered with. The quorum issue may be improved with this obligation as members will know not to miss the meetings because of the function.</p>
	<p><u>Amendment to Section 63A</u></p> <p>The KZNGBB raises its concerns regarding this proposed draft amendment as the decisions that impact on gambling policy can be passed by an inquorate Policy Council. This is poor from a governance and oversight perspective.</p>	<p>This proposed amendment is simply giving effect to an executive decision that was already made, and any contrary proposal would be tantamount to a disregard for the separation of powers doctrine entrenched in the Constitution. Members will be informed in advance repeatedly that in the second meeting key decisions will be made after the first inquorate meeting and reminded to attend so that should they not attend, they were aware of the implications. This is</p>

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		<p>also in line with current practices of good corporate governance.</p> <p>Round robin is currently a standard practice of the NGPC and NGPC members are familiar with it. Round robin ordinarily is utilised to cast a vote on matters which have already been deliberated upon. Passing of motions have been attempted through round robin previously and has proven not to be a viable option. In any event, round robin is administrative in nature and does not require to be legislated to provide agility for the rules of procedure of the NGPC.</p>
	<p><u>Amendment to Section 65</u></p> <p>Section 65 of the principal Act outlines the objects and powers of the National Gambling Regulator. Among its objects and functions, a new section (eB) is proposed as a new enactment – <i>“collecting and retaining the monitoring fees for all modes of gambling”</i></p> <p>KZNGBB is of the view that the proposed amendment is undesirable and proposes that it be deleted. The effect thereof is to interfere into the arena of central monitoring system service providers and potentially also into contractual arrangements that will have been concluded between respective service providers and licensees. This would also have a negative effect on the fees currently collected by the Provinces through their relevant fee structures and Schedule to the Act. The Responsibility of collecting and retaining monitoring fees is the domain of the Provincial Legislative Authorities.</p>	<p>The Bill proposes that the NGR collect and retain monitoring fee in its operation of the NCEMS. There is no cost that any province will incur in the extension of NCEMS to other modes of Gambling.</p>

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	<p><b>BINGO ASSOCIATION OF SOUTH AFRICA (BASA) REPRESENTED BY Lawrence Smith, Chairperson.</b></p> <p>At the outset, BASA is most concerned about the decision of the National Assembly Committee to split the process of consideration of the Bill. The process of amending the National Gambling Act commenced way back in 2010 with the Gambling Review Commission. To leave critical amendments out of the Bill at this late stage in the process is not in the best interest of stakeholders in the industry. All sections of the Bill should be dealt with simultaneously to prevent further delays and bring certainty to the relevant sectors of the industry.</p>	
	<p>It is clear that the establishment of the NGR and the funding of the NGR seem to be the driving forces behind the amended Bill. This despite the fact that by the DTI's own admission in its presentation, "the NGB has for the past four years been led by an Administrator, and it has successfully achieved 100% of its performance targets year on year, and has received a clean audit for the past 3 consecutive years." So, one has to ask the question, why the sudden rush to pass only parts of the draft Bill and the original Bill 27?</p>	
	<p><b>THE PROPOSED NCEMS</b></p> <p>There has been totally inadequate consultation with the industry on the NCEMS. The burden of implementing and paying for the extended NCEMS (and through it, paying also for the operations of the NGR) is placed on the gambling industry. However, unlike the other aspects of</p>	

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	<p>the Bill which were dealt with the Policy consultation process, the industry has not been consulted on this proposal despite the enormous implications.</p> <p>The report published by the Gambling Review Commission did not make any recommendations that the NCEMS should be extended to the bingo industry.</p> <p>Bingo operators have installed state of the art electronic monitoring and management systems (“CEMS”) for all their electronic gambling operations, as have the casinos.</p> <p>There is no rationale for running dual monitoring systems which will come at great expense to the licensee. This will have to be added to the existing systems and also installed on individual gambling machines and bingo terminals.</p> <p>To BASA’s knowledge, there has been no research done whatsoever to establish whether it is even technically possible to have two systems running in parallel and if so, what would the cost of such technical development would be.</p> <p>All gambling machines and bingo terminals would have to go through full re-testing by the approved test laboratories and the NRCS as well as further approvals of LOCs by the PLAs. These extra and unnecessary costs have the potential to cripple the industry.</p> <p>It must be borne in mind that each gambling sector operates and functions within different parameters. The current state of NCEMS will</p>	

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	<p>be required to be amended/changed to cater for all these different gambling sectors and to take into consideration a spectrum of distinct "significant events". Who will pay for all these unnecessary development costs?</p> <p>The regulation of information which NCEMS seeks to achieve is better placed with the PLAs as PLAs are the primary regulators within the provinces and are responsible for the compliance of licence holders. Such information must therefore be within the reach of the PLAs to ensure that monitoring and enforcement of the legislative compliance is done timeously and completely within the control of the PLAs. Having regard to the aforesaid, we submit that the Provinces should manage the CEMS' as PLAs and not the NGR as the oversight body of the gambling industry.</p> <p>Lastly, it must be pointed out that one of the principles of the Wiehahn Commission is the "Generation of revenue and taxes for provincial governments and for good causes". There is no recommendation for national structures to benefit from gambling revenues, and the introduction of NCEMS to other gambling modes will in fact reduce any revenues to good causes. This extension therefore outweighs any benefits suggested.</p>	
	<p><b>The establishment of the National Gambling Regulator as a public entity lead by the CEO.</b></p> <p>The proposed reconfiguration does not meet any justification to do away</p>	

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	<p>with the National Gambling Board and it is undesirable that such power vest in one person without the benefit of accountability that arises from decisions taken by a lawfully appointed Provincial Gambling Board.</p>	
	<p><b>The additional powers of the National Gambling Inspectors to act with or without provincial inspectors to investigate illegal gambling activities.</b></p> <p>The proposed inclusion of section 76A if effected will undermine the provincial governments powers to regulate gambling as required to do so in terms of Schedule 4 of the Constitution. This proposed amendment, which provides for additional powers of the national gambling inspectors that they may act with or without provincial inspectors to investigate illegal gambling is in direct conflict with section 30 of the National Gambling Act as it is the PLAs that are required to conduct inspections to ensure compliance with the National Gambling Act as well as applicable provincial law.</p>	
	<p><b>Clause 26 (Quorum of meetings of the National Gambling Policy Council)</b></p> <p>The principles of co-operation and co-ordination of gambling policy between the provinces and between the provinces and the national government must be placed at the forefront. The proposed amendment to clause 26 must therefore be amended in a manner that does not undermine the Constitutional principles and should be amended for example to allow for decisions to be made by a round robin method or</p>	

Provincial Legislature	Voting in respect of the National Gambling Amendment Bill	Departmental comments
	proxy votes.	
	<p><b>GALAXY GAMING AND ENTERTAINMENT (PTY) LTD</b></p> <p>Clause 26 of the bill which proposes that a decision can be taken by the National Gambling Policy Council without a quorum is unsustainable and should be deleted.</p>	
	<p>Clause 12 of the Bill: the proposed amendment of section 27 of the Act (a section dealing with the national central electronic monitoring system) and that proposed extension of the CEMS to casinos and bingo premises would, however, serve no discernible purpose.</p> <p>Casinos and bingo sites already have sophisticated ticketing, monitoring, accounting and reporting systems, installed at great expense, that are operational at all times. In some instances provincial licensing authorities (“PLAs”) have moreover stipulated that they must have off-site remote access to these monitoring systems, so that they can verify all information pertaining to those premises at any time. This is all the more so as there is nothing to suggest that the bingo operators have ever failed to provide any and all information requested by PLAs.</p> <p>The NGR does not collect gaming taxes from bingo licensees or casino licensees; and it does not police or regulate these sites in any manner.</p> <p>The DTI seems to suggest that because there is no prescribed national limit insofar as the issuance of bingo licenses and more specifically the</p>	



Provincial Legislature	Voting in respect of the National Gambling Amendment Bill	Departmental comments
	<p>number of EBTs that can be made available for play in the Republic, this is a substantive reason to introduce a National CEMS. Such a contention does not bear scrutiny as the 2 issues are entirely distinct and disconnected. The submission is inherently illogical. The purpose of a National CEMS is not to restrict the number of bingo or other gambling licenses or to restrict the number of EBTs, casino gambling machines or LPMs. The number of licenses or machine per gaming mode is regulated by applicable legislation or the application of discretion vested in PLA's under relevant legislation. CEMS has a very specific function and it certainly cannot be utilised to restrict EBTs, gaming machines or LPMs. If that were to be the case, such a basis would fail for want of legality as it clearly amounts to the use of legislative power to achieve an ulterior purpose.</p>	
	<p><b>Clause 26 of the Bill (Quorum of meetings of the National Gambling Policy Council)</b></p> <p>The Bill proposes amendments that will undermine the important principle of a provincial majority established by the relevant sections of the Act. The effect of the proposed amendment is that a binding decision can be taken without at least five provinces being in favour of it. Such an amendment is unsustainable and should be deleted.</p>	
	<p><b>GREAT BINGO</b></p>	

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	<p>Mr Shabalala is unhappy that the Bill has been presented in piecemeal as it only deals with issues only crucial to the Minister of DTI as an attempt to influence gaming regulation in provinces and raise funds for the National Gambling Regulator. He submits that the Bill is still raw and far from ready to be tabled in Parliament.</p>	
	<p><b>10.2 NATIONAL CENTRAL ELECTRONIC MONITORING SYSTEM</b></p> <p>Great Bingo is opposed to the extension of NCEMS to casino, bingo and betting activities at a cost of the operator.</p> <p>Provincial Licencing Authorities are already perform this function, National Gambling Regulator can access this information from the PLAs.</p> <p>Currently there is no benefit in having NCEMS for limited paying machines, it will be worse if introduced for other forms of gambling.</p> <p>Staff of the NGR has no capacity to monitor every gambling establishment optimally.</p> <p>NGR has no licensing powers, why would it monitor operations they cannot regulate.</p>	
	<p><b>10.3 NATIONAL GAMBLING POLICY COUNCIL</b></p> <p>The NGPC has been ineffective from its inception because of its failure to quorate. This failure is not a legislative inefficiency, but management or administrative.</p> <p>Clause 26, which inserts section 63A is rejected as it cannot be</p>	

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	<p>acceptable that the Minister can sit with one or two MECs and adopt a nationally binding policy. It is submitted that if MinMecs function then the NGPC should also be able to function.</p> <p>It is proposed that section 63 in Act 7 of 2004 must compose the membership of the Council as the Minister, DDG, NGR CEO, 9 MECs, 9 Provincial Gambling Boards' Chairpersons and 9 Provincial Gambling Boards' CEOs.</p> <p>This composition of the NGPC will guarantee the quorum of the Council which will be effective given the wealth of knowledge and experience of the new proposed composition of the Council.</p>	
	<p><b>ESTABLISHMENT OF THE NATIONAL GAMBLING REGULATOR</b></p> <p>The dissolution of the Board and the establishment of the Gambling Regulator is supported. Great Bingo however objects to the use of the word Regulator is inappropriate, given its powers and functions, a proper term proposed is National Gambling Observer.</p>	
	<p><b>CONCLUSION</b></p> <p>The Committee was concerned about the confusion created by the reference to the National Gambling Amendment Act 10 of 2008 in the B version of the Bill whereas the long title of reflects the Bill amending the National Gambling Act No 7 of 2004. Further, at its briefing, the Committee was presented with the original explanatory memorandum</p>	

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	<p>that was not coherent with the provisions of the B version of B27. The Committee having considered the above submissions agreed that these are substantial comments which are valid and of importance, they need to be addressed as proposed amendments at the Select Committee. The Committee met on 12 March 2019 and agreed to abstain from voting on the Bill subject to the proposed amendments and principle issues raised above being seriously considered by the Department of Trade and Industry prior to the final and voting mandate being conferred by the House. The negotiating mandate is attached herein as Annexure "A" of the report.</p>	
	<p><b>Explanatory memorandum</b></p> <p>The Committee was presented with the original explanatory memorandum that was not coherent with the provisions of the B version of B27. The Committee having considered the above submissions agreed that</p>	
<b>Mpumalanga</b>	<p>Votes in favour of the Bill subject to the following proposals:</p> <p><b>Clause 12: Section 27</b></p> <p>Casino, Bingo and Betting must be removed from the provision as they have their own monitoring systems which they acquired at great cost as regulated by PLAs. The system used in betting is different to the one used for LPMs, Casino and Bingo and may not be compatible with the NCEMS.</p>	<p>The system has already been developed at the cost of the NGB focusing on Limited Payout Machines (LPMs). The cost will not be to PLAs. This is a mandate of the NGB set out in section 27 of the NGA, 2004 and is a regulatory function for National Government to exercise oversight. Existing monitoring systems at various gambling venues will continue to function as normal. This function will ensure that the NGR continues to work as a central repository of gambling information in terms of the national registers.</p>

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		<p>The NGR will engage with PLAS and relevant stakeholders to ensure compatibility. Compatibility is not a matter for inclusion in legislative provisions.</p>
	<p><b>Clause 26: Section 63A</b>  Remove the entire clause as it will compromise the extend to which Council's decisions are discussed and considered, as well as the legitimacy of the decision. The non-attendance on Council members should be addressed in a different form and not be legislated.</p>	<p>The original text of the NGA, 2004 in section 63 (4), (5) and (6) have not been deleted and principles of corporate governance have been maintained to ensure that the council first attempts to reach decisions by consensus failing which a matter is resolve by formal vote on a motion which is passed by the minister and 5 members. Efforts were taken to ensure the NGPC takes place however the measures employed to reach did not succeed or yield any results. Round robin is currently a standard practice of the NGPC and NGPC members are familiar with it. Round robin ordinarily is utilised to cast a vote on matters which have already been deliberated upon. Passing of motions have been attempted through round robin previously and has proven not to be a viable option. In any event, round robin is administrative in nature and does not require to be legislated to provide agility for the rules of procedure of the NGPC .</p> <p>Section 63 (7) of the NGA stipulates that the NGPC may establish its own rules of procedure, and the decision to insert section 63A was made by the NGPC in its meeting of 12 March 2018 which was quorate.</p> <p>This proposed amendment is thus simply giving effect to an executive</p>

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		<p>decision that was already made, and any contrary proposal would be tantamount to a disregard for the separation of powers doctrine entrenched in the Constitution. Members will be informed in advance repeatedly that in the second meeting key decisions will be made after the first inquorate meeting and reminded to attend so that should they not attend, they were aware of the implications. This is also in line with current practices of good corporate governance.</p>
	<p><b>Clause 28: Section 64</b>  The clause must be deleted and instead of disestablishing the board, each of the nine provinces must have a representation in the NGB.</p>	<p>This proposed amendment is unconstitutional in that the implication of this is that provinces will be allowed to exercise oversight over themselves. This is not a good governance or sound regulatory practices. There is an underlying assumption that organisations governed by Boards are efficient and effective. However, <b>the dti</b> has experienced numerous challenges by entities governed by Boards. The provinces are represented in the NGPC. The Board is not a similar structure as the NGPC. The policy position taken by <b>the dti</b> is to establish CEO/Commission based structures versus that of the Board for efficiency and effective service delivery.</p>
<b>Free State</b>	Votes in favour of the Bill.	N/A
<b>Northern Cape</b>	Votes in favour of the Bill. The provincial legislature raised other issues not in the Bill which are implementation related.	N/A
<b>North West</b>	Votes in favour of the Bill.	N/A